

SOUTH AFRICA / JUDGMENT

Makgotlho and Others v Minister of Police and Another (1072/24)

[2025] ZANWHC 107 (25 June 2025)

[2025] ZANWHC 107**COURT**

North West High Court, Mafikeng

BEFORE

Oosthuizen-Senekal

CASE / FILE NUMBER

1072/24

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA****NORTH WEST****DIVISION, MAHIKENG****CASE****NUMBER: 1072/24****Reportable: NO****Circulate to Judges: NO****Circulate to Magistrates:**

NO

Circulate to Regional

Magistrates: NO

In

the matter between:

OARABILE

MAKGOTLHO

FIRST

PLAINTIFF

BOIKOBO

DONALD MOSWELE

SECOND

PLAINTIFF

BOIKHUTSO

MARY MONYAMANE

THIRD

PLAINTIFF

THUTO

BRIDGET LETHOKO

FOURTH

PLAINTIFF
SEITISO
SETLHARE
FIFTH
PLAINTIFF
MASEGO
NKASHE
SIXTH
PLAINTIFF
MALEBO
PILANE
SEVENTH
PLAINTIFF
and
THE
MINISTER OF POLICE
FIRST
DEFENDANT
NATIONAL
DIRECTOR OF PUBLIC
PROSECUTIONS
SECOND
DEFENDANT

CORAM:

OOSTHUIZEN-SENEKAL AJ

Date

judgment reserved: 6

June 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 25 June 2025 at 10H00am.

ORDER

1. The
claim against the second defendant is dismissed.
2. The
first defendant is liable for the unlawful arrest and detention of
the plaintiffs from 15 March 2021 to
17 March 2021.
3. The
first defendant is hereby ordered to pay each of the plaintiffs
damages in the amount of R50 000 (Fifty
Thousand Rand).
4. The
first defendant is ordered to pay interest on the amount referred to
in paragraph (1) from date of this
judgment until date of final
payment, at the applicable prescribed rate.
5. The
first defendant is ordered to pay the costs of suit on the

Magistrates' Court scale.

JUDGMENT

OOSTHUIZEN-SENEKAL AJ:

Introduction

- [1] This is an application for default judgment brought by the plaintiffs against the defendants for unlawful arrest and detention, as well as malicious prosecution. The application is not opposed, as neither defendant filed a notice of intention to defend. Nevertheless, the Court is required to determine whether the plaintiffs have established a cause of action on the facts and in law.
- [2] According to the particulars of claim, the plaintiffs were arrested without warrants on 15 March 2021 by members of the South African Police Service under CAS 65/03/2021 and was detained until 17 March 2021. The plaintiffs were thereafter prosecuted on a charge of Public Violence and later acquitted. They now seek damages for unlawful arrest and detention, and malicious prosecution in the amount of R 200 000 each.
- [3] The prosecution, it is alleged, was initiated without adequate investigation or reasonable grounds.
- [4] Summons was issued on 28 February 2024 and served on the defendants on 14 March 2024 and 27 March 2024 respectively.
- [5] The defendants entered appearance to defend on 30 July 2024. A notice of bar was served on 9 September
2024. No plea or further steps followed. The matter proceeded by way of default.
- [6] Notice of set down was served on the State Attorney on 7 November 2024. The default hearing was enrolled for 21 May 2025.
- [7] The Court is required to determine liability and quantum.

Background Facts

- [8] The plaintiffs were arrested individually by members of the South African Police Service during a community protest in Sunflagt, Zeerust. They were detained in holding cells at the Zeerust police station under generally poor and unhygienic conditions and later appeared in Court where they were released on bail. After protracted court proceedings, all were acquitted of a charge of public violence.
- [9] It is common cause that none of the plaintiffs were engaged in any violent or unlawful conduct at the time of their arrests. Several of them were merely present in the vicinity of the protest or were observing it, when they were arbitrarily arrested.

