

SOUTH AFRICA / JUDGMENT

Langa and Another v Minister of Police (55541.21 ; 55542.21) [2024] ZAGPPHC 1285 (2 December 2024)

[2024] ZAGPPHC 1285

COURT

North Gauteng High Court, Pretoria

BEFORE

PD. Phahlane

CASE / FILE NUMBER

55541/21 ; 55542/21

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REPUBLIC OF SOUTH

AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NO: 55541/21

CASE

NO: 55542/21

(1)

REPORTABLE: YES/NO

(2)

OF INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED: YES/NO

DATE:

02-12-2024

SIGNATURE:

PD. PHAHLANE

In

the matter between: ZANELE
GOODENOUGH LANGA
1ST PLAINTIFF
SALTHIEL
MADIMETJA LANGA
2ND PLAINTIFF
And
MINISTER
OF POLICE
DEFENDANT

JUDGMENT

PHAHLANE, J

Introduction

- [1] The first and second plaintiff instituted separate claims for damages against the defendant for unlawful arrest and detention, and for assault, as a result of an incident that occurred on the 02nd of October 2020. The first plaintiff (“Mrs Langa”) issued summons under case number 55541/2021 whilst the second plaintiff (“Mr Langa”) issued summons under case number 55542/2021. For convenience of the court, the two matters were heard together at trial since they arose from the same cause of action and involved the same witnesses.
- [2] Mr and Mrs Langa allege that as a result of the of the unlawful arrest and detention, they have suffered loss in the amount of R 750 000 and R700 000 respectively, being (i) general damages for pain, suffering, deprivation of liberty and infringement of their constitutional rights; impairment to dignity, integrity and self-esteem; discomfort, emotional shock and trauma (ii) past and future medical & hospital expenses; and (iii) legal expenses.

Common cause issues

- [3] Mr and Mrs Langa were arrested without a warrant of arrest and detained by members of the South African Police Service (SAPS) at Kameeldrift Police Station under CAS number 09/10/2020 and CAS number 10/10/2020 respectively.

3.1 They were both released on warning the next day on 03 October 2020 without appearing in court. Their first appearance at the Cullinan Magistrate court was on 30 October 2020, and the cases were postponed several times until the charges were withdrawn on 15 April 2021.

3.2 They both aver in their respective particulars of claim that they were wrongfully arrested without any reasonable suspicion of having committed an offence referred to in schedule 1 of the Criminal Procedure Act 51 of 1977, and were detained without merit by the members of SAPS when those members could have easily verified the plaintiffs’ allegations.

3.3 It is not in dispute that at the time of his arrest, Mr Langa was a member of SAPS.

Pleadings

[4] In its amended plea to the particulars of claim, the defendant admits that Mrs Langa was arrested without a warrant of arrest but denies that the arrest and detention was unlawful, wrongful and without just cause. The defendant specifically makes the averment that Mrs Langa was arrested for committing an offence of interference with the police in the performance of their duties; *crimen injuria*; and assault common.

4.1 It is averred that the arresting officer had reasonable grounds to suspect that Mrs Langa committed an offence of interference with

the police in the performance of their duties having satisfied themselves that an offence had been committed. It is further pleaded

that its members acted in terms of section 40(1)(j) of the Criminal Procedure Act 51 of 1977.

[5] With regards to the defence on the claim of Mr Langa, the defendant pleaded that Mr Langa committed an offence of reckless and negligent driving in the presence of the arresting officers. The defendant avers that Mr Langa was arrested without a warrant of arrest for committing an offence of reckless and negligent driving, together with resisting arrest but deny that the arrest was unlawful, wrongful and without just cause.

5.1 It is further averred that the arresting officer had reasonable grounds to suspect that Mr Langa committed an offence of reckless and negligent driving and proceeded to effect the arrest after satisfying themselves that an offence had been committed.

5.2 The defendant pleaded that Mr Langa's arrest was lawful and that its members acted in terms of section 40(2) and section 40(1)(a) of the Criminal Procedure Act 51 of 1977[1] read with section 63(1)[2] of the National Road Traffic Act, (Act no. 93 of 1996).

[6] The defendant further denied that its members assaulted Mr and Mrs Langa.

[7] Having admitted the arrest of the plaintiffs (Mr and Mrs Langa), the defendant had to lead evidence first to justify such arrest. In this regard, three witnesses gave viva voce evidence.

Summary of evidence

[8] The defendant called three arresting officers, constable Tumishi Aphane ("constable Aphane"), constable Ntjale Happy Mphahlele ("constable Mphahlele") and Lucia Dibeila ("constable Dibeila"). I will deal with the evidence of these witnesses in tandem simply because by and large, their evidence mirrors each other to a certain extent.

[9] The evidence of the defendant's first witness constable Aphane was that on 2 October 2020 he was in the company of constables Mphahlele and Dibeila as his crew coming from China Mall – driving along Moloto road when they noticed a vehicle driven by Mr Langa being driven at high speed and was overtaking on the left side of the road, that is, on the yellow lane and painted island. Mphahlele was driving the State vehicle at the time.

- [10] They stopped Mr Langa, and he approached him and informed him that he was driving recklessly. He said when he tried to arrest him, Mr Langa became violent and aggressive – by pushing him. As such, he applied minimum force and used pepper spray to subdue Mr. Langa, and thereafter handcuffed him. His colleagues assisted him to effect arrest and put Mr. Langa at the back of the police van.
- [11] He explained that while trying to put Mr. Langa at the back of the police van, Mrs. Langa tried to help her husband not to be arrested by pulling his leg, and she was also pepper sprayed. It was at this point that constable Dibeila removed Mrs. Langa from pulling constable Aphane with his leg, and told her not to interfere with police duties, but she fought with constable Dibeila.
- [12] When asked why did they not issue a ticket to Mr. Langa, he responded that Moloto road is a busy road full of accidents caused by negligent drivers, and for that reason, they do not issue tickets but automatically refer all matters to Cullinan magistrate court.
- [13] He testified under cross-examination that their vehicle had a blue light on, and they left Mr Langa to continue driving because they wanted to see if he would continue driving recklessly. They stopped him after he drove for about 1.8 km, and they all alighted from their vehicle. He approached Mr Langa's vehicle first and asked him why he was driving reckless knowing that the Moloto road is accident prone. He confirmed that Mr and Mrs Langa were arrested and taken to the police station where they were detained.
- [14] This evidence was corroborated by constable Mphahlele, the second witness for the defendant and also by constable Dibeila who was the third witness.
- [15] Constable Mphahlele testified that constable Aphane asked Mr Langa for his driver's license and requested him to drive his vehicle to the police station – and it was at this point that Mr Langa identified himself as a police sergeant. Mphahlele then changed his evidence and stated that after Mr Langa told them who he was, they told him to get inside the police van and he

refused. He explained that there was a tussle between them because Mr Langa was resisting arrest, and this led to Mrs Langa getting out of the vehicle. Constable Dibeila tried to 'restrain' her, but Mrs Langa pulled constable Dibeila by the leg to the middle of the road where there was a high traffic volume.

- [16] He said constable Aphane was then compelled to go and assist constable Dibeila, but Mrs Langa started insulting and swearing at constable Dibeila with her private parts. Constable Aphane managed to separate them and thereafter Mrs. Langa took out her phone to record what was happening. Constable Dibeila took the phone from her and arrested her for interfering with her duties. When they got to the police station, Constable Dibeila decided to add a charge of assault against Mrs Langa and alleged that she assaulted her.

- [17] He confirmed that Mr. Langa was pepper sprayed by himself and constable Aphane, and further confirmed that Mrs. Langa was also pepper sprayed. When they got to the police station, his relief commander called an ambulance to take Mrs. Langa to Mamelodi hospital, and he personally escorted the ambulance to the hospital. From the hospital, he took Mrs. Langa back to the police station.
- [18] Responding to the question of why a fine was not issued to Mr. Langa instead of detaining him, he stated that the Cullinan magistrate issued a directive which prohibited them from issuing fines around Moloto road. He thereafter changed this version and said – had Mr. Langa not resisted arrest, they would have arranged traffic officers to give him a fine.
- [19] Under cross-examination, constable Mphahlele testified that Mrs. Langa was pepper sprayed after her phone was taken from her. Responding to the question whether he witnessed Mrs. Langa assaulting constable Dibeila, he said he did not see the assault on constable Dibeila because he was busy with constable Aphane effecting arrest on the husband.
- [20] Constable Dibeila testified that she arrested Mrs. Langa for assaulting her when she took her phone to stop her from recording a video. She said she took the phone because by making a video, Mrs. Langa was interfering with their duty and risking her own life – and she was only trying to protect her because part of her duties is to protect the community. She testified that she was not aware that Mrs. Langa succeeded in recording a full video when she confiscated her phone.

