

SOUTH AFRICA / JUDGMENT

Londo v Minister of Police (1855/2024)

[2025] ZANWHC 122 (22 July 2025)

[2025] ZANWHC 122**COURT**

North West High Court, Mafikeng

BEFORE

Maodi

CASE / FILE NUMBER

1855/2024

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Policy**IN****THE HIGH COURT OF SOUTH AFRICA****NORTH WEST DIVISION -****MAHIKENG****Case No: 1855 / 2024****Reportable: YES / NO****Circulate to Judges: YES****/ NO****Circulate to Magistrates:****YES / NO****Circulate to Regional****Magistrates: YES / NO**

In the matter between:

SELLO LAURANCE LONDO

PLAINTIFF

and

MINISTER OF POLICE

DEFENDANT

CORAM: MAODI AJ

Date

judgment reserved: 23 April 2025

The judgment was handed

down electronically by circulation to the parties'

representatives via email. The date and time for

hand-down is deemed

to be 22 July 2025 at 10H00am.

ORDER

a. The

defendant is held liable for the plaintiff's 100% damages.

b. The

defendant to pay an amount of R 150 000, 00 (One Hundred and Fifty Thousand Rands) to the plaintiff.

c.

Interest on the said amount at a rate of 8,25% per annum, calculated from 24 April 2024 until date of payment.

d. The

defendant is ordered to pay the costs of this matter

JUDGMENT

MAODI AJ

Introduction:

- [1] This is a claim for unlawful arrest of the plaintiff by members of the defendant acting within the course and scope of their employment with the defendant. Summons was served on the defendant on the 24 April 2024. On the 20 June 2024 the defendant delivered its notice of intention to defend, but has failed to deliver a Plea timeously or at all. The plaintiff delivered a notice of bar on the 23 July 2024. As such the defendant remains barred as it has never uplifted the bar or delivered a Plea. The matter proceeded undefended and the plaintiff called one witness, being the plaintiff himself.
- [2] Although the plaintiff's claim comprised of a few heads of damages which are: past medical expenses, future medical expenses, loss of earnings and general damages, on the day of hearing the plaintiff abandoned all other heads of damages and elected to proceed only on the issue of general damages. Therefore, I will only concern myself with such aspect.

The Particulars of Claim:

- [3] The plaintiff pleaded that on or about the 20 November 2023 he was at house number 3[...] Rooigrond Village, Mafikeng, North West Province when he was approached by members of the South African Police Services, whose names and ranks are unknown to him. He was arrested and detained on a charge of theft from a motor vehicle at Mafikeng Police Station under Cas No. 132/11/2023 and 164/10/2023.
- [4] The plaintiff was taken to court and was never made to appear before a magistrate and was further detained at Mafikeng Police Station without being furnished a reason for the further detention. The plaintiff was subsequently released on warning to appear on 24 November 2023 after having spent 4 days in custody of the defendant. Upon attending court as per the given date to appear, the matter was not enrolled and the plaintiff was informed to go home.
- [5] At all material times of the arrest, the plaintiff provided the necessary co-operation to the police officers and explained that he was not involved in any commission of a crime or alleged offence. Despite the plaintiff's best efforts to explain his non-involvement to the alleged offence, the police officers blatantly disregarded his explanation but rather proceeded to detain him.
- [6] There was no reasonable suspicion on the part of the arresting officer that the plaintiff committed the offence for which he was arrested and detained, or any other offence. The police officers failed to adequately investigate the matter in order to not arrest where no crime was committed by the plaintiff as there was no crime committed by the plaintiff. A thorough and proper investigation was not carried out before the plaintiff was arrested and detained. The police officers failed to apply their minds properly to the matter to attain the correct steps to be taken in the matter. They failed to exercise reasonable care when considering the matter and failed and/or neglected to exercise discretion properly and/or lawfully.
- [7] As a result of the said unlawful arrest and strict supervision by the SAPS, the plaintiff suffered damages for the unlawful arrest, and contumelia in the sum of R 650 000, 00 (Six Hundred and Fifty Thousand Rands) comprising of past medical expenses, future medical expenses, loss of earnings, and general damages which include psychological shock and emotional trauma. At all relevant times the arresting officer and other police officers in uniform were acting in their official capacity and furtherance of their employment, hence the defendant is vicariously liable for the unlawful conduct of its

employees.

