

SOUTH AFRICA / JUDGMENT

Kidson v Minister of Safety And Security (31309/2012) [2014] ZAGPPHC 861 (8 October 2014) [2014] ZAGPPHC 861

COURT

North Gauteng High Court, Pretoria

BEFORE

Msimeki

CASE / FILE NUMBER

31309/2012

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IN THE HIGH COURT
OF SOUTH AFRICA
(GAUTENG
DIVISION, PRETORIA)
CASE
NO: 31309/2012

DATE:

08 October 2014

IN THE MATTER

BETWEEN

WILLIAM FRED

KIDSON.....PLAINTIFF

AND

MINISTER OF

SAFETY AND SECURITY.....DEFENDANT

JUDGMENT

MSIMEKI, J

INTRODUCTION

- [1] The plaintiff sued the defendant for damages that he allegedly suffered when he was allegedly unlawfully arrested and detained. The plaintiff, in the second claim, sued for damages allegedly suffered for loss of income and contumelia. Plaintiff also alleged that he was unlawfully assaulted. It is the defendant's contention that the arrest was lawful and that the plaintiff was never assaulted.
- [2] On 21 May and at the instance of the defendant merits were separated from quantum.

THE ISSUES

- [3] These are:
1. whether the plaintiff's arrest and detention was unlawful; and
 2. whether the plaintiff was assaulted and, as a result, lost income (loss of income and contumelia).

BRIEF FACTS

- [4] The plaintiff testified and called a witness while three witnesses testified on behalf of the defendant. The plaintiff's case is briefly as follows: On 10 March 2012 he had a braai at his lapa. He was in the company of his ex wife, his son Kevin, Kevin's fiancé Nicolene Reynecke ("Nicolene") and their child. Kevin, Nicolene and their child at some stage left for the shop to buy cool drink in the plaintiff's black Renault Clio. Approximately ten minutes later Kevin, in a shock, came back running and informed the plaintiff that they had encountered problems in the street. Nicolene and the child followed a few minutes later. Nicolene reported that two black men in civilian clothes removed the car key from the ignition of the motor vehicle. The plaintiff, in the company of Nicolene, then left for the scene. There, Nicolene showed the plaintiff the two black men in Theo Slabbert Street while they were moving towards the black Clio. He shouted three times at the men asking them to come back and to tell him about the problem. The men, without responding and identifying themselves, proceeded to the Clio. The plaintiff then

moved faster and caught up with them. While between them the plaintiff again asked them what the problem was. The taller man had the car keys in his hands. He attempted to take the car keys but the shorter man hit him against the back of his head with a fist which threw him against the tall man and they both fell to the ground. The short man hit and kicked him while he was on the ground. The plaintiff thought that the men had been robbers. They struggled, all the time, plaintiff trying to block their blows. While so struggling plaintiff saw a blue light and concluded that he would receive help. That was not to be as he immediately felt someone jumping onto him with his knees. A gun was cocked at the back of his head and he heard someone saying "I will shoot you!" The plaintiff's neighbour, Quinton, shouted saying "this is not the manner in which the police should operate". He was sprayed with teargas. Four men who did not identify themselves attempted to place him into the back of a van. The men did not identify themselves,

neither did they inform him what he was being arrested for. He resisted their attempts by pushing back using his legs against the van. He knocked his knee several times against the back of the police van. He bled from a cut on his forehead and nose. He was only wearing shorts without a shirt. The plaintiff and his son Kevin were then taken to the Hercules police station where they were placed in the holding cell. Upon enquiring why they were arrested, a blond lady at the

police station told him to keep quiet as they alone did the talking there. She told him "hy is laer as slang kak!" He saw the two men in civilian clothes and then realised they were policemen. A shirt was brought for him by his ex wife and Nicolene who were not allowed to see them. Kevin was taken to hospital while he was not. He had chest pains and his cheek started swelling. He was placed in a cell with fifty people still without being charged and told what he had been arrested for. Their attorney came to the police station and received no help until he brought the public prosecutor who arranged their release on warning on the afternoon of 11 March 2012. He was charged with interfering with a police officer, crimen injuria and assaulting policemen. He was later taken to Pretoria West hospital by his ex wife (life partner). The J88 was completed by a medical practitioner who concluded that he had been assaulted. His 5th rib was broken and this, according to him, prevented him from doing his duties as a motor mechanic. It is the plaintiff's evidence that he opened a case of assault, pointing a firearm and unlawful arrest at Villieria police station which transferred the matter to Hercules police station from where the docket disappeared.

