

SOUTH AFRICA / JUDGMENT

Mabotse v Minister of Police (1495/2018) [2021] ZANWHC 32 (5 August 2021)

[2021] ZANWHC 32**COURT**

North West High Court, Mafikeng

BEFORE

M Z Makoti

CASE / FILE NUMBER

1495/2018

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record**IN****THE HIGH COURT OF SOUTH AFRICA****NORTH****WEST DIVISION - MAHIKENG****Reportable:**

YES / NO

Circulate

to Judges: YES / NO

Circulate

to Magistrates: YES / NO

Circulate

to Regional Magistrates: YES / NO

CASE

NO: 1495/2018

In

the matter between:

SHIMANE

MABOTSE

Plaintiff

And

THE

MINISTER OF

POLICE

Defendant

JUDGEMENT

MAKOTI AJ

INTRODUCTION

- [1] MR SHIMANE MABOTSE ('Mabotse') is the Plaintiff in this matter and he sued the Minister of Police for damages resulting from his alleged unlawful arrest in detention. He alleges that he was unlawfully arrested by police officials who are stationed at the Zeerust Police Station ('the station') on 20 April
2018. He was then charged with the offence of public violence and was detained at the Groot Marico Police Station from 20 until 23 April 2018 when he was released from detention.
- [2] The suit against the Minister of Police ('the Minister') is for damages in the amount of R320,000-00 (Three Hundred and Twenty Thousand Rand, Only), for the alleged unlawful arrest and detention. Amongst others, the basis for alleging that he was unlawfully arrested is due to the fact that he was released from detention without making an appearance in a court of law or before a magistrate.
- [3] On behalf of the Minister the arrest was admitted, however it was contended that the arrest was lawfully carried out by the police. It was the Minister's further case that the arrest and detention were conducted in accordance with the empowering provisions of section 40(1)(b) of the Criminal Procedure Act[1] ('the CPA'), as amended.
- [4] The Plaintiff contends that his arrest was not based on any reasonable grounds and that there could have been no reasonable suspicion of him having committed an offence listed in Schedule 1 of the CPA. As indicated this is disputed by the Minister. The defence was that Mabotse was part of a group of violent protestors who took to the streets of Zeerust town on 20 April 2018, and he was arrested for his role in the riots.

ISSUE(S) FOR DETERMINATION

- [5] Although Mabotse's arrest is a matter of common cause between the parties, they parted company in so far as the question of lawfulness thereof was concerned. Thus, what stands to be determined is the issue whether:
- [5.1] Mabotse's arrest without a warrant was lawful; and
- [5.2] His detention was lawful.
- [6] Essentially, what needs to be decided is the question whether the arrest and detention of Mabotse on 18 April 2018 were conducted in compliance with the provisions of s 40(1)(b) of the CPA. It is trite that in a case of unlawful arrest and detention

where the arrest has been admitted or proven, the duty lies with the Minister to prove that the arrest was lawful.[2]

FACTUAL BACKGROUND

- [7] During the week of 20 April 2018 the Zeerust area(s) experienced community protests, allegedly because of the displeasure with the province's then political leadership. The protest apparently started from one of the townships (Ikageng) neighbouring the Zeerust town on 19 April 2018. On the fateful morning of 20 April 2018 the members of the community took their violent protestations to town. This too is common cause between the parties.
- [8] Once they were in town the protestors began to blockade the main road passing through Zeerust, known as Church Street and which forms part of the N4 road system. The police had met them shortly before they entered town, pleading with them to end the march peacefully, which intervention fell on deaf ears. Amongst police officers in attendance was Brigadier Ntoagae, the arresting officer. Again, the parties agree that the protestors engaged in violent acts of littering on Church Street, conduct which led to many businesses closing out of fear.
- [9] The police (arresting officer's) statement recorded that the protest was started with a small group of approximately 20 to 30 people. This is the estimation concerning the number of protestors that they intercepted before it entered into Zeerust town. The attempts to bring a stop to the march drew blanks as the marchers spread around town and began the violent scenes to which I have referred earlier.
- [10] The protest march moved along Church Street towards the Zeerust taxi rank, which is located somewhere near municipal offices. As the police were controlling or managing the protest action, they repeatedly requested the protesters to disperse since their actions were considered to be public violence.