Evidence by the plaintiff:

- [8] The plaintiff testified that he is 34 years old and resides at Unit 1[...], Mmabatho. His highest level of education is grade 9. He does gardening for a living. This is piece jobs cleaning people's yards and he makes about R 250, 00 per day which he translated to about R 2 800, 00 to R 3 000, 00 per month. He was arrested on the 20 November 2023 by four police officers whose names he does not know. It was around 15:00 and he was in the company of one Mr

Ivan and they were at the said Mr Ivan's house located at Rooigrond Village. The police came in two White Nissan bakkies.

- [9] At the time of arrest there were people from the community watching. People in the community loved them as they never did anything wrong to anyone. No warrant of arrest was exhibited to him. He was given a document titled "Notice of rights in terms of the Constitution" which is contained at page 15 of the bundle.
- [10] The police arrested both of them on a Monday, took them to the Mafikeng Police Station and they never went to appear in front of a judge. On Wednesday when they were supposed to appear before a judge they were taken back to the cells.
- [11] At the police cells they found other arrested persons, (he referred to them as prisoners), who asked them what they were doing there. The prisoners showed them where to sleep and when the prisoners went to the toilet, they had to hold a blanket for them. The conditions of the cells are untidy and the blankets dirty. When they were given food they had to share it with the prisoners. They were not allowed to drink tea.
- [12] When they got to the cells the prisoners told them that they (the prisoners) are in charge of the cells and started searching them. The prisoners told them that they do not have a say on anything. He managed to eat half of his food on Monday. He later testified that on Monday he did not eat anything as when they got to the cells, the other prisoners had already eaten for the day. He only managed to eat on Tuesday morning at 08:00. It was bread. Around 17:00 he ate pap and mince. For the four days he was there he had to share his food with others.
- [13] On Wednesday he did not eat anything as they were taken to court before food could be served. At court they did not appear in front of any magistrate and were taken back to the cells. They were given a second notice of rights and told they will go to court on Friday. He slept without eating as there was no food. On Thursday he had to share food with others. He was released on Friday afternoon after everyone had gone. He was never taken before a magistrate at all.
- [14] He further testified that the arrest and detention were not good and he would never wish for anyone to go through that. The place (cells) will drain a person emotionally and he was told what to do as if he was a slave. He was never told what he was arrested for. When he was released on Friday he was told that he had to go to court on the 18 January. On the 18 January he went to court but was told to go home as he would not appear in front of any magistrate. That was his case.

The authorities and reasons for judgment

- [15] It is not in dispute, in fact there is no version or evidence before me disputing that the plaintiff was arrested without a warrant. Therefore, I accept that the plaintiff was arrested without a warrant of arrest. There is nothing prohibiting a peace officer to arrest a person without a warrant. However, such arrest must be within the confines of the law and the onus rests upon the arresting officer to prove the lawfulness thereof. Arrest without warrant is

governed by the provisions of sections 39 to 42 of the Criminal Procedure Act 51 of 1977 (the Act). For our purposes the specific sections relevant are sections 40 and 41 of the Act.

[16] The authorities are clear that arrest has always been premised on the need to ensure attendance of an accused person to trial, and not as punishment. The position might have been different pre-democratic dispensation, but with the advent of the Constitution and the Bill of Rights, specifically section 12(1) of the Constitution, peace officers are required and/or expected to do more than is provided for in terms of section 40 of the Act. This is amplified by section 2 of the Constitution which provides that the Constitution is the supreme law of the land and anything inconsistent with it is invalid and the obligations imposed by it must be fulfilled.

