IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case number: 14884/2015
Date of hearing: 2-5 August 2022 and 12 September 2022
Date delivered: 23 September 2022
REPORTABLE: NO
OF INTEREST TO OTHERS JUDGES: NO
REVISED
23/9/22

In the application between:

EMILY BALOYI	**First Plaintiff**
NKESHE FRANS MAKGOPA	**Second Plaintiff**
and	
THE MINISTER OF POLICE	**First Defendant**
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS (NATIONAL PROSECUTING AUTHORITY OF SOUTH AFRICA	**Second Defendant**

JUDGMENT

SWANEPOEL AJ:

[1] This is an action for damages pursuant to the arrest of the plaintiffs by police officers on 24 October 2007, and their further detention from that date until 24 July 2014, nearly seven years later, when they were acquitted on charges of murder, robbery, conspiracy to commit murder and/or robbery, and firearms charges. The parties agreed to separate the issue of liability from the question of *quantum*, and I made an order to that effect.

[2] It is common cause that both plaintiffs were arrested at first plaintiff's home in Ennerdale. They both claim that they were assaulted, during the arrest, by members of the South African Police Services, and they claim damages resulting from the alleged assault. In addition, they claim that they were unlawfully searched and that first plaintiff's home was also allegedly searched unlawfully. Therefore, they claim against the first defendant under the following heads of damages:

[2.1] Assault;

[2.2] Wrongful and unlawful search;

[2.3] Wrongful and unlawful arrest and detention;

[2.4] Wrongful, false and malicious prosecution;

[2.5] Loss of business profit.

[3] I clarified with plaintiff's counsel the fifth claim for loss of business profit, and plaintiffs conceded that this claim was not a separate one, but one of the heads of damages resulting from the allegedly unlawful arrest and detention of the plaintiffs.

[4] Against second defendant plaintiffs claim for malicious prosecution, although the particulars of claim allege that police officers presented false statements to the second defendant, resulting in the second defendant's decision to prosecute the plaintiffs. No other unlawful conduct by second defendant is alleged in the particulars of claim. Plaintiff has not made any attempt to prove any case against second defendant, and I therefore deal in this judgment only with the claim against the first defendant.

[5] First plaintiff testified that she is a traditional healer, residing (and trading from) [....] T [....] Avenue, Ennerdale. She has seven children, six of whom reside with her. Early on the morning of 24 October 2007 first plaintiff's children, save for her baby, left the home. First plaintiff heard a knock at the door of her house, and when she enquired who was knocking the person identified himself as Frans Makgopa, the second plaintiff. She opened the door and second plaintiff and another man, the latter who was dressed in civilian clothing and was carrying a duvet cover, entered her home. First plaintiff did not know what was in the duvet cover. It must be noted that at this stage first plaintiff was only clad in a nightgown.

[6] First plaintiff was about to ask second plaintiff why he was bringing an unknown man into her home, when many people came into the house. Some were clad in civilian clothing and others in police uniforms. The police officers started assaulting the civilians. First plaintiff was still carrying her child, a baby, aged 19 months. The child was crying, which caused one of the police officers to approach first plaintiff to demand that she stopped the baby crying. When first plaintiff could not get the baby to stop crying, another police officer approached her and slapped her face. He told her to take the baby outside, which she did. She was made to sit next to the kitchen door, from where she could see into the house. The police were emptying containers filled with food onto the ground. They turned her sofa upside down. First plaintiff eventually managed to quieten her child. Her oldest daughter also arrived at the house. The police instructed first respondent to hand the child to her daughter. She was handcuffed by an unidentified police officer and made to sit under a tree. Some persons came to take photographs of her. Sometime later, while first plaintiff was still sitting under the tree, her seven-year-old son came home from school. He was stopped from entering the gate. He was hysterical and crying out for the first plaintiff. First plaintiff noticed many men being brought from her home and handcuffed outside the house.

[7] Sometime later, just before it became dark, first plaintiff was pulled to her feet and placed in a police vehicle. She was taken to the Westonaria police station where she was held in the cells overnight. The following day she was taken by car to the offices of 'SOCS', which is apparently a police unit in Germiston. She was still only clad in her nightgown. There she was taken to a hall where there was a table and

some police officers. The police officers told first plaintiff that she must speak the truth and that they would make her speak the truth. They told her that a white person had died. She did not answer. She was placed in a chair, electric leads were attached to her nipples, and she was shocked until she passed out.