EVIDENCE LED DURING TRIAL

- [11] To discharge the onus, four witnesses were called to testify on behalf of the Minister: (a) Brigadier Ntoagae; (b) Constable Motsikwa; (c) Sergeant Maselwa; and (d) Constable Mosiane. The role that was played by Constable Mosiane was that of the investigating officer who was assigned the further investigation and attendance of matter following the Plaintiff's arrest. Mabotse was the only witness to testify in support of his own case.
- (a) Evidence of Brigadier Ntoagae

- [12] The testimony of Brigadier Ntoagae was to the effect that she was on duty in the morning of 20 April 2018. She then received intelligence report to the effect that there were protesters marching from one of the neighbouring townships towards town. She then activated a response from public order police ('POP') and proceeded to the side of Zeerust town where she had been advised that the protesters were heading. She was in the company of the other police officers.
- [13] When they got to the intersection of Church Street with the road coming from the Ikageng, which the protestors were using to get to town from the township,[3] the police managed to intercept them. Being senior of the police officials in attendance, Brigadier Ntoagae led the engagement talks with the protesters, in an attempt to ensure calmness among them. She also enquired as to what was the reason of their protest and pleaded with them to stop the march. Her attempts to maintain calm proved to be in vain as the protesters went on rampage, spilling rubbish bins, blockading the main road and throwing stones and other objects at passing motorists. The behaviour of the protesters is common cause and proves the commission of a serious criminal offence.[4]
- [14] She further testified that when she was talking to the protestors attempting to calm them down, in terms of normal police practice or experience, the police were able to identify three prime suspects or leaders of the protest march. She indicated that she specifically identified Mabotse as one of the leaders of the violent protest, and set out to arrest him for the offence. Amongst others, she identified him with a white T-shirt that he was wearing.
- [15] When the protesters intensified and proceeded with their violent actions, as a means of stopping the protest, the police then took a decision to arrest those among the protestors that they had managed identify, including Mabotse. I should digress at this point to mention that there was no indication that the Brigadier had known or met Mabotse prior to the date of the incident.
- [16] The reason for identifying prime suspects or leaders is because it was practically impossible for the police to arrest everyone. When faced with such situations, according to their practices, they then identified targets amongst the protestors for arrest. As indicated, the Brigadier testified that she identified Mabotse based on his clothing,[5] and because he had appeared to be one of the leaders of the violent protest.
- [17] Concerning the criminality of the incident, there was no dispute to the fact that the violent protestation in Zeerust on 20 April 2018, and that that constituted the offence of public violence. The disruption of normal business, especially those situated along Church

Street is also not disputed. Further, the protestors are said to have been in possession of assortment of weaponry, including sticks and stones. Traffic in town came to a complete halt and vehicles had to be diverted to other streets. The protestors inter alia caused physical damages to a state owned motor vehicle.[6]

- [18] Given the chaotic nature of the situation that morning, the witness indicated that she had to call for backup from members of POP who also attended to the situation using vehicles that are commonly known as police 'Nyalas'. Despite police presence and attempt to stop the march, the situation got out of control because the protestors began to spread around town throwing rubbish onto the street and stopping motorists from using the N4. It was for that reason that the police began pursue their prime suspects for arrest. It need to be emphasised that Mabotse was identified by the witness as the person whom she targeted for arrest. According to this witness, the Plaintiff managed to outmanoeuvre them and disappeared at or near the taxi rank. The police continued their monitoring of the town situation through patrols.
- [19] The witness went back to the station and while there saw two police officers who were on patrol duties and requested them to help her to search for a suspect in town. The two officers are now known to be Const. Motsikwa and Sgt. Maselwa.
- [20] According to her testimony, it so happened that when she and the other two police officers in her company were busy patrolling the town streets, she again spotted Mabotse near the parking area of the Municipality. In particular, she stated that she recognised Mabotse as the man who was participating in the violent protest march that morning, the one who was wearing a white T-shirt and as the one she had targeted for arrest. They then stopped the police vehicle and she proceeded to arrest him. During the arrest she informed him of the reasons for the arrest, including the constitutional rights that he had as an arrested suspect.
- [21] Afterwards, Mabotse was taken to the station where Brigadier Ntoagae handed him over to the charge office commander to be formally charged. In addition, she testified that the Plaintiff initially refused to disclose his particulars to the police when she handed him over to the charge office commander to be charged.
- [22] Police records show that Mabotse was booked at the Police charge office at or about 13:11 on 20 April 2018. When handing him over at the Station, Brigadier appears to have been in the company of Captain Mabaakanye, also a police official

stationed at Zeerust. However, her testimony was that she arrested Mabotse with the help of Motsikwa and Maselwa. This, after she had been notified at about 10:30 that morning that the marchers were on their way towards town. The importance of the timing of the arrest will become apparent at a later stage. The relevant part of the statement reads:[7]