[5] MR QUINTON RAATHS ("Quinton") was the next witness for the plaintiff. He was with his brother smoking outside their house when he heard noise from the street. They rushed to the gate to see what was happening. They heard the plaintiff shouting "stop, stop". He then, while at the gate, noticed the plaintiff going to two black men in civilian clothes. The plaintiff on catching up with the men grabbed the hand of one of them. The man pulled the hand away and a struggle ensued. The two men grabbed the plaintiff and threw him to the ground. He and his brother went out of the gate to see if they could offer help to the plaintiff. The two men hit the plaintiff who, in a loud voice, asked what was going on. Again he and his brother went closer. One of the two men stood up and pointed a firearm at them while they asked what was going on. He pushed his brother and his wife (Quinton's) who had joined them backwards. A few seconds later a police van came and stopped behind the bakkie. Two policemen joined the first two and jumped onto the plaintiff pushing him to the ground. The one with the firearm still had it pointed at them. He again, in a loud voice, asked what was going on. He was informed that the plaintiff was to be arrested for interfering with their work. The plaintiff was arrested. One of those in civilian clothes sprayed the plaintiff with pepper-spray. He screamed telling them to stop assaulting the man the way they were doing. He too, was sprayed with pepper-spray. He grabbed the hand with pepper-spray always saying it was unnecessary. The policemen struggled to put the plaintiff into the van. This, because the plaintiff made it difficult for them to do. Kevin who came to the scene was also arrested and placed in the van. It is important to mention that the witness, when cross-examined, testified that the plaintiff is called "Wimpie" and that they

had been living in the same area together for eleven years. He, however, knew the plaintiff by sight and name. He did not know the plaintiff's

surname. They were ordered to go home and they obliged.

[6] The defendant called MR PETER WILLEM GROBBLER ("Grobblor"), a manager in a valley business, as their first witness. His evidence is as follows: On 11 March 2012 he was walking next to the pavement going to his home at 1286 Hjalmer Street when he heard people arguing. The next moment a grey Renault Clio motor vehicle came straight to him while the driver was looking at him. He had been moving from east to west. The motor vehicle went straight to him when it cut a corner at an excessive speed while moving on the incorrect side of the road. He jumped out of the road to the pavement as there was no sidewalk. He turned around and screamed at the driver who had nearly knocked him down with his motor vehicle. The motor vehicle, at the time, had stopped on the wrong side of the road. The driver came out of the motor vehicle in a very aggressive mood and swore at him. He asked the driver why he had behaved as he did and an argument ensued. While arguing two people came in a motor vehicle which was stopped behind the Clio. They introduced themselves as police officers and intervened. He could see that the driver of the Clio had been under the influence of alcohol as he also smelt of it. A man whom he later knew as the plaintiff arrived in his shorts without a shirt on. He too was under the influence of liquor. The plaintiff pointed his finger at the witness' face and swore at him. The two officers intervened. The plaintiff punched the one officer on his mouth and also punched the second officer. The two tried to restrain the plaintiff who was very violent screaming and calling the officers names. He discovered that the plaintiff was the father of the driver of the Clio. He testified that it was tough for the officers to arrest him. A back up team had to be summoned to the scene. The team arrived. The first two officers had been in civilian clothes while the two who later arrived as the back-up team had been in uniform. The plaintiff continued with his behaviour even in the presence of the two officers who later arrived. Some of the people at the scene inflamed the plaintiff. To restrain him, the officers had to pin him to the ground. None of the police officers, according to him, assaulted the plaintiff. They struggled to arrest him and to place him in the van as he resisted. He blocked and made it impossible. He testified that the plaintiff assaulted two police

officers, wanted to assault him and was causing disturbance. The officers tried to reason with him but to no avail. They did what they thought was the best in the circumstances. Of significance is that the officers identified themselves as officers. They had properly identified themselves to the plaintiff's son as officers. After a struggle, the plaintiff was finally placed in the van. The plaintiff was so aggressive that the two officers in civilian clothes could not even introduce themselves to him. No one in his right frame of mind could fail to see that the officers were policemen. Their behaviour was also evident. He confirmed that one of the two officers in civilian clothes took the car key from the ignition system when a woman wanted to remove the Clio from the scene.