[8] When first respondent came to she was lying in a puddle of water on the floor. She was bleeding from her mouth and from her private parts. One Superintendent Manamela arrived and admonished the police officers. He instructed them to find two female officers to return first plaintiff to Westonaria, and to purchase pain medication for first plaintiff on the way there. First plaintiff was returned to Westonaria, and the following day she was brought before court on charges of murder and robbery. The case was postponed for legal representation. A bail application brought later was unsuccessful, and first respondent spent the next (nearly) seven years in custody. First plaintiff testified that second defendant also appeared in court on the same charges, as did a number of other persons.

[9] First plaintiff identified her warning statement in which she refused to say anything. It was ostensibly taken at Westonaria on 30 October 2007, which, according to first plaintiff was impossible as she was in the Johannesburg Prison on that date. First plaintiff testified that she had known second plaintiff before the day of their arrest, as she had conducted traditional ceremonies on his behalf. She said that second plaintiff was a hawker at the nearby train station.

[10] First plaintiff denied that she knew her co-accused (save for second plaintiff), and she denied being involved in the murder and robbery.

[11] After the conclusion of first plaintiff's evidence in chief defendants sought to introduce new documentary evidence that had not previously been discovered. Defendants sought to introduce half a lever arch file containing new documents. Plaintiffs objected to the late discovery, and the matter stood down for defendants to file a substantive application for admission of the documents. The application revealed that both defendants and their attorney had been lax in the preparation of the discovery affidavits, and that they should have taken steps earlier to discover the documents.

[12] Defendants then limited their application to the introduction of one document only, being the affidavit deposed to by first plaintiff in her bail application. I granted the application in respect of the one document only, in the interest of justice, and I ordered defendants to pay the costs of the application, notwithstanding that they had been successful, due to the fact that defendants only had themselves to blame for the late discovery of the document.

[13] In cross-examination it was put to first plaintiff that second plaintiff had deposed to an affidavit in which he said that he had arrived at her house on 23 October 2007, the day before the arrest, and that he had slept over in first plaintiff's home. He had met one Thekiso at first plaintiff's home on 23 October 2007. The affidavit also alleged that second plaintiff had seen people coming to the house with money and firearms. First plaintiff denied the allegations.

[14] It was put to first plaintiff by defendants' counsel that the police had received information regarding a murder and robbery. They had intercepted one of the suspects, and that suspect had led them to first plaintiff's home. First plaintiff denied having any knowledge of these allegations.

[15] First plaintiff was confronted with an affidavit deposed to by her in support of a bail application. The affidavit presented a completely different version of the events of 24 October 2007. It stated that a week before the arrest one Thekiso came to first plaintiff's home in the company of two other unknown men. They told first plaintiff that they had been referred to her by one Mkhulu. They were looking for a traditional healer who would provide them with muti that would allow them to go and fetch "ghost" money. First plaintiff asked what they meant by "ghost" money, and was told that they were referring to gold Kruger rands which was stored in pots. First plaintiff allegedly sent them on their way.

[16] Later that same day first plaintiff received a call from one Mdala, who told her that he had referred those men to her. She told him that she could not assist. On 24 October 2007 she was at home when she heard a motor vehicle driving into her property at high speed. As first plaintiff went outside to see what was going on, she saw two unknown black men who were carrying a duvet cover. She shouted at them

asking what did they want. They said that they had been sent by Mkhulu and that they were there to ‘cleanse’ their firearms. She told them to leave. One of the men then hit her on the back of the head with a firearm, telling her that she had no choice; she was going to cleanse the firearms. She was forced into the house and made to kneel down in the passage. When her child started crying she was allowed to sit on the sofa. From there she could see an old man together with three unknown men standing outside her home. The old man was known as ‘Mdala’. He told her to cleanse the firearms. She again refused and saw the men starting to move to the gate.

[17] While she was still seated she heard footsteps running in the yard, and she saw people running into the house, followed by police officers. Everyone was made to lie down, and she alerted the police to the presence of two men who were hiding away. She allegedly told the police the entire tale.

[18] First plaintiff testified that she did not provide the narrative set out in the affidavit. She said her attorney at the time must have obtained the information elsewhere. The affidavit was never read to her nor was it read out in court. The presiding officer in the bail application did not, as far as she recollects, ask her to confirm the contents of the affidavit. It was put to first plaintiff that the police found a vehicle in her yard that had been used during the robbery. She denied any knowledge of such a vehicle, saying that there were many vehicles in her yard. She denied seeing money in the house, and she said that the photographs taken of the seized items were never shown to her. She knew nothing about firearms being found in her home.