20.1 A video recording made by Mrs. Langa was played in court. Constable Dibeila could be heard on the recording telling constable Aphane that she thinks that Mrs. Langa should be arrested. However, it was apparent at that moment that she did not know on what charge Mrs. Langa should be arrested for. Not only was this heard from the recording, but her evidence was that she was having a discussion with constable Aphane in relation to that.

20.2 Constable Dibeila could also be heard on the recording insulting Mrs. Langa with her private parts, and further saying that she should actually be going to her home to get “nyaope” to plant the plaintiffs. The altercation between constable Dibeila and Mrs. Langa was so intense that the following appears on the recording – (this scenario occurred at the time when Mr. Langa was put at the back of the police van, and they were about to drive to the police station) – I will refer to just a

few exchanges of words:

Constable Aphane (speaking to Dibeila): are you going to drive?

Constable Dibeila: I don't know how to drive

Mrs. Langa shouting: “Why are you taking my phone? Why are you spraying me?

Constable Dibeila: (using a vulgar word to insult Mrs. Langa by her private parts).

It should be noted that the vulgar words used by constable Dibeila were so extreme and shocking that the interpreter refused to repeat them and informed the court that “the interpreter will not place it on record”.

Constable Dibeila: motlogele n*a e. Wa driver or bamo thula, or o irang, ha kena nako ya m****a. Ga retlo disrespekta ke batho. Ga batlo ira ka mokgo ba ratang. Re theogetse. Golla sa rona seyeta.

The above words are loosely translated as follows:

*“Leave that * (referring to private parts). Whether she drives or not, or she gets into an accident, I don’t have time for s***t. We will not be disrespected by people. We are working. We are in charge here”.*

20.3 She then instructs constable Aphane to drive the plaintiff’s vehicle and says: “get in and drive this car. If she’s rude to her husband, she should know that we are in charge here”.

Mrs. Langa shouting: “Why are you taking my phone?”

Constable Dibeila: “you grab the police by the neck. Let’s go to the police station”.

A male colleague can be heard from the background saying: “you are actually arrested. You should write her up”

Constable Dibeila then responds: “You and your husband are under arrest! “Yeah, ro ba nyesa. Ko mo ngwala”. – (words are loosely translated as follows: “we will f*k them up” **alternatively meaning: “we will make them s*t themselves”**). I will write her up.

Constable Dibeila: “ke batlo tseya phone ke e latlhele kwa. A kase e kereye. Monna wa gage ke nonsense neh? Why mara ke sa late nyaope ko gonna re mo plante?”

I want to throw this phone away. She will never get it back. Her husband is such nonsense. Why don’t I go and get “nyaope” from my place and plant her?

He is a police officer, and he is not going to give us s***t. Why is Pax going with her” – (probably referring to constable Mphahlele because at this point, constable Dibeila was with constable Aphane).

Constable Aphane agreed and said: “Yeah”.

20.3 Constable Debeila was asked by counsel on behalf of the defendant that she sounded angry on the recording, and she disputed that. The following questions were posed by the defendant’s counsel:

Counsel: “From the audio, you sounded angry

Answer: No, I was not angry

Counsel: Why did you swear at her

Answer: I was bored and irritated by her

Counsel: why did you say that you should get 'nyaope' and plant her

Answer: I was bored"

20.4 It was put to constable Debeila under cross-examination that when Mrs. Langa was arrested, she did not have a reason to arrest her because she still had to decide on the charges with constable Aphane. She responded that she could not recall some of the things that happened on the day of the incident because the incident occurred long time ago, and that she was "just talking to her colleagues".

20.5 When asked why Mrs. Langa was not put in handcuffs if according to her evidence – Mrs. Langa was arrested for insulting her; for being violent; and for interfering with police duties, she responded that they were actually not arresting her. It was then put to her that she was contradicting herself, and she struggled to explain the contradiction and elected not to answer.

20.6 It was then put to her that she was being evasive and did not want to answer questions, and she responded that they were still going to discuss with constable Aphane what to do, and stated that she was angry at the time.

20.7 It was put to constable Dibeila that the reason why she refused to give Mrs. Langa her phone was because she knew that the recording would be used as evidence in court, and she responded that "had she known that the recording would be used as evidence, she would have deleted it".

20.8 With regards to what became a clear intention of a police officer to commit an unlawful act – as could be heard from the video

footage – it was put to constable Dibeila that her intention was to lay false charges against the Langas when she suggested

bringing 'nyaope' to plant them – and she responded that she was angry and bored, and disturbed by the behavior of Mrs. Langa.

20.8.1 Constable Mphahlele was asked about the nyaope which constable Dibeila was talking about, and he denied having heard anything about nyaope. He stated that he "heard the voice recording but the portion pertaining to Nyaope never took place".

20.8.2 When the court asked him to clarify and explain his answer, he decided to change his version and stated that he heard constable Dibeila talking about planting nyaope against Mr. and Mrs Langa – and confirmed that the recording was too loud, and he could hear his colleague speaking in a loud voice.

20.8.3 With regards to the insults hurled at Mrs Langa, constable Mphahlele once again attempted to protect constable Dibeila and stated that "Mrs Langa was swearing at Dibeila with her private parts". When asked if he could hear the voice of constable

Dibeila because her voice is very loud" – and asked if he could hear the voice of Mrs Langa swearing, – he responded by saying "nowhere", I did not hear swear words from Mrs Langa.

[21] The plaintiff's version put to the witnesses was as follows:

- (a) Mr and Mrs Langa were from Menlyn Mall travelling along Moloto Road at a speed of about 70 to 80 km/h. They deliberately left Menlyn late knowing that there would not be any traffic, meaning they waited for late afternoon traffic to subside. Mr Langa was driving at a normal speed and never overtook on the yellow line, and did not drive on the painted island.
- (b) Mr Langa stopped his vehicle on the side of the road after being signaled by the police to stop and his vehicle remained idling and had his window open. Constable Aphane approached and took the keys from the ignition. He was wearing a cap and a camouflaged balaclava like a mask pulled over his face and only showing his eyes.

· In response to this version, constable Aphane denied removing the keys from the ignition but confirmed that it is true that his mask was covering his face and Mr. Langa could only see his eyes.

- (c) Mr Langa got out of his vehicle and went towards constable Aphane who told him that he was under arrest for reckless and negligent driving, and further informed him that if he does not want to go to jail, he must pay R300 bribe. Mr Langa refused to pay the bribe and informed constable Aphane that he is a police officer. Constable Aphane became aggressive and immediately pepper sprayed him and thereafter constables Dibeila and Mphahlele joined constable Aphane.

· Responding to this version, constable Aphane denied demanding a bribe and said they never talked about money. Constable Mphahlele also disputed the version that constable Aphane demanded a bribe from Mr. Langa.

- (d) It was put to him that Mrs. Langa confirms the version of her husband that the witness (constable Aphane) demanded money, and that she decided at that moment to get her phone to record the police after they had solicited a bribe. Further that she managed to record but constable Dibeila ran to her and took her phone in order to destroy the evidence, and also punched her with a clenched fist on her face, whereafter Mrs. Langa gave up her phone and never fought back after it was taken.

· Constable Aphane disputed this version and stated that constable Debeila never assaulted Mrs. Langa, but he saw them tussling over the phone. He denied that constable Mphahlele rushed to assist constable Debeila to take the phone away from Mrs. Langa. With regards to the assaults perpetrated on Mrs. Langa, he could not comment when it was put to him that there are medical records to prove that Mrs. Langa was assaulted.