[7] CAPTAIN MARGARET UYS was a relief commander at the charge-office on 10 March 2012. They, over the radio, received a complaint of domestic violence and drunken driving. She testified that her juniors, Constables Dikgoro and Seloga, were attending to complaints that day. She got information that the two attended to the complaint she had heard about. She, while working, received a call asking for a back up. Thereafter the constables brought in the plaintiff and his son. The son was charged for drunken driving while the plaintiff was arrested for interfering with and assaulting the police officers. The plaintiff who had no shirt on was very drunk and swore at everybody in the charge-office. Constable Seloga reported that the plaintiff had assaulted them. Dikgoro's mouth was full of blood while Seloga's eye was swollen. He also complained of pain emanating from the ribs. Tlou was with them as it had been said that, he too, had assisted with the arrest of the plaintiff. Plaintiff's son Kevin co operated with them and he was taken to Steve Biko hospital for blood samples. She received a report that the officers had to use minimum force to subdue and arrest the plaintiff who even refused to be placed in the van. The plaintiff had no visible injuries. The plaintiff was kept

in a holding cell at the charge-office. The plaintiff was removed to the cell after paperwork was completed. The holding cell takes approximately ten people. If squeezed the cell can only accommodate about twenty five people and never fifty people. The plaintiff and Kevin were the only two in the holding cell. Dikgoro, once back with Kevin from hospital, accompanied Seloga to hospital for consultation as they had been injured. Plaintiff was charged after she had gone off duty at 6:00 and was released on warning. As is customary, she wrote short statements about the injuries of Dikgoro and Seloga. She denied that she had referred to the plaintiff as "laer as slang kak". She also denied that she had blond hair. There was only one lady constable who had blond hair. All she did, according to her, was to ask about the plaintiff's shirt.

[8] CONSTABLE SELOGA testified and briefly said that he was the driver of their motor vehicle in Theo Slabbert Street with his crew Dikgoro when they noticed a Clio motor vehicle driving recklessly and at high speed in the wrong lane on 10 March 2012. The driver of the Clio had an argument with a pedestrian who turned to be the first defence witness who informed them that the driver had nearly run him over with the Clio. The pedestrian stopped them and asked them to contact the police. He told the pedestrian that they were police officers. They approached the driver who asked them to identify themselves. They did. They noticed that the driver had been under the influence of alcohol. They asked him where he was off to at 23:30. They told him he was under arrest for drunken driving. The driver still argued with the pedestrian. The driver had also been arguing with a woman who carried a child. He smelt of liquor. Kevin, the driver, asked the woman to go and call his father and shortly thereafter fled the scene taking the direction that the woman had taken. They gave a short chase and returned to the motor vehicles. As they went back,

the plaintiff came with his short on. He was very angry ordering them to stop while asking why they were running away. They duly

introduced themselves to him informing him that they had been looking for the driver of the Clio. The plaintiff went to him as if he wanted to read the appointment certificate. He hit the witness with a fist on his right cheek. He repeated and then hit the witness with his head above his left eye. The witness fell to the ground. He then left the witness and went to the crew, grabbed his clothes and hit him with his head on his lips. The crew broke lose, ran to the van and called for a back-up. He stood up and told the plaintiff that he had not been fighting. People tried to intervene but he would not oblige, he kept on telling him that he had not been fighting. The plaintiff called them "kaffir robbers". Constable Tlou was one of the two officers who came to back them up. They had their uniform on. He explained to Tlou what had been happening. The plaintiff was informed he would be arrested for assaulting the police. The plaintiff then said that he had not been aware that they were police officers. The witness told him they had showed him their appointment certificates whereupon he said they would not arrest him. He became very aggressive on realising that he was to be arrested. He strenuously resisted while telling them that they were "kaffirs" and would do nothing to him. He demonstrated bravery and strength. They had to force him to get to the van where he used his feet against the van and pushed back. He was in the process telling people that he would sue them. Pepper-spray had to be resorted to subdue him. A man from the public asked him to go with us and that he would follow too, to the police station. He then relented and agreed to go with them. Kevin, the driver of the Clio, was also arrested after the proper warnings. Kevin gave no problems until a blood sample was drawn from his body. The two were kept in a holding cell at the charge-office. Paperwork was done but the plaintiff refused to sign the SAP.14A which is the notice of rights of detainees. An officer Constable Gezani Jerry Kubayi then had to sign as a witness. The witness too signed. He denied that the plaintiff had asked to go to hospital. At about 3:00

he and Dikgoro were allowed to go and consult. The plaintiff was released after he was gone on 11 March 2012. He denied that the plaintiff was assaulted. He also denied that a firearm had been placed on the back of his head and that no one had ever said that the plaintiff would be killed. He was the arresting officer of the plaintiff.