[19] Second plaintiff testified that he worked as a hawker at the nearby train station, although he lived in Everton. He said that on 24 October 2007 he went to first plaintiff’s home in search of medicine for insomnia. He arrived at her home around 7h00 to 7h30. He noticed that the gate was open and some five or six persons were queuing outside. He booked his place in the queue, and because he was tired, he went to lie down. He fell asleep and around 08h00 to 09h00 he heard a commotion and he saw police officers arriving. One of them told him to remain silent or he would be shot.

[20] When he turned his head he noticed that the person speaking to him was a white police officer. He also saw a person came from the direction of the passage on the side of the house. He was carrying a duvet. That person greeted and asked to search him. He was dressed in civilian clothing which caused second plaintiff to think he was not a police officer, and second plaintiff refused to be searched. This person took out a little notebook. He showed second plaintiff the police insignia in the book to prove that he was a police officer. Second plaintiff then agreed to be searched. He had a phone, a set of keys and a wallet containing R 470.00 in his possession, which he took out and handed over. He was searched and nothing else was found on his person. First plaintiff was told to throw his belongings into the duvet, but he refused. He gave the police officer his home address.

[21] He told the police officer that he was there to see the traditional healer who was inside the house. They went to the front door and knocked. First plaintiff opened the door, and they entered the house. He sat down next to first plaintiff. Suddenly there were many police officers on the scene. The police were assaulting people and making them lie on the ground. One of the police officers grabbed second plaintiff and threw him onto the ground next to the other men already put there. Second plaintiff was tied to the person next to him with a cable tie. He was not told why he was being arrested. He felt someone stepping on his back, and he felt as if his bones were breaking. When he tried to look up he was hit on the head with a wooden object. He was also kicked in the head and he hit his mouth on the ground causing it to be cut.

[22] Second plaintiff cannot estimate how long they lay on the floor, but at some stage he was taken outside the house together with the person that he was tied to. He was first made to lie on the ground in the sun, and later he was tied to the house's burglar bars. He again gave his name and address, as well as his age and his phone number. Later that afternoon he was taken to the Westonaria police station. He had still not been told why he had been arrested. There he again gave all of his personal details to the police. He was then detained in the cells.

[23] On 25 October 2007 he was taken to the offices of SOCS, although he cannot remember whether the offices were in Germiston or Springs. There two officers took

him into an office and told him that they were going to put a “thing” over his head. He would not be able to speak, they said, but if he wanted to say anything, he should tap his foot on the floor. A plastic hood, similar to a balaclava, but without holes for breathing or for his eyes was placed on his head, and he was shocked repeatedly. When the hood was removed he told the police that he could not do as they said. He told them that he did not know anything.

[24] Second plaintiff was later taken to a captain who was in another office. There he was made to sign a document, which he identified in court as a warning statement. He denied that the document had been completed when he signed it. The document is dated 26 October 2007. Second plaintiff testified that he could not have been at SOCS on 26 October 2007, as he had appeared in court on that day, and he was transported to the Krugersdorp prison after his court appearance. He denied making any statement, and it was only when he appeared in court that the charges were explained to him.

[25] Second plaintiff spent nearly seven years awaiting trial, where after he was acquitted.

[26] In cross-examination second plaintiff said that he never saw what was in the duvet. When he entered the house with the police officer he went to sit on the sofa, and the police officer disappeared into the house. At that stage there were four people in the house, being first plaintiff and her baby, second plaintiff and the police officer.

[27] Second plaintiff could not comment on the proposition put to him, that the police had received information about the robbery and murder, which led them to first plaintiff’s home. He did not see any firearms, nor did he see money or a vehicle. Second plaintiff was adamant that the person who stepped on him where he was lying was a police officer.

[28] Second plaintiff was identified at an identification parade as being one of the assailants. That identification was retracted at trial. That concluded the plaintiffs’ case.

[29] Captain Gavin Bens testified that on the morning of 24 October 2007 he was at Mondeor police station, accompanied by three fellow members of the Public Order Policing Unit, W/O Matthee, W/O Olivier, and W/O Shange. Shortly after morning parade W/O Matthee received a call alerting him to a shooting on the plot where he lived with his family in Jagsfontein, Westonaria. W/O Matthee was told that one of the stolen vehicles was a green Nissan 1-tonner LDV. The four officers raced to the scene, using the Golden Highway. Near Grasmere they spotted the vehicle which Matthee recognized immediately.