- Constable Debeila also denied assaulting and using vulgar words on Mrs. Langa and said she was performing her duties when the Langas were placed under arrest. When confronted with Mrs. Langa's medical record admitted as exhibit C, which indicated that Mrs. Langa had an injury and was treated for a swollen eye and had traces of pepper spray, she first stated that Mrs. Langa did not have any injuries, and thereafter changed her answer and said she was indeed pepper sprayed.
 - She alleged that Mrs. Langa assaulted her with a fist and stated that when she took Mrs. Langa to the hospital, she did not consult the doctor even though she was bruised and in pain, because she was not in such pain that she could consult a doctor.
 - Constable Mphahlele on the other hand denied witnessing constable Debeila assaulting Mrs. Langa.
- (e) The other version put to witnesses was that Mr. Langa was never searched, and that he handed over his firearm to constable Mphahlele because he was the only police officer who had a name tag.
- Constable Mphahlele confirmed this version and stated that Mr. Langa was never searched because they were focused on effecting arrest. When asked if Mr. Langa was informed of his rights and the reasons for his arrest, he said he explained those rights. He was asked to repeat the specific rights he gave to Mr. Langa - he changed his version and stated that it was constable Aphane who explained the rights to Mr. Langa.
 - Throughout their evidence, none of the defendant's witnesses testified about giving Mr. Langa his rights at the scene where he was arrested. The only thing that happened is that both Mr. and Mrs. Langa were given their notice of rights (SAP14) when they were at the police station and were booked – and still, their rights were never explained to them.
 - Constable Debeila confirmed under cross-examination that she was in control of everything that happened when Mr. and Mrs. Langa were arrested – and that is why she gave instructions to constable Aphane to drive Mr. Langa's vehicle.

[22] I now turn to deal with the evidence of Mr and Mrs Langa simultaneously because their evidence mirrors each other and is corroborated. Their evidence reflects the version put to the defendant's witnesses and will not be repeated herein, but I will only highlight those aspects of the evidence which I did not refer to from the version that was put to the witnesses.

[23] Mr Langa testified that he was driving a Polo motor vehicle and was stopped by the police who were driving a marked police vehicle. They flashed their lights, and he pulled off the road. He explained that his wife warned him to be careful and to make sure the people stopping them were real police officers because the person approaching them was wearing a balaclava. He explained that his driver's window was a little open and after stopping his vehicle, he was approached by constable Aphane who immediately switched off his engine by pulling out his keys from the ignition and accused him of driving recklessly.

[24] Mr. Langa said constable Aphane told him that if he does not want to go to prison, he should pay R300. He denied driving recklessly or on the yellow lane, and refused to pay the R300 which according to him was a bribe – and informed constable Aphane that he is also a police officer. Constable Aphane got angry and took out a pepper spray and sprayed him and said he does not care if he (Mr. Langa) was a police officer off duty – and told him that he will give him a ticket for driving on the yellow lane. He was then told that he was under arrest.

24.1 This evidence was corroborated by Mrs. Langa who testified that constable Aphane threatened that their trip would end there at the scene where they were stopped if Mr. Langa did not “throw in R300”. She said constable Aphane used the words: “latlhela R300” and she understood these words to mean “her husband should give him money so that they can continued with their trip”, but Mr. Langa refused and said he would not pay a bribe of R3000 but should rather be given a ticket.

[25] Mr. Langa further testified that Mrs Langa got out of the vehicle and went to the rear passenger door of their vehicle and started recording a video. Constable Debeila went for his wife’s cellphone and constable Aphane left him with constable Mphahlele and ran towards constable Debeila and his wife in order to assist Debeila. Constable Mphahlele opened the back of the bakkie, and he then entered into the bakkie without resisting.

25.1 Once again, this evidence is corroborated by Mrs. Langa who testified that after her husband indicated that he was not going to give them R300 and disclosed that he is also a police officer, constable Aphane started raising his voice and used pepper spray on her husband. She decided to get out of the vehicle and took her phone to record a video.

25.2 She said constable Debeila saw her holding the phone and rushed to her and hit her with a clenched fist on her right eye. They started to wrestle for the phone because constable Debeila wanted to take it by force. She testified that constable Debeila called another officer to come with pepper spray, and as they pepper sprayed her, she was assaulted on her body and on her right eye. She explained that at this stage, she was in so much pain that she wet herself (ie. urinated herself)

25.3 She testified that she had already started recording when constable Debeila tried to take the phone from her. Debeila finally managed to take the phone away from her and she then noticed constable Aphane taking her husband to the back of the police van. She testified that Mr. Langa never resisted when he was put at the back of the police van, and never interfered with the police when they tried to do their job.

25.4 Mrs. Langa stated that she could not drive her vehicle because her vision was blurry as a result of the pepper spray, and constable Mphahlele had to drive their vehicle. She explained that constable Mphahlele had difficulty driving the vehicle but ultimately succeeded in setting the vehicle in motion and drove to the police station.

[26] Both Mr. and Mrs. Langat testified that upon arrival at the police station, they were left in the police van for about thirty minutes and were eventually taken inside. Mr. Langa said he had his service firearm hidden inside his shirt and when they arrived at Kammeldrift police station, he gave it to constable Mphahlele because he was wearing a name tag. A certain sergeant Makgatho requested him to remove his belt, shoelaces, and wallet – and he was taken to the cells and locked up. His service pistol and vehicle were registered in SAP 22, which is used for keeping a record of the property belonging to people in custody. Some of their belongings were registered in SAP 13, safe for Mrs. Langas cellphone which constable Dibeila was hiding in her “breast”.

26.1 Mrs. Langa testified that when their items were booked in the SAP13 register, her cellphone was missing, and she repeatedly demanded it from constable Dibeila who denied that it was in her possession. She testified further that a white police officer appeared, and she went to him and requested him to tell constable Dibeila to hand over her cellphone, and it was only after intervention and assistance of this officer that constable Dibeila took out the phone from her breast where she was hiding it and gave it to her. Her phone was then taken and put together with her other belongings in the exhibit bag. Thereafter the ambulance was called,

and she was taken to the hospital by two paramedics, constable Dibeila, and constable Mphahlele.

26.2 She further testified that en route to the hospital, constable Dibeila kept swearing at her and upon arrival at the hospital, they delayed getting inside the hospital because she felt ashamed and embarrassed because she wetted herself. She finally got inside, and the doctor attended to her and put a patch on her eye to cover it. When they left the hospital going back to the police station, constable Mphahlele suggested that she sit in front because they were driving in a double cab bakkie, but constable Dibeila refused and told her to sit at the back of the bakkie. She said the bakkie was driven at high speed and deliberately driven in such a way that she was tossed from side to side inside it.

26.3 Mrs Langa testified that upon their arrival at the police station, her husband was already locked in the cell and she was placed in the charge office and not the cell even though she was told by constable Dibeila at the police station that she is under arrest and was given her notice of rights document (“SAP14”) which was admitted by the court as exhibit C.

[27] Mr Langa testified that because he had been pepper sprayed, he asked to use the toilet so that he could rinse his burning and itching eyes, and his request was refused. He explained that his wife was at that moment sitting in a chair outside the holding cell and complaining of pain. He explained that his wife had an injury on her right eye, and it was red and swollen.

[28] Mr Langa said he requested sergeant Makgatho to open a case against his arresting officers, but the sergeant refused and told him that he should do that at Groblersdal where he works. He explained that he felt humiliated the entire night as many police officers, one of whom

was a former colleague, came to peep in the cell where he was kept. A white police officer came and asked for his name and persal number, and said he was going to report to the Provincial office that a police officer has been arrested. That officer also asked for his commander, Colonel Seroka's number so that he could inform him.

- [29] The next morning during the shift change, he was then allowed to use the bathroom. Around 10:30am a detective constable approached him and said he is the investigating officer on standby, and he was then charged together with his wife. Mr. Langa said he did not give his warning statement and said he will give it in court. He was released on SAP 496 – which is a warning to appear in court, while his wife was released on J398.

29.1 Mrs. Langa confirmed that they were released the next morning by the investigating officer who told her that she is being released because she is injured, and her husband was also released. They were then given the date of the 30th to appear in court.

