IN THE HIGH COURT OF SOUTH AFRICA

(Witwatersrand Local Division)

Case no: 05/9489

Delivered:
28 February 2008

In the matter between:

MICHIEL STEPHANUS HEYNS OLIVIER Plaintiff

v

THE MINISTER OF SAFETY AND SECURITY 1ST Defendant

SENIOR SUPERINTENDENT MOKOENA 2nd Defendant

JUDGMENT

Horn J:

The first defendant is the Minister of Safety and Security and the second defendant is Senior Superintendent Mokoena. The plaintiff, a superintendent in the South African Police Services stationed at Heidelberg, sued the defendants for wrongful arrest and detention. The claim set out in paragraph 8.2. of the plaintiff's particulars of claim relating to emotional shock and stress has been abandoned.

It is alleged by the plaintiff in the particulars of claim that on 7 May 2004 the second defendant acting within the course and scope of his employment with the first defendant arrested the plaintiff without a warrant at the Heidelberg police station. The plaintiff alleges that he was detained for approximately six and a half hours and thereafter had to appear in court on a charge of theft, alternatively fraud. The charges were withdrawn against him on or about 25 June 2004. There was a further allegation that the second defendant acting as aforesaid set the law in motion in having the plaintiff prosecuted. However, the trial proceeded only in respect of the alleged unlawful arrest and detention. The plaintiff alleged that he suffered damages for the embarrassment, inconvenience, deprivation of liberty, anguish and *contumelia* caused by the unlawful conduct of the defendant in the amount of R150 000.

The defendants in their plea admitted that the plaintiff was arrested without a warrant, but pleaded that the plaintiff was arrested in terms of s 40(1)(b) and detained in terms of s 50 of the Criminal Procedure Act 51 of 1977. The defendants bore the onus to prove the lawfulness of the arrest and consequently commenced with the leading of evidence (**Minister of Law and Order v Hurley 1986 (3) SA 568 (A)** at p. 589).

Superintendent Govindasamy stated that he was the station commissioner at

Heidelberg. The plaintiff, who was known to him, was also stationed at Heidelberg. The plaintiff was attached to the crime prevention unit. One of the responsibilities of the plaintiff was to oversee the disposal of exhibits recorded in the SAP 13 register. On Friday 7 May 2004 Superintendent Govindasamy received a call from someone who stated that he was concerned that certain exhibits which had been recorded to have been destroyed, had not been destroyed and had been seen lying in the plaintiff's office. Apparently the items still had their exhibit identification numbers attached to them. Superintendent Govindasamy reported the matter to Director Ndlovu. The investigation was taken over by Senior Superintendent Mokoena, the second defendant. Superintendent Govindasamy stated that the items mentioned to have been appropriated in this manner were cigarettes, alcohol, clothing and shoes.

Mrs O'Neill, an exhibits clerk, stationed at the Heidelberg police station, stated that she worked in close liaison with the plaintiff. It was her duty to manage the exhibits room and the contents thereof. From time to time when instructions were given that certain of the exhibits should be disposed of, she would do the necessary in liaison with the plaintiff. She would make the required occurrence book and SAP 13 register entries to that effect. When it had been decided to dispose of the exhibits, they were either destroyed or they were sold and the proceeds would go to the State. She stated that when exhibits were destroyed, they were either incinerated or thrown down a mine

shaft. She remembered 3 May 2004 when she and the plaintiff proceeded to destroy exhibits, including five cartons of cigarettes. After they had destroyed the items, the plaintiff advised her that he wanted to "have another look" at the cigarettes and he took the cigarettes back to the office with him. She does not know what the plaintiff did with the cigarettes. She was aware that certain exhibits consisting of alcohol were destroyed on 11 May 2004, but she was not sure whether the plaintiff was involved with these exhibits. She further testified that she was the only person who was in possession of the SAP 13 register. She usually kept her office locked after hours and it was impossible for anyone to get hold of the register after normal work hours. At no stage did the plaintiff insist on being given access to the SAP 13 register or the exhibits room after hours.

The second defendant stated that he was stationed in Swaziland. During May 2004 he was in charge of the organised crime unit on the Northrand, with his office in Kemptonpark. He stated that on 7 May 2004 he received a telephone call from Director Ndlovu, who informed him of a report received from the Heidelberg station commissioner. It was alleged that the plaintiff had retained in his possession cigarettes and liquor which supposedly had to be disposed of. He proceeded to the Heidelberg police station with Inspector Steenkamp and another policeman.

