IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION, GRAHAMSTOWN)

CASE NO. CA 62/2017

In the matter between:

CANDICE JACQUELINE NEL Appellant

and

THE MINISTER OF POLICE Respondent

JUDGMENT

MBENENGE JP:

Introduction

[1] The appellant was arrested and detained by members of the South African Police Service after having occupied a house wherein dagga was found on 5 January 2014. The police had proceeded to the house pursuant to a report gleaned from a faceless and unidentified informer *via* police radio control to the effect that drugs were being sold at the house. When none of the three occupants of the house, including the appellant,[1] owned up to the dagga contained in plastic packets found inside a *telefunken* DVD speaker located in one of the rooms, all were arrested for possession of dagga and thereupon detained, but released on the following day without having appeared in court and pleading to any charge(s).

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[1] Mr. Desmond Claassen, his wife (Mrs. Brenda Claassen), and their niece, the appellant together with her infant child

[2] Unlike Mr. Claassen and his wife,[2] the appellant's quest for redress fell on deaf ears. She thereupon resorted to launching an action for recovery of damages that she allegedly suffered as a result of the impugned arrest and detention, which served before the court *a quo*.

The pleadings

[3] The claim which was for payment of R60 000 as and for general damages and *contumelia* was predicated principally on the contention that the appellant had not committed an offence in the presence of a peace officer; there was no reasonable suspicion that she committed a Schedule 1 offence. The detention was assailed principally on the basis that the police officials concerned had not applied their minds in relation to the appellant's detention and the circumstances relating thereto.

[4] The respondent pleaded that the arrest had been justified in terms of section 40(1) (a) of the Criminal Procedure Act 51 of 1977 ("the CPA") as the appellant had been found in possession of dagga. The detention, pleaded the respondent, had been lawful and justified in terms of section 39(3) of the CPA.[3]

The trial

[5] At trial stage, before the court *a quo*, the issues had narrowed themselves to a consideration of whether the arrest of the appellant had been justified in terms of section 40(1)(a). In keeping with the applicable legal principle, in its quest to justify the arrest and the resulting detention, the respondent adduced evidence first.

[6] Constable *Mtebelele*, the arresting officer, testified that, on 05 January 2014, upon receipt of information "*from someone in the street*" that drugs were being sold at the house in question,[4] she, together with her colleagues with whom she had been on patrol duty, made their way to the house where they found Mr. Claassen, his wife and

[2] Mr. Claassen successfully sued the Minister of Police and recovered damages in the sum of R60 000.00, whilst the claim in respect of Mrs. Claassen was settled out of court at R40 000.00 (NB none of these awards have precedential value. They are referred to merely as part of the background gleaned from the record as common cause facts referred to during the opening addresses).

[3]The section provides that the effect of an arrest shall be that the person arrested shall be in lawful custody and that he shall be detained in custody until he is lawfully discharged or released from custody.

[4] House number 2030, Burness Street, Extention 6, Malabar, Port Elizabeth

a certain lady (the appellant) together with her infant. Constable *Mtebelele* sought and obtained permission from Mr. Claassen[5] to conduct a search of the house. The record provides no detail of what the search was about and why it had to be conducted. The police commenced the search in a room close to the kitchen in the presence of Mrs. Claassen, to whom the constable referred during her testimony as "*the lady of the house*". On the side of the room where Mrs. Claassen had stood, next to a bed, they noticed a DVD speaker with a slight opening at the back. Inside the speaker they found dagga.[6] When Mrs. Claassen was confronted about the dagga she claimed to bear no knowledge thereof. When the police turned to enquire about the dagga from the appellant, she, too, bore no knowledge of the dagga. Mr. Claassen adopted the same stance.

[7] According to Constable *Mtebelele*, during the search and the police's interaction with the occupants the police were made to believe that the appellant had been a visitor who had stayed in the house for longer than a weekend. She decided to arrest all the occupants because "*no one wanted to give account or responsibility* (sic) *for the dagga… so that the detective* [could] *investigate the matter*" and establish who the real owner among the three occupants was. Constable *Mtebelele* was furthermore of the view that he was entitled to effect the arrest because the Claassens and the appellant had committed an offence in his presence.