- [30] Mr. Langa testified that the investigating officer told them that they should open a case in Groblersdal because he does not want to get into trouble. After their release, they drove to Groblersdal and along the way when they switched on their phones, Mrs. Langa realized that the video she was recording the previous night had actually continued to record even after constable Dibeila

had taken her phone. Mr. Langa stated that when they arrived at Groblersdal, he met colonel Seroke who indicated that his arrest was never reported to him.

- [31] Mr Langa testified under cross-examination, that he opened a case against the arresting officers with IPID and was informed that IPID was busy with the investigation. He is of the view that he was unlawfully arrested and should have been given a fine or warning to appear in court because his arrest was unnecessary. He stated that his rights were violated because he was kept in a cell without water, toilet or a blanket, and his request to use the toilet was refused. He therefore believes that his arrest was a means to punish him and tarnish his image.

- [32] Responding to a question that his arrest could not have been unlawful because the police acted in terms of section 40(1)(a) and (2) of the CPA, he stated that section 40 allows a police officer to arrest a person, but such a police officer should use a discretion to determine whether the offence committed warrants incarceration, or it is an offense which purely allow a police officer to warn the suspect and not detain him. He testified that constables Aphane, Mphahlele, and Debeila did not formulate a reasonable suspicion to arrest him because all they wanted was a bribe, and never requested to see his driver's license.

- [33] It is undeniable that the evidence before court reflects two mutually destructive versions. Accordingly, the onus rests on the plaintiffs

(“Mr and Mrs Langa”) to satisfy the court on a balance of probabilities that their version is correct and therefore acceptable – and that the defendant’s version is incorrect and falls to be rejected. In Stellenbosch Farmers' Winery Group Ltd. and Another v Martell & Cie SA and Others^[3] the court provided guidance on how to resolve factual disputes and stated as follows:

“[5] The technique generally employed by courts in resolving factual disputes of this nature may conveniently be summarised as follows. To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses;

- (b) their reliability; and (c) the probabilities. As to (a), the court’s finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness’s candour and demeanour in the witness-box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extracurial statements or actions, (v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events. As to (b), a witness’s reliability will depend, apart from the factors mentioned under (a)(ii), (iv) and (v) above, on (i) the opportunities he had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to (c), this necessitates an analysis and evaluation of the probability or improbability of each party’s version on each of the disputed issues. In the light of its assessment of (a), (b) and (c) the court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it”.

- [34] Mr Mogagabe argued that Mr and Mrs Langa were credible and reliable witnesses because they have shown that their version is true and correct because there was no reasonable suspicion or ground for the police to arrest them. He argued further that the police acted maliciously when they failed to solicit a bribe of R300 from the Langas by laying false charges against them when it was clear that Mr and Mrs Langa did not commit any offence in their presence. He submitted in his heads of argument that the police were corrupt and driven by greed, and that it was worrying that they are still holding

their jobs when it is evident that they violated the constitutional rights of Mr and Mrs Langa and even tried to destroy the evidence

gathered by Mrs Langa in her cell phone, which was going to prove their corrupt activities when constable Dibeila took and hid Mrs Langa’s phone.

- [35] Mr Mosoma on the other hand, argued that the police were justified in

arresting and detaining Mr Langa because Mrs Langa confirmed that her husband was forced into the back of the police van, and thus proving that he was resisting arrest. He argued further that the probabilities are in favour of the version of the defendant that at the time Mr Langa was resisting arrest, the police were justified to pepper spray him in order to put him at the back of the police van – and that this resistance is also on the recording made by Mrs Langa.

35.1 It was also argued that the version of the defendant's witnesses should be accepted because there was no reason why constable Aphane would stop Mr Langa just to request a bribe. It is for this reason that Mr Mosoma submitted that Mr. Langa had been driving recklessly and negligently when he was stopped by the police.

[36] Mr Mosoma's submission that the probabilities favour the defendant's version that Mr Langa was resisting arrest and that such resistance was confirmed by Mrs Langa – is misplaced and was taken out of context. Mrs Langa specifically stated that when constable Aphane told Mr Langa to get inside the police van, Mr Langa never resisted because at that specific moment, Mr Langa wanted to close his vehicle first and said: "things can get lost". She explained that Mr Langa was still standing next to his own vehicle.

36.1 It is on record that when this question was posed to Mrs Langa by her own counsel, the video recording was played back to specifically establish what really happened and to clarify the police' allegation that Mr Langa refused to follow the instruction that he should get inside the police van.

36.2 Furthermore, Mrs Langa was asked if constable Aphane uttered any words which would have suggested that Mr Langa was resisting arrest and refusing to get inside the police van, and she responded that nothing was said by constable Aphane when her husband wanted to attend to their belongings first – and said the words: "things can get lost".

36.3 I want to place on record that when the recording was played in court, none of the three police officers said anything or uttered the words that Mr Langa is refusing to be arrested or refusing to get inside the police van.

[37] Having said that, counsel on behalf of the defendant seem to ignore the fact that in the process of considering the aspect of mutually destructive versions, the enquiry is not only limited to the 'probabilities' in the version of the defendant's witness's vis-a-vis the version of Mr and Mrs Langa, but it also extends to other factors noted at paragraphs (a) and (c) as laid down in the decision of Stellenbosch Farmers' Winery.

[38] As far as the enquiry in terms of paragraph (a) Mr and Mrs Langa testified that as soon as constable Aphane approached their vehicle after being stopped, he took their vehicle keys from the ignition, and that is why Mr. Langa disembarked from the vehicle and followed him. Constable Aphane disputed this version, but it is clear from the recording that when constable Dibeila was busy screaming and swearing at Mrs. Langa, she instructed constable Aphane to drive Mr. Langa's vehicle – and he did. It does not appear from the audio that one of the officers asked where the keys to the vehicle were, and it is also indisputable that constable Aphane never approached Mr. Langa to ask about the keys. In my view, the only

reasonable inference to be drawn is that constable Aphane had the keys with him all the time, and was therefore not being honest with the court when he said he did not take the keys.

38.1 Regarding the evidence that Mrs. Langa was interfering with police duties, the defendant's witnesses contradicted themselves. Constable Dibeila testified that Mrs. Langa pulled the leg of constable Aphane when he tried to put Mr. Langa at the back of the police van. She changed this version under cross-examination and said constable Mphahlele came to her rescue. Constable Mphahlele on the other hand testified that Mrs. Langa grabbed constable Dibeila's leg and pulled her to the road, and constable Aphane was then compelled to go and assist constable Dibeila.

38.1.1 In my view, there is no consistency in the evidence of the defendant's witnesses. Furthermore, there is nowhere in the video where the police are accusing Mrs. Langa of interfering with their duties or reprimanding her not to interfere with their duties.

38.2 Both constables Dibeila and Mphahlele testified that Mrs. Langa insulted constable Dibeila with her private parts. However, this version is not correct because it is clear from the video recording that constable Dibeila was the one throwing insults. As indicated earlier, the defendant's counsel put to constable Dibeila after the video was played in court that "from the audio, she sounded angry" and asked her why she was swearing at Mrs. Langa.

38.2.1 This court is mindful of the fact that after watching the video, Mr. Mogagabe confronted constable Dibeila with her evidence, and she still denied insulting Mrs. Langa. When confronted with the obvious and pressed for an answer, she did not want to respond to the question and ultimately said she was 'bored and irritated'[4].

38.2.2 Constable Dibeila's demeanor in the witness-box left much to be desired. She appeared irritated and was boldly rude and evasive on many occasions and refused to answer questions or would simply respond by saying: "I was bored". This was her go-to response when she was unable to answer tough questions from Mr. Mogagabe. She could also not give a sound reason why she wanted to lay a false charge of crimen injuria against Mrs. Langa.

38.2.3 Constable Mphahlele was also confronted with his version which was contradicted by the video recording, and he refused to tell the court why he was not telling the truth about who between the two women insulted the other. He stated that constable Dibeila should answer for herself because he does not want to get involved in what was said by constable Dibeila, yet they are both witnesses for the defendant. Nonetheless, he finally confirmed that he could hear the voice of constable Dibeila swearing at Mrs. Langa.

38.2.4 When it comes to the assaults perpetrated on Mrs. Langa, the police denied the assaults. The evidence before court is that Mrs. Langa was taken to Mamelodi hospital the same day because she was complaining about being in pain. Constables Mphahlele and Dibeila were confronted with the hospital record which confirmed the injuries sustained by Mrs. Langa and they had difficulty explaining how Mrs. Langa's eye got swollen.