Plaintiffs Evidence

First Plaintiff

- [10] Mr Oarabile Makgotlho (“the first plaintiff”) testified that on 15 March 2021, while at his residence, he heard a commotion outside and went to investigate. Upon arrival, he observed a group of people gathered with members of the South African Police Service present. He was informed that a meeting was taking place concerning employment opportunities in the area. During this time, tensions escalated between the group and the police, who instructed the crowd to disperse. While observing the situation, police officers approached and arrested him without any explanation. He was placed into a police vehicle and transported to the local police station, where he was processed and detained in a cell.
- [11] While in detention, the first plaintiff was allegedly dispossessed of his cap and ring by fellow detainees. He testified that he was physically assaulted and forced to lie on a dirty blanket in the cell. The following day, he was escorted from the cell to depose of a statement before being returned to the same conditions. On 17 March 2021, he was transported to court and subsequently released on bail. In November 2023, he was acquitted on a charge of public violence.
- [12] In respect of his personal circumstances, the first plaintiff testified that he was born on 17 September 1969 and was 27 years old. He attended school up to Grade 11. Although he was married, he had no children. At the time of his arrest and at the date of his testimony, he was unemployed. He explained that prior to his arrest, he was treated with respect within the community. However, his arrest and prosecution significantly altered how he was perceived and treated by members in the community. He specifically recalled that during his arrest, a police officer grabbed him by his pants, which he found degrading and disrespectful. He believed his constitutional rights were violated, particularly as he had not committed any offence.
- [13] The first plaintiff further described the conditions in the cell, stating that there were approximately eight to ten detainees confined therein. The cell was described as dirty, poorly lit, and without access to running water.

Second Plaintiff

- [14] Mr Boilobo Donald Moswele (“the second plaintiff”) testified that on 15 March 2021, while at his residence, he heard people singing and chanting in the street. He was further informed that employment opportunities were allegedly being offered at the nearby solar plant. Motivated by the prospect of securing work, he decided to investigate. Upon his arrival near the gathering, he stood alongside the road observing the crowd when an altercation arose between the community members and the police.

This confrontation caused the crowd to disperse.

- [15] As he was attempting to leave the area, police officers approached him from behind. He testified that although he complied with instructions to surrender, he was nevertheless forcefully grabbed and thrown into the back of a police vehicle. He was transported to the police station, where his constitutional rights were explained to him before he was placed in a cell.
- [16] The second plaintiff described the conditions of the cell as deplorable, frightening, and unhygienic. He stated that there were between nine and ten other detainees in the cell. He was assaulted by fellow detainees using an “All Star” sneaker. He further testified that the cell had no running water, which prevented him from bathing or relieving himself due to the unsanitary state of the toilet. The food provided was minimal and unpalatable, consisting of brown bread and tea in the mornings.
- [17] He was transported to court on 17 March 2021, where he was granted bail in the amount of R1000. The criminal case against him was ultimately finalised on 11 November 2023, when he was acquitted.
- [18] Regarding his personal circumstances, Mr Moswele testified that he was born on 16 June 1986 and was 39 years old. He attained formal education up to Grade
11. Although unmarried, he was the father of three children. At the time of his arrest, he was unemployed and supported himself by selling kitchenware in town. He explained that prior to his arrest, he was a respected member of his community. However, since the incident, community members view him with suspicion and refer to him disparagingly as a “prisoner.” He expressed his deep sense of hurt and ongoing emotional distress, as a result of the manner in which he was treated by the police on the day of the incident, which feelings that still continue.

Third Plaintiff

- [19] Ms Boikhutso Mary Monyamane (“the third plaintiff”) testified that on the day of the incident, between 09h00 and 10h00, she went to observe a commotion involving community members and the police. While returning to her residence, a police officer who was a passenger in a passing vehicle, grabbed her by the hand and forcibly escorted her to the police station. Upon arrival, she remained in the foyer until approximately 16h00, after which she was placed in a cell.
- [20] The following day, she was removed from the cell and taken to an officer to depose of a statement. After doing so, she was returned to the cell and later transported to court on 17 March 2021. She was charged with public violence and released on bail. The criminal proceedings concluded with her acquittal.
- [21] Ms Monyamane expressed deep emotional distress resulting from her arrest, especially as she denied any involvement with the protesting group. She stated that she merely observed the gathering and had no active participation in the events that unfolded.

