

SOUTH AFRICA / JUDGMENT

Minister of Justice and Constitutional Development and Another v Masia (A13/2019) [2021] ZAGPPHC 428; 2021 (2) SACR 425 (GP) (28 June 2021)

[2021] ZAGPPHC 428

COURT

North Gauteng High Court, Pretoria

BEFORE

C N Van Heerden, TLHAPI VV

CASE / FILE NUMBER

A13/2019

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REPUBLIC OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, PRETORIA)

APPEAL

CASE NO: A13/2019

NOT

REPORTABLE

NOT

OF INTEREST TO OTHER JUDGES

REVISED

In

the matter between:

THE
MINISTER OF JUSTICE AND FIRST
APPELLANT
CONSTITUTIONAL
DEVELOPMENT
THE
MINISTER OF
POLICE SECOND
APPELLANT
And
THABO
TOKA MACK
MASIA
RESPONDENT

JUDGEMENT

INTRODUCTION

[1] This case is about the flagrant disregard of the fundamental rights of the Respondent, in particular,

the right to freedom and security of a person entrenched in Section 12 of the Constitution of South Africa.

[2] The matter before us is an appeal against the judgment handed down on 16 March 2018 of the Civil Magistrate Court of Tshwane in Pretoria and the reasons for that judgment dated 14 November 2018 . In the reasons, the judgment was not amended but only the order by clarifying against which defendants the order was granted.

[3] The relevant facts in this matter are not in dispute, but the findings of the court a quo are in contention .

FACTUAL BACKGROUND

[4] On the 5th of August 2013 , the Respondent presented himself, by appointment, at the Atteridgeville magistrates court before a maintenance officer for an enquiry in terms of the Maintenance Act 99 of 1998 pertaining to the maintenance of the minor child of the Respondent. When the matter could not be resolved, the maintenance officer referred the matter to the maintenance court magistrate for adjudication. The Respondent adduced evidence regarding his income and expenditure to enable the court to make an order regarding the maintenance payable in respect of the maintenance of his minor child. Subsequent to adducing evidence, the Respondent offered to pay maintenance in the amount of R300.00 (three hundred rand) per month

- [5] The presiding magistrate in the maintenance court rejected the Respondent's offer and then ordered the arrest and detention of the Respondent in the Atteridgeville police station cells for one night. The Respondent was arrested by warrant officer Letlape and detained to go and think clearly and thoroughly and to come up

with a better offer. Respondent was arrested without a warrant, he was not charged with any offences, nor was he found guilty of any offence. The arrest took place in full view of his colleagues. Respondent was detained for 1 (one) day from 6 August 2013 at about 13h35 and was released on 7 August 2013 at about 10h00, after he made an offer to pay maintenance of R700.00 (seven hundred rand) per month. The Respondent was detained along with other detainees. He described the cell conditions as dirty. He slept on the floor on a mat and was given a smelly blanket. He was almost robbed by other cell mates but managed to ward off the robbery. He was hurt and humiliated by the arrest and due to the fact that his colleagues witnessed it.

- [6] Warrant officer Letlape testified that he effected the arrest on the instruction of the magistrate and not on a reasonable suspicion. He testified that he did not know the events leading to the instruction given by the magistrate. Therefore, he could not have entertained a reasonable suspicion. The Second Appellant did not lead evidence that

the detention was justified. The Respondent subsequently claimed R95 000.00 for unlawful arrest and detention and R5 000.00 for legal costs in the Tswane magistrates court in Pretoria against the First and Second Appellants jointly and severally.

- [7] Although the Magistrates Commission was cited as Third Defendant, the Third Defendant did not appear and the case did not proceed against the Third Defendant. The magistrate in the maintenance court was not joined as a defendant.