COMMON CAUSE

FACTS

[9] These facts are common cause either because the parties are ad idem on them or that they were never disputed. These are that:

1. Kevin, on 10 March 2012 and at about 23:30, drove the plaintiff's Renault Clio motor vehicle;
2. Constables Seloga and Dikgoro noticed Kevin recklessly driving the Clio along Theo Slabbert Street in Booyens Hercules;
3. the Clio was driven in the wrong lane facing the oncoming traffic;

4. the Clio, at a high speed, cut a corner when turning into Hjalmer Street at the intersection of Hjalmer and Theo Slabbert Streets and nearly ran over Mr Pieter Willem Grobblers ("Grobblers") while in Hjalmer Street. Grobblers had to jump for his dear life;
 5. Kevin stopped the Clio after missing Grobblers with the Clio;
 6. Constables Seloga and Dikgoro, having noticed the bad driving of Kevin, followed the Clio and stopped their van behind it;
 7. there was an altercation between Kevin and Grobblers;
 8. the two constables introduced themselves to Kevin and Grobblers;
 9. Kevin was told that he would be arrested for drunken driving;
 10. Kevin fled the scene only to come back later with the plaintiff; and
 11. the plaintiff was later arrested following an altercation between him and the police.
- [10] Against the version of the plaintiff and that of the defendant the court has to determine whether:
1. the plaintiff's arrest was unlawful;
 2. the plaintiff assaulted the police;
 3. the police assaulted the plaintiff; and
 4. the plaintiff interfered with the police who were doing their work.

THE LAW

- [11] The provisions of section 40(1)(a) and (j) of the Criminal Procedure Act, 51 of 1977 ("the CPA") are key to the resolution of the issues facing the parties.
- [12] Fortunate enough the court only has to deal with the merits of the case seeing that quantum was separated from merits.

[13] Section 40 of the CPA provides:

"40. Arrest by peace officer without warrant.

- (1) A peace officer may without warrant arrest any person –
 - (a) who commits or attempts to commit any offence in his presence;
 - (b) ...
 - (c) ...
 - (d) ...
 - (e) ...

- (f) ...
- (g) ...
- (h) ...
- (i) ...
- (j) who wilfully obstructs him in the execution of his duty."

(My emphasis.)

[14] The plaintiff based his case on the provisions of section 40(1)(b) which provides that -

"A peace officer may without warrant arrest any person-

- (a) ...
- (b) whom he reasonably suspects of having committed an offence referred to in Schedule 1, other than the offence of escaping from lawful custody." (My emphasis.)

[15] ADVOCATE W CALITZ ("Mr Calitz"), for the plaintiff, proceeded from the premise that the case revolves around the interpretation of this section of the CPA. He then, in the process of arguing and submitting, and in their heads of argument, referred to cases which deal with the section.

[16] The defendant had pleaded specially that the defendant had not been served with any notice by the plaintiff before summons was issued and served on the defendant. Such notice was served on the defendant on 8 May 2014 at 11:30. The special plea was therefore not proceeded with.

[17] ADVOCATE M MPHAHLELE ("Mr Mphahlele") submitted that section 40(1)(b) found no application in the facts of the plaintiff's case and that it, as a result, followed that the cases cited by Mr Calitz were also irrelevant.

[18] In deciding whether or not, and on a balance of probabilities, the plaintiff proved his case, the evidence has to be considered in its entirety.

[19] The plaintiff, in his evidence, told the court that he perceived the two policemen in civilian clothes as robbers. This cannot be correct. His testimony is that he followed the two when they went to the motor vehicles. He also, reluctantly conceded, when shown that the two could have driven the Clio away if they, indeed, were robbers as they had the keys of the Clio with them. The reason he furnished for thinking that they had been robbers, namely that they are living near an informal settlement, is not convincing. It must be remembered that the policemen introduced themselves to Kevin and Grobblers. Kevin must have told the father as to who had taken the car keys.

