

SOUTH AFRICA / JUDGMENT

Ramasike v Minister of Police (22482/12)

[2024] ZAGPJHC 991 (26 September 2024)

[2024] ZAGPJHC 991**COURT**

South Gauteng High Court, Johannesburg

BEFORE

Mahosi

CASE / FILE NUMBER

22482/12

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Policy**REPUBLIC****OF SOUTH AFRICA****IN****THE HIGH COURT OF SOUTH AFRICA****GAUTENG****DIVISION, JOHANNESBURG****Case****Number: 22482/12****REPORTABLE:**

NO

OF

INTEREST TO OTHER JUDGES:NO

REVISED:

NO

DATE:

26 September 2024

SIGNATURE:

In

the matter between: RAMASIKE
 BEVERLY
 Plaintiff
 And
 THE
 MINISTER OF
 POLICE
 Defendant

JUDGMENT

Mahosi J

Introduction

- [1] This action raises the question of the State’s liability for the negligent act of one of its servants.
- [2] Specifically, it concerns a delictual claim resulting from an alleged unlawful assault, arrest and detention of the plaintiff on 14 December 2009 at Rosetenville, Johannesburg. The plaintiff abandoned his claim relating to arrest and detention during the trial. The remaining issue was whether the police officer’s means to effect arrest, which amounted to assault, were lawful.

The parties

- [3] The plaintiff is Mr Beverly Ramasike (“Ramasike”), an adult male residing in Pimville Zone 6, Soweto, near Johannesburg. The defendant is the Minister of Police who is sued in his capacity as the Minister responsible for the conduct of the members of the South African Police Service (“the SAPS”) in executing their constitutional obligations to prevent, combat and investigate crime.

Background

- [4] The facts are primarily common cause. On 14 December 2009 at about 02h30, Mr Phuti Elija Mabotja and his three colleagues were on duty and patrolling around Rossettenville and Booysen area near Johannesburg, when they noticed a red Citi Golf bearing registration number M[...] parked in the middle of Pan Street with the suspects, Ramasike and Kabelo Mokgau (“Kabelo”), standing beside it. Ramasike and Kabelo jumped into the red Golf and drove off when the patrol vehicle approached.
- [5] As the police pursued the suspects, the two vehicles (the patrol vehicle and the red Golf) travelled at an excessive speed, passing through stop streets and red traffic lights until the red Golf stopped at the corner of Geranium and Lawn Streets. Thereafter, Ramasike and Kabelo alighted from the red Golf and proceeded to flee on foot along Lawn Street. Mabotja and his colleague, Motlatjo Hector Lapane (“Lapane”), also alighted from the patrol vehicle

and pursued them on foot. It was at this point that Mabotja shot Ramasike on his back, injuring his spinal cord and paralysing him.

- [6] Following the shooting incident, Ramasike was transported to the Chris Hani Baragwanath Hospital ("Baragwanath Hospital") by ambulance, where he was admitted and treated. The following day, he was transferred to South Rand Hospital, where he received treatment until he was discharged on 04 March 2010.

Ramasike's case

- [7] Ramasike contended that his shooting was negligent in that as the Minister's servant, Mabotja failed to pay due regard to the possibility that the shots may wound him or someone who might be in the vicinity and to avoid shooting him when, by exercising reasonable care, he could and should have done so.

The Minister's case

- [8] The Minister admitted Mr Ramasike's shooting but argued that he was shot lawfully in that he was in unlawful possession of a stolen vehicle, resisted arrest, shot at the members of the SAPS and attempted to run away on foot after the vehicle he was driving in was damaged.