- [8] In the judgement delivered on 16 March 2018 (the matter was heard on 11 August 2017), the Magistrate made the following order:

"(a) The Defendant is directed to pay the plaintiff R75,000.00 (seventy-five thousand rand) being damages for unlawful arrest and detention;

(b) Interest on the aforesaid amount at a rate of 10.25% per annum from the date of judgement to the date of payment;

(c) Costs of suit on a party and party scale."

- [9] The Appellants applied for condonation for the late request for reasons for the judgement delivered on 16 March 2018 in terms of the Magistrate Court Rule (MGR) 54(1). The vague wording of the said order that did not indicate against which Defendant the order was given, prompted the Appellants to request reasons.

- [10] On 2 October 2018 the magistrates court granted condonation for the late request for reasons in terms of MGR 51(1). On 10 October 2018 the Appellants requested reasons for the judgement.

[11] On 14 November 2018 the reasons were provided and in November 2018 the Appellants noted their appeal in terms of the Uniform Rules of Court (URC) 51(3).

[12] The Magistrate provided the following reasons on 14 November 2018:

"I stand by my written judgment delivered on 16 March 2018 which is attached herein. In the light of the fact that I have already made a ruling that Second Defendant is vicariously liable, there can be no liability against the Third Defendant. The order is therefor amended as follows:

- (a) The First and Second Defendants are jointly and severally liable to compensate the Plaintiff in the amount of R75, 000.00 (seventy- five thousand rand) for unlawful arrest and detention;
- (b) Interest on the aforesaid amount at a rate of 10.25% per annum from date of judgement to date of payment;
- (c) Costs of suit on party and party scale."

[13] The First and Second Appellant appeal against this order.

THE ISSUES TO BE DECIDED

[14] The Respondent issued summons for damages as a result of his unlawful arrest and detention and claimed R100,000.00 . The issues to be decided are:

[14.1] The points in limine raised by the Respondent that the appeal was out of time and did not comply with Rule 53(7) of the Uniform Rules of Court.

[14.2] Was the Respondent unlawfully arrested and detained?

[14.3] Was the magistrate employed by the First Appellant and did he act in the course and scope of his employment?

[14.4] Did the magistrate act negligently or maliciously?

[14.5] Is the Second Appellant liable as the warrant officer and other members of the South African Police Services executed an order of the magistrate?

[14.6] Was the R75.000,00 quantum correctly awarded?

POINTS RAISED IN LIM/NE BY THE RESPONDENT

[15] The Respondent raised two points in limine. Respondent submitted that the procedure to be followed in respect of appeals from the magistrate court is divided into two stages. The first stage deals with the processes in the magistrate court and is regulated by Rule 51 of the Magistrate Court Rules ("MCR"). The second stage deals with the process in the high court and is regulated by Rule 50(1) of the Uniform Rules of Court ("URC").