[20] It is clear that the plaintiff's version is not consistent. His statement to the police dated 13 March 2012 which forms pages 27 to 30 of exhibit "C" shows that he was the first to attack the policemen by hitting one of them with his forehead causing him to fall down. His evidence in court reveals that the shorter one of the two policemen was the first to hit him with a fist on the back of his head causing him to fall against the tall one resulting in both of them falling to the ground. The section 3 notice clearly shows that one of the two policemen shoved the plaintiff who then hit the man. Paragraph 12 of the plaintiff's particulars of claim reads:

"In the early morning of 11 March 2012, following the arrest of the plaintiff and at the place of arrest, the plaintiff was wrongfully and unlawfully assaulted by members of the South African Police Services whose identities are to the plaintiff unknown." (My emphasis.)

This clearly shows that the plaintiff was first arrested and thereafter wrongfully and unlawfully assaulted.

[21] The plaintiff testified that he had spent two nights in custody. He, upon being shown that that was in fact not so, changed and said that he had made a mistake

[22] The plaintiff testified that he was sprayed with teargas which was also used on Kevin. Quinton, his witness, however testified that plaintiff had been sprayed with pepper-spray which was used on him too. Quinton said nothing about Kevin having been sprayed with pepper-spray.

[23] The plaintiff, shown the discrepancies in his statement, the section 3 notice, the particulars of claim and his evidence in chief and asked to respond answered that only his evidence in chief had to be considered. The answer loses sight of the fact that the statements were made closer to the date of the incident and that they were a reflection of his fresh memory as opposed to his oral evidence.

[24] The plaintiff, in his evidence in chief, started by saying that he had resisted arrest because he did not know that the two were police officers. Strange enough, the resistance persisted even in the presence of the back up police officers who were in uniform. He then called the resistance verbal resistance. This also cannot be correct because he conceded that he had resisted in a way which implied that force was used. Evidence also shows that he blocked using his feet and legs to push back. Asked if the police had used force he said yes and added that he resisted. This is what led to the use of minimum force to get him into the police van. A member of the public also had to plead with him.

[25] Again, what appears strange with the plaintiff's version, is that he testified that Quinton remarked when the firearm was placed against his head that that was indeed not the way they were supposed to carry out their work. This again shows that the plaintiff was aware that the two men had been police officers.

- [26] The plaintiff could not explain why the J88 was not supporting his evidence regarding the injuries that he told the court about. He ended up saying that he did not know why the J88 did not show the extent of the injuries that he described.
- [27] Quinton's description of how the plaintiff was assaulted by the two policemen in civilian clothes differed from the description that the plaintiff gave to the court. According to Quinton, the plaintiff grabbed the hand of one of the men and they then wrestled. The two grabbed the plaintiff and threw him to the ground. They could not help Wimpie (the plaintiff).
- [28] Quinton wanted to paint the picture that he did not know the plaintiff, the man he had lived with for eleven years. Strange enough he referred to him as "Wimpie" an indication that he knew him very well. This version is highly improbable.
- [29] Quinton testified that the officer with the firearm told them that they were police officers. The officer pointed them with the firearm and threatened to arrest them. The plaintiff also testified that he had heard Quinton saying that their way of handling the plaintiff was not the right way of carrying out their work. If the plaintiff heard this he also must have heard them saying that they were police officers.
- [30] According to Quinton the one policeman with both of his hands had held the plaintiff from behind. This was never the plaintiff's evidence. Told that the short policeman, according to the plaintiff, had hit the plaintiff with a fist on the back of his head and realising the contradictions, he then told the court that he had not seen how they were fighting. According to Quinton the two of them sat on the plaintiff. This again was never the plaintiff's evidence. Quinton had no reason to doubt that the two were policemen. He did not even consider laying charges of pointing a firearm at him as he was aware that the policemen were doing their job.
- [31] Mr Calitz brought an application to amend the amounts the plaintiff claimed in the particulars of claim and prayers. The application was opposed. I, however, allowed the application and ordered the plaintiff to pay the costs. Mr Mphahlele, too, moved an application to amend the defendant's plea after a notice so to amend was served on the plaintiff on 8 May 2014. The application was not opposed. The amendment was granted and the amended pages were handed up from the Bar.
- [32] The plaintiff opened a case against the police with the following case number: Villieria 243/03/2012. The case was transferred to Hercules police station where the result was: nolle prosequi on the basis of de minimus.
- [33] The defendant's version is amply corroborated. The witnesses corroborate one another. Their evidence is probable, understandable and acceptable. The witnesses did not know one another yet they, in the main, corroborate each other and one another. Grobblers' evidence is in the main, and in a number of respects, in line with the evidence of Seloga and Quinton. The differences that are there, in their evidence, in my view, are of no consequence as they,