- [22] With regard to her personal circumstances, she was born on 2 October 1974 and was 51 years old. She completed Grade 12 and was married with three children aged 16, 20, and 24 years respectively. At the time of her arrest, and continuing to the present, she was unemployed. She sustained herself and her family by selling meat and other goods within the community.
- [23] Prior to the incident, she was held in high regard by the community. However, the arrest and subsequent prosecution significantly damaged her reputation. She testified that the arrest placed a serious strain on her marriage, which nearly broke down.
- [24] While in detention, she was unable to eat due to the unsanitary conditions of the cell. She was permitted to call her husband, who brought her high blood pressure medication to the police station. Despite this, her husband, a schoolteacher by profession, distanced himself from the case and offered her no emotional support during the trial.
- [25] She described the conditions in the cell as deplorable. The space was littered with items including shoes and used as well as unused sanitary towels. There were seven detainees inside the cell, but only one blanket, which she could not use. Instead, she had to keep warm with her jersey. The foul odour in the cell made her nauseous, and she was unable to eat because of the conditions inside the cell.
- [26] She testified that, following her arrest, she continued to face ridicule from both members of the community and her husband. She experienced sadness and trauma stemming from this experience.

Fourth Plaintiff

- [27] Ms Thuto Bridget Lethoko ("the fourth plaintiff") testified that on 15 March 2021, she was on her way home when she observed a gathering of people and decided to approach to see what was happening. As she moved closer, she noticed individuals running towards her. While speaking to some of them, police officers arrived at the scene. Although the others fled, she remained where she was. A police officer then grabbed her and arrested her without any explanation proffered. She was transported to the police station, where she was detained. There, she was informed that she was being arrested for allegedly violating a protection order and for public violence.
- [28] On 17 March 2021, she was taken to court and released on bail. Ultimately, on 17 November 2023, she was acquitted of all charges. She described the conditions of her detention as inhumane. The cell was filthy and emitted a foul odour. She was served cold, unpalatable food, and there was no access to warm water. The cell contained only one blanket, and she was forced to keep warm using the clothes she had on at the time of her arrest.

- [29] Regarding her personal circumstances, Ms Lethoko stated that she was born on 4 June 1996 and was 29 years of age. She completed Grade 12. She was unmarried and had three children, aged 2, 8, and 13. She resided with her mother, along with her children and siblings. Since the time of her arrest, she was unemployed.
- [30] She further testified that prior to her arrest, she was a respected member of her community. However, following the incident, her social standing deteriorated significantly. Community members began treating her with suspicion, referring to her as a troublemaker. She believed that the arrest and the stigma that followed had made it even more difficult for her to find employment. She continued to suffer the social and economic consequences of the incident.

Fifth Plaintiff

- [31] Ms Seitiso Setlhare ("the fifth plaintiff") testified that on 15 March 2021, she heard from members of her community that employment opportunities were being offered at a nearby solar plant. Motivated by this prospect, she proceeded to the area where a group of people had gathered. Upon her arrival, she was informed that the group intended to block the nearby road to prevent vehicles from passing, apparently as a form of protest. Realising that she had no intention of participating in any such activity, she turned around and were walking back home.
- [32] While en route, she noticed people running from both the front and behind. In an attempt to avoid the commotion, she moved to the side of the road where she remained. A group of police officers approached her and instructed her to get into their vehicle. She complied without resistance and was transported to the police station, where she initially remained in the foyer. After having her photograph taken by the police, she was placed in a cell.
- [33] The following morning, she was removed from the cell and required to provide a statement to the police. It was at that stage that she was informed she had been arrested for allegedly violating a court order. She was subsequently returned to the cell. The next day, she was transported to court, formally charged with public violence, and released on bail. She diligently attended all court proceedings and was ultimately found not guilty on the charge of public violence.
- [34] Ms Setlhare described the conditions in the cell as deplorable and unfit for human detention. The cell was filthy, emitting an unbearable smell, and used sanitary towels were strewn on the floor. The shower facilities were not functional, and she had no access to bedding. She was forced to sleep in a sitting position and used only the clothing she was wearing on the day for warmth. The meals provided consisted of bread, cabbage, and tea, which she described as inedible.
- [35] As a result of the incident, she had been stigmatised within the community. Many residents refuse to associate with her. She experienced social isolation and reputational harm as a result of her arrest and detention.