- [16] Respondent submitted that the appeal is not properly noted because the Appellants failed to timeously note the appeal in compliance with the provisions of Rule 51(3) of the MCR which provides that "an appeal shall be noted within 20 (twenty) days after the date of judgement appealed against or within 20 (twenty) days after the Clerk of the Court has supplied a copy of the judgement in writing to the party applying therefor, whichever period shall be the longer '.
- [17] The Appellants were granted condonation for the late request for written reasons for the judgement in terms of MRC 51(1) but Respondent submitted that Appellants failed to also seek condonation in the high court as the notice of appeal was given more than in November 2018 and the judgement on 16 March 2018 .
- [18] The Appellants were in our view correct to ask for reasons as it was not possible to appeal against the order dated 16 March 2018. The Appellants then timeously noted their appeal in the high court after receipt of the amended order of 14 November 2018.
- [19] Because the Appellants properly noted the appeal in accordance with MCR 51(3) after the reasons were provided and prosecuted the appeal timeously in terms of URC 50(1), there is no need to lodge a further application for condonation in the court of appeal.
- [20] It was further submitted as a second point in limine, that the Appellants failed to serve the Respondent with the record as directed by the URC 50(7)(d) which states that the party lodging copies of the record shall not less than 15 (fifteen) days prior to the date of the hearing of the appeal also furnish each
- of the other parties with 2 (two) copies thereof, certified as prescribed by the rules.
- [21] The Appellant did not comply with URC 50(7)(d) in that the Appellants uploaded an incomplete record of the appeal on Case Lines without the consent of the Respondent.
- [22] The following copies were not included in the record:
- [22.1] The Rule 50(1) notice to request reasons for judgement dated 6 April 2018;
- [22.2] The condonation application for the late request of the reasons dated 3 May 2018;
- [22.3] The notice of intention to oppose the application for condonation dated 9 May 2018.
- [23] The question is whether failure to provide the documents listed above, failure to provide a list of all the documents that have been excluded from the record, failure to have the excluded documents available at the appeal, failure to list the documents that have been excluded, and failure to consult with Respondent's attorneys about which documents should be excluded, constitutes failure to properly proceed with the appeal.
- [24] This failure to comply with the rules is clear but the question is whether such failure justifies an order that the appeal be struck from the roll with costs. The documents that were excluded are not material to the issues to be decided in this appeal. We are of the view that striking the appeal from the role is not justified . See *S v Jafta* (CA&R 490/02) [2003] ZAECHC

18 (10 April 2003); Myeni v Organisation Undoing Tax Abuse (15996/2017)[2021]ZAGPPHC 56 (15 February 2021); Minister of Home Affairs v Liebenberg 2002 (1) SA 33 (CC) 35H-36A; Kuilders v Pharo (LCC101R/OO) [2001] ZALCC 17 (22 May 2001).

- [25] The Appellants failure to timeously file a request for reasons which is a relatively simple and uncomplicated notice caused them to apply for condonation. The reasons for that delay and why condonation was granted, are not before this court. This effectively caused a 7 (seven) month delay in prosecuting the appeal to the detriment of the Respondent. Appellants also failed to comply with Rule 50(7) of the Rules of the High Court and failed to seek condonation for this failure. In both instances , the Respondent was severely prejudiced. This will be taken into account when considering the cost orders.
- [26] However, this failure is not considered to be sufficiently grave to strike the appeal from the roll. The points in limine are dismissed . No order as to costs is made in favour of the Appellants in their opposition of the points in limine.

WAS THE RESPONDENT UNLAWFULLY ARRESTED AND DETAINED?

- [27] It is common cause that the Respondent was arrested by the warrant officer and detained by members of the South African Police Services pursuant to an order by the magistrate without having committed an offence and having been found guilty of any offence.
- [28] The Second Appellant admitted that Respondent was arrested without a warrant and detained by members of the South African Police Services who were acting in the course and scope of their employment. The Second Appellant did not lead evidence that the detention was justified.
- [29] We concur that the Respondent was unlawfully arrested and detained for one day by members of the South African Police services and that the entrenched Constitutional rights of the Respondent were breached.
- [30] Because the court a quo found that the arrest was made without a warrant , it referred to Section 40(1)(b) of the Criminal Procedure Act 51 of 1977 ("the CPA") which provides for an arrest by a peace officer without a warrant of any person whom he reasonably suspects of having committed an offence referred to in Schedule 1 of the CPA. The Second Appellant did not rely to this Section in its plea and argued that it is not applicable. We concur that it is not applicable.

VICARIOUS LIABILITY OF THE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

- [31] The First Appellant pleaded that the magistrate was not his employee, even if the magistrate is administratively appointed by the First Appellant on the recommendation of the Magistrates' Commission . Thus, the First Appellant cannot be held vicariously liable. The First Appellant pleaded further that he cannot be held vicariously liable for acts of a magistrate which were discharged whilst he was exercising a judicial discretion. Counsel for First Appellant argued that if the First Appellant is held vicariously liable, then the

magistrate did not act maliciously but negligently.

