

**IN THE HIGH COURT OF SOUTH AFRICA  
(EASTERN CAPE DIVISION, GRAHAMSTOWN)**

**CASE NO: CA285/2018**  
**Date heard: 23 August 2019**  
**Date delivered: 27 August 2019**

In the matter between

**RUWAYNE SAULS**

**Appellant**

And

**THE MINISTER OF POLICE**

**Respondent**

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**JUDGMENT**

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**PICKERING J:**

[1] The appellant was arrested without a warrant and thereafter detained by a member of the South African Police Services at Somerset East on 11 January 2016 on a charge of unlawful possession of property. He was thereafter detained at Somerset East Police cells until 12 January 2016 when he was released after the charges against him were withdrawn in Court.

[2] Alleging that his aforesaid arrest and detention were unlawful appellant claimed damages from the respondent in the amount of R100 000,00. The defendant admitted that plaintiff was arrested without a warrant but pleaded further that:

*"The plaintiff was arrested on a charge of possession of stolen goods; and the arrest was justified and lawful in terms of section 40(1)(b) and/or section 40(1)(e) of Act 51 of 1977."*

[3] The matter proceeded to trial in the magistrate's court, Somerset East. At the conclusion thereof appellant's action was dismissed with costs. He now appeals against the judgment of the magistrate.

[4] It was common cause that appellant was arrested by Sergeant Lawack in purported reliance on the provisions of s 40(1)(b) of the Act which empowers a

policeman to arrest without a warrant if he forms a reasonable suspicion that the arrestee has committed a Schedule 1 offence.

[5] Lawack testified that on 11 January he and a colleague received a report of fighting that was occurring in a certain street in Somerset East. They proceeded to the scene. The street was full of people. Plaintiff and his brother were present. They were being held by members of the community. They had been seriously assaulted and were covered in blood. Lawack received information that appellant and his brother had pointed out certain places to members of the community where they had stolen certain goods. These goods were a kettle and an urn. As Lawack put it *"sekere items het hulle loop en connect of uitgewys. Dit was by hulle gekry. Toe ons by hulle kom was dit by hulle gestaan voor hulle. In hulle besit."* He was asked *"wie sê vir u dat die eiser en sy broer in besit was van die ketel en die urn"* to which he replied *"dit is nie dat iemand vir my sê nie. Dit is wat dat hulle dit in hulle besit het nie. Hulle was deur die gemeenskap alreeds gevat na die plekke toe om dit uit te wys. Toe ons by hulle kom toe het hulle die goed by hulle."* He conceded that he knew nothing of the circumstances of the alleged pointing out.

[6] Lawack stated, however, that in the light of the prevailing circumstances at the scene *"my verstaanbaarheid is dat ek as 'n polisie beampte as ek 'n strong suspicion het asook as ek 'n person in besit van enige onwettige goedere kry dan kan ek die person aanhou op die besit van onwettige goedere, en ook as ek 'n sterk suspicion het dat as iemand involved is in 'n misdryf dan kan ek ook die persoon arresteer in daardie geval."* He reiterated that he had *"strong suspicion"* that plaintiff had committed the offence of *"besit van gesteelde goedere"*, these being the kettle and the urn. Under cross-examination the following was put to him:

*"So u strong suspicion u sterk vermoede was omdat die gemeenskap het die persone aangerand, die persone is daar, die gemeenskap sê die persone het gaan uitwysing doe of die gemeenskap het hulle gevat om uitwysings te doen en u sien omtrent twee, drie items by die beskuldigde, by die eiser en sy broer Franklin. Dit is die strong suspicion? Yes."*

[7] His evidence that the kettle and the urn were standing in front of plaintiff and his brother was in direct contradiction of his later evidence to the effect that they were in fact holding the kettle and the urn in their hands, although he could not remember who was holding which item. He reiterated that the community had taken the appellant and his brother to point out the items which had been stolen from a hostel. He conceded that the evidence of the pointing out in circumstances where appellant and his brother had been assaulted in order to point out such items would be inadmissible in court but stated that he had in any event formed a "*strong suspicion*" that they were in possession of the items. He stated further that neither appellant nor his brother had admitted or denied anything.

[8] He stated that at that stage because of the outrage of the community he considered it necessary to remove appellant and his brother from the scene and to take them to hospital, which he did.

[9] In his evidence appellant denied having stolen the goods or having had them in his possession.

[10] As appears from what is set out above Lawack was far from being a satisfactory witness. His evidence was replete with contradictory statements. It is clear also from his assertion that he had a strong suspicion that he had no proper understanding of the provisions of s 40(1)(b) of the Act relating to reasonable suspicion. It matters not how strong his suspicion may have been. The issue is whether on the facts before him he had formed a reasonable suspicion that appellant had committed the offences. If he did not form a reasonable suspicion he had no power to arrest appellant.