On arrival he spoke to the station commissioner, Superintendent

Govindasamy, who had lodged the complaint. He told him to submit a sworn affidavit and while Superintendent Govindasamy was busy preparing the affidavit, he went through to the charge office and asked to see the plaintiff. The plaintiff was not present and while he was waiting for the plaintiff, he proceeded to check certain entries in the occurrence book as well as the SAP 13 register. He noticed that an entry was made by Mrs O'Neill, the exhibits clerk, in the occurrence book that certain exhibits had been destroyed and disposed of and when he checked these entries, he noticed that some of the exhibits concerned liquor and cigarettes. He noticed that in one entry where the plaintiff had signed, it was stated that the exhibits concerned had been destroyed in the plaintiff's presence. He stated that while he was busy investigating the matter, the plaintiff arrived. The plaintiff asked the second defendant to follow him to his office. In the plaintiff's office, the second defendant explained to the plaintiff that he had received complaints of exhibits which were supposed to have been disposed of and which had apparently not been disposed of, but had been kept by the plaintiff. He mentioned specifically liquor and cigarettes. The plaintiff informed him that he knew nothing about liquor. The plaintiff pointed to an envelope containing five cartons of cigarettes lying on his desk and said that those were the cigarettes which had not been destroyed. When the second defendant asked the plaintiff why he did not dispose of the cigarettes, the plaintiff stated that it was his intention to check with the area commissioner as to the manner the cigarettes were to be disposed of. The second defendant stated that he

suspected that the plaintiff had committed theft or fraud, or at least attempted theft or fraud. He informed the plaintiff that he was under arrest. He requested the plaintiff's permission to search his office and having received such permission and having searched the plaintiff's office, he could find no liquor. He also obtained the plaintiff's permission to search his house where a search was conducted for the liquor and other exhibits, but none were found. He stated that the plaintiff was released on R500 bail at approximately 8pm that night.

Inspector Steenkamp stated that he accompanied the second defendant to the Heidelberg police station on 7 May 2004. There had been complaints that the plaintiff had stolen exhibits. He had apparently certified that the exhibits had been destroyed, but had kept the exhibits in his office. Specific mention was made of cigarettes and liquor. Having conducted an inspection of the necessary registers, he interviewed Mrs O'Neill, the exhibits clerk who declared her willingness to make a statement. He made copies of the relevant occurrence book entries as well as the relevant SAP 13 entries. He later heard from Inspector Pieterse that cigarettes were found in the office of the plaintiff. The second defendant requested the plaintiff to accompany them to his house where they conducted a search of the plaintiff's house. At that stage the second defendant had already placed the plaintiff under arrest. Nothing was found in the plaintiff's house. The plaintiff asked to be released on bail and that evening the prosecutor came to the police station and the

plaintiff was released on bail. Inspector Steenkamp stated that he returned to Heidelberg police station the following Monday and made further enquiries. He proceeded to the mine shaft where Mrs O'Neill reported to him where the exhibits had been thrown into, but could find no such exhibits. He stated that Mrs O'Neill at no stage mentioned any liquor to him which was alleged to have been kept by the plaintiff.

The plaintiff closed his case without leading any evidence. Mr Joubert, who appeared on behalf of the defendant, criticised the plaintiff for not giving evidence. He submitted that an adverse inference should be drawn against the plaintiff for his failure to testify. In **Titus v Shield Insurance Co Ltd 1980 (3) SA 119 (A)** Miller JA at p. 133E said:

> *It is clearly not an invariable rule that an adverse inference be drawn; in the final result the decision must depend in large measure upon 'the particular circumstances of the litigation' in which the question arises. And one of the circumstances that must be taken into account and given due weight, is the strength or weakness of the case which faces the party who refrains from calling the witness."*

In my view the above comments of Miller JA are paramount where the defendant, such as is the case here, bears the onus. It is quite permissible for a plaintiff in a case of unlawful arrest when the onus rests on the defendant,

when the facts are largely common cause and the unlawfulness of the defendant's conduct can be ascertained from those facts and the evidence presented by the defendant, to refrain from giving evidence. Even more so where there is nothing for the plaintiff to rebut such as was the case here. In my view nothing sinister can be read into the plaintiff's decision not to give evidence in the circumstances of this case.