[32] Relying on the judgements of *Janse van der Walt and Another v Minister of Safety and Security and Others* [2011] ZAGPJHC 15 (25 January 2011), *Tsotetsi v The Honourable Magistrate Delize Smith and Another* (239691150) [2016] ZAGPJHC 329 (29 November 2016), *Minister of Safety and Security v Van der Walt and Another* (1037113)

[2014] ZASCA 174, the court a quo found that magistrates are employed by the Minister of Justice and held the following in paragraph 10 of the judgement:

"The question who Magistrates are employed by is a legal issue, governed by statute. In my view, the legal position of employees of the National Prosecuting Authority and that of magistrates are not identical. Section 9(1)(a) of the Magistrates Court Act 32 of 1944 provides expressly that magistrates are appointed by the Minister of Justice. The Magistrates Act 90 of 1993, establishes a Magistrates Commission which inter alia ensures that the appointment of magistrates by the Minister takes place without favour or prejudice and advises the Minister thereon. In terms of Section 10 of the Magistrates Court Act, the Minister of Justice appoints magistrates after consultation with the Magistrates Commission. Although the magistrates function independently and impartially that does not detract from the fact that they are appointed by and employed by the Minister of Justice. To the contrary, the statutory framework within which magistrates are appointed by the Minister of Justice ensures that they are appointed on the basis that they function independently and impartially . In carrying out their functions independently and impartially, they act within the course and scope of their appointment and in accordance with the basis on which they were appointed . It follows that the Minister of Justice remains in my view, as in the past, vicariously liable for the conduct of magistrates acting within the course and scope of their employment."

[33] It is trite law that whilst serving in a judicial capacity, a judicial officer can only be held delictually liable for an act or omission if his or her actions are *ma/a tides*, malicious or fraudulent (*Moeketsi v Minister van Justisie en in ander* 1988 (4) SA 707 (T) at 713G; *Telematrix (Pty) Ltd tla Matrix Vehicle Tracking v Advertising Standards Authority* SA 2006

(1) SA 461 (SCA); *Claassen v Minister of Justice and Constitutional Development & another* 2010 (6) SA 399 (WCC) , para 22).

[34] In the *Telematrix* case, Harms JA turned to Johannes Voet (Commentary on the Pandects 5.1.58, Gane's translation) to cite the common law rule in this regard, as follows:

But in our customs and those of many other nations it is rather rare for the judge to [bear the responsibility for the outcome] by ill judging . That is because the trite rule that he is not made liable by mere lack of knowledge or [lack of skill], but by fraud only, which is commonly difficult of proof It would be a bad business with judges , especially lower judges who have no skill in law, if in so widespread a science of law and practice, such a variety of views, and such a crowd of cases which will not brook but sweep aside delay, they should be held personally liable to the risk of individual suits, when their unfair judgment springs not from fraud, but from mistake, lack of

knowledge or [lack of skill]. (para 17).