[8] The following excerpt from the relevant transcript constituting the cross examination of Constable *Mtebelele* and the answers she proffered capture the essence of the circumstances that culminated in the appellant's arrest and detention:

> "Do I understand you correctly that you arrested all three the occupants at that house? --- Yes Your Worship.
>
> So although you are not the person that spoke to, as you refer to, the father of the house that was Warrant Officer Gallant that spoke to him, you nevertheless effected the arrest of the father of the house. --- I arrested all three of them Your Worship.
>
> The father of the house that is Desmond Claassen. --- Yes

[5] Referred to in her testimony as "*the father of the house*".

[6] 115 medium plastic bompies containing dagga; 58 plastics containing dagga and 10 paper zols containing dagga.

> And you arrested Desmond Claassen also on the charge of possession of dagga. --- That is correct Your Worship.
>
> Did he possess dagga? --- No your worship.
>
> And you arrested the mother of the house, that is Brenda Claassen. --- That is correct.
>
> Did she possess dagga? --- Not on her person.
>
> But you did not know whether she was the owner of the dagga that was found in the house? --- That is correct.
>
> And with regards to the Plaintiff there was no dagga found on her person. --- That is correct.
>
> Yet, you arrested her for possession of dagga. --- Yes.
>
> Not knowing whether she was the owner of the dagga that was found in the house. --- Yes.
>
> **So if I may just summarise this, just correct me if I misunderstanding your evidence. You suspected that one of these three persons must have been the owner of that dagga? --- That is correct.**
>
> But you did not know which one of three. --- Yes Your Worship.
>
> So you then arrested all three of them, as you then say, for further investigation. --- That is correct." (the emphasis is mine.)

[9] The re-examination of the appellant, insofar as relevant hereto, sheds further light and was structured:

> "Now what makes you say that they were in possession? --- Because I could see that it was in the house, in the residence that they alone reside in.
>
> So because of this dagga was in their house which they were all occupants. --- Yes Your Worship.
>
> Now you mentioned something very interesting. You said that the Plaintiff didn't dispute that she was staying there for quite a long time. --- Yes.
>
> Does it mean that she was there when this information was provided to you? --- Yes.
>
> However, she didn't dispute it. --- That is correct."

[10] The appellant also testified. She maintained her stance namely, that she bore no knowledge of the dagga, adding that she only came to sleep at the house over the weekend in question. Mrs. Claassen had been alone for that weekend, her husband (the appellant's uncle) having only returned on Sunday morning prior to the arrest.

[11] In its judgment handed down on 11 October 2016, the court *a quo*, having had regard to section 1(1) of the Drugs and Drug Trafficking Act 140 of 1992, which defines "*possess*" in relation to a drug as including the keeping or storing of the drug,

or having it in custody or under control or supervision, concluded that the possession contemplated in the section did not mean that the drug must have been actually found in the arrestee's person.

[12] More appositely, the court *a quo* became satisfied that the respondent had discharged the onus resting on it to justify the arrest and dismissed the action with costs, after reasoning as follows:

> "[Constable Mtebelele] did not tell the police that she was not staying in the house. Furthermore, she did not tell the police that she was there for the weekend. Whilst it was her right to remain silent and had no duty to proffer an explanation to the police, which she did, save for the fact that she denied knowledge of the dagga.
>
> In the absence of explanation from all the occupants of the house, also **in the absence of the evidence as to who, from the three who was the owner or person in control of that house**. It would not have been farfetched for the police in the position of Constable Mtebelele to formulate a **reasonable suspicion** that either the Plaintiff or her two companions were in possession of what must have been aware of the existence of the dagga. Hence their actions would have, in the probabilities necessitated their arrest." (emphasis supplied)

[13] Apropos to the detention, the court *a quo* merely pronounced that the appellant's rights had been explained and she was brought to court within at least 48 hours of her arrest, which rendered the detention lawful.

The appeal

[14] The appellant delivered her notice to appeal the judgment of the court *a quo* on 12 December 2016. Whilst, in my view, it was available both at trial stage and even at appeal stage, to challenge the search of the house as having been not lawful by reason thereof that it had been a sequel to and based upon information gleaned from a faceless and unidentified informer,[7] the appellant did not opt for that route. Nor did the appellant challenge the search and thus the resulting arrest and detention on the basis that consent to conduct a search in the house had not been properly sought and obtained.[8]

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[7] See for instance *Sigwebendlana v Minister of Police* (unreported judgment of the then Transkei Supreme Court by Davies AJ delivered on 10 March 1994 under case no. 27/94).

