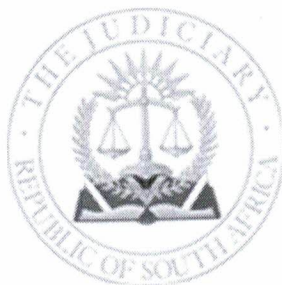


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG

Case Number: 43325/2019

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
<u>28/4/2023</u>	
DATE	SIGNATURE

In the matter between:

**DAVID DANIEL NKOSI**

Plaintiff

and

**MINISTER OF POLICE**

First Defendant

**NATIONAL PROSECUTING AUTHORITY**

Second Defendant

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**JUDGMENT**

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Coertse, AJ

- [1] This court is no stranger to these claims of the Plaintiff. In fact, it is having to adjudicate, rather regularly with this kind of claims and I hasten to state with this kind of special pleas. And the law reports are replete with well-reasoned judgements of old to today. And I venture to say that this court would not be the last delivering judgment in similar matters.
- [2] Plaintiff was arrested at the Johannesburg Central Police Station on 19 August 2015. He was detained until he applied for bail; it was granted and he was released on 21 August 2015. On 23 August 2019 he was discharged in terms of Section 174 of the Criminal Procedure Act 51 of 1977 as amended.
- [3] The view this court takes of the above is the above facts in paragraph 2 above are common cause facts between the parties. These three dates are crucial in this matter and the outcome of the two Special Pleas depend on the view I take of this: do this court view these three dates as three separate incidents or do this court view it as one continuous incident? In other words, is it a continuous wrong or shall I view it as three separate wrongs?
- [4] A Combined Summons was issued 9 December 2019 after the necessary notices were served on both the Defendants. He claimed for the following:
- a) Wrongful and unlawful arrest and detention in the amount of R385 000.00;
  - b) Wrongful, false and malicious prosecution in the amount of R2 000 000,00; and
  - c) Loss of earnings in the amount of R3 281 880.00.
- [5] Defendants filed the following four special pleas as well as pleas over:
- a) Non-