- [35] The learned judge went on to comment that the 'decisive policy' underlying the immunity of the judiciary is the protection of its independence to enable it to adjudicate fearlessly. Litigants ... are not "entitled to a perfect process, free from innocent [i.e. non mala fide] errors (para 19).
- [36] In *Claassen supra*, a full bench of the Western Cape High Court refused to dilute judicial immunity by stripping away immunity for negligent conduct (para 27). The court also found that the criminal magistrate concerned enjoyed immunity against delictual liability even though he had unlawfully committed the appellant to prison in breach of the latter's fundamental rights under s 12(1) of the Constitution. The court noted that although section 12 of the Constitution entrenched a right to personal liberty, it did not by itself afford a right to compensation to a person whose right had been infringed (para 31).
- [37] In the case at hand, the question is therefore whether the magistrate's actions were *ma/a fide*, malicious or fraudulent, or, drawing from *Telematrix*, whether the magistrate committed an 'innocent error'? In *May v Udwin* 1981
- (1) SA 1 (A), which dealt with a judicial officer's liability for defamatory statements, Joubert JA expanded on the meaning of malicious conduct as 'conduct actuated by a dishonest or improper motive' (at 11C-D).
- [38] In *Claassen*, a criminal court magistrate summarily remanded the appellant in custody until the next date to which the appellant's co-accused in the pending criminal trial and been warned or remanded to appear. The appellant and his co-accused were facing charges relating to theft and malicious damage to property. The magistrate was annoyed with the appellant who had not appeared in court on a particular date, but the accused had experienced unforeseen difficulties with the transport he had arranged from Cape Town to Oudtshoorn in order to be in court on the appointed date. Instead of enquiring into the reasons underlying the appellant's non-appearance as he was required to do in terms of s 72(4) of the Criminal Procedure Act 51 of 1977, the magistrate summarily ordered his detention in prison. He had also not cancelled the appellant's release on warning in the manner prescribed in s 72A read with s 68(1) and (2) of the Act. The magistrate's explanation for his conduct was that s 72(4) of the CPA employed the word 'may' rather than 'must' and was therefore permissive, not pre-emptory. The court found this explanation inherently implausible in the context of the magistrate's conduct, but held back from finding that such conduct was *ma/a fide* or malicious, despite being urged to do so. A decisive consideration appears to have been the absence of a dishonest, improper or 'unreasonable' motive.
- [39] *Claassen* can nevertheless be distinguished from this case on the basis of the status of the appellant, who had already been accused.

[40] In *Moeketsi supra*, a regional magistrate ordered the summary detention of a police official who had arrived at court to deliver a docket. On the magistrate's version of events, the police official had disturbed court proceedings and disrespected the court by moving between the bench and the witness stand without bowing to the judicial officer. He then proceeded to the back of the court and had a brief exchange with a colleague with his back to the presiding officer. This proved too much for the regional magistrate who ordered his summary detention. At the trial, however, it emerged that the magistrate had warned the police officer concerned about such disturbances. The court found that the magistrate's conduct, while unreasonable and unfair, fell short of being *ma/a fide* (at 714C). The magistrate was guilty of negligence and was thus protected against delictual prosecution on the basis of the doctrine

of judicial immunity.

[41] *Moeketsi supra*, is distinguishable from this matter on at least three grounds: The first is the history of engagement between the magistrate and the officer, the second is the fact that the officer appeared in court in official capacity, and the third is that the case was decided prior to the Constitution becoming effective.

[42] *Janse van der Walt & another v Minister of Safety and Security & others* [2011] ZAGPJHC 15 (25 January 2011) sheds further light on how courts approached the question of conduct that is *male fide*, malicious or fraudulent on the part of a judicial officer. In the action, the plaintiffs sought damages for malicious prosecution and unlawful arrest. The defendant was an ordinary member of public, but the magistrate hearing the case had been overheard saying that she 'will not tolerate this anymore'. She then intervened in the case by adding a charge of armed robbery to the charge sheet, which prevented the plaintiffs from applying for bail. In determining whether the magistrate had acted with malice and bad faith, the court made the following observations at para(s). 48 - 9:

"Since the existence of malice or bad faith is not an issue which can be observed in the abstract, it is by necessity an issue which must be determined by drawing an inference from established factual circumstances. In the absence of rebutting evidence or a plausible explanation by the magistrate in question, such an inference is justifiable and the most probable and most plausible inference which can be drawn from the testimony of the plaintiffs regarding the conduct of the magistrate.

There clearly was no factual or evidential basis for the formulation of the charge of armed robbery against the plaintiffs before the prosecutors or before the magistrate. The comment of the magistrate that the type of conduct as she apparently suspected the plaintiffs were guilty of "can no longer be tolerated", suggests, on a balance of probabilities and in the absence of rebutting evidence, that the magistrate was advancing a personal agenda which was not disclosed to the plaintiffs and which was intended to teach the plaintiffs a lesson, irrespective of whether they were legally and procedurally entitled to be released on bail.