[17] Sections 12(1)(a) and (b) of the Constitution find specific relevance to the case in casu. This approach was followed in the case of *Le Roux v Minister of Safety and Security and Another* (AR436/07) [2009] ZAKZPHC 8; 2009 (4) SA 491 (N) ; 2009 (2) SACR 252 (KZP) (17 March 2009) as follows:

“8] The approach which applied in the pre-constitutional era seems to be the one that is satisfied with mere compliance with the provisions of this section. For instance, in the well-known decision of the

then Appellate Division in *Tsose v Minister of Justice and others* Schreiner JA pronounced himself as follows on the issue :-

“An arrest is, of course, in general a harsher method of initiating a prosecution than citation by way of summons but if the circumstances

exist which make it lawful under a statutory provision to arrest a person as a means of bringing him to court, such an arrest is not unlawful even if it is made because the arrestor believes that arrest will be more harassing than summons. For just as the best motive will not cure an otherwise illegal arrest so the worst motive will not render an otherwise legal arrest illegal.”

9] It would appear that, with the advent of the Constitution, the courts began to express doubt or uneasiness at the views expressed in *Tsose*. For instance, in *S v van Heerden en ander* sake though he reserved his comments on the *Tsose* pronouncement, van der Walt J continued to remark as follows :-

“Die vraag kan gevra word of die arrestasie van verkeersoortreders by die mobiele hof slegs en uitsluitlik ten doel gehad om die oortreders voor die hof te bring. Dit lyk vir my of daar ‘n element van terrorisering daarin vervat is wat ook die doel sou hê om die boete insameling te vergemaklik. Want as die boete nie betaal word nie word die oortreder in die gevangenisbus aangehou.....

Onwettig sou die arrestasie nie wees nie, maar seer sekerlik laakbaar en dit kan alleen dien om die agting wat lede van die publiek vir die regsproses moet hê in gedrang te bring”.

10] In *Ralekwa v Minister of Safety and Security de Vos J* was even more forthright. After referring to the *Tsose* pronouncement, she opined :-

“(11) The question is whether, in view of the fact that we now have a Constitution that restricts the exercise of public power through a justiciable Bill of Rights, the last statement of the quotation can be correct. There can be no doubt that an examination into the lawfulness of an arrest against the backdrop of a statement that there is no rule of law requiring the milder method of bringing a person into court will be different from an enquiry which starts off on the premise that the right of an individual to personal freedom is a right which should be jealously guarded.

(12) I am of the view that the demands of the Constitutional State must be taken into account when applying the general test in cases such as these

11] The Constitution with its justiciable Bill of Rights heralded a new era. The new order was no longer subjected to the parliamentary sovereignty. All laws now had to be interpreted in consonant with the Constitution and those which were contrary to the provisions of the Constitution and its Bill of Rights had to be declared invalid and therefore of no force and effect. Section 40(1)(b) of the Criminal Procedure Act is no exception. Its provisions must also yield to the superior imprimatur of the Constitution. The relevant clause of the Constitution provides that :-

“12(1) Everyone has the right to freedom and security of the person, which includes the right :-

(a) not to be deprived of freedom arbitrarily or without just cause.....”

12] Interpreting the equivalent provision of the Interim Constitution O'Regan J remarked :-

“In my view, freedom has two inter-related constitutional aspects: the first is a procedural aspect which requires that no-one be deprived of physical freedom unless fair and lawful procedures have been followed.... The other constitutional aspect of freedom lies in a recognition that, in certain circumstances, even when fair and lawful procedures have been followed, the deprivation of freedom will not be constitutional, because the grounds upon which freedom has been curtailed are unacceptable”.

13] The same sentiments were expressed as follows by Ackermann J in *De Lange v Smuts NO* and others :-

“It can therefore be concluded that Section 12(1) in extending the right to freedom and security of the person, entrenches the two different aspects of the right to freedom referred to above. The one that O'Regan J has, in the above-cited passages, called the right not to be deprived of liberty ‘for reasons that are not acceptable’ or what may also conveniently be described as the substantive aspect of the protection of freedom is given express entrenchment in Section 12(1)(a), what protects individuals against deprivation of freedom ‘arbitrarily or without just cause’ “

14] The notion of “arbitrariness” as a benchmark for wrongful detention finds expression in the International Covenant on Civil and Political Rights, 1966 which, in its article 9(1), provides, inter alia, that :-

“Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention

15] The words “arbitrary arrest” contained in Article 9(1) were explained as follows by the United Nations Human Rights Committee :-

“Arbitrariness is not to be equated with ‘against the law’. But must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law..... This means that remand in custody pursuant to lawful arrest, must not only be lawful but reasonable in the circumstances. Remand in custody must further be necessary in all the circumstances, for example, to prevent flight, interference with evidence or the recurrence of crime.”