"At about 10:30 I received the information that the participants are on the way to Zeerust town to disrupt and barricade N4. I mobilized Public Order Police for back up as is the unit that is working crowd management." (Emphasis added)

- [23] It is apposite to consider the evidence of both these officers Motsikwa and Maselwa. Before doing so, I should point out that the witness' testimony remained the same even during her cross-examination by counsel on behalf of Mabotse. She particularly denied during her cross-examination that:

[23.1] Mabotse was arrested at around 10:30 in the morning;

[23.2] She and the other police officers had kept Mabotse at the back of the police vehicle and drove around the Zeerust town with him for approximately three (3) hours while searching for other people to arrest; and

[23.3] She had no reasonable suspicion or belief that Mabotse had committed a criminal offence, and that she had arrested him for ulterior purposes other than to take him to appear in court, before a magistrate.

[24] The witness was adamant that she received information that the protestors were heading towards town at around 10:30, after which she mobilised POP Unit. She reiterated that she left her office to attend to the protest march at the time mentioned above. While she attended to the protestors she was able to identify Mabotse for arrest and that she and other police officers pursued him on foot. When he disappeared near the taxi rank, she went back to the police station. She then saw the two police officers who were on patrol duties using a police bakkie and requested them to accompany her to town to look for her prime suspect, Mabotse. Also, she asserted that it was when they were patrolling that she spotted the same person that she was looking for, still wearing a white T-shirt, and effected the arrest.

(b) Evidence of Constable Motsikwa

[25] The evidence of Motsikwa was that he was on duty in the morning of the fateful day. He was in the company of Sergeant Maselwa using police bakkie to conduct patrols. At some point during the morning they were driving past the Police Station when Brigadier Ntoagae stopped them and asked that they accompany her in the bakkie to go look for a suspect who was involved in violent protest in town, which they did. Brigadier had explained to them that she will be able to identify the person she was looking and that he was wearing a white T-shirt.

[26] Together with the Brigadier they started patrols in town looking for the particular individual. He confirmed the evidence of the Brigadier in so far as the events of the day leading to the arrest was concerned. I do not find it necessary to repeat his evidence which was substantially similar to that of Brigadier Ntoagae. However, it is worth mentioning that the Brigadier was with them when she effected the arrest. Colonel Mabaakanye was not in their company while patrolling around town. Motsikwa did not know what happened at the charge office as he and Maselwa continued with their patrol duties after taking him and Brigadier to the police station. According to Motsikwa, this was the only arrest which they assisted Brigadier Ntoagae with on the day in question.

(c) Evidence of Sergeant Maselwa

[27] For brevity's sake I will not repeat the oral evidence of this witness, which was similar to that of the first two witnesses. What I am prepared to point out at this stage is that the three witnesses corroborated each other in all material respects. The witness testified that he and Motsikwa knew Mabotse very well as they all grew up in the same neighbourhood.

(d) Evidence of Contable Mosiane

[28] Constable Mosiane was assigned as the investigating officer of the case against Mabotse as the investigating officer. It was him who became responsible for ensuring that Mabotse was formally charged and taken to appear before court or magistrate. He testified that he received the docket of the case on Saturday 21 April 2018 and only managed to charge him the next day, which was on Sunday 22 April 2018.

[29] The witness testified that he explained the reasons why Mabotse was arrested and being charged, and that he explained to him his constitutional rights during that Sunday when he formally charged him. Making reference to the Court bundle,[8] the witness pointed out to the Court to a notice of constitutional rights which Mabotse signed upon being informed of all his rights.

The witness stated that Mabotse confirmed that he understood what he had explained to him, which paved way for him to sign the statement. The next morning, on Monday 23 April 2018 he took Mabotse for his first appearance at the Zeerust Magistrate's Court. He did not know what had transpired that day at Court, and the case was subsequently assigned to another officer for further handling.

(e) Evidence of the Plaintiff (Mabotse)

[30] At the time of attendance at Court, Mabotse was a 42 years old employee of the Municipality in Zeerust. He is not married but lives with a long term partner with who he has four children. Importantly, the youngest of the children was born in 2019.