[36] In respect of her personal background, Ms Setlhare stated that she was born on 12 December 1998 and was 26 years old. She attended school up to Grade 10. She was unmarried and the mother of three young children, aged 8 years, years, and 4 months respectively. At the time of the incident, and continuing to the date of her testimony, she was unemployed.

Sixth Plaintiff

[37] Ms Masego Nkashe ("the sixth plaintiff") testified that on 15 March 2021, she heard a commotion near her home and decided to investigate the source of the noise. Upon arriving at the scene, she was immediately grabbed by a male police officer and informed that she was under arrest. She questioned the reason for her arrest, explaining to the officer that she had done nothing wrong. Despite her protestation, she was forcefully

held by the neck with her clothes and placed into a police vehicle.

[38] She was transported to the police station where she was instructed to surrender her personal belongings, including her cell phone, money, and footwear. Her constitutional rights were explained to her, after which photographs were taken. She was then placed in a cell.

[39] The following day, she was taken from the cell and required to make a statement, after which she was returned to the same cell. She was later released on bail and stood trial on a charge of public violence. The trial concluded and she was acquitted.

[40] Regarding her personal circumstances, Ms Nkashe testified that she was born on 1 February 1996 and was 29 years old. She was unmarried and the mother of two children, aged 12 and 2 years respectively. At the time of her arrest, and still at the time of her testimony, she was unemployed. She stated that she believed her arrest and the prolonged nature of the legal proceedings had significantly hindered her ability to find employment. She described feeling hurt, ashamed, and humiliated by the experience to such an extent that she refrained from disclosing to others that she had been arrested.

[41] Ms Nkashe also described the conditions of the holding cell as deplorable. The cell was dirty and emitted a strong, foul odour. She observed used sanitary towels strewn around, and the toilet was non-functional, which worsened the stench. There was only one blanket available in the cell, and she had to rely on the clothes she was wearing at the time of her arrest to keep herself warm.

Seventh Plaintiff

[42] Ms Malebo Pilane ("the seventh plaintiff") testified that on 15 March 2021, she was on her way home after accompanying her child to school when she came across a group of people gathered in the street. Curious about the commotion, she approached to enquire what was happening. She was informed that the gathering related to potential employment opportunities at the solar plant in the area.

- [43] While at the scene, she noticed tension escalating between the crowd and members of the South African Police Service. Sensing conflict, she decided to proceed home. As she was walking, two police vehicles appeared, the one chasing after fleeing members of the crowd and the other stopping nearby. Officers from the second vehicle approached her and arrested her without any explanation.
- [44] She was transported to the police station, where her constitutional rights were explained. She was informed that she had allegedly violated a court order. Ms Pilane testified that she had no prior knowledge of any such order. Following the arrest, she was placed in a cell. The next day, she was taken from the cell to provide a statement to a police officer, after which she was returned to the cell. She later appeared in court and was released on bail. The matter eventually proceeded to trial, and she was found not guilty on the charge of public violence.
- [45] Ms Pilane described the conditions of the cell as unhygienic. According to her, it appeared the cell had not been used or cleaned for some time. She recalled that there were only one or two blankets in the cell. She could not recall whether she ate during her detention, aside from being given tea in the mornings.
- [46] She further testified that since her arrest, her reputation in the community had been tarnished. Community members now treat her with suspicion, referring to her as a troublemaker or someone who stirs conflict. She described the experience as traumatic and a complete waste of her time.
- [47] Regarding her personal circumstances, Ms Pilane stated that she was born on 24 March 1985 and was 40 years old. She was engaged and is the mother of one child, aged 16 years old. She obtained a Bachelor's Degree in Information Systems from the North-West University.