[30] They gave chase, causing the driver of the Nissan to try to escape. He stopped near a vegetable farm and ran into the veld. The police gave chase and the suspect was apprehended. The suspect told W/O Shange that he would cooperate by taking them to the house where the other suspects could be found. The police officers called for backup, and soon between 20 and 40 police officers were on the scene.

[31] W/O's Shange, Matthee and Olivier drove with the suspect in their car. The suspect directed them to first plaintiff's home. The rest of the police vehicles formed a convoy behind them. Capt. Bens drove the Nissan. Upon their arrival at first respondent's home the police debussed, surrounded the house, and then entered the property. Capt. Bens was some three minutes behind the first police officer. Upon entering the house, he found some suspects in the kitchen and in the dining room. He also saw six firearms, some money and jewellery lying on the floor. In the yard was a red Toyota Conquest that was confirmed to have been stolen in Sandton. An Opel Corsa and a Volvo that had been used in the robbery were found two or three blocks from the house. The suspects were later arrested. The search of the premises took some time, but later that afternoon the suspects were detained at Westonaria police station. The driver of the Nissan was the only suspect that Capt. Bens arrested personally.

[33] Warrant Officer Matthee testified and confirmed Capt. Bens' version. He was travelling in a car about 30 meters from the front of the convoy, and he was one of the last police officers to enter the house. When he entered the house a number of suspects had already been apprehended and were lying on the floor. He saw that

there was jewellery, money and six firearms that had been found, and which was still lying on a mat. He did not witness any assault on any of the suspects.

[34] In cross-examination W/O Matthee denied that there was any language barrier between him and the driver of the Nissan. They spoke to one another in English. He said that he did not have any foreknowledge of how many suspects had been involved in the attack, although in an affidavit that he had deposed to at the time he had said that eight suspects were involved in the murder, and that eleven suspects in total had been arrested at first plaintiff's home.

[35] Ms. Adriana Viljoen testified that she was the prosecutor in the bail application brought by the plaintiffs. She said that the first plaintiff's affidavit in support of her bail application was read to her in court. First plaintiff was asked whether she agreed with the contents of the affidavit, which she confirmed. Ms. Viljoen said that an interpreter had interpreted the affidavit to first plaintiff, and that there had not been any complaint that first plaintiff could not understand the interpreter. Bail was refused by the magistrate, and later on appeal against the refusal, the appeals court ordered the magistrate to hear first plaintiff's *viva voce* evidence. Once again during her evidence, first plaintiff repeated the version set forth in her bail affidavit.

[35] That concluded the evidence.

WRONGFUL ARREST AND DETENTION

[36] Arrest is a drastic infringement of a person's right to freedom of movement[1], the right not to be deprived of freedom[2], and the right to human dignity[3]. Nonetheless, section 40 (1) (b) of the Criminal Procedure Act, Act 51 of 1977 ("the Act") provides for the arrest by a peace officer of a person whom he reasonably suspects of having committed an offence referred to in Schedule 1 to the Act. Murder and robbery are Schedule 1 offences.

[1] Section 21 91) of the Constitution
[2] Section 12
[3] Section 10

[37] The *onus* is on the defendant to prove that the arrest was lawful, and it has to meet the following jurisdictional requirements in order to establish a defence:

[37.1] That the arrestor is a peace officer;

[37.2] The arrestor must harbour a suspicion;

[37.3] The suspicion must be that the suspect committed a Schedule 1 offence;

[37.4] The suspicion must rest on reasonable grounds.[4]

[38] Once those jurisdictional requirements are met, the arrestor still has to exercise a discretion whether or not to arrest. The arrestor must consider whether the suspect may be brought before court in a manner that does not infringe on his right to freedom. The discretion must be exercised in good faith, rationally and not arbitrarily.[5]

[39] There is no dispute that the plaintiffs were arrested by peace officers who harboured a suspicion that they were guilty of murder and robbery (even if by common purpose). The plaintiffs allege that the police could not reasonably have had any suspicion that they were guilty of a Schedule 1 offence. That cannot possibly be correct. In this regard the following facts are relevant:

[39.1] The police officers were provided with information that a robbery had occurred at W/O Matthee's home, that a green Nissan had been taken (*inter alia*), and that a person had been killed during the incident.

[39.2] Within minutes of receiving the information the police officers spotted the stolen vehicle, the driver of which attempted to escape from them.

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[4] Du Toit *et al*, Commentary on the Criminal Procedure Act, page 5-14B and the various authorities referred to

[5] Naidoo v Minister of Police 2016 (1) SACR 468 (SCA) para 43

[39.3] Upon being arrested, the driver of the Nissan undertook to take them to the place where the other robbers could be found.