[31] Concerning employment he testified that he was already in the employ of the Municipality when the incident of his arrest occurred. During his times off work from the Municipality, he is a community activist and a former member of the community policing forum. Being an activist he was au fait with almost all issues affecting his community, and becomes personally involved in many of the community

issues.

[32] Regarding the events of 20 April 2018, he testified that he reported late for duty. This was caused by some acute pain which he had felt in the morning, for which he had to first get medication. He then obtained permission from his superiors to attend to the medical problem first before reporting for duty. He took public transport to town at around 08H00, a trip which takes approximately 25 to 30 minutes.

- [33] After his trip to town in a mini-bus taxi, he alighted at the taxi rank and began walking towards the chemist. While at the area of the Municipality's parking lot, he saw two gentlemen whom he knew and they got into a conversation on general matters. He then testified that while still in the company of those gentlemen, police arrived at the parking lot. Brigadier Ntoagae arrived in a small Nissan Bakkie, an NP200, in the company of one Colonel Mabaakanye. According to him, Motsikwa and Maselwa also arrived but in a separate vehicle, also a bakkie. The witness testified in total there were about four police vehicles which stopped at the parking lot, including the small Nissan bakkie.
- [34] Mabotse then testified that Brigadier Ntoagae asked Maselwa to identify a person known as 'Masinga'.^[9] He was pointed out and that led to his arrest. I digress to mention that this was refuted by both Brigadier Ntoagae and Maselwa when they were cross-examined about it. Both testified that it was the Brigadier who pointed out to the person in a white T-shirt and it happened that both Motsikwa and Maselwa recognised him as their fellow community member. The name of Masinga was called out by Maselwa when he realised that the person that they were about to arrest was known to them.
- [35] The witness further testified that he was not informed of the reasons for his arrest by Brigadier Ntoagae, nor were his constitutional rights read out to him. Then upon his arrest, which he alleged took place at about 10H30, the police drove with him in town for some three hours looking for other people to arrest. He was then taken to the police station in the afternoon at about 13H30, where he was then handcuffed to a chair. The witness also gave some interesting piece of evidence, in that:
- [35.1] While at the police station a number of people arrived to demand his release. Among these individuals were Mr Thale, Mr Nyamane and Ausi Mokgadi.
- [35.2] The interesting part was that, as the witness testified, the people demanded to know why the police did not arrest a person who was referred to as Tola also. Ask the question, 'what would have been the reason to arrest Tola? Was the said Tola in some form of an infraction of the law, which rendered him liable for arrest together with Mabotse?' I leave these questions for the time being.
- [36] It was the witness' further testimony that he was taken to holding cells at Groot Marico that evening, which cells proved to be unpalatable. He slept without having any food that night because he had arrived late after meals were served. Amongst other complaints, he indicated that the cells were extremely unhygienic and he was treated badly by some of the inmates. Food was inadequate and he was physically molested in ways that affected him psychologically. He survived the ordeal when a person known to him as 'Jovies' stood up for and protected him.

- [37] Mabotse also confirmed that Const. Mosiane visited him while in the holding cells in Groot Marico where he was formally charged, but denied that he was advised of the reasons for his arrest and why he was being charged. He stated that Mosiane gave him a blank form which he signed. The next day on Monday 23 April 2018 he was taken to the Court in Zeerust for his appearance, and he was released that afternoon without appearing before a Magistrate.
- [38] The witness the refuted allegations that he was wearing a white T-shirt on the day of his arrest. He stated that he was wearing a dark vest as he had left his protective wear at the workplace the previous day, 19 April 2018. I note however, that this version of evidence was not put to the witnesses of the Defendant. But even if it was, it seems to me inadequate to merely mention that he was wearing a dark (which is not a colour) vest because the witness would know the colour of the clothing that was wearing on the day. I take dim view of his evidence in this regard precipitated by him not mentioning the exact colour of his vest.
- [39] Finally, he testified that his arrest has left him in serious life crisis where he is now struggling to cope with life. The community no longer respects him and refers to him as a criminal. He no longer enjoys life and that it has become impossible for him to share intimacy with his life partner on account of the things that were done to him while in detention. When I enquired about his youngest child, he however admitted that the child was sired soon after his discharge from detention.