Legal Frame Work

Unlawful Arrest and Detention

- [48] In *Zealand v Minister of Justice & Constitutional Development*[1], the Constitutional Court reaffirmed that an arrest or detention is *prima facie* unlawful:

"[25] This is not something new in our law. It has long been firmly established in our common law that every interference with physical liberty is prima facie unlawful. Thus, once the claimant establishes that an interference has occurred, the burden falls upon the person causing

that interference to establish a ground of justification."

- [49] The plaintiffs' evidence concerning their arrest without warrants at the hands of members of the South African Police, in the context of the first defendant being in default, stands undisputed.
- [50] On a preponderance of the plaintiffs' evidence, I accordingly accept that the arrest and consequent detention of the plaintiffs from 15 March 2021 to 17 March 2021, was unlawful.

Malicious Prosecution

- [51] A court may grant default judgment only where the plaintiff has made out a prima facie case. The absence of opposition does not dispense with the need to prove all elements of the claim.
- [52] In cases of unlawful arrest and detention, once the plaintiff alleges that the arrest was without a warrant, the onus shifts to the Minister of Police to prove the lawfulness of the arrest and continued detention.
- [53] In contrast, the burden of proof for malicious prosecution rests squarely on the plaintiffs. The plaintiffs must prove:
- [1] That the defendant set the law in motion;
 - [2] That the prosecution was instituted without reasonable and probable cause;
 - [3] That it was actuated by malice;
 - [4] That the proceedings terminated in the plaintiff's favour.
- [54] It is important to emphasise that an acquittal, while satisfying the element of favourable termination, does not in itself establish that the prosecution was malicious. The fact that the criminal case ended in the plaintiff's favour does not negate the possibility that the prosecution was initiated in good faith on the basis of information then available. Malice and lack of reasonable and probable cause must still be proven with reference to the prosecutor's conduct and state of mind at the time of instituting the proceedings.
- [55] In the present matter, while the plaintiffs have averred that they were prosecuted and later acquitted, they have not placed before this Court any facts or evidence to support an inference that the prosecution was malicious or lacking reasonable and probable cause. No factual allegations have been made regarding the conduct or intent of the prosecutor, nor has any improper motive been alleged or substantiated.
- [56] The absence of evidence on these essential elements is fatal to the plaintiffs claim for malicious prosecution. Accordingly, the claim against the second defendant, the National Director of Public Prosecutions, must be dismissed.

Assessment of Quantum

- [57] In *Minister of Safety & Security v Seymour*[2], Potgieter JA held:

"It is settled law that the trial judge has a large discretion to award what he in the circumstances considers to be a fair and adequate

compensation to the injured party for these sequelae of his injuries ..."

- [58] In *Minister of Safety and Security v Tyulu*[3], Bosielo AJA said:

“[26] 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. I readily concede that it is impossible to determine an award of damages for this kind of iniuria with any kind of mathematical accuracy. Although it is always helpful to have regard to awards made in previous cases to serve as a guide, such an approach if slavishly followed can prove to be treacherous. The correct approach is to have regard to all the facts of the particular case and to determine the quantum of damages on such facts (Minister of Safety and Security v Seymour 2006 (6) SA 320 (SCA) 325 para [17]; Rudolph & others v Minister of Safety and Security & Others (38012008) [2009] ZASCA 39 (31 March 2009) (paras {26}-{29})”

[59] In *Minister of Police v Du Plessis*[4], Navsa ADP held:

“The right of liberty is inextricably linked to human dignity... we as a society place a premium on the right of liberty.”

[60] In *Khedama v The Minister of Police*[5], the Supreme Court of Appeal stated the following:

“Everyone has the constitutional right not to be treated in a cruel, inhuman or degrading way and the right to bodily and psychological integrity. Constitutionally, an arrested person has the right ‘to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at the State expense, of adequate accommodation, nutrition, reading material and medical treatment’. The purpose of pre-trial imprisonment remains to make certain that those accused of crimes and some transgressions attend court which has a duty to make a determination if they are guilty of those crimes or not. It is not necessary to document the suffering experienced by the appellant any further.”