[39.4] Upon entering the house to which they were directed, the police encountered a number of men, and they found stolen cars on the premises. They also found six firearms. They found stolen vehicles that had reportedly been used in the murder and robbery in the close vicinity of the house.

[40] Plaintiffs say that the facts set out above were not sufficient for the police to harbor a reasonable suspicion that they had been involved in the offences. The question then is: What were the police to deduct from their find? They had received credible information from the driver of the Nissan, and that information was then confirmed by the suspects and items found in and around the house. The only reasonable deduction that they could have made would have been that the persons in the home were most likely involved in the murder and robbery. The test to apply is whether a reasonable man would ordinarily have formed the same suspicion; that the suspects had committed a Schedule 1 offence.[6]

[41] Counsel for plaintiff argued that the police were told before the arrest that there were eight suspects involved. The police arrested eleven suspects. The inference to be drawn, say plaintiffs, is that the police must have known that they were arresting more persons than there were suspects. The answer to that argument is that it is not clear at all that the Nissan driver told the police that there were only eight persons involved in the incident. In any event, even if he had said so, having been confronted with evidence of the involvement of the people in the house in committing the offences, the police could not possibly have been expected to decide on the spot which eight people to arrest. The possibility always existed that either the estimate of the number of suspects involved was wrong, or that some of those involved had not been at the scene of the crime, but were otherwise involved in the offences.

[42] Counsel for plaintiffs also argued that the *onus* to prove that the police harboured a reasonable suspicion against the suspects rested on the individual

[6] R v Van Heerden 1958 (3) SA 150 (T)

policeman or policemen that effected the arrest. The individuals who actually effected the arrest of the plaintiffs did not testify. Therefore, say the plaintiffs, the defendant did not discharge the onus that rested on it. There are a number of authorities that say that the *onus* rests on the arresting policeman. I do not read those authorities to mean that the *onus* rests on the individual. The individual is not always a party to the case, and the *onus* can only rest on a party to a case. If plaintiff's argument is correct, then in a hypothetical case where an arresting officer has incontrovertible evidence that a suspect has committed a Schedule 1 offence, and he then arrests the suspect but is killed transporting the suspect to the police station, the police could never put up a defence. That cannot be correct.

[43] In my view one should look at all the evidence that faced the police at the scene in totality, and then consider whether given the evidence that they had, their suspicions were reasonable. In my view the suspects were caught red-handed, and the police were objectively correct in harbouring a suspicion that the suspects had been involved in the offences.

[44] Should the police in these circumstances have exercised their discretion not to arrest the suspects? In my view the police would have been guilty of a dereliction in duty if they had done so. The legislature regards premeditated murder as being such a serious offence that it is not only listed in Schedule 1, but also listed in Schedule 6 of the Act. In the case of Schedule 6 offences a court may only release an accused on bail if he can show exceptional circumstances. It could not have been expected of the police to secure the suspect's presence in court in any other way than by arrest.

[45] It may be that plaintiffs were acquitted. It does not follow that their arrest was unlawful.

UNLAWFUL SEARCH

[46] First plaintiff claims that the police's search of her premises was unlawful, "invasive, aggressive and humiliating. Second plaintiff says the same of the search

of his person. He pleads that the search was conducted in full view of the public. As a result, they say, they are entitled to damages.

[47] Section 25 (1) (b) of the Act allows for a magistrate or justice to issue a search warrant for premises where there are reasonable grounds to believe that an offence has been committed, for purposes of carrying out investigations. Section 25 (3) states:

> *"(3) A police official may without a warrant act under subparagraphs (i) (ii) and (iii) of subsection (1) if he on reasonable grounds believes-*
>
> *(a) that a warrant will be issued to him under paragraphs (a) or (b) of subsection (1) if he applies for such warrant; and*
> *(b) that the delay in obtaining such warrant would defeat the object thereof."*

[48] I have already set out the information at the police's disposal before they searched the premises. There is no doubt that a magistrate would not hesitate, under these circumstances, to issue a search warrant to search the premises. Once the decision to arrest is made, section 23 authorizes the search of the person of the suspect.

[49] The question that remains is whether the police were justified in believing that the delay in obtaining a search warrant would defeat the object of the search. When the police obtained the information from the Nissan driver that the suspects were at a specific house, the police did not know the identity of the suspects. They did not know where the suspects resided. They did not know how long the suspects were going to be at that house. They did know that they were faced with a dangerous group of individuals who were obviously keen to escape arrest, and who would flee as soon as possible.