Personal liberty weighs heavily with the courts. A balance has to be found between the right to individual liberty on the one hand and the avoidance of unnecessary restriction of the authority of the police in the exercise of their duties on the other hand. There is no doubt that when these factors are evenly balanced, the scales in a democratic constitutional society would fall on the side of individual liberty (**Minister of Safety and Security v Glisson 2007 1 SACR 131 (E)** at p. 134; see also **Tandani v Minister of Law and Order 1991 (1) SA 702 (E)** at p. 707B).

Section 40 (1)(b) of Act 51 of 1977 (the Act) reads as follows:

> *"A peace officer may without a warrant arrest any person*
>
> *a) ...*
>
> *b) Whom he reasonably suspects of having committed an offence referred to in Schedule 1, other than the offence of escaping from custody."*

The offences listed in Schedule 1 include theft and fraud. What the section

requires is that the police officer must have had a reasonable suspicion and in that regard the test is objective. On an objective approach the police officer must show that he had reasonable grounds for his suspicion (**Duncan v Minister of Law and Order 1986 (2) SA 805 (A)** at p. 818). In **Mabona and another v Minister of Law and Order and others 1988 (2) SA 654 (SE)** Jones J at p. 658E said the following:

> *"Would a reasonable man in the second defendant's position and possessed of the same information have considered that there were 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 this information a reasonable man would bear in mind that the section authorises drastic police action. It authorises an arrest on the strength of a suspicion and without the need to swear out a warrant, i.e. 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 ascertain 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."

To this might be added that the facts on which the police officer relies for his suspicion must at least be realistic and well founded having regard to the circumstances of the particular case.

The second defendant stated that he visited the Heidelberg police station on the day in question where he, acting on certain information, inspected the SAP 13 register and occurrence book. He noticed an instruction in the SAP 13 emanating from a Captain Wessels that five cartons of cigarettes had to be destroyed. In the occurrence book he noticed an entry by Mrs O'Neill that a number of exhibits, including cigarettes, had been destroyed. He noticed an entry in the SAP 13 register where the plaintiff had certified that the cigarettes had been destroyed. On the invitation of the plaintiff the second defendant proceeded to the plaintiff's office where the plaintiff pointed out an envelope still bearing its SAP 13 identification marks containing five cartons of cigarettes. Significantly the envelope containing the cigarettes was in full view and there clearly had been no attempt to hide it. Moreover, it was put to the second defendant during cross-examination that the plaintiff did not smoke. This was not denied by the second defendant. The plaintiff explained that he had retained the cigarettes as he wanted to consult with the area director as

to the manner the cigarettes should be destroyed. The second defendant evidently based his suspicion on the information supplied by Mrs O'Neill that the cigarettes had been destroyed and his subsequent discovery of the cigarettes in the plaintiff's office. He did not base his suspicion on what the plaintiff had told him he intended doing with the cigarettes. On his own version the second defendant did not consider the reasonableness of the plaintiff's explanation regarding the cigarettes neither did he follow the explanation up to evaluate its authenticity or veracity. He could not explain why the plaintiff's explanation was unacceptable or unreasonable.

Indeed I have several difficulties with the second defendant's evidence. Firstly, in cross-examination when the second defendant was questioned about the entries in the SAP 13, he conceded that he misunderstood some of the instructions in the SAP 13 as to how the cigarettes were to be dealt with. He further stated that in interpreting some of the entries he made mistakes. Secondly, when he was asked why he arrested the second defendant, he was vague and gave conflicting versions. He stated that he arrested the plaintiff because the plaintiff had committed what the second defendant perceived to be a first schedule offence. However, when prompted, the second defendant had difficulty explaining what he understood to constitute first schedule offences. He also said that perhaps the plaintiff committed attempted theft or fraud. He insinuated that the plaintiff committed theft or fraud because some of the entries in the SAP 13 seemed to be spurious.