[8] See *Magobodi v Minister of Safety and Security and Another* 2009 (1) SACR 355 (Tk) at 360g, wherein Miller J held:

> "I am also of the view that in cases where there is no probable cause for the intended search the police official should, prior to requesting consent for the search, establish whether the person to whom the request will be directed has the capacity to consent and has physical control over the vehicle to be searched. If so, then such

[15] The appeal is founded on a rather narrower and crisp, but dispositive contention that, whilst section 40(1)(a) grants a peace officer the authority to arrest without a warrant a person who commits or attempts to commit an offence in the peace officer's presence, the court *a quo* erred in finding that the jurisdictional requirements for an arrest under the section had been fulfilled without any evidence as to who the person was that committed or attempted to commit the relevant offence; in the absence of evidence as to who committed the relevant offence, the court *a quo* erred in finding that the respondent had succeeded in discharging the onus to prove lawfulness of the arrest and thus in dismissing the appellant's claim with costs.

Condonation

[16] The judgment of the court *a quo* was delivered on 11 October 2016 and the appellant's notice of appeal on 12 December 2016. In terms of rule 50(4)(a) of the Uniform Rules of Court (the Rules)[9], it was incumbent on the appellant to have applied for an appeal date by 12 January 2017. The notice of application for an appeal date was, however, lodged out of time by 36 days, on 03 March 2017. Only on 13 October 2017 did the respondent challenge the prosecution of the appeal as an irregular proceeding in terms of rule 30 of the Rules.

[17] The reasons put forward for the failure to comply with rule 50(4) are the following:

(a) the appellant's attorney's office had closed from 15 December 2016 to 09 January 2017;

(b) on three separate occasions the appellant's attorneys made attempts between 09 January and 31 January 2017 to secure a copy of the impugned judgment of the court *a quo*, to no avail;

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person should be informed of his or her right not to have the vehicle searched and also of his or her right to refuse to give consent for the search to take place."

[9] The sub - rule reads:

"(4) (a) The appellant shall, within 40 days of noting the appeal, apply to the registrar in writing and with notice to all other parties for the assignment of a date for the hearing of the appeal and shall at the same time make available to the registrar in writing his full residential and postal addresses and the address of his Attorney if he is represented".

(c) since the initiation of the appeal process on 10 November 2016, the respondent had not appointed a Grahamstown local correspondent so as to facilitate the finalisation of the appeal record and service of the same on the respondent; and

(d) the condonation application was launched on 20 October 2017 after the appellant's attorneys had become aware of the need to launch the same on 13 October 2017, the date on which the respondent's rule 30 notice was served.

[18] The respondent had also taken no step to give effect to the judgement by, for instance, having its bill of costs taxed. Nor did the Registrar of this Court refuse to accept the appellants rule 50(4) notice on the basis that the appeal had lapsed. The respondent's rule 30 notice was, despite the clear wording of rule 30(2)(b)[10], delivered way out of time.

[19] Only a notice to oppose the appellant's rule 30 application was delivered; no answering affidavit was delivered, leaving the facts to be determined on the version presented by the appellant.

[20] The explanation given by the appellant's attorney is adequate. Also, this court was of the view that the appellant's prospects of success on the merits were strong, hence the condonation application and the appeal were dealt with in one fell swoop. The case is important to the parties; it is in the interest of both parties that finality of the impugned judgment be reached, without any further delay. Little wonder that Mr Mpahlwa, counsel for the respondent, correctly in my view, focused his attention on the costs aspect, being not vigilant to resist the merits of the condonation application.

[21] It is thus timely to revert to the merits of the appeal.

Issue for determination

[22] As already pointed out, apart from quantum and costs, the main issue for consideration in these proceedings is whether the finding by the court *a quo* that, in

[10] In terms of this sub-rule an application to set aside an irregular step may be made only if *"the applicant has, within ten days of becoming aware of the step, by written notice afforded his opponent an opportunity of removing the cause of complaint within ten days."*

the circumstances of this case, the arrest of the appellant was justified is correct. Aligned to this is the question whether, on the facts of this case, the appellant can be said to have committed or attempted to have committed possession of dagga in the presence of Constable *Mtebelele*.