Relevant evidence

For the Minister

- [9] Mabotja and Lapane testified in support of the Minister's case. Lapane confirmed that on 14 December 2009, he was one of the police officers who were on duty patrolling with Mabotja in a patrol vehicle with blue lights and a siren. He occupied the front passenger seat, while Mabotja was the driver and the other colleagues were at back passenger seats. As they approached Pen Street, they observed a group of people next to the Red City golf. Some were standing, while others were lying on the ground. One of them ran off, and two jumped into the red Golf. The people who were lying on the ground alleged that the people who fled were robbing them. For that reason, he and his colleagues gave chase to the red Golf, and one of its occupants fired a shot at the police vehicle.
- [10] The chase took about 20 to 30 minutes before the red Golf hit a pavement along Lawn Street and stopped. The police vehicle stopped behind the red Golf, and he (Lapane) alighted carrying his service R5 rifle and warned the suspects to lie down. However, Kabelo alighted and ran away. Lapane fired a warning shot and took cover on the side of the road. He heard a gunshot behind him, and Mabotja told Ramasike not to move. That is when he walked back to red Golf and realised that Mabotja had shot Ramasike and was searching him for a firearm. Lapane called the ambulance and went back to search the red Golf. Upon arrival, the ambulance took Ramasike to Baragwanath Hospital. In the meantime, Lapane and his other colleague, Meko, continued to search for Kabelo and found him hiding in one of the nearby houses. They arrested him and took him to the police station.

- [11] Under cross-examination, Lapane was asked why he failed to mention in his written statement that there were three people, one of them being a lady lying on the ground. He said he only got a clear statement after consultation and denied having made up the new evidence. When asked why he did not mention the people lying on the ground in his testimony during the criminal trial, he stated that there were many things to remember when he gave his first statement. He failed to mention the lady during the examination-in-chief, and justified his failure by stating that when they spoke to the male persons, the lady was still on the ground.
- [12] Lapane confirmed that although both suspects were arrested, no gun or cartridge casing was found at the scene of the accident. Further that, when they chased the red Golf, they were not aware that it was stolen. He could not explain why the results of the primer residue test were not in the police file. Lastly, he testified that the reason the Minister did not call the robbed people to testify was because he and his colleagues could not find them after the arrest of the suspects.
- [13] Mabotja relied on his oral evidence and denied having written a statement of what occurred on the date in question. Regarding the issue relating to the people standing beside the red Golf, he testified that three were lying on the ground and two were standing. Of the three people on the ground, two men stood up, and a lady remained lying down. When the police vehicle approached them, the two standing men jumped into the red Golf and drove off.
- [14] Mabotja testified that after the car chase and the red Golf hit the pavement and stopped, he parked behind the red Golf. Lapane alighted from the police vehicle and instructed the suspects not to move. Nevertheless, Kabelo got out of the red Golf and ran away. Lapane chased after him and fired a warning shot. As he (Mabotja) was getting out to the police vehicle, Ramasike also alighted and started running. Although he instructed Ramasike to stop running, he persisted. Mabotja used his service 9mm Baretta to shoot at Ramasike, aiming at his leg. Ramasike fell and rolled on the pavement. He approached Ramasike and searched him for a firearm but did not find it. Lapane called the ambulance, which transported Ramasike to Baragwanath Hospital. He explained that the reason he shot at Ramasike was not only to secure his arrest but also to protect Lapane, who was chasing Kabelo.
- [15] Under cross-examination, Mabotja confirmed that he found no firearm or stolen goods in the red Golf and on the suspects. Further, when he and his colleagues chased the suspects, they did not know that the red Golf was stolen. His explanation for not finding the people who were robbed was that they (the police officers) took too long at the shooting scene. He stated that Ramasike and Kabelo were dangerous as they fired shots at the police. Further, Ramasike was dangerous to Lapane as he was running behind him. Lastly, he denied that Ramasike was with two friends and that they left Titi behind.