I am perturbed that we have here a highly ranked police officer who did not seem to grasp the purpose and content of Schedule 1 which is referred to in s. 40 (1)(b) of the Act. He also had difficulty explaining what he understood to comprise theft or fraud. While one does not expect, even from a highly ranked police officer, a legal dissertation of the definition of theft or fraud, surely one can expect at least a semblance of knowledge of the elements of those crimes in order to be in a position to form some basis for his belief that the plaintiff had committed such crimes. So for example with crimes where *mens rea* is a requirement, a police officer should at least endeavour to ascertain the mindset of an accused when considering the crime which the accused is suspected of committing. (**Minister of Law and Order and another v Pavlicevic 1989 (3) SA 679 (A)** at pp. 692J-693A).

The plaintiff gave an exculpatory explanation which should have alerted the second defendant to the real possibility that the plaintiff at the time lacked the requisite *mens rea* for theft or fraud. Indeed, the second defendant seemed to know very little of the requirements of s 40 (1)(b) where a peace officer effects an arrest without a warrant. He had difficulty explaining on what grounds he based his suspicion justifying the arrest of the plaintiff without a warrant. He was contradictory and vague as to what crime the plaintiff had allegedly committed. I gained the distinct impression when the second defendant gave his evidence that once he was shown the cigarettes in the

plaintiff's office he was satisfied that he plaintiff had stolen the cigarettes. According to the second defendant he placed the plaintiff under arrest and then searched his office and home for other exhibits but none were found.

Having regard to the facts of this matter I am of the view that the second defendant had failed to show that he could have entertained reasonable grounds for his suspicion justifying the arrest of the plaintiff. Besides the question whether a man can commit theft in respect of items that had been discarded by the owner or possessor thereof, it is doubtful whether the plaintiff in fact had committed any crime. Surely this is a matter which required proper investigation and consideration before taking the serious step of arresting the plaintiff. Another important consideration is that the plaintiff was arrested before any searches were conducted of his office and house. That, to my mind, was placing the cart before the horse. Surely in a case such as this it would have been advisable to conduct the search before taking the step of arresting the plaintiff. Evidently the plaintiff would have had no difficulty consenting to such searches. Should the exhibits have been found in the plaintiff's office or home prior to his arrest it would have been a crucial factor giving rise to the second defendant's suspicion that the plaintiff had appropriated the property. As it is, after the second defendant placed the plaintiff under arrest, he conducted a search of the plaintiff's office and home looking for liquor and other exhibits. He found none. Surely he should by then have realised that he was on thin ice. It would appear on these facts that

the second defendant acted over hastily and imprudently. When the second defendant was asked why he did not consider releasing the plaintiff on a warning or summons, he replied that the plaintiff could have interfered with the investigation or intimidated witnesses. There was no evidence to substantiate such a proposition.

This brings me to another important factor. One of the purposes of an arrest is to ensure an accused's appearance in court. Obviously, as Jones J in **Mabona** *supra* at p 660 said:

> *"In evaluating the lawfulness of the police action I must bear in mind that at times it is necessary to strike while the iron is hot. If swift, effective action is not taken, but instead ponderous enquiries, suspects may be forewarned and evidence may disappear."*

There may, thus, be circumstances where an immediate arrest would be necessary. Let us consider the facts in this matter. The plaintiff is a highly ranked police officer with many years service. He worked at the Heidelberg police station and lived in Heidelberg with his wife and children. The case against him was, to put it mildly, tenuous. There was no reason why the plaintiff could not have been warned or summoned to appear in court. Can one say that arresting the plaintiff in these circumstances was the only way to secure his appearance in court? In other words, was the arrest of the plaintiff

really necessary. In **Louw and another v Minister of Safety and Security and others 2006 (2) SACR 178 (T)** pp. 186-188, Bertelsmann J dealt with this aspect of the matter as follows, and I quote liberally:

> *"An arrest is a drastic interference with the rights of the individual to freedom of movement and to dignity. In the recent past, several statements by our Courts and academic commentators have underlined that an arrest should only be the last resort as a means of producing an accused person or a suspect in court* – Minister of Correctional Services v Tobani *2003 (5) SA 126 (E) ([2001] 1 All SA 370) at 371f (All SA):*
>
> > 'So fundamental is the right to personal liberty that the lawfulness or otherwise of a person's detention must be objectively justifiable, regardless… even of whether or not he was aware of the wrongful nature of the detention.'
>
> *If an accused or a suspect does not represent a danger to society, will in all probability stand his trial, will not abscond, will not harm himself and is not in danger of being harmed by others, may be able and be keen to disprove the allegations against him or her, an arrest will ordinarily not be the appropriate way of ensuring the accused's presence: see* S v Van Heerden en Ander Sake *2002 (1) SACR 409 (T). In* Ralekwa v Minister of Safety and Security *2004 (1) SACR 131 (T) (2004 (2) SA 342), my Sister, De Vos J, dealing with a similar*

issue, underlined the following:

> 'It is trite law that an arrest is *prima facie* wrongful and unlawful. It is for the defendant to prove that the arrest was lawful.'