The Law

[23] In terms of section 40(1)(a) a peace officer may without warrant arrest any person who commits or attempts to commit any offence in her/his presence.

[24] The jurisdictional factors that must be established for a successful invocation of section 40(1)(a) are –

(a) the arrestor must be a peace officer;

(b) an offence must have been committed by the suspect or there must have been an attempt by the suspect to commit an offence; and

(c) the offence or attempt must occur in the presence of the arrestor. [11]

[25] "*[I]n the presence of*" contained in the section is an expression whose meaning has not been interpreted consistently. Ordinarily the expression means "*within the eye shot of that police official or on her/his immediate vicinity or proximity*".[12]

[26] In my view, any controversy there previously might have been in interpreting "*in the presence of*" is resoluble by having regard to the pronouncement in *Gulyas v Minister of Law and Order*,[13] where it was held:

> "In my view the intention was to authorise a warrantless arrest also in the case of an offence that has already been committed. To hold that the peace officer can only arrest without warrant someone who is still committing the offence seems to me to be absurd and not what the Legislature intended. Parliament intended that if, from the peace officer's own perception, the offence had just been committed, he should have the power to arrest without warrant. This involves the peace officer being on

[11] *National Commissioner Of Police and Another v Coetzee* 2013 (1) SACR 358 (SCA) at para [13] – [14].

[12] In *Levuna v R* 1943 NPD 323 at 325 where Hathorn JP (Selke concurring) was of the view that a peace officer's power to arrest without warrant should not be confined to cases where she/he can actually see the offender committing the offence, whilst in *Fancult v Kalil* 1933 TPP 248 at 251 it was held (in relation to section 26 of Act 31 of 1917- predecessor of section 40) that the power to arrest was limited to offences which could be seen in their entirety (compare also *Minister of Justice and Others v Tsose* 1950 (3) SA 88 (t) at 92 – 3.

[13] 1986 (3) SA 934 (c) 953 H-I

> the scene of the offence either at the time of its commission or at the tail end of it, so that he personally sees (or otherwise perceives) that an offence has just been committed."

[27] In light of the above, there should be little, if any, problem in the case of continuous offences such as possession of dagga or any other item whose possession is proscribed by the law.

[28] Most importantly, the assessment of the legality of an arrest in terms of section 40(1)(a) requires a determination whether the facts observed by the arresting officer as a matter of law *prima facie* establish the commission of the offence in question. The question to be posed and answered is – did the arresting officer have knowledge at the time of the arrest of such facts which would in the absence of any further facts or evidence, constitute proof of the commission by the arrestee of the offence in question? The arresting officer's honest and reasonable subjective conclusion from the facts observed by her/him is not of any significance to the determination of the lawfulness of her/his conduct.[14]

Application of the law to the facts

[29] The Court *a quo* moved from the correct premise that for a proper invocation of section 40(1)(a) the dagga did not have to be actually found in the person of the appellant. Can it be said, however, that the appellant kept or stored or had dagga under her control or supervision?

[30] If one has regard to the conclusion reached by the Court *a quo*, alluded to in paragraph [12] above, reference to "*reasonable suspicion*" therein seems to suggest that the Court *a quo* relied on section 40(1)(b) of the CPA[15] which was not the respondent's pleaded case.

[14] *Scheepers v Minister of Safety & Security* 2015(1) SACR 284 (ECG) at [20] – [21].

[15] The section permits an arrest without a warrant of any person whom the arresting officer "*reasonably suspects of having committed an offence referred to in Schedule 1 …"*

[31] In any event, it remains to be seen whether the conclusion reached by the court *a quo* is, regard being had to the objective test,[16] justified.

[32] Nothing at the time of the impugned arrest pointed to the appellant as having been in control or custody of the dagga. Interestingly, the permission to search the house (presumably in terms of section 22 of the CPA) was sought and obtained from Mr Claassen, which, on the respondent's own showing, was either the owner of the house or the person who "*may consent to the search*" of the house. Indeed, it was therefore more likely that Mr Claassen was in control of the house and its contents (including the dagga).

[33] The appellant was a mere occupant of the house at the relevant time. There was no evidence that she slept in the room where dagga was found or that she must have been aware of the existence or presence of the dagga in the house. I agree with the submission made by Mr *Wessels*, counsel for the appellant, that there were no objective facts constituting proof of the commission of the offence by the appellant. The Court *a quo's* finding that the *Majaca* case[17] is distinguishable because the occupants in *hoc casu* were in a private dwelling and not in a taxi (public transport) eschews the requirements that it must be the arrestee who committed or attempted to have committed the offence, regardless of where the offence had been committed.