38.3 In the circumstances, I find that the defendant's witnesses were not credible.

38.4 With regards to the enquiry in Stellenbosch case in terms of paragraph (b), it is clear that the defendant's witnesses were trying to protect each other and were biased, and lacked the ability to accurately describe the events as they unfolded. This is so because when constable Dibeila was challenged

about the role she played and the many contradictions in the evidence of all the defendant's witnesses, she responded that the incident happened a long time ago and could not remember some of the things that occurred, but surprisingly, she was adamant and insistent in giving a wrong version of events which was contradicted by either her colleagues or the video, and when cross-examination became tougher, she would use her go-to response, which is: "I was bored".

38.4.1 Accordingly, I am of the view that the defendant's witnesses were unreliable.

38.5 With regards to the enquiry in terms of paragraph (c) which relates to assessing the probability and improbability of each party's version by weighing the evidence presented by both parties, what the Stellenbosch decision refers to in this final step of the enquiry is to determine whether the party burdened with the onus of proof has succeeded in discharging it.

38.6 It suffices to highlight that the credibility of a witness is inextricably bound up with a consideration of the probabilities of

the case, and if the balance of probabilities favours a party, – and in this case Mr and Mrs Langa, – then the court will accept his/her version as being probably true^[5]. The focal point of the exercise in terms of the Stellenbosch enquiry is to find the truth of what had happened.

[39] I have carefully considered the evidence adduced in support of each party's case and have taken due regard to the credibility and reliability of the witnesses as they presented their evidence. Furthermore, in considering whether Mr. and Mrs. Langa succeeded in adducing the onus rested on them on a balance of probabilities, I had to further assess the probability and improbability of each party's version of events on each disputed issue. In my view, Mr. and Mrs.

Langa's version of events is more probable because they corroborated each other in material respects. They answered all questions truthfully and honestly without hesitation, and their version withstood the test of cross-examination. Accordingly, this

court accepts the version of Mr. and Mrs. Langa as being true. Consequently, it is my considered view that they have succeeded

in discharging the onus required of them.

- [40] Turning to the main issues to be decided by this court in respect of the alleged unlawful arrest and detention, the general principle is that the onus rests on the detaining officer to justify the detention because detention is prima facie unlawful. Put differently, the onus rests on the defendant to prove on a balance of probabilities that: (1) the arrest was lawful and justifiable;
- (2) there was a reasonable suspicion that Mr. and Mrs. Langa were committing an offence; and (3) the suspicion rested on reasonable grounds. In determining whether there was a reasonable suspicion to arrest, the court must also decide to what extent did the available evidence create a reasonable suspicion for constables Aphane, Dibeila and Mphahlele to effect arrest.
- [41] Mr and Mrs Langa stated in their particulars of claim that their constitutional rights to freedom and security were violated on the basis that their right to liberty was deprived arbitrarily without just cause. Once it has been established that the constitutional right not to be deprived of one's physical liberty has been interfered with, the deprivation is prima facie unlawful, and the infringer bears the onus to prove that the interference was justified[6].
- [42] The right to freedom and security is enshrined in section 12(1) of the Constitution[7]. In Minister of Law and Order v Hurley[8], the court held: "An arrest constitutes an interference with the liberty of the individual concerned, and it therefore seems fair and just to require that the person who arrest or cause the arrest of another person should bear the onus of proving that this action was justified in law".
- [43] It is undeniable that arrest constitutes one of the most drastic infringements of the rights of an individual. It follows that the
- rules that have been laid down by the Constitution[9] and the Criminal Procedure Act, concerning the circumstances when a person may be arrested and how such person should be treated, must therefore be strictly adhered to. Having said that, when a statute provides that a public power may be invoked and deprive a person of his/her right of liberty, the law demands that those who exercise public power subscribe to a culture of justification.[10] It is therefore imperative that jurisdictional pre-requisites be established or satisfied before an arrest is effected.
- [44] In Lifa v Minister of Police and Others[11] the court quoted the following dictum in Botha v Minister of Safety and Security and Others, January v Minister of Safety Security and Others[12] :
- "It is also trite law that in a case where the Minister of Safety and Security (as defendant) is being sued for unlawful arrest and*

detention and does not deny the arrest and detention, the onus to justify the lawfulness of the detention rests on the defendant and the burden of proof shifts to the defendant on the basis of the provisions of s 12(1) of the Constitution . . . These provisions,

therefore, place an obligation on police officials, who are bestowed with duties to arrest and detain persons charged with and/or

suspected of the commission of criminal offences, to establish, before detaining the person, the justification and lawfulness of such arrest and detention.

.... In *Mvu v Minister of Safety and Security* Willis J held as follows: “It seems to me that, if a police officer must apply his or her mind to the circumstances relating to a person’s detention, this includes applying his or her mind to the question of whether detention is necessary at all”.

It goes without saying that the police officer's duty to apply his or her mind to the circumstances relating to a person's detention

includes applying his or her mind to the question whether the detention is necessary at all”.

[45] Having considered the evidence presented on behalf of the defendant, the answer to the question whether the three police officers had a reasonable suspicion to conclude that Mr. Langa was committing an offence of reckless and negligent driving, there is nothing to support that suspicion. If really an offence was committed, one would have expected corroboration or probabilities in the version or evidence of the defendant. Instead, from the time the video was recorded – which according to the evidence of Mrs. Langa was immediately after the keys were removed from the ignition and the time Mr. Langa jumped out of his vehicle to follow constable Aphane, – there was no indication that a warning was given to Mr. Langa that he was committing an offence, and therefore under arrest.

[46] This video played a significant part in exposing what really happened

when the police officers confronted Mr and Mrs Langa. Having said that, if really an offence was committed by the Langas, and the

police officers were exercising their lawful and justified powers to arrest, there would not have been any need for constable Dibeila to assault Mrs Langa and forcefully take away her phone in order to destroy it.

[47] It is on record that constable Dibeila testified that had she known that the video was going to be used as evidence in court, she would have deleted the recording. She could also be heard speaking to constable Mphahlele and telling him that she is going to destroy Mrs Langa’s phone and throw it away.

[48] In the circumstance, it is therefore my considered view that the defendant had no reasonable suspicion to conclude that Mr. Langa was committing an offence. Similarly, I can find no reasonable or justifiable grounds that would have made constable Dibeila to take a decision to arrest Mrs Langa at the time when she told her that she was under arrest with

her husband – because she testified under cross-examination that Mrs Langa was not under arrested because she was still going to discuss with constable Mphahlele what to do with her. I am alive of the evidence of constable Mphahlele that constable Dibeila only added an offence of common assault and crimen injuria against Mrs Langa when she was completing the SAP 14 for her at the police station.

[49] It therefore follows that the arrest of Mrs Langa was unlawful because when she was placed under arrest, she had not committed any offence of crimen injuria. Furthermore, there was no reason to arrest her for common assault because there is no evidence before court to suggest that she assaulted constable Dibeila.

[50] Constable Dibeila was challenged and taken to task about the assault charge laid against Mrs Langa. It is common cause that she accompanied Mrs. Langa to the hospital and yet she did not consult the doctor for the injury she alleged to have sustained. Although she wanted the alleged injury on her to appear to be something serious,

she testified that she did not consult the doctor because she did not feel any serious pain and her injury was not so serious to warrant the doctor's attention.

[51] It is clear from the video recording that when Mrs Langa was trying to take her phone away from constable Dibeila, she grabbed her on the neck, and when Dibeila shouted that Mrs Langa is grabbing a police by the neck, Mrs Langa repeatedly said, "I am not, I want my phone, why are you taking my phone".

[52] In light of the aforesaid, it cannot be concluded that constable Dibeila was justified in arresting Mrs Langa for any offences she was charged with. I concur with Mr Mogagabe's submission that given

the circumstances of how Mrs Langa was arrested, it was clear that the police officers laid false charges against Mrs Langa to protect themselves. Consequently, I am of the view that the arrest of Mrs. Langa was not justifiable and therefore unlawful.