- [43] In the matter before this court, the magistrate ordered the summary detention of the Respondent after his offer to pay maintenance of R300 per month for the maintenance of his minor child was deemed too low and the magistrate sent him to the cells 'to think "clearly and thoroughly" and to come up with a better offer .' The Respondent was arrested without a warrant and was not charged with any offence. Unlike Claasen, the Respondent had not already been accused and the magistrate was not laboring under a false impression that his powers were permissive rather than mandatory. The facts of the case appear to be most closely aligned with those in Janse van der Walt in that the conduct of the magistrate sought to teach the applicant a lesson. The bullying tactic of detaining the Respondent without a warrant of arrest is a clear abuse of judicial power and malicious.
- [44] In the result we find that the magistrate acted maliciously. The submission by counsel for First Appellant that the magistrate acted negligently and not maliciously is rejected.
- [45] The court a quo found that the Magistrate enjoys delictual immunity so long as he I she does not act with malice. The court a quo also relied on the decision of Minister of Safety and Security and Others v Van Der Walt and Another (1037113) [2014] ZASCA 174; Le Roux and Others v Dey 2011 (3) SA 274 (CC) and Janse van der Walt and Another v Minister of Safety and Security and Others 2011 ZAGPJHC 15 (25 January 2011).
- [46] The court a quo held that "vicariously liability may in general terms be described as the strict liability of one person for the delict of another. The former is thus indirectly or vicariously liable for the damage caused by the latter. And the liability applies where there is a particular relationship between the two persons. Where an employee, acting within the scope of his employment , commits a delict, the employer is fully liable for the damage. Fault is not required on the part of the employer , and therefore this is a form of strict liability."
- [47] The court a quo held that the magistrate is employed by the Department of Justice and Constitutional Development and that the Minister of Justice remains vicariously liable for the conduct of a magistrate acting within the course and scope of his employment. (See Tsotetsi v The Honourable Magistrate Delize Smith and Another (23969/150) [2016] ZAGPJHC 293 (29 November 2016); Minister of Safety and Security v Van Der Walt and Another (1037/13) [2014] ZASCA 174).
- [48] We find that the magistrate acted as employee of First Appellant in the exercise of his duties. The magistrate acted maliciously . The magistrate did not enjoy judicial immunity. The magistrate accordingly committed a delict against the Respondent whilst acting within the course and scope of his employment. The First Appellant is therefore vicariously liable. There was no need to have joined the magistrate personally as a defendant in the court a quo.

VICARIOUS LIABILITY OF THE MINISTER OF POLICE

- [49] The Second Appellant pleaded that the Respondent was arrested and detained by members of the South African Police Services in compliance with a court order and accordingly cannot be held liable. Second Appellant further admitted that the members of the South African Police Services were acting within the scope and course of their employment with the Minister of Police. Second Appellant also pleaded that the court a quo incorrectly applied section 40(1)9b) of the Criminal Procedure Act 51 of 1977 as the court orderly had to execute a court order. Second Appellant did not rely on this section in his plea and the court a quo should not have relied on it.
- [50] Section 165(5) of the Constitution determines that an order or decision issued by a court binds all persons to whom and organs of state to which it applies and therefore all judicial orders must be obeyed. The Second Appellant pleaded that the police officers acted on the strength of a court order. Relying on Section 165(5) of the Constitution argued that the police officer simply executed an order of the magistrate and he is not entitled second guess that order. Accordingly, he did not act unlawfully, and the appeal of the Second Appellant should be upheld. Second Appellant relied on the judgement of the Department of Transport and Others v Tasima (Pty) Ltd 2017 92) SA 622 (CC) 669A-B
- [51] We concur with this submission and find that the police officers were not acting unlawfully as they were complying with a court order.
- [52] The delay in prosecuting the appeal, the failure to explain the delay and the failure to properly comply with the URC is taken into account when considering the cost orders in this appeal. The Respondent has been prejudiced by the delay and failure to properly comply with the URC, apart from having been deprived of his fundamental rights by the malicious conduct of the magistrate.