The pre-constitutional approach by our courts and our law enforcement authorities is reflected by Schreiner JA in Tsose v Minister of Justice and Others *1951 (3) SA 10, in the Appellate Division, at 17G-H:*

> 'An arrest is, of course, in general a harsher method of initiating a prosecution than citation by way of summons but if the circumstances exist which make it lawful under a statutory provision to arrest a person as means of bringing him to court, such an arrest is not unlawful even if it is made because the arrestor believes that arrest will be more harassing than summons. For just as the best motive will not cure an otherwise illegal arrest so the worst motive will not render an otherwise legal arrest illegal…
>
> What I have said must not be understood as conveying approval of the use of arrest where there is no urgency and the person to be charges has a fixed and known address; in such cases it is generally desirable that a summons should be used. But there is no rule of law that requires the milder method of bringing a person into court to be used whenever it would be equally effective.'

This passage is commented upon by my Sister, De Vos J, as follows:

> 'The question is whether, in view of the fact that we now have a Constitution

> that restricts the exercise of public power through a justiciable Bill of Rights, the last statement of the quotation can be correct. There can be no doubt that an examination into the lawfulness of an arrest against the backdrop of a statement that there is no rule of law requiring the milder method of bringing a person into court will be different from an enquiry which starts off on the premise that the right of an individual to personal freedom is a right which should be jealously guarded. I am of the view that the demands of the constitutional State must be taken into account when applying the general test in cases such as these.'

In the factual context of that case, De Vos J was required to do no more than to state this as a general principle. I am of the view that the time has arrived to state as a matter of law that, even if a crime which is listed in Schedule 1 of Act 51 of 1977 has allegedly been committed, and even if the arresting police officers believe on reasonable grounds that such a crime has indeed been committed, this in itself does not justify an arrest forthwith.

> *An arrest, being as drastic an invasion of personal liberty as it is, must still be justifiable according to the demands of the Bill of Rights."*

In **R J Charles v Minister of Safety and Security 2007 (2) SACR 137 (W)** Goldblatt J said the following at p. 143j:

> *"I do not agree with the conclusions reached by Bertelsmann J, despite his full and careful reasons thereof and am of the view that it is clearly wrong."*

The learned judge, in my view, with respect, adopted a somewhat narrow stance. He suggests that s. 40 (1)(b) grants police officers protection against actions for unlawful arrest and holds that a court has no right to impose further conditions on such persons. Goldblatt J further states:

> *"To do so would open a Pandora's box where the courts would be called upon in cases of this type to have to enquire into what is reasonable in a variety of circumstances and further where peace officers would be called upon to make a value judgment every time they effect an arrest in terms of s 40."*

The criticism levelled by Goldblatt J against the findings of Bertelsmann J in **Louw and another v Minister of Safety and Security and others** *supra*, should be viewed in the context of the different circumstances prevailing in the two cases. As I have already intimated, there will be cases where an arrest should be immediate, where the police officer will be duty bound to effect the arrest without having first to consider other extraneous factors; as Jones J put it in **Mabona** *supra* where it is necessary to *"strike while the iron is hot"*. In my view, Bertelsmann J in expressing his views in the **Louw**-matter, while not specifically dealing in his judgment with the *"strike while the iron is hot"*

concept, certainly did not exclude it. Seen in that light, I do not believe that the conclusions of Goldblatt J in **R J Charles** *supra*, and Bertelsmann J in **Louw** *supra* are necessarily irreconcilable. I say this by reason thereof that I am of the view that in circumstances such as these each case must be decided on its own facts.