BRIEF ANALYSIS OF EVIDENCE

- [40] I should mention that there are conflicting versions as to the exact time for his arrest; how long did it take the police to take him to the Station after his arrest; and whether he was he advised of his constitutional rights upon being arrested. He was the only witness to testify in an attempt controvert the evidence of three officers. Without repeating the evidence which I have dealt with earlier, I find that Mabotse was not a reliable witness, inter alia, due to his exaggeration of what transpired while in prison and the effects of it. I have to use set mechanisms to unravel the conflicting versions. At the heart of it is Mabotse's evidence that he was unable to be intimate with his partner, in particular, was disproved through a simple question relating to the birth of one of his children in 2019. This, in my view, is one of the untruths that render his evidence unreliable.
- [41] The first major piece of documented evidence that I took into consideration is the police occurrence book for the date of the arrest, being 20 April 2018. A cursory look at this document reveals that at about 13H11 Motsikwa and Maselwa attended to a complaint at No. 13A Jan Rossouw Avenue. The complaint was lodged by a lady who had suspected a breaking in at a house that is situated at the above street address. This evidence is important because, if the testimony of Mabotse is to be believed, it would imply that he was in the back of their bakkie when they visited that address, but that was not so. It is unlikely that Mabotse was arrested at 10H30 as he alleged. Three witnesses refuted this allegation, and their evidence was quite clear as to when and how Motsikwa and Maselwa got to assist Brigadier Ntoagae on her sojourn to arrest the Plaintiff. That piece of evidence remained untrammelled.

[42] The parties were ad idem with regard to the time that Mabotse was taken to the police station. When one takes into consideration the fact that the witnesses for the State testified that Brigadier Ntoagae had been to town where riots were taking place, pursued a suspect on foot who disappeared at the taxi rank, and then walked to the police station to seek assistance, I am persuaded that the time for Mabotse's arrest was not at 10H30 as he had alleged. Add that to the fact that shortly prior the arrest, Motsikwa and Maselwa had attended to a different matter to which I have referred above.

[43] The second point which I reflect on is the issue relating to his attire that morning. This is because they differed in so far as the colour of his shirt was that day, with him saying that he had a dark vest. The police said that he was wearing a white T-shirt. He was a single witness on this issue as compared to the evidence of three witnesses who testified that he was wearing a white T-shirt. I have already pointed out that the version as to the colour of the vest / T-shirt was not put to the State's witnesses. I have no difficulty rejecting the version of evidence as tendered by Mabotse because, apart from being a single witness on the issue, the Defendant's witnesses were not given an opportunity to answer to the question of colour of his dress that morning. In the reported judgement of SFW Group Ltd and Another v Martell et Cie and Others,[10] which I followed, the Court issued guidelines regarding the manner in which such irreconcilable opposing versions should be evaluated and, this is set out as follows:

[43.1] The Court must make a finding on the credibility of various witnesses;

[43.2] It must make a finding as to the reliability of the witnesses; and

[43.3] Also, it must make a finding of the probabilities. The Court went on the state that:

"As to (a), the court's finding on the credibility of a particular witness will depend on its impression of the veracity of the witness...That, in turn, will depend on a variety of subsidiary factors such as (i) the witness' 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 extra-curial statements or actions, (v) the probability or improbability of particular aspects of his version, and (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about same incident or events...

As to (b), a witness' reliability will depend, apart from the factors mentioned under

(a) (ii), (iv) and (v) above, on

(i) the opportunities he had to experience and 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 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....”.

[44] My impression of Mabotse as a witness was also quite low, with him appearing to have decided to embellish the facts. One such example is the testimony that he no longer enjoys intimacy with his life partner, something which the fruits of his loins dispelled. Evidence of this is his last born child who was born in 2019, and who was undeniably conceived soon after his release from detention. This makes him a desperate witness, if not completely a bad one.

[45] With these simple facts put forward, it is likewise unlikely that Mabotse was arrested at 10H30 as he has alleged. It is also highly unlikely that the police drove around town with him at the back of the bakkie for over three hours. His testimony that the police drove around to arrest two more people while keeping him in the back of the bakkie is not borne out of the documentary evidence, and was rejected by the witnesses for the Defendant. The record simply shows that Brigadier Ntoagae took in two people, Mabotse and one Gloria Lefatswe, to the police station that afternoon. The record of a third person is not found anywhere in the occurrence book. Instead, the third person was Mapula Mokgwasi who was detained at 13H55 having been arrested by members of the POP.