[53] Trite is the principle that says the police must ensure that an arrest is used as a measure of last resort. Signifying that this drastic intrusion into the right to liberty should not be used unless necessary and justified, the constitutional court in Minister of Safety and Security v Van Niekerk[13] stated that: "Arrest constitutes one of the most drastic infringements of the rights of an individual and a member should

therefore regard it as a last resort". It is common cause that the police are not only guided by the Criminal Procedure Act in the performance of their duties as it relates to effecting arrest. They are also guided by the Standing Orders which are peremptory in nature and like regards arrest as a drastic infringement which should be resorted to as a last resort as expressed by the court in Van Niekerk supra.

[54] Mr Langa pleaded in his amended particulars of claim that he should not have been arrested and kept in custody because he has a fixed address and is also a member of the South African Police Services.

54.1 In this regard, the defendant submitted that – the fact that Mr Langa is a police officer does not accord him any preferential treatment, and that there was nothing unlawful about the exercise of a discretion to arrest and detain him.

[55] I do not agree with this submission because there is nothing in the behaviour of the defendant's witnesses or the performance of their duties on the 02nd of October 2020 which support a finding that their discretion was properly exercised. The evidence before me shows that constables Aphane, Mphahlele and Dibeile acted irrationally in arresting Mr Langa. Their actions on that day were motivated by greed and corruption.

[56] The fact that constable Dibeile with assistance and encouragement of constable Mphahlele fabricated charges against Mrs Langa and went as far as assaulting her; trying to destroy her property; and

verbalising an intention to commit a scandalous and unlawful act of “planting nyaope” so that Mr and Mrs Langa can get into serious trouble - with the law and probably face a long term of imprisonment – raises a concern that they are simply incapable of performing their duties, let alone complying with any of the rules which every police official is supposed to comply with.

[57] When constable Dibeile was asked by the court if it was proper for a police officer to frame suspects, she said she is also a human being with feelings. This brings me to the next aspect which in my view, needs thorough investigation by the relevant authorities into the fitness of these three officers to be in the services of law enforcement.

[58] The general considerations that are important when a court weighs or evaluates the evidence is to have regard to the evidence as a whole. In essence, a trier of fact must have regard to all considerations

which reasonably invite clarification. In doing this, the court should take the following into consideration among others: all

probabilities; reliability and opportunity for observation of the respective witnesses; the absence of interest or bias; the intrinsic

merits or demerits of the testimony itself; inconsistencies or contradictions and corroboration.

58.1 All these aspects were taken into consideration by the court in respect of all the witnesses who testified.

[59] It is on record that after a video recording was repeatedly played in

court, the court engaged constable Dibeila in order to clarify issues of concern in her evidence, and to try and understand what could have motivated her to want to do something so despicable to his senior colleague and his wife, and probably destroy their reputation and lives. The following clarity seeking questions, which also appear from the transcribed record of the proceedings, were asked by the court:

Court: "You just confirmed that you gave Mrs. Langa her phone back at the police station. She asked for her phone when you were at the scene. Why did you not give it to her? Why did you keep it in your person?"

Ms Dibeila: ... When someone is under arrest, that suspect is not allowed to use the instrument.

Court: Where do you get that from – that a person under arrest is not supposed to use their property. If it is a rule, I need to know that specific rule please.

Ms Dibeila: It is not written down. There is no rules or laws My Lady. It is the discretion of the arresting officer in as far as the type or kind of crime that you arrest the suspect for - use your discussion (sic)

Court: You said you have the discretion as a police officer. You said you have to use your own discretion depending on the type of offense – what they have been arrested for. Does that discretion extend to the fact that you have to make your own rules? Given the fact that they were arrested for reckless driving?

Ms Dibeila: ...She kept on following us and going up and down. I was purely trying to get control of the scene, My Lady, and that is how I then decided to confiscate her phone.

Court: Now I am going to borrow the words that were used by your counsel yesterday when he first started to ask you questions. He asked you: – from the audio, from the video, you sounded very angry, and your answer was: I was not angry.

Ms Dibeila: I was irritated, My Lady.

Court: Irritated by what?

Ms Dibeila: The manner in which Miss Langa was behaving, and as well as she treated me - she went as far as assaulting me, and me being a very young person than her, My Lady, knowing that I was actually on duty.

Court: You were also asked by your counsel why did you swear at her, and you repeatedly said you were bored.

Ms Dibeila: yes

Court: Correct me if I'm wrong. It sounded like - from the audio and the video – that this anger was perpetuated by the fact that Ms. Langa was demanding her phone and you got very furious. I am using the words carefully so, you were angry, very furious, because you wanted to take this phone away from her and you also continued to say that she will never get it back. Apart from you insulting her, you wanted to make sure that she will never get her property back. Am I correct in saying that?

Ms Dibeila: I was infuriated, My Lady, or angry because Ms Langa had assaulted me.

Court: Now if you are saying that she assaulted you, remember yesterday you were asked why did you not go to the doctor because you are the one who took her to the doctor, including your colleague Mphahlele, and you said that you were not in pain then by then.

Now here is my question: if you could go as far as writing on the SAP 14A register, that is the Notice of Rights, that she is charged with assault and you allege that you have been assaulted by her, I would want to assume that – if that is the charge, there has to be some sort of evidence, something that you would prove that you were assaulted.

Why was it not important for you to get help because from where I stand, there was no assault?

Ms Dibeila: from the witnesses that witnessed the assault.

Court: This question comes from the fact that:– you also heard yourself three times already, that you were saying you should have gone home and get nyaope so that you can plant it in their car or wherever. But you wanted to plant it, meaning that you wanted to fabricate a case against them.

Now if that is the case, and you are of the view, or you have this plan, which is not supposed to be happening - Would I be wrong to say that even this assault could be something that you wanted to frame against her, given the fact that there is no record that shows that you were assaulted?.

Ms Dibeila: No, My Lady

Court: yesterday, even today, when you were asked about your duties, you said that you wanted to protect her. Now, when you want to protect the community, as you said yesterday, does that extend to the fact that you have to falsely implicate them or fabricate charges against them?

Does that protection go as far as laying false charges or trying to lay a false charge and verbally saying so – being a police officer - Knowing very well that what you are saying is wrong and you are not supposed to say that.

Ms Dibeila: My Lady, I am saying that I had no intention to frame anyone, falsely so, My Lady, and what was said in the recording – that was said after the arrest, and I was not talking to two plaintiffs then, My Lady. I was speaking to my colleagues and what I have said and heard being said in the video - I said so My Lady, purely because I was bored, I was irritated.

Court: Here is the problem that I have. You said you were talking to your colleagues. Why say it in the first place?

Why did you say something so dangerous, because it has a different meaning to me, and I want to believe to everybody else – that, I want to plant something.....

You said even the police have the right to talk amongst themselves, to have a conversation. Now, does that private conversation include the fact that you are going to commit an offense, or you are going to plant somebody, because doing that is an offense in itself?

Ms Dibeila: My Lady, I have already said that all the utterances on the video, those were uttered because I was irritated, and to confirm that I had no intention of executing what I have uttered on the video, none of what I have uttered have I ever instituted.

Court: Do you understand, and do you appreciate the gravity of what you had just said? That you want to plant somebody.

Ms Dibeila: No

Court: When it was put to you during cross examination regarding the phone, – when the question was asked – and the reason why you refused to give the phone back to Mrs. Langa, was because you knew that there was going to be evidence that was going to be used - and in your own words, you said: if you knew that she was going to record, and the recording was going to be used as evidence, you would have deleted that video. You were going to delete that video – if you knew. Am I correct in saying that? I am quoting you.

Ms Dibeila: I was not actually meaning to delete it, My Lady, but I was saying I did not consider the video that was the recording as evidence at all.

Court: I'm going to repeat myself for your benefit and I'm going to quote you..... These are not my words. The answer is coming from you. “I was going to delete it if I knew that it was going to be used as evidence against me by Ms Langa”.....

Here is my question to you - you are the person who has five years experience in SAPS, who knows the law, who knows what is right from wrong, who has taken the oath. I want to believe that when you were appointed, you took an oath of serving and protecting, as you said yesterday. You wanted to protect, and yet you want to delete information or evidence that will be used in court or in the future wherever.