[50] Had the police not acted immediately, the suspects may well have fled, never to be seen again. Even if it took only an hour or two to obtain a search warrant, the

purpose of the search may well have been negated. In my view the search without a warrant was lawful.

UNLAWFUL DETENTION

[51] Plaintiffs say that their continued detention was unlawful. They say that their continued detention was unlawful on the following grounds:

> [51.1] That there were no reasonable grounds justifying their continued detention;
>
> [51.2] That the arresting police officers, and the police at Johannesburg Central Police Station failed to apply their minds in respect of their further detention;
>
> [51.3] Their detention was motivated by malice.

[52] I am not going to say more than that these averments are utterly without any basis in fact. Even though both plaintiffs were acquitted of the offences, that does not mean that there was no probable cause to believe them to be guilty of the offences. In the case of second plaintiff, he was identified in an identity parade a few days after the offences were committed. In first plaintiff's case, her home was evidently used as a place for the suspects to gather after the offences had been committed. Had the police not detained the plaintiffs they would, in my view, have been guilty of dereliction of duty.

MALICIOUS PROSECUTION

[53] Plaintiffs also plead that the police unlawfully set the law in motion by laying false charges of robbery, and murder (*inter alia*) against plaintiffs. As a result, they say, they were prosecuted.

[54] In order to succeed with a claim for malicious prosecution the plaintiffs must show that there was no reasonable and probable cause for the prosecution. For the reasons set out above, I find that the police were not only acting lawfully, I find that

had they not acted in the manner that they did, they would not have been fulfilling their duties.

ASSAULT

[55] First and second plaintiffs claim that during their arrest they were assaulted by police officers who kicked them all over their body, and dragged them to the police van. First plaintiff pleads as follows:

> *"The members of the SAPS assaulted the first plaintiff by kicking all over her body and dragging her to the police van."*

[56] Second plaintiff made the same averments.

[57] First plaintiff's said in her evidence that when the police entered the house they made the suspects lie on the floor. At that stage she was sitting on the sofa. She confirmed second plaintiff's version that the persons lying on the floor were stepped on by the police. She testified that she could not get her baby to stop crying. A police officer approached her and told her to make the child stop crying, and he slapped her in the face with an open hand. First plaintiff was then made to sit outside, and eventually, to lie on the ground in the sun. Sometime later a police officer picked her up by the arm, causing her some pain. She was then placed in the police van.

[58] In her affidavit in the bail application first plaintiff proffered a completely different version of events, as I have set out above.

[59] The bail affidavit provides a completely different version of events as that proffered in court. First plaintiff's version, that her attorney must have obtained this information elsewhere, is utterly without merit. It must be borne in mind that first plaintiff testified in this court some 15 years after the events happened. Nonetheless, these are not minor differences in her version. The two versions are completely distinguishable. Her version in court also does not support her pleadings. In my view,

even though the defendants did not gainsay her version in court, in the absence of any supporting evidence, her evidence can be rejected.

[60] As far as second plaintiff is concerned, his evidence was satisfactory. He was also supported in his version by first plaintiff. Defendants did not attempt to gainsay his evidence. I accept second plaintiff's evidence that he was assaulted during the arrest by being kicked on the body.

[61] Both plaintiffs also testified about incidents that occurred at the SOCS police unit during which they were allegedly tortured by the police. Neither plaintiff pleaded these allegations in the particulars of claim, and the alleged assault at SOCS is consequently not part of the case that the defendants had to meet. I do not, therefore, take those events into account.

[62] I therefore make the following order:

[62.1] First plaintiff's claims are dismissed with costs.

[62.2] First defendant is held to be liable for any damages resulting from second plaintiff's Claim A.

[62.3] Second plaintiff's claims B, C, D and E are dismissed with costs.

[62.4] The quantum of second plaintiff's claim A is postponed *sine die*.

SWANEPOEL AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION OF THE HIGH COURT, JOHANNESBURG

COUNSEL FOR APPLICANT:	**Adv. Legoabe**
	Adv. Mavhungu
ATTORNEY FOR APPLICANT:	**Lebea Inc.**

COUNSEL FOR RESPONDENT:	**Adv. Nondwangu**
ATTORNEYS FOR RESPONDENT:	**The State Attorney**
DATE HEARD:	**2-5 August 2022 and 12 September 2022**
DATE OF JUDGMENT:	**23 September 2022**