WHETHER THE ARREST WAS UNLAWFUL

[46] The exercise of police powers in terms of section 40 of the Act are circumscribed and the circumstances under which an arrest can be effected in terms of the provision is not something akin to the everyday political jargon which says, ‘the ends justify the means’. It is the means employed during the arrest which must justify the arrest. Our courts have repeatedly affirmed that what is key in determining whether the arrest was lawful or not is what was in the mind of the arresting officer at the time of the arrest.[11] The inquiry is subjective in nature. Also, it has often been said that the question as to whether the arresting officer had a reasonable[12] suspicion or not is the sole factor for consideration in determining the lawfulness of the arrest.

[47] The first point to make is that Mabotse was arrested without a warrant by Brigadier Ntoagae. An arrest without a warrant is permitted in terms of the provisions of s 40(1)[13] of the Criminal Procedure Act (‘the CPA’) when one of the two things have been satisfied. The first is where a person has committed or attempted to commit an offence in the presence of a peace officer. And the second is where a peace officer, on reasonable grounds, suspects that a person has committed an offence listed in Schedule 1 of the CPA.

[47] Brigadier Ntoagae is undeniably a peace officer and, if her testimony is to be believed, Mabotse committed an offence of public violence in her presence. Her evidence was clear as to how she had identified the suspect to be arrested, and how the arrest itself was carried out. The jurisdictional factors for a s 40(1)(a) and (b) defence were in my view satisfied through the testimonies of the witnesses for the Defendant. I say so because, when she requested Motsikwa and Maselwa

to accompany her in the quest to find and arrest the suspect, she knew the description of the person that she was looking for. When she saw the person who met the description, she did not think twice and proceeded to arrest him.

[48] On the assumption that Brigadier Ntoagae may have been mistakenly identified Mabotse as the person whom she was looking for, the question would be whether her suspicion was reasonable. Her evidence was that she identified this person while in the course of attempting to prevent the riots. She followed the identified person towards the taxi rank where he disappeared from her sight. The question would then be whether she believed, on reasonable grounds,[14] that Mabotse was the person who was involved in the riots that took place in Zeerust. Again, I find that Brigadier Ntoagae had the reasonable suspicion that Mabotse had committed what was an undeniably serious criminal offense in the town of Zeerust on 20

April 2018, a Schedule 1 offense.

[49] There was strong criticism against Brigadier Ntoagae, that she ought to have exercised her discretion and that she ought to have avoided arresting Mabotse.[15] I am in disagreement with this sentiment in light of the common cause fact of public violence that prevailed in Zeerust that day. It is my further conclusion that, to not arrest someone who was involved in violent destruction of property in town would in my view have been remiss of her responsibilities as a peace officer. Another fact which I took into account is that he had refused to give his particulars to the police. Thus, the criticism against Brigadier Ntoagae in this regard is in my view unwarranted.

[50] The above criticism was taken further to suggest that the Brigadier only arrested Mabotse for nefarious reasons and not to ensure that he appears before a magistrate. There was no suggestion of what the ulterior motives were or could have been. Nonetheless, I readily accept that it is an important principle of our law that an arrest may only be effected for the purpose of securing attendance of an arrested person in court.[16] This criticism is dispelled by the fact that Mabotse was in fact taken to Zeerust court for his appearance. I am accordingly not

persuaded by the contention that the arrest was for any other reason than to ensure that Mabotse appeared before court. The arrest in order to stop the violent activities on the day, coupled with what I have already mentioned regarding the lack of cooperation from the Plaintiff, was in my view justified.

[51] In addition, Counsel for Mabotse strongly submitted that the arrest was unlawful because there was no evidence on behalf of the Defendant to the effect that it was the only mechanism to secure the attendance of Mabotse in court. I am not in agreement. First, this contention ignores the evidence that he refused to provide the police with his names upon his arrest. What provided guarantee that he will attend court when he refused to cooperate with the police? I am of the view

that the criticism against the police is taken way out of hand, to the point where it would become impossible for them to effect any arrest.

[52] Lastly, the claim for unlawful arrest and detention was predicated on the contention that the police ought to have taken Mabotse to court on Friday 20 April 2018. Again, I do not see how this was going to be possible if he was not cooperating with the police and refusing to provide them with his names. This is because before a person can be taken to court, he or she has to be formally charged and the full names are important for that purpose. Normally, that function is performed by an investigating officer who gets assigned a case after an arrest. In this case the matter was assigned to Mosiane who attended to Groot Marico to formally charge Mabotse with public violence. I have no difficulty rejecting the contention that the police ought to have made sure that Mabotse is taken to court before end of business that Friday afternoon.