On the other hand, I have you as a police officer who knows what is right and wrong, and who wants to plant something because you are bored and want to falsely implicated another person who you say - “I wanted to protect her” - but I was bored, but at the same time, I have the right to say whatever I want to say to my colleagues.

Now if I look into the two scenarios, I see something – a red flag. Having said that, tell me why I should not report you directly to the Minister? Give me one good reason why I should not do it?

I am asking you because I am asking myself how many people have gone to prison where things were planted. There are offenses where they were falsely implicated in something that they did not do. And how many people are still going to be in danger...you know they are at the mercy of the police officers like yourself who are not afraid to say I will plant, I will destroy evidence.

Ms Dibeila: My Lady, pertaining to the confiscation of the phone and the deleting of the contents of the video. It was not trying to destroy evidence, I was trying just to prevent Mrs. Langa from preventing the officers from executing their duties.

[60] Having regard to the above, this court is mindful of the evidence of Mr Langa when he was asked how he feels about the arrest of his wife, and he responded that he feels saddened and belittled because his wife was assaulted by the police in his presence, and he could not assist her. He testified that his wife was humiliated because she was wearing track-pants and she wet herself after being pepper sprayed and was in pain.

[61] At this stage I find it appropriate to indicate some concerns this court has regarding the evidence placed before court and the manner in which the members of the defendant have conducted themselves.

[62] It became apparent throughout their evidence that constables Dibeila,

Mphahlale and Aphane were willing to mislead the court and blatantly lie about how they conducted themselves during the course of their duties. Not only did they violate the constitutional rights of Mr and Mrs Langa in terms of section 12, but they went as far as assaulting them simply because Mr Langa refused to pay a bribe.

[63] What is rather more concerning is that firstly, constable Dibeila wants to “plant nyaope”, which is a drug and one of the prohibited substances, just to get Mr and Mrs Langa in more trouble,

and probably destroy their lives; reputation; and most importantly, the career of Mr Langa – who is also a member of SAPS. To make things worse, constable Mphahle who this conversation and the intention to commit an offence was directed to, agreed with constable Dibeila instead of reprimanding her or advising her that what she intends to do or she is suggesting to do is wrongful and unlawful, – or advise her of the implication and effect of wanting to commit such a ruthless and atrocious act.

63.1 Secondly, when constable Dibeila said she should actually be going to get nyaope from her place, she was actually admitting of being in possession of prohibited drugs in her home, and yet she is a member of police services.

63.2 When the court asked constable Dibeila if she appreciates and understand the implications of what she wanted to do, and she said “no”.

63.3 This clearly shows that she will not uphold the law or serve and protect – which I believe is the number priority of every police officer who took an oath to do just that.

63.4 Constable Dibeila testified that Mrs Langa was “risking her own life by moving towards the road where vehicles were passing, and she wanted to protect her because part of her duties is to protect the community”. This is not true because when the video recording was played, she clearly stated that she does not care if Mrs Langa gets involved in an accident – and qualifying that statement by saying she is in charge.

[64] In addition to what I have noted above, what is more worrying about this type of behaviour is that Mr and Mrs Langa would have been a part of the statistics of hundreds of innocent people who are in prison because they have been framed. One wonders how many more people have fallen victim to these three constables because the record shows that they were working together. I say this being mindful of the fact that they tried throughout their evidence, to protect each other.

64.1 As they were testifying, where their versions differed or contradicted each other, when confronted about such contradictions, they would simply say they are all correct and telling the truth. One example is when a video recording was played and constable Dibeila was hurling insults at Mrs Langa, both constable Dibeila and constable Mphahlele denied any wrongdoing or swearing by constable Dibeila. The video was replayed for Constable Mphahle to give him a chance to think about the answer he had just given, or maybe think about the oath he had taken to tell the truth in court – and he still denied that that his colleague was swearing at the plaintiff.

64.2 When asked by the court to confirm if he could hear the voice of Mrs Langa swearing, it was then that he decided to say he does not hear the voice of Mrs Langa swearing. To take it further, when it became apparent that constable Mphahlele was not being honest, he stated that constable Dibeila will answer for herself when it comes to any question relating to the insults directed at Mrs Langa.

64.3 As for constable Aphane, he was the first one to attack Mr Langa because he is the one who approached him first, and when he manhandled him, his colleagues came running to his assistance and alleged that Mr Langa was resisting arrest and that is why they came to his rescue. Mrs Langa corroborated the evidence of Mr Langa that when Mr Langa disclosed to constable Aphane that he is a sergeant in SAPS and will not pay a bribe, constable Aphane became angry, and that is when all the commotion started.

64.4 Constable Aphane’s evidence under cross-examination that they left Mr Langa to continue driving because they wanted to see if he would continue driving recklessly and only stopped him after he drove for about 1.8 km, does not make sense. One would have expected a police to stop a person who violates the law when that violation becomes apparent at the first opportunity. In my view, this explanation was simply an excuse to paint a picture that they had no problem with Mr Langa because they were just doing their job.

64.5 I have already indicated that Constable Dibeila said to Mrs Langa: “You and your husband are under arrest”, but she does not tell her the reason for her arrest. All Mrs Langa wanted was to get her phone back from Dibeila and she was insulted and assaulted for that.

[65] It seems to me that these police officers made common cause with one another to cover each other's back when one violates the law and probably their code of conduct and ethics.

[66] It was put to all the defendant's witnesses that IPID has recommended that the National Prosecuting Authority should charge them. A document confirming that recommendation forms part of the bundles uploaded on caseline and it was shown to them. Their counsel did not dispute or object to this document. These police officers confirmed giving statements to the investigators from IPID but indicated that they have not been to an internal disciplinary hearing

at SAPS.

66.1 Mr Mogagabe submitted that these three police officers are corrupt and were driven by greed. He further raised a concern that it was worrying that they are still holding their jobs when it is evident that they violated the constitutional rights of Mr and Mrs Langa and even tried to destroy the evidence gathered by Mrs Langa in her cell phone, which was going to prove their corrupt activities. I could not agree more.

[67] Having regard to the comments I have made, it is on this basis that I

will direct that a copy of this judgment be referred or forwarded to IPID; the Minister of Police; and the Commissioner of Police for the investigation of constables Tumishi Aphane; Ntjale Happy Mphahlele and Lucia Dibeila.

[68] Having regard to all the circumstances of this case and the circumstances under which the Mr and Mrs Langa were arrested, I am of the view that the defendant has failed to discharge its onus of showing on a balance of probabilities that constables Aphane, Mphahlele and Dibeila were justified in effecting an arrest of Mr and Mrs Langa. Accordingly, their actions fall short of the required reasonable suspicion that the plaintiffs have indeed committed any of the offences they were arrested for. It follows that the arrest and detention of Mr and Mrs Langa were unlawful.

[69] In light of what is noted on the preceding paragraph, I find that the

first defendant failed to prove that (1) the arrest and detention of Mr and Mrs Langa was lawful; (2) that a reasonable suspicion existed that Mr Langa was actually committing an offence of reckless and negligent driving and resisting arrest, and that Mrs Langa committed an offence of interference with the police in the performance of their duties; crimen injuria; and assault common.

[70] With regards to the assault perpetrated on Mr Langa, the defendant submitted that even though Mr Langa gave a description of the assaults in his amended particulars of claim, he did not give a description of the assaults in his evidence, but only mentioned being pepper sprayed. It argued in its heads of argument that Mr Langa only

confirmed in his evidence that what is contained in his particulars of claim, is how he was assaulted without giving a full description

when testifying. It was submitted that this was an inconsistency in his version and the assault claim should as such be rejected.

[71] Mr Langa testified that his first consultation with his doctor was on

the first Monday after being released from custody on a Saturday. He stated that he consulted with doctors' Mfiso and Nairobb, as well as a clinical psychologist.

[72] It should be noted that the defendant did not appoint any experts, and the results of the assessment done on Mr and Mrs Langa remains unchallenged.

[73] Mr Langa testified that he was assaulted, and pepper sprayed. His wife and constable Mphahlele corroborated his evidence that he was pepper sprayed. The evidence before court is that after he alighted

from the vehicle, he followed constable Aphane who had his car keys. He was immediately tackled when he refused to pay the R300 bribe, and the attack shifted to his wife when she took out her phone to record what was happening between her husband and constable Aphane.