[34] I therefore conclude that, much as there were facts pointing to the commission of possession of dagga, there were no facts that the appellant had committed the offence. The Court *a quo* erred in not finding that the respondent failed to discharge the onus resting on it that the arrest and ensuing detention of the appellant were unlawful.

[35] Let me digress a bit and say even if the arrest of the appellant had been proven to have been lawful, the detention would, on the facts of this case, not have passed muster as there is no evidence of the police who detained the appellant as having

[16] The approach to the requirements is section 40(1)(a) has always been and still is that it is significant that the facts observed by the arresting officer *prima facie* constitute the commission of the offence in question by the arrestee (as objective text) (see Du Toit *et al,* Commentary on the Criminal Procedure Act Vol 1 p5 – 14)

[17] See *Majaca v Minister of Safety and Security* (1721/2011) [2012] ZAECGHC 94 (21 November 2012)

applied their mind to the question whether the detention of the appellant, was necessary at all.[18]

Quantum

[36] The appellant, born on 02 March 1985 and mothering three children, was arrested just after midday on Sunday, 05 January 2014. She was, together with her two year old infant, incarcerated in a police cell with other unknown females, until the morning of Monday, 06 January 2014 when she was taken to but told to leave without appearing in court. This gives us approximately 20 hours[19] of detention. She said the cell was dirty and bore an unbearable stench; she was experiencing incarceration for the first time. She never slept the whole night.

[37] I turn to deal with the guidelines that are pivotal to a determination of *quantum*. These are dealt with in *Minister of Safety and Security v Tyulu*[20] wherein it was held:

> "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 *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 the quantum of damages on such facts (*Minister of Safety and Security v Seymour* 2006 (6) SA 320 (SCA) at 325 para17; *Rudolph and Others v Minister of Safety and Security and Another* 2009 (5) SA 94 (SCA) ([2009] ZASCA 39) paras 26 – 29). "

[38] The Supreme Court of Appeal has also recently remarked that the amount of the award is not susceptible of precise calculation; it is arrived at in the exercise of a broad discretion.[21]

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[18] *Minister of Justice v Hofmeyr* 1993(3) SA 131 (A*); Mvu v Minister of Safety and Security & Another* 2009 (2) SACR 291(GSJ) at para [14].

[19] Computed on the basis that the appellant was arrested at about 13:30 on Sunday and released on the following morning at about the time proceedings in the Magistrate's Court commence (09:00) (there was no evidence to the contrary).

[20] 2009 (5) SA 85 (SCA) at 93d-f

[39] In light of the principles and guidelines alluded to above, and bearing in mind that the peculiar facts of each case ultimately influences the amount of damages to be awarded, I turn to consider some awards made in this Division.

[40] In *Mfini v Minister of Safety and Security*[22] R50 000 was awarded in respect of unlawful arrest and detention that spanned approximately 24 hours in a dirty cell. The plaintiff had to contend with a dirty blanket and could not sleep, having been scared of the suffering he thought he would occasion at the hands of the police on the following day when interrogations would resume.

[41] *Prince v Minister of Safety and Security*[23] is yet another case worth considering. The plaintiff in that case had been 27 years old, single and unemployed. He was detained overnight with two other cell mates for 14 hours 25 minutes. The bedding he was provided with was a 3 centimetre thick sponge and a dirty, flea-infected blanket. Inside the cell there was a toilet that did not flush properly. The award made, which translates to R25 056.00 in 2017, was R20 000.

[42] R40 000[24] was awarded in *Domingo v Minister of Safety and Security*.[25] The Court[26] merely stated that the plaintiff "*described his incarceration as a an ordeal*" adding that "*he was deeply traumatised and disturbed at being whisked away from his home shortly after his arrival from church*" and that "[t]*he distress he suffered on his arrest was exacerbated by his subsequent detention until his release the following*

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[21] *Minister of Safety and Security v Augustine* C811/2016) [2017] ZASCA 59 (24 May 2017); also see *Phillip v Minister of Police and Another*; *Aubrey v Minister of Police and Another* (unreported decision of the then Limpompo High Court under case numbers 457 and 676/2012 by Lamminga AJ), where it was observed, in respect of whether the court should calculate the award on a daily tariff or a single all-inclusive award, that the nature of the compensation and the inherent variables applicable in each case would be minimised by trying to place an average daily tariff on such a determination. The court went on to state that "*[t]he fact that each case must be considered on its own merits militates against a so-called average flat rate per day*" and that "*a single all-inclusive award would appropriately address and express all the factors to be considered*."