(Footnotes omitted)

[61] In determining an appropriate award of damages, the considerations outlined in paragraph [27] of *Minister of Safety and Security v Tyulu* supra are particularly instructive. These include factors such as the plaintiff’s age, the circumstances surrounding the arrest, the nature and duration of the detention, the plaintiff’s personal and professional status, the presence of any improper motive behind the arrest, and guidance derived from similar cases. Taking all these aspects into account, the court in *Tyulu*, supra, deemed an award of R15,000 to be just and equitable compensation for the unlawful arrest and brief detention endured by the respondent.

[62] In evaluating damages, reference to prior case law can be informative. However, as Fischer AJ cautioned in *Steenbergen and Others v Minister of Safety and Security*[6], such comparisons must be approached with care:

"[22] I am mindful of the fact that the assessment of awards for general damages with reference to awards made in earlier cases is "fraught with difficulty" as each case falls to be analysed with reference to its own particular facts and circumstances, which seldom, if at all, compare directly with those in another case. Earlier cases are regarded as a useful guide as to what has been considered to be appropriate in the past, but such earlier cases quite clearly serve no greater purpose than that. (See the Seymour case supra at page 325 par [17])."

[63] In Visser & Potgieter, Law of Damages, 3rd ed., at 545-548, the authors enumerate factors relevant to assessment, including:

- [1] Duration and nature of deprivation;
- [2] Harshness or malice;
- [3] Impact on dignity and reputation;
- [4] Absence of apology or justification;
- [5] Comparative jurisprudence;
- [6] Public policy concerns.

[64] The sentiments expressed in Rahim and 14 Others v The Minister of Home Affairs[7], is apposite:

"[27] The deprivation of liberty is indeed a serious matter. In cases of non-patrimonial loss where damages are claimed the extent of damages cannot be assessed with mathematical precision. In such cases the exercise of a reasonable discretion by the court and broad general considerations play a decisive role in the process of quantification. This does not, of course, absolve a plaintiff of adducing evidence which will enable a court to make an appropriate and fair award. In cases involving deprivation of liberty the amount of satisfaction is calculated by the court ex aequo et bona. Inter alia the following factors are relevant:

27.1 Circumstances under which the deprivation of liberty took place;

27.2 The conduct of the defendants; and

27.3 The nature and duration of the deprivation.

Having regard to the limited information available and taking into account the factors referred to it appears to me to be just to award globular amounts that vary in relation to the time each of the appellants spent in detention."

[65] While the determination of damages must, as a general principle, be rooted in the particular facts and circumstances of each individual case, it is equally important that courts strive for a measure of consistency in the awards granted for similar delicts. This does not imply a rigid or formulaic approach, but rather reflects the judicial imperative to ensure fairness, predictability, and equality before the law. Uniformity in comparable matters guards against arbitrary discrepancies and affirms public confidence in the legal system. With this in mind,

I now proceed to assess the facts of the present matter in light of relevant judicial precedent and established legal principles concerning unlawful arrest and detention.

[66] The collective evidence of the plaintiffs paints a deeply troubling picture of the conditions endured during their detention. Their evidence, consistent and unchallenged, reveal that the cells at the Zeerust Police Station were dirty, poorly equipped, and lacked the most basic sanitary infrastructure. Toilets were broken or non-functional, running water was absent, whilst used and discarded sanitary pads littered the cell floors. There were either no blankets or an insufficient number to cater for the detainees, many of whom had to sleep in an upright position or rely solely on the clothes they were wearing. The air was heavy with foul odours, making the environment intolerable. Some plaintiffs were subjected to physical assault by fellow detainees and reported feeling unsafe and humiliated. These conditions are manifestly incompatible with the constitutional guarantee of human dignity and the minimum standards required by law for the treatment of persons deprived of their liberty. They offend the foundational values of our legal system and cannot be justified under any circumstances.