[18] The question whether the suspicion was based on reasonable grounds or not has been dealt with in the case of *Mabona and Another v Minister of Law and Order and Others* 1988

(2) SA 654 (SE) at 658E-H where Jones J held as follows:

“The test of whether a suspicion is reasonably entertained within the meaning of s 40(1) (b) is objective (S v Nel and Another 1980 (4) SA 28 E at 33E-H). Would a reasonable man in the second defendant’s position and possessed of the same information have considered that there were good and sufficient grounds for suspecting that the plaintiff was guilty of conspiracy to commit robbery or possession of stolen property knowing it to have been stolen? It seems to me that in evaluating his information a reasonable man would bear in mind that the section authorises drastic police action. It authorises an arrest on the strength of a suspicion and without the need to swear out a warrant, i.e. something which otherwise would be an invasion of private rights and personal liberty. The reasonable man will therefore analyse and assess the quality of the information at his disposal critically, and he will not accept it lightly or without checking it where it can be checked. It is only after an examination of this kind that he will allow himself to entertain a suspicion which will justify an arrest. This is not to say that the information at his disposal must be of sufficiently high quality and cogency to engender in him a conviction that the suspect is in fact guilty. The section requires suspicion but not certainty. However, the suspicion must be based upon solid grounds. Otherwise, it will be flighty or arbitrary, and not a reasonable suspicion.”

[19] Section 35(1)(d) of the Constitution read with section 50(1)(d) of the Criminal Procedure Act provides that arrested, detained and accused persons must be brought before a court as soon as reasonably possible, but not later than 48 hours after the arrest or the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day.

[20] The manner in which the plaintiff was handled or treated by the members of the defendant shows that the intention was arbitrary and to punish, the reasons for which remain a mystery. Detention and continued detention is, in and by itself, unlawful. The onus rests on the detaining officer to justify it. The plaintiff was detained for forty-eight (48) hours and then taken to court without appearance or warning by the magistrate. The members of the defendant, seeing that the plaintiff had to be let go, ensured a further detention by providing him with another notice of rights in terms of the Constitution, which allowed them to detain him for a further forty-eight (48) hours. This is clear from annexure LSL1 to the summons. Still, at the expiry of the said Forty-Eight (48) hours, the members of the defendant did not

ensure that the plaintiff appears before a magistrate, and they had to release him.

- [21] I therefore find that the plaintiff was arrested without a warrant, the arrest was not justified and is unlawful. The plaintiff was unlawfully, arbitrarily and without any just cause detained for a period of four (4) days.
- [22] I am of the view that in arriving at a just award for compensation, one has to look at, amongst others, the alleged charge of which the plaintiff was accused, the reason proffered for the arrest, the conditions experienced by the plaintiff from the time of arrest, during detention until release, the period of detention, the status of the plaintiff in society, the impact of the arrest and detention on the plaintiff's mental, physical, emotional and financial well-being.
- [23] The plaintiff is a 34 years old male who is self-employed. He works with the community and comes from the same community which witnessed his unlawful arrest. There is no evidence before me why he was detained twice without being brought before a magistrate. The conditions under which he was subjected from arrest, during detention and the time of release are unacceptable. The police should also respect the rule of law and due process of the law. Freedom of a person is protected by the Constitution. Even if an arrest is lawful, the police should consider whether it is reasonable and necessary that a person be placed under arrest and detention. This requires of police officers, especially in less serious crimes, to consider and analyse the information at their disposal, amongst others, whether a person is a flight risk or threat to witnesses or the investigation

of the case.

- [24] There is no reason to deviate from the norm that costs follow the suit. The defendant is therefore liable for the plaintiff's costs.

Order

- [25] In the circumstances, I make the following order:

- d. The defendant is ordered to pay the costs of this matter.

J. T. MAODI

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA,

NORTH WEST DIVISION, MAHIKENG

APPEARANCES

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FOR THE DEFENDANT: No Appearance

Instructed by:

None

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