For Ramasike

- [16] Ramasike testified that on 13 December 2009, he went to visit his friend, Kabelo, at his home in Pimville, Soweto. Upon arrival, he found no one at the house but met Kabelo's friend, Titi, at the gate. They both decided to wait for Kabelo at the nearby park. When Kabelo returned back home between 16h00 and 16h30, they all decided to visit several clubs in Hilbrow, Johannesburg, using Titi's red Golf and were there until the following day at about 01:00. They had all consumed alcohol, but as he was the least drunk, he drove them back to Soweto.
- [17] They stopped to urinate at the corner of Penn & Diagonal Street in Rossetenville and saw a police vehicle about to pass, but it reversed and drove in their direction. He and Kabelo got into a red Golf and drove off, leaving Titi as he was still urinating. The reason they drove off was to avoid the police as they were seen urinating in a public place, drunk and in possession of alcohol. The police gave chase to them until the red Golf slipped and got stuck in the pavement. Immediately after that, he and Kabelo alighted and ran away. However, he did not get far before he heard two gunshots close to each other and fell to the ground.
- [18] When he opened his eyes, Ramasike saw several police officers surrounding him who asked what he was doing and where he was shot. He told them that he was shot in his back as he could not feel his legs. One of the police officers kicked him on his head and asked others why they were not killing him. The other police officer called an ambulance, which took him to Baragwanath Hospital. In the meantime, the other police officers pursued Kabelo, found him in one of the houses nearby and assaulted him.
- [19] Lastly, Ramasike stated that although the police charged him with attempted murder and car theft, he did not know that the red Golf was stolen, and as none of them had a gun on them, he denied firing a shot at the police vehicle and robbing people. He was found not guilty of all the charges and acquitted in the criminal proceedings. Under cross-examination, Ramasike admitted that evading the police, urinating in public and driving under the influence of alcohol were criminal offences, which justified his arrest. He denied that these offences justified his shooting.
- [20] The ballistic expert, Mr Lubbe ("Lubbe"), submitted a written report and gave oral evidence in support of Ramasike's case. Lubbe works for Forensic and Ballistic International Laboratory and has 37 years of experience in the forensic examination of crime scenes, reconstruction of scenes, photographing and documentation of examinations and compiling of opinions, results and findings.
- [21] Lubbe testified that he received a bundle of documents from Ramasike's attorneys and visited the scene at Geranium Street on 06 March 2013. In his report, he stated, inter alia, that the police photo album reflects the area where the red Golf came to a halt, where the cartridge casing of the police and Ramasike were found. Further, the distance between the area where the Golf came to a halt and where Ramasike was shot is approximately 55m, and there was street lighting. The two different calibre casings photographed on the scene were 9mmP calibre, which was probably fired by a 9mmP pistol, and the larger casing was

probably fired by an R4 or R5 firearm, the calibre of which was 5,56 mm.

- [22] According to the documentation, the SAPS sent cartridge casings and the primer residue tests to the forensic laboratory, but no forensic or ballistic reports were present in the police file. Under cross-examination, Lubbe confirmed that his report was incomplete in that it did not have the statements by the SAPS and JMPD regarding the area where the accused fired a shot at them and its direction; the explanation regarding the number of shots fired compared to the number of casings picked up from the scene; the pocketbooks and statements regarding the issuing of ammunition at the beginning and the end of the shift to determine the number of shots fired; and the shooting report of the police officer in charge regarding his observations on the scene. However, he denied that his report was unreliable.

Legal framework

- [23] Section 49 of the Criminal Procedure Act[1] regulates the force that the police may employ to arrest suspects who offer resistance or flee. It reads:

“(1) For the purposes of this section-

- (a) 'arrestor' means any person authorised under this Act to arrest or to assist in arresting a suspect;
 - (b) 'suspect' means any person in respect of whom an arrestor has a reasonable suspicion that such person is committing or has committed an offence; and
 - (c) 'deadly force' means force that is likely to cause serious bodily harm or death and includes, but is not limited to, shooting at a suspect with a firearm.
- (2) If any arrestor attempts to arrest a suspect and the suspect resists the attempt, or flees, or resists the attempt and flees, when it is clear that an attempt to arrest him is being made, and the suspect cannot be arrested without the use of force, the arrestor may, in order to effect the arrest, use such force as may be reasonably necessary and proportional in the circumstances to overcome the resistance or to prevent the suspect from fleeing, but, in addition to the requirement that the force must be reasonably necessary and proportional in the circumstances, the arrestor may use deadly force only if-
- (a) the suspect poses a threat of serious violence to the arrestor or any other person; or
 - (b) the suspect is suspected on reasonable grounds of having committed a crime involving the infliction or threatened infliction of serious bodily harm and there are no other reasonable means of effecting the arrest, whether at that time or later.”
- [24] The Minister is required to satisfy four aspects. Firstly, there must have been an attempt to arrest the suspect. Secondly, the suspect must have resisted the arrest, fled, or resisted and fled when it was clear to him that an attempt was being made to arrest him. Thirdly, it must have been impossible to arrest the suspect without force. Fourthly, once used, such force must be reasonably necessary and proportional to overcome the resistance or prevent the

suspect from fleeing. In addition, the arrestor may use deadly force only if “(a) the suspect poses a threat of serious violence to the arrestor or any other person; or (b) the suspect is suspected on reasonable grounds of having committed a crime involving the infliction or threatened infliction of serious bodily harm and there are no other reasonable means of effecting the arrest, whether at that time or later.”

[25] In *Ex Parte Minister of Safety and Security: in re S v Walters*[2], the Constitutional Court, in declaring the first (pre-2003) section 49(2) unconstitutional and invalid, outlined the main points to clarify the law regarding the use of force during arrest as follows:

“54. In order to make perfectly clear what the law regarding this topic now is, I tabulate the main points:

- (a) The purpose of arrest is to bring before court for trial persons suspected of having committed offences.
- (b) Arrest is not the only means of achieving this purpose, nor always the best.
- (c) Arrest may never be used to punish a suspect.
- (d) Where arrest is called for, force may be used only where it is necessary in order to carry out the arrest.
- (e) Where force is necessary, only the least degree of force reasonably necessary to carry out the arrest may be used.
- (f) In deciding what degree of force is both reasonable and necessary, all the circumstances must be taken into account, including the threat of violence the suspect poses to the arrestor or others, and the nature and circumstances of the offence the suspect is suspected of having committed; the force being proportional in all these circumstances.
- (g) Shooting a suspect solely in order to carry out an arrest is permitted in very limited circumstances only.
- (h) Ordinarily such shooting is not permitted unless the suspect poses a threat of violence to the arrestor or others or is suspected on reasonable grounds of having committed a crime involving the infliction or threatened infliction of serious bodily harm and there are no other reasonable means of carrying out the arrest, whether at that time or later.
- (i) These limitations in no way detract from the rights of an arrestor attempting to carry out an arrest to kill a suspect in self-defence or in defence of any other person.”

[26] Although the shooting incident in the current matter occurred on 14 December 2009, it was not disputed that the aforestated principles are applicable in interpreting section 49[3] as it stood when the incident occurred.

- [27] It was common cause that at the time of Ramasike's shooting, Mabotja was acting within the course and scope of his employment with the Minister. Consequently, as the employer, the Minister was vicariously liable for his wrongful acts. The onus to prove, on balance of probabilities, that Mabotja acted within the bounds of section 49(2) rests on the Minister[4].