[22] (3137/2010) [2015] ZAECPEHC 3 (29 January 2015), per Beshe J

[23] (CA117/2010) [2013] ZAECGHC 48(23 May 2013), per Ebrahim *et* Beshe JJ

[24] Which translates to R50 113.15 in 2017

[25] (CA429/2012) [2013] ZAECGHC 54(5 July 2013)

[26] Per Chetty *et* Malusi JJ

day." The judgment is silent regarding the conditions and circumstances that beset the detention.

[43] A more liberal award of R130 000.00 was made in *Burford v Minister of Police*[27] in respect of an arrest and subsequent detention that spanned approximately three days. The appellant in that matter suffered the humiliation of detention in a filthy police cell. Whilst in detention his wife died on the Saturday and, despite there being no justification for his continued detention from 13h00 on that same day, his pleas to be released were not given heed to. The court found this to have been an exceptionally traumatic experience.

[44] A more recent judgment is *Mtola v Minister of Police*[28] wherein an award for unlawful arrest and ensuing detention which spanned 5 days was R125 000.00. The court took into account the fact that the appellant had been deprived of his liberty and detained under unhygienic conditions, whilst separated from family and friends.

[45] In most of the cases there is little information in relation to the circumstances surrounding the arrest, the state of health of the arrestee, the effect of the arrest and detention on them, their social standing, and the humiliation suffered, rendering it quite a daunting task to draw comparisons with the cases referred to and the instant matter. Finally, I also have to bear in mind that the length of time for which the arrestee was incarcerated subsequent to the arrest is not the only factor to be considered in determining damages.[29]

[46] I have not lost sight of the fact that the exceptional circumstances that influenced the award in the *Burford* case[30] do not exist in the instant matter. To allow for inflation and taking into account that the circumstances that prevail in this matter

[27] (CA 128/2015 [2015] ZAECGHC 126 (10 November 2015).

[28] Case no. CA23/2016 by Smith J (concurred in by Mbenenge ADJP *et* Brooks J) delivered on 30 June 2017.

[29] *Tyulu* (*supra*) at 44i, at para [25].

[30] *Supra*.

are slightly more aggravating,[31] I am of the view that an award that would be fair and reasonable in the circumstances of this case is R35 000.00.

Costs

[47] The costs of the appeal should follow the result. The appellant sought and was granted an indulgence in having the condonation application heard and decided in his favour. No answering papers were filed, with the respondent having been content to merely deliver a notice to oppose. The condonation application and the appeal were heard simultaneously. In my view each party should bear its costs of the condonation application, in so far as additional costs were incurred. No other costs issues are properly raised in the record and the papers before this Court. There is, in my view, justification for interest to run from the date of service of the summons.

Order

[48] The following order is made:

(a) *The appeal is upheld with costs.*

(b) *The order of the court a quo is set aside and the following order is substituted therefor:*

(i) *The defendant is ordered to pay the plaintiff damages in the sum of R35 000.00 consequent, upon the plaintiff's arrest which took place on 05 January 2014 and the resulting detention which endured till 06 January 2014.*

(ii) *The defendant shall pay interest on the amount referred to in paragraph (i) above, calculated at the rate of 9% per annum, from the date of service of summons (ie 16 September 2015) to date of final payment.*

(iii) *The defendant is ordered to pay the plaintiff's costs of suit.*

[31] The appellant was detained with her two year infant for the whole night

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S M MBENENGE

JUDGE PRESIDENT OF THE HIGH COURT

I agree:

_____

P T MAGEZA

ACTING JUDGE OF THE HIGH COURT

Counsel for the appellant	:	*J W Wessels*
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Counsel for the respondent	:	*M Mpahlwa*
Instructed by	:	The State Attorney PORT ELIZABETH C/O Yokwana Attorneys GRAHAMSTOWN
Date heard		17 November 2017
Judgment delivered		23 January 2018