WAS THE QUANTUM CORRECTLY AWARDED?

- [53] The presiding magistrate found (in paragraph 16 of the judgement) , that in determining the fair and reasonable amount of compensation the court must consider the following factors :
- (a) The circumstances under which an arrest took place;
 - (b) the degree of publicity afforded to the arrest;
 - (c) the duration of the detention;
 - (d) the absence or presence of malice on the part of the arrestor;
 - (e) the conditions of the cell;
 - (f) the awards in previous comparable cases; and
 - (g) the effects of inflation.

- [54] The Respondent claimed R95,000.00 (ninety-five thousand rand) for unlawful arrest and detention and a further amount of R5,000.00 (five thousand rand) for legal costs. The magistrate found that the Respondent did not lead evidence about the R5,000.00 (five thousand rand) claimed in respect of legal fees and accordingly did not deal with the claim for legal expenses.
- [55] These facts regarding the arrest and detention were not disputed and the magistrate took in consideration that the Respondent did not commit any offence and that the arrest was pursuant to an instruction of the magistrate that was clearly malicious.
- [56] In relying on the matter of *Strydom v Minister of Safety and Security and Another* (31353/07) [2014] ZAFSHC 73 (28 May 2014) the magistrate quoted the principles for damages for unlawful arrest and detention as follows :

"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 such arbitrary deprivation of personal liberty is viewed in our law. It is impossible to determine an award of damages for this injuria 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 quantum of damages on such facts."

- [57] In the matter of *Minister of Safety and Security v Kruger* (183/01) [2011] ZASCA 7 (8 March 2011) the Court on appeal awarded an amount of R50,000.00 (fifty thousand rand) for unlawful arrest and detention of 1 (one) day. In *Guidione v Minister of Safety and Security* (2008/37480) [2015] ZAGPJHC 110 (11 June 2015) the Plaintiff was arrested and detained from 24 August 2008 to 25 August 2008 and the amount awarded was R75,000.00 (seventy-five thousand rand).
- [58] The Magistrate also considered the case of *Minister of Safety and Security v Scott* (969/2013) [2014] ZASCA 84 (30 May 2014) where the Plaintiff was awarded initially an amount of R75,000.00 (seventy-five thousand rand) by the court a quo for unlawful arrests and detention of 9 (nine) hours. The amount of R75,000.00 (seventy-five thousand rand) was altered on appeal to R30,000.00 (thirty thousand rand).
- [59] The amount awarded by the magistrate was not seriously disputed by the Appellants . We concur with the finding of the magistrate.
- [60] In the result the following order is made: -
- [60.1] The points in limine are dismissed, no order as to costs is made;

[60.2] the appeal of the First Appellant is dismissed with cost on an attorney and client scale;

[60.3] the appeal of the Second Appellant is upheld, no order as to costs is made; and

[60.4] the First Appellant is ordered to pay the Respondent the amount of R75 000,00 (seventy-five thousand rand) plus interest at a rate of 10.25% per annum from 14 November 2018 to date of payment, plus the costs of the hearing in the court a quo on a party and party scale.

C N Van Heerden

[Acting Judge of the High Court, Gauteng Division, Pretoria]

I CONCUR

TLHAPI VV

[Judge of the High Court, Gauteng Division, Pretoria]

DATE OF HEARING: 16 February 2021

DATE OF JUDGEMENT: 28 June 2021

APPEARANCES:

COUNSEL FOR FIRST APPELLANT: Adv Maelane

COUNSEL FOR SECOND APPELLANT: Adv Tshivhase

INSTRUCTED BY: THE STATE ATTORNEY

FOR RESPONDENT: Mr Makapan

INSTRUCTED BY: Makapan Attorneys

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