Assessment

- [28] The Minister justified the shooting on the basis that Ramasike resisted arrest while he was driving a stolen vehicle recklessly, shot at the police officers, refused to stop after a warning shot was fired and the instruction to surrender, and posed a threat of serious violence to Lapane.
- [29] Ramasike conceded that there was an apparent attempt by the police to arrest him, which he resisted by fleeing. However, he denied knowing that the red Golf was stolen, firing a shot at the police vehicle and posing a threat of serious violence to Lapane.
- [30] The Court is faced with two mutually destructive versions. In Stellenbosch Farmers' Winery Group Ltd and Another v Martell & Cie SA and Others[5] the Court had the following to say regarding the method to be employed in resolving factual disputes:

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

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

- [31] In the current matter, the Minister's evidence is riddled with inconsistencies and improbabilities. The evidence shows that the police were not aware that the red Golf was stolen when they pursued Ramasike and Kabelo. The only reason for their arrest was the alleged robbery of three people on the side of the road, which could not be proven as nothing stolen was found in the suspects' possession. Additionally, Lapane and Mabotja's testimony that the alleged robbed people included a lady is at variance with all the police statements that were handed in as exhibits. This presents a material contradiction, which renders their evidence unreliable. In light of the above, it cannot be that Mabotja used deadly force because Ramasike was driving a stolen vehicle or had robbed people.
- [32] Ramasike denied that he or Kabelo shot at the police vehicle during the chase. Instead, he testified that none of them was armed. The ballistic expert could not be of assistance in this regard because the evidence shows that the police did not do any forensic tests. Nevertheless, Ramasike argued that had he or Kabelo fired at the police vehicle during the chase, it was improbable that the police would not shoot back at their Golf.
- Further, if he or Kabelo had a firearm that was allegedly used to shoot at the police vehicle, it was improbable that they would not use it when they alighted from their Golf. This is a fair proposition. Without evidence that the police vehicle sustained any damage from the shooting, police fired back at the red Golf during the chase, police found Ramasike or Kabelo in possession of a firearm, or fired back at the police when they were fleeing on foot, the most probable version is that Ramasike had no firearm and presented no threat to the police when he was shot at his back and paralysed.
- [33] Lapane testified that he fired a warning shot at Kabelo and pursued him, but the transcript of the criminal trial records that he fired three warning shots. Further, he stated that he heard only one shot from Mabotja, whilst the transcript of the criminal trial indicates that he heard about three to four shots, which made him take cover as he could not ascertain the directions from which the shots were coming. It is apparent from the above that Lapane's evidence contradicts his evidence at the criminal trial. As such, he tailored his evidence during the trial, which made him not credible and his evidence unreliable.
- [34] Mabotja did not make a written statement of what happened on the day of the incident and did not testify at the criminal trial. In this matter, he testified on what transpired 14 years ago from his own recollection and offered no explanation why he failed to record such a significant occurrence. The evidence does not support his version that he fired one shot at Ramasike, save for Lapane's testimony, which this Court already found to be unreliable.
- [35] To the extent that the scene of the incident and police album were not disputed, the Minister's argument that the incompleteness of Lubbe's report renders it unreliable was inconsequential. The Minister did not dispute the correctness of photographs in the police's Album, which depicted one unspent 9mm cartridge, 2 spent 9mm cartridges and one spent R5 type cartridge. According to Lubbe, the photograph confirms Ramasike's evidence that Mabotja fired two shots at him, and Lapane fired a warning shot from his R5 rifle.

- [36] Even if this Court accepted that Mabotja fired one shot, the Minister did not dispute that the injuries sustained by Ramasike resulted from the shooting incident in question. Further, there is no proof that Mabotja fired a warning shot before firing the shots that injured Ramasike. His justification for the shooting was that he was protecting Lapane, who was pursuing Kabelo, from Ramasike, who was probably carrying a firearm, is improbable as there is no evidence that he noticed a firearm on Ramasike or that any of the suspects fired a shot at the police vehicle. Thus, there is no evidence that Ramasike posed a threat of serious violence to Lapane or Mabotja.
- [37] Additionally, there was an alternative reasonable manner of effecting the arrest to that Lapane used to arrest Kabelo. Lapane did not shoot at Kabelo to secure his arrest. Instead, he instructed him to surrender, and when he refused, he fired a warning shot or shots and gave chase to him until he heard a shot that paralysed Ramasike. Kabelo was pursued and eventually arrested. This further confirms that Ramasike and Kabelo presented no threat to the police officers, and it was not impossible for them to be arrested without the use of force. In light of all the evidence, this Court has no basis to reject Ramasike's version, as it is more credible and probable.
- [38] The issue is whether Mabotja's conduct was negligent. The test applicable in an action for damages alleged to have been caused by the defendant's negligence has been stated by the Supreme Court of Appeal in *Sea Harvest Corporation (Pty) Ltd and another v Duncan Dock Cold Storage (Pty) Ltd*[6], where Scott JA, writing for the majority, said:

"[21] A formula for determining negligence which has been quoted with approval and applied by this Court time without measure is that enunciated by Holmes JA in Kruger v Coetzee 1966 (2) SA 428 (A) at 430E-F. It reads:

'For the purposes of liability culpa arises if –

- (a) a diligent paterfamilias in the position of the defendant –
 - (i) would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss; and
 - (ii) would take reasonable steps to guard against such occurrence; and
- (b) the defendant failed to take such steps.

However, in *Mukheiber v Raath and Another* 1993 (3) SA 1065 (SCA) the following was said at 1077E-F:

'The test for culpa can, in light of the development of our law since *Kruger v Coetzee* 1966

- (2) SA 428 (A), be stated as follows (see *Boberg Law of Delict* at 390):

For the purpose of liability culpa arises if –

- (a) a reasonable person in the position of the defendant –

- (i) would have foreseen harm of the general kind that actually occurred;
- (ii) would have foreseen the general kind of causal sequence by which that harm occurred;
- (iii) would have taken steps to guard against it, and
- (b) the defendant failed to take those steps.”

[39] The Constitution[7] requires the state and all its organs to respect, protect, promote and fulfil all the rights protected by the Bill of Rights. Those relevant in this case are expressed by sections 10, 11 and 12 of the Constitution as follows:

“10. Human dignity

Everyone has inherent dignity and the right to have their dignity respected and protected.

11. Life

Everyone has the right to life.

12. Freedom and security of the person

(1) Everyone has the right to freedom and security of the person, which includes the right—

(a) ...

(b) ...

(c) to be free from all forms of violence from either public or private sources;

(d) not to be tortured in any way; and

(e) not to be treated or punished in a cruel, inhuman or degrading way.

(2) Everyone has the right to bodily and psychological integrity, which includes the right—

(b) to security in and control over their body; and

(c) not to be subjected to medical or scientific experiments without their informed consent.”

[40] In evaluating the evidence, this Court should balance the aforementioned rights against the responsibility of the police officers to carry out their duties to prevent crime and protect the public effectively. As shown above, the Minister failed to prove on the preponderance of probabilities that in shooting Ramasike, Mabotja acted reasonably or justifiably. As such, Mabotja did not follow the prescript of section 49(2) to ensure that no citizen was injured unduly. Had he done so, he could have avoided Ramasike's injuries. His suspicion that Ramasike robbed people and shot at the police vehicle did not entitle him to use deadly force in the manner that he did.

[41] The force he used was not reasonably necessary and proportional to overcome the resistance or prevent Ramasike from fleeing, no evidence was presented to establish that he was suspected, on reasonable grounds, of having committed a crime involving the infliction

or threatened infliction of serious bodily harm and the Minister failed to show that there were no other reasonable means of effecting his arrest, whether at that time or later. In light of the above, force was not necessary to effect Ramasike's arrest. A reasonable police officer would have foreseen that, if he fired upon Ramasike, his conduct could cause injury to him. On the evidence, Mabotja was negligent.

[42] Without a warning shot, Ramasike was in no position to prevent or avoid the shooting incident. In the circumstances, and having regard to Mabotja's conduct, I find that there was no contributory negligence on the part of Ramasike and the Minister has not discharged the onus. There is, therefore, no reason why he should not be held liable for all the damages suffered by Ramasike.