[11] It is trite that the test to be applied as to whether a suspicion is reasonable is an objective one. In the well-known case of Mabona Minister of Law and Order and Others 1998 (2) SA 654 (SE) 658 E – H Jones J stated as follows:

*"Would a reasonable man in the second defendant's position and possessed of the same information have considered that there were good and sufficient grounds for suspecting that the plaintiffs were guilty of conspiracy to commit robbery or possession of stolen property knowing it to have been stolen? It*

*seems to me that in evaluating his information a reasonable man would bear in mind that the section authorizes drastic police action. It authorizes an arrest on the strength of a suspicion and without the need to swear out a warrant, ie something which otherwise would be an invasion of private rights and personal liberty. The reasonable man will therefore analyse and assess the quality of the information at his disposal critically, and he will not accept it lightly or without checking it where it can be checked. It is only after an examination of this kind that he will allow himself to entertain a suspicion which will justify an arrest. This is not to say that the information at his disposal must be of sufficiently high quality and cogency to engender in him a conviction that the suspect is in fact guilty. The section requires suspicion but not certainty. However, the suspicion must be based upon solid grounds. Otherwise, it will be flighty or arbitrary, and not a reasonable suspicion."*

[12] Lawack had not witnessed the alleged housebreaking in the course of which the items allegedly found in appellant's possession were stolen. He had before him two men who had been so badly beaten by members of the community that he regarded it as necessary to remove them from the area for their own safety and in order for them to be hospitalized. He knew nothing of the circumstances of the alleged pointing out by appellant and his brother to members of the community save that such pointing out had obviously been made in consequence of a severe assault upon them. He appeared to be of the view that because the items were either in appellant's hands or on the ground in front of him he had found appellant in possession thereof. A moment's reflection would have made him realize that the only reason the goods were where he saw them was because of the assault which had been perpetrated upon appellant and his brother. In these circumstances the fact that the allegedly stolen items were either being held by appellant and his brother or were on the ground in front of them was irrelevant and could not in any way create a reasonable suspicion that they were in possession of the items at the time that Lawack saw them. Nor, in circumstances where appellant and his brother had been beaten could he have formed any reasonable suspicion to the effect that the items had been in the possession of the appellant and his brother prior to his arrival on the scene. He failed entirely to analyse and assess the information at his disposal critically. In all the circumstances

Lawack's suspicion that appellant had committed the alleged offence was not reasonable.

[13] As was said by Jones J, myself concurring, in *Minister of Safety and Security v Glisson* 2007 (1) SACR 131 (E) at para 6:

*"I am aware of the need in cases such as this to find a balance between the protection of individual liberty on the one hand and avoidance of unnecessary restriction on the police in the execution of their duties on the other. Where the two are evenly balanced, the scales on the modern constitutional state will fall on the side of individual liberty. The police should not lightly make arrest without warrant. At times - and I think this is such a case - it may be difficult for a policeman to know where to draw the line. If the does not witness criminal conduct himself, he should always be alive to the need of a warrant, which he knows, would neither be sought nor granted except where there is a sworn statement of the commission of the criminal conduct."*

[14] I am accordingly of the view that the defendant has not discharged the onus that rest on it to justify appellant's arrest and subsequent detention. In the light hereof it is unnecessary for me to consider whether Lawack exercised his discretionary power irregularly or not: as a jurisdictional fact was absent, he never had the power to arrest the appellant at all.

[15] I turn then to consider the issue of quantum. The factors that are to be taken into account in determination of quantum in cases involving unlawful arrest and detention are well-known. See for instance Olgar v Minister of Safety and Security unreported case no 608/2007, ECD at paragraph 16 where it was stressed that a just award for damages for wrongful arrest and detention should express the importance of the Constitutional right to individual freedom and should properly take into account the facts of the case, the personal circumstances of the victim and the nature, extent and degree of the affront to his dignity and his sense of personal worth.

[16] It is trite that broadly similar cases serve as a rough guide but it must be borne in mind that the facts of each case vary considerably and so it is almost impossible to

find cases on all fours with the case under consideration. Mr. Trichardt, who appeared for appellant, has made reference to a number of cases involving unlawful arrest and detention and I have taken the awards made in these cases into account.

[17] The appellant is 33 years old, unmarried with a clean record and employed as a labourer on an apple farm. He was detained for approximately 19 hours in a dirty cell and it is clear from his evidence that he suffered a considerable degree of humiliation in consequence thereof. In these circumstances Mr. Trichardt submitted that an award of between R35 000,00 to R50 000,00 would be appropriate.

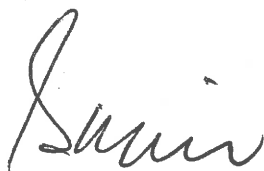
[18] Having regard to the circumstances of this case as well as the fact that Lawack did not act with malice or in bad faith I am of the view that an award of R50 000,00 is reasonable. Accordingly the following order is made:

1. The appeal is upheld with costs.
2. The order of the Court a quo set is set aside and the following order substituted therefor:
  - a. The defendant is ordered to pay the plaintiff damages in the amount of R50 000,00 (fifty thousand);
  - b. Interest is payable on the aforesaid amount calculated at the legal rate from date of judgment to date of final payment.
  - c. Defendant is ordered to pay the plaintiff's costs of suit.



**J.D. PICKERING**  
**JUDGE OF THE HIGH COURT**

I agree,



**S. RUGANANAN**  
**ACTING JUDGE OF THE HIGH COURT**

Appearing on behalf of the Appellant: Mr. Trichardt  
Instructed by: NN Dullabh & Co, Mr. Dullabh

Appearing on behalf of the Respondent: Adv. Sandi  
Instructed by: Mabece Tilana Inc., Mr. Basson