[74] Furthermore, he testified that when he was detained in the police cells, none of the police officers at the station wanted to help him even when he repeatedly asked to used a simple thing such as a bathroom or water to rinse his eyes, to relief the itchiness from the pepper spray. This version was also not disputed by the defendant.

[75] Mr Langa testified under cross-examination that he did not tell his doctor that he was assaulted during his arrest. He testified that he did not prepare any documents for his clinical psychologist to consider when she came to give her evidence in court. Be that as it may, his counsel argued that the court should accept the evidence of Mr. Langa as it relates to the assaults perpetrated on him as it is more probable, and to take into consideration that his pleaded version was never challenged,

[76] With regards to Mrs. Langa, the evidence before court is that she was

taken to the hospital on the day of the incident. She testified that apart from being pepper sprayed, her eye was swollen after being assaulted by constable Dibeila and after receiving treatment at the hospital, a patch was put on her eye to cover it.

[77] With regards to quantum, the plaintiffs called Ms Narropi Sewpershad,

a clinical psychologist who conducted an assessment on Mr. and Mrs. Langa. She testified that they have been negatively impacted by the arrest and have suffered psychological trauma. She stated that Mr. Langa's reputation has been damaged and that he suffers from moderate depression and marked clinical features of PTSD.

[78] The results of Mrs Langa's assessment revealed that she also has PTSD. Mrs Langa also consulted with an ophthalmologist who opined that she suffers from traumatic optic neuropathy with some visual

field impairment on the right eye.

[79] Having regard to the level of commotion at the scene of arrest, and hurling insults and attack by the police officers, the probabilities favours a finding that both Mr and Mrs Langa were indeed assaulted.

Consequently, a consideration of all the evidence placed before court, and the surrounding circumstances leading to the unlawful

arrest of Mr and Mrs Langa justifies a finding that both plaintiffs were assaulted.

[80] Accordingly, this court accepts their evidence as it relates to the assaults perpetrated on them. I am also mindful of the evidence of Ms Sewpershad that the impact of this ordeal has been more serious on

Mrs Langa because after she was assaulted, she suffered blunt force trauma, and that she presents with neurocognitive disability. The court observed Mrs. Langa as she gave her evidence, and it was evident that this ordeal impacted her negatively as she was overcome with emotions and could not stop sobbing when the video recording was played.

[81] Both counsels referred me to various authorities in respect of compensation, for which I am grateful. All have been considered in

respect of what constitutes a fair compensation to be awarded when regard is had to all the circumstances taken cumulatively. After

consideration of awards in other cases, this court will reiterate on what was pointed out by Nugent JA in *Minister of Safety and Security v Seymour*[14] that: "caution should be exercised in comparing awards because each case must of necessity be decided on its own facts".

[82] In assessing quantum for the amount to be awarded to the plaintiffs, the court in *Minister of Safety and Security v Tyulu*[15] stated that: "In the assessment of damages for unlawful arrest and detention, it is important to bear in mind that the primary purpose is not to enrich the aggrieved party but to offer him or her some much-needed solatium for his or her injured feelings. It is therefore crucial that serious attempts be made to ensure that the damages awarded are commensurate with the injury inflicted. However, our courts should be astute to ensure that the awards they make for such infractions reflect the importance of the right to personal liberty and the seriousness with which any arbitrary deprivation of personal liberty is viewed in our law".

[83] I have carefully considered and assessed all the circumstances of this case; the circumstances under which the plaintiffs were arrested; the assault perpetrated on them by the members of the South African Police Services; the emotional and psychological effect of

the arrest on them; and I have also considered all the submissions made by both counsels. The decision to award damages to Mr and Mrs Langa as compensation was not taken lightly. In my view, these damages constitutes a fair and reasonable award which under the circumstances, would be appropriate and fair to both parties.

[84] With regards to amount claimed as legal expense at the magistrate's

court, nothing has been placed before court to justify the claim and no evidence was led in that regard. In the circumstance, the amount claimed in this head of damages falls to be dismissed. In so far as the costs are concerned, as a rule, they should follow the results and be awarded in favour of the plaintiffs (Mr and Mrs Langa).

[85] In the circumstances, the following order is made:

1. The defendant is liable for all the plaintiffs' proven damages relating to unlawful and arrest and detention.
2. The Defendant is ordered to pay Mr. Salthiel Langa in full and final settlement of his claim against the defendant the capital amount of R 420 000.00 (Four Hundred and Twenty Thousand Rand only) made up as follows:

(a) Unlawful arrest and detention: R 40 000.00

(b) General damages for assault: R 250 000.00

(c) Future medical treatment:

R 130 000

(d) Legal expenses:

R 0.00

3. The defendant is ordered to pay Mrs Zanele Langa in full and final settlement of her claim against the defendant the capital amount of R 490 000.00 (Four Hundred and Ninety Thousand Rand only) made up as follows:

(b) General damages for assault: R 300 000.00

(c) Future medical treatment: R 150 000.00

4. The above amounts shall be paid within 30 days of receipt of this order.

5. The Defendant ordered to pay the plaintiffs' costs on a party

and party scale (subject to the discretion of the Taxing Master) up to the date of the order, such costs to include the following:

5.1 Counsel's fees, including reasonable preparation and appearance costs for all trial days and reserved days.

5.2 The costs of obtaining reports, preparation, reservation fee and attendance for trial for the following experts:

5.2.1. Dr Cor Van Zyl (Ophthalmologist)

5.2. 2. Ms. Narropi Sewpershad (Clinical Psychologist)

6. The Plaintiff's reasonable travelling and accommodation costs for attending consultations with the experts as well as attending trial court.

7. It is ordered that a copy of this judgment be forwarded to IPID; the Minister of Police; and the Commissioner of Police for the investigation of constables Tumishi Aphane; Ntjale Happy Mphahlele and Lucia Dibeila.

PD. PHAHLANE

JUDGE OF THE HIGH COURT

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Date of Hearing : 23 March 2024

Date Delivered

: 02 December 2024

- [1] Section 40 (1)(a) and 40(2) provides:
- (1) “A peace officer may without warrant arrest any person –
 - (a) Who commits or attempt to commit any offence in his presence: -
 - (i) who wilfully obstructs him in the execution of his duty.
 - (2) If a person may be arrested under any law without warrant and subject to conditions or the existence of circumstances set out in that law, any peace officer may without warrant arrest such person subject to such conditions or circumstances”.
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- [2] The section provides: “No person shall drive a vehicle on a public road recklessly or negligently”.
- [3] (427/01) [2002] ZASCA 98; 2003 (1) SA 11 (SCA) at para 5 (6 September 2002).
- [4] See: The transcribed record of the proceedings of 03 February 2022 at page 5.
- [5] National Employers’ General Insurance Co Ltd v Jager 1984
- (4) SA 437 (E) at 440D-441A.
- [6] Mahlangu and Another v Minister of Police (CCT 88/20) [2021] ZACC 10; 2021 (7) BCLR 698 (CC); 2021 (2) SACR 595 (CC) at para 32 (14 May 2021). See also: Zealand v Minister of Justice and Constitutional Development and Another 2008(2) SACR 1 (CC) at para 24; Minister of Safety and Security v Slabbert [2010]2 All SA 474 (SCA) at para 20.
- [7] Act 108 of 1996
- [8] 1986 (3) SA 568 (A) at 589E-F.
- [9] Section 12(1)(a) of Act 108 of 1996
- [10] Prinsloo v. Van der Linde & Another 1997(3) SA 1012 (CC) at para 25 quoted by Tuchten J in an unreported Full Bench Judgement of this Division in the Minister of Police & Another v. Morgan Gombakomba & Another Case No. A945/14 dated 5 April 2016 at 21.
- [11] (2020/17691) [2022] ZAGPJHC 795; [2023] 1 All SA 132 (GJ) at para 46 (17 October 2022)

[12] 2012 (1) SACR 305 (ECP) (2 April 2011)

[13] 2008

(1) SACR 56 (CC).

[14] 2007 (1) ALL SA 558 (SCA)

[15] 2009 (5) SA 85 (SCA), at para 26.

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Prepared on 11 October 2026 · Esheria