[43] Accordingly, the following order is made:

Order

1. The defendant is liable to pay all such plaintiff's damages as he may establish in due course arising out of the incident that occurred on 14 December 2009.
2. The defendant is ordered to pay the plaintiff's costs of this action on party and party scale B, including the costs of the ballistic expert.

D. Mahosi J

Acting Judge of the High Court

Delivered: This judgment was handed down electronically by circulation to the parties' representatives through email. The date for hand-down is deemed to be 26 September 2024.

Appearances

For the applicant: Advocate J.M. van Rooyen

Instructed by:

Wits Law Clinic

For the respondent: Advocate T. Nyandeni

Instructed by:

State Attorney, Johannesburg

[1] Act 51 of 1977, as amended.

[2]

[2002] ZACC 6; 2002

(4) SA 613 at para 54.

- [3] Section 49, as amended by Section 7 of the Judicial Matters Second Amendment Act[3], reads: “49 Use of force in effecting arrest (1) For the purpose of this section- (a) ‘arrestor’ means any person authorised under this act to arrest or to assist interesting suspect; and (b) ‘suspect’ means any person in respect of whom an arrestor has or had a reasonable suspicion that such person is committing or has committed an offence. (2) If any arrestor attempts to arrest a suspect and the suspect resists the attempt, or flees, or resists the attempt and flees, when it is clear that an attempt to arrest him or her is being made, and the suspect cannot be arrested without the use of force, the arrestor may, in order to effect the arrest, use such force as may be reasonably necessary and proportional in the circumstances to overcome the resistance or to prevent the suspect from fleeing: Provided that the arrestor is justified in terms of this section in using deadly force that is intended or is likely to cause death or grievous bodily harm to a suspect, only if he or she believes on reasonable grounds— (a) that the force is immediately necessary for the purposes of protecting the arrestor, any person lawfully assisting the arrestor or any other person from imminent or future death or grievous bodily harm; (b) that there is a substantial risk that the suspect will cause imminent or future death or grievous bodily harm if the arrest is delayed; or (c) that the offence for which the arrest is sought is in progress and is of a

forcible and serious nature and involves the use of life threatening violence or a strong likelihood that it will cause grievous bodily harm.”

- [3] Section 49, as amended by Section 7 of the Judicial Matters Second Amendment Act[3], reads:

“49 Use of force in effecting arrest

- (1) For the purpose of this section-
- (a) ‘arrestor’ means any person authorised under this act to arrest or to assist interesting suspect; and
- (b) ‘suspect’ means any person in respect of whom an arrestor has or had a reasonable suspicion that such person is committing or has committed an offence.
- (2) If any arrestor attempts to arrest a suspect and the suspect resists the attempt, or flees, or resists the attempt and flees, when it is clear that an attempt to arrest him or her is being made, and the suspect cannot be arrested without the use of force, the arrestor may, in order to effect the arrest, use such force as may be reasonably necessary and proportional in the circumstances to overcome the resistance or to prevent the suspect from fleeing: Provided that the arrestor is justified in terms of this section in using deadly force that is intended or is likely to cause death or grievous bodily harm to a suspect, only if he or she believes on reasonable grounds—
- (a) that the force is immediately necessary for the purposes of protecting the arrestor, any person lawfully assisting the arrestor or any other person from imminent

or future death or grievous bodily harm;

(b) that there is a substantial risk that the suspect will cause imminent or future death or grievous bodily harm if the arrest is delayed; or

(c) that the offence for which the arrest is sought is in progress and is of a forcible and serious nature and involves the use of life threatening violence or a strong likelihood that it will cause grievous bodily harm.”

[4] See Minister of Safety and Security and another v Swart 2012 (2) SACR 226 (SCA) at para19.

[5] 2003 (1) SA 11 (SCA), at 14I-E.

[6] 2000 (1) SA 827 (SCA), at 838I – 839C

[7] Act 5 of 2005

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