to me, are immaterial. The defence witnesses were honest with the court unlike the plaintiff and his witness who never wanted to concede even where it was obvious. Their version has improbabilities which are clearly evident. Grobblers, for instance, when told that plaintiff attempted to get the car keys, answered that it was possible although he did not know about that. Asked if he heard people asking the police to stop he answered that one woman did say that. Asked if the police could have kicked the plaintiff he answered that it was possible although he did not see it. Constable Seloga conceded that he was upset when plaintiff hit him. It must also be borne in mind that a number of aspects are common cause or were not at all challenged.

[34] Notwithstanding the relentless cross-examination of Mr Calitz, Grobblers, Captain Uys and Constable Seloga stood their ground and remained credible witnesses. They were, as Mr Mphahlele correctly submitted, reliable, convincing and credible. They, in my view, told the truth. Their evidence was indeed convincing and probable.

[35] Mr Mphahlele referred the court to the matter of Minister of Justice and another v Tsose 1950 3 SA 88 at 92H where the court said:

"If a peace officer, as a result of observations, honestly and reasonably comes to the conclusion that a crime is being committed he may act upon such opinion or belief even though in subsequent proceedings whether civil or criminal it is not proved that a crime was in fact committed. Moreover, in order to justify the apprehension and to determine whether or not a crime is being committed the arrestor should not be confined to what he perceives at the time of arrest but may import into his decision the antecedent conduct of the arrested person as well as his knowledge of all the relevant surrounding circumstances and thus supplement what is perceived by him. He is not obliged to delve into the mental attitude or the mental processes or reservations of the person arrested. It is sufficient, in my opinion, if he acts upon facts capable of ascertainment and conveyed to him through one or more of his senses. If facts are present which are apparent to the arrestor and which reasonably interpreted lead to the inference that a crime is in the course of being perpetrated, the arrestor is protected."

Indeed, the passage was cited with approval in Minister of Safety and Security v Glisson 2007(1) SACR 131 (ECD) at 134A-D.

[36] Mr Mphahlele submitted that it is not necessary that a crime be committed or that the arrestee later be charged or convicted of the offence for the police officer to successfully rely on section 40(1)(a) of the CPA. I agree. See S v Loubser 1977 4 SA 546 (T) at 548.

[37] Mr Mphahlele further submitted that the probabilities in this case favour the defendant. The plaintiff, on a balance of probabilities, has not successfully proved his case to be entitled to the relief that he seeks.

[38] The evidence clearly shows that Kevin drove the Clio while he was not sober. The plaintiff, after getting the report, hurriedly proceeded to the scene where he wanted to assist his son. He interfered with Constables Dikgoro and Seloga who had intended to arrest Kevin. Kevin

committed an offence in their presence and right under their noses and thus, indeed, this is not a case of reasonable suspicion referred to in section 40(1)(b) of the CPA. Indeed, the cases that Mr Calitz referred to relating to the section are irrelevant and do not assist the plaintiff. The plaintiff unlawfully assaulted both Constables Dikgoro and Seloga and called them "kaffirs" which constitutes the offence of crimen injuria. The police officers, in the circumstances of this case, were entitled to act in accordance with the provisions of section 40(1)(a) of the CPA.

[39] Indeed, as Mr Mphahlele correctly submitted, the provisions of section 40(1)(a) are very clear, unambiguous and unequivocal. Evidence, as well as the balance of probabilities, support the finding that the arrest was, indeed, lawful and that the plaintiff was never assaulted as he alleged. It follows, therefore, that the plaintiff's detention, as well, was lawful. The plaintiff's claims, therefore, should be dismissed with costs.

[40] I make the following order:

The plaintiff's claims are dismissed with costs.

M W MSIMEKI

JUDGE OF THE GAUTENG DIVISION, PRETORIA

31309-2012

HEARD ON: 19/5/2014

FOR THE PLAINTIFF: ADV CALITZ

INSTRUCTED BY: MARIO COETZEE ATTORNEYS

FOR THE DEFENDANT: ADV M H MPHAHLELE

INSTRUCTED BY: THE STATE ATTORNEY

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