[67] In *Minister of Safety and Security v Tyulu* supra at para [26], the Court held:

“Money can never be more than a crude solatium for the deprivation of what, in truth, can never be restored.”

[68] The court went on to emphasise that awards for deprivation of liberty must be fair and reflect the seriousness of the infringement.

[69] Each plaintiff was detained for approximately two nights before being released on bail. The quantum of damages must be assessed considering the period of detention, the conditions in the cells, the humiliation and distress suffered, and the impact on their personal dignity, reputation, and mental well-being.

[70] In *Mvoko v Minister of Police*[8], the court awarded R90,000 for an unlawful arrest and 48-hour detention under poor conditions.

[71] In light of prevailing jurisprudence and the comparative cases, I am of the view that an amount of R50,000 is fair and reasonable compensation for each of the plaintiffs, taking into account inflation and the particularly dehumanising circumstances of their detention.

[72] In conclusion, each of the plaintiffs is entitled to compensation for unlawful arrest and detention from 15 March 2021 to 17 March 2021.

Costs

[73] The issue of costs falls squarely within the discretion of this Court, to be exercised judicially having regard to the facts of the case and the conduct of the parties. As a general principle, the successful party is entitled to his/her costs unless there are compelling reasons to depart from that rule.

[74] However, courts have consistently held that where a matter could and should have been instituted in a lower court, such as the Magistrates' Court, but was instead brought in the High Court without justification, costs should be awarded on the scale applicable to the lower court. This principle is well established in case law.

[75] In *Thusi v Minister of Home Affairs and Another*[9], the Court held:

“There is judicial authority for the proposition that a successful party may be deprived of the costs attendant on having instituted action in the High Court, instead of the Magistrates' Court, where the monetary value of the relief claimed falls within the jurisdiction of the Magistrates' Court.”

[76] Similarly, in *Dipico v Dipico*[10], it was confirmed that:

“The High Court has the discretion, where it is of the view that the Magistrates' Court would have been the more appropriate forum, to award costs only on the scale of that court.”

[77] In the present case, although the plaintiffs were successful in their claim for damages arising from unlawful arrest and detention, the amount of damages awarded to each plaintiff falls within the jurisdictional limits of the Magistrates' Court. Furthermore, the issues were neither novel nor complex, and there was no compelling reason to approach the High Court.

[78] In light of the above authorities and the facts of this matter, it is appropriate that costs be awarded on the Magistrates' Court scale.

Order

[79] In the result, the following order is made:

1. The claim against the second defendant is dismissed.
2. The first defendant is liable for the unlawful arrest and detention of the first to seventh plaintiff from 15 March 2021 to 17 March 2021.
3. The first defendant is hereby ordered to pay each of the plaintiff's damages in the amount of R50 000 (Fifty Thousand Rand).
4. The first defendant is ordered to pay interest on the amount referred to in paragraph (1) from date of this judgment until date of final payment, at the applicable prescribed rate.
5. The first defendant is ordered to pay the costs of suit on the Magistrates' Court scale, scale “B”.

CSP OOSTHUIZEN-SENEKAL

ACTING JUDGE OF THE HIGH COURT

NORTH WEST DIVISION, MAHIKENG

APPEARANCES

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For the Defendants: THE STATE ATTORNEYS

CORNER SEKAME ROAD AND DR JAMES MAROKOA DRIVE

EAST GALLERY FIRST FLOOR

MEGA CITY COMPLEX

[1] 2008

(4) SA 458 (CC).

[2] 2006

(6) SA 320 (SCA).

[3] 2009

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

[4] 2014

(1) SACR 217 (SCA).

[5] *Khedama v The Minister of Police* [2025] ZASCA 79 at paragraph [19].

[6] [2011] ZAFSHC 132 (21 July 2011).

[7] [2015] ZASCA 92.

[8] [2022] ZAGPPHC 874 at para [52].

[9] 2011

(2) SA 561 (KZP) at para [40].

[10] 2002

(1) SA 504 (W) at 509C–D.

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