[53] Mosiane, likewise Brigadier Ntoagae, testified that they explained to Mabotse the reasons for his arrest when he was charging him at Groot Marico. He further testified that he read Mabotse his constitutional rights and, only thereafter, asked him to sign the relevant form. Only Mabotse testified in rebuttal of this evidence. I am unable to rely on his testimony as a single witness, and in view of his attempted aggrandizement of the situation. There is no contest that the witnesses of the Defendant were far more impressive and reliable than he was and I have no reason to reject their testimonies.

[54] The final contention that was made was to the effect that the police did not appear to have appreciated that they had discretion not to arrest Mabotse, or to keep him in detention. As indicated, I have no reason to doubt that he had initially refused to provide his names to the police. If that be the case, I do not how the police could simply release him from detention without appearing before court. This criticism finds no favour from me. Under the circumstances, I reach the conclusion that the arrest and detention of Mabotse was lawfully carried out by the police and therefore have no difficulty dismissing the claim.

ORDER

[55] In conclusion, I make the following order:

- [1] The claim is dismissed;
- [2] The Plaintiff is ordered to pay the costs of this matter.

M. Z. MAKOTI

ACTING JUDGE OF THE HIGH COURT

NORTH WEST DIVISION

REPRESENTATIVES:

PLAINTIFFS:

ADV HC DU PLESSIS

LABUSCHAGNE ATTORNEYS

MAHIKENG

DEFENDANT:

ADV K. MAKGATE

.

OFFICE OF THE STATE ATTORNEYS

1ST FLOOR, EAST WING

MEGA CITY, MMABATHO

JUDGMENT

RESERVED:

28 APRIL 2021

JUDGMENT

DELIVERED:

05 AUGUST 2021

[1] Criminal Procedure Act No. 51 of 1977.

[2] Mahlangu and Another v Minister of Police (CCT 88/20) [2021] ZACC 10 (14 May 2021); Barnad v Minister of Police and Another [2019] ALL SA 481 (ECG); 2019 (2) SACR 362 (ECG) (31 May 2019).

[3] Near Shell Petrol Station on the east side of Zeerust town.

[4] Public violence is listed in Schedule 1 of the CPA.

[5] He was wearing, amongst others, a white T-shirt.

[6] Par. 3 of Brigadier Ntoagae's Sworn Statement.

[7] Par. 4.

[8] Bundle C, p 21.

[9] Masinga is Mabotse's nickname dating to his soccer playing days.

[10] 2003

(1) SA 11 (SCA).

[11] Sibuta and Another v Minister of Police and Another (3709/2016;3710/2016)

[2020] ZAECGHC 6 (15 January 2020).

[12] Minister of Safety and Security NO v Schubach ZASCA 216 (1 December 2014); J Neethling, JM Potgieter & PJ Visser Neethling's

Law of Personality (2 ed, 2005) at 176. The test for determining reasonableness 'has both a subjective and objective element which means that there must be both actual belief on the part of the prosecutor and that that belief must be reasonable in the circumstances.'

[13] See s 40(1) which reads: "Arrest by peace officer without warrant

(1) A peace officer may without warrant arrest any person- (a) who

commits or attempts to commit any offence in his presence; (b) whom he reasonably suspects of having committed an offence referred to in Schedule 1, other than the offence of escaping from lawful custody; (c) ..."

[13] See s 40(1) which reads: "Arrest by peace officer without warrant

(1) A peace officer may without warrant arrest any person- (a) who

commits or attempts to commit any offence in his presence; (b) whom he reasonably suspects of having committed an offence referred to in Schedule 1, other than the offence of escaping from lawful custody;

(c) ..."

[14] Mabona and Another v Minister of Law and Order and Others 1988 (2) SA 654 (SE) at 34A; Minister of Safety and Security v Linda 2014 (2) SACR 464 GP at [20]; Minister of Safety and Security v Sekhoto 2011 (1) SACR 315 (SCA) at [6].

[15] Louw v Minister of Safety and Security 2006 (2) SACR 178 at 186B.

[16] See, Sekhoto supra.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZANWHC/2021/32.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/mabotse-v-minister-unknown-topic-anwhc-2021>

Prepared on 10 October 2026 · Esheria