This entails that the adjudicator of fact should look at the prevailing circumstances at the time when the arrest was made and ask himself the question – was the arrest of the plaintiff in the circumstances of the case, having regard to flight risk, permanence of employment and residence, co-operation on the part of the plaintiff, his standing in the community or amongst his peers, the strength or weakness of the case, and such other factors which the court may find relevant, unavoidable, justified or the only reasonable means to attain the objectives of the police investigation. The interests of justice may also be a factor. Once the court has considered these and such other factors which in the court's view may have a bearing on the question, there should be no reason why the court should not exercise its discretion in favour of the liberty of the individual. Arrest should after all be the last resort. There is no doubt in my mind that a trained policeman would have little difficulty in assessing a situation like this, to decide when an arrest without a warrant would be proper and when not – this, without having to make a value judgment. In this way the two interests, namely, personal liberty on the one hand and the right of the police to effect an arrest without a warrant on the

other hand, are adequately preserved. The one need not encroach on the other. This would go a long way to accommodating the reservations Goldblatt J expressed in **R J Charles v Minister of Safety and Security** *supra*.

I conclude, therefore, that the arrest and detention of the plaintiff at the Heidelberg police station on 7 May 2004 was unlawful. That brings me to the question of quantum.

The plaintiff claimed R150 000 for the unlawful arrest and detention. The plaintiff did not give evidence but the following common cause facts could be gleaned from the pleadings and the evidence. The plaintiff at the time of his arrest was a superintendent stationed at the Heidelberg police station. At the time of his arrest he was in uniform and on duty. He was arrested in full view of his colleagues and detained at the police station. His office was searched as well as his home, the latter in the presence of his wife and children. He asked to be released on bail, but his request was refused. The evidence of Inspector Steenkamp was that the second defendant only agreed to bail after steps had been taken to launch an urgent application in the High Court for the plaintiff's release on bail and after Inspector Steenkamp prevailed upon the second defendant to allow the plaintiff to be released on bail.

Having regard to these facts there can be no doubt that the arrest caused the plaintiff embarrassment and distress. He had to endure the indignity of being

arrested and detained in the presence of his subordinates and his seniors. He was made out to be a criminal and had to endure the added indignity and discomfort of being paraded as a suspect in front of his wife and children during the unsuccessful search of his home. The plaintiff's detention continued until well after 8pm that night, after which he was released on bail – comprising a total of some five to six hours in detention. On the facts, therefore, there was a serious invasion of the plaintiff's rights and dignity. There was the added indignity of having to appear in court on three occasions as an accused. On the other hand the plaintiff's detention was of a relatively short duration. He was not placed in a police cell, neither was he handcuffed. In **Minister of Safety and Security v Seymour 2006 (6) SA 320 (SCA)** at p. 327 paragraph (20), Nugent JA said the following:

> *"Money can never be more than a crude* solatum *for the deprivation of what, in truth, can never be restored and there is no emphirical measure for the loss. The awards I have referred to reflect no discernable pattern other than that our courts are not extravagant in compensating loss. It needs also to be kept in mind that there are many legitimate calls upon the public purse to ensure that other rights that are no less important also receive protection."*

The awarding of damages for unlawful arrest and detention falls in the domain of the trial court. The award is discretionary. In that regard previous awards

of this nature by other courts can serve only as guidelines. There are no hard and fast rules. Having regard to the aforegoing facts and principles, as well as previous awards of this nature, I believe that an amount which would be fair to both parties would be R50 000.

Insofar as it concerns the costs, Mr Joubert submitted that in the event of the amount of damages the court decides to award the plaintiff falls within the jurisdiction of the magistrate's court, costs should be awarded on the magistrate's court scale. I do not agree. When a court awards costs it exercises a discretion. The facts and principles of law in this matter were not uncomplicated. Quantum, more often than not is a thorny question, the outcome of which is not always easy to predict. I do not believe that the plaintiff should be penalised with the costs for choosing to litigate in this court, particularly having regard to the circumstances of this case.

I make the following order:

1. The plaintiff is awarded damages in the sum of R50 000.
2. The defendants are liable to pay the aforesaid sum of damages as well as the costs of suit jointly and severally, the one paying the other to be absolved.

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J P Horn

Judge of the High Court

Witwatersrand Local Division

Plaintiff's attorneys	:	Locketts attorneys
Plaintiff's counsel	:	Adv H West
Defendant's attorneys	:	The State Attorney
Defendant's counsel	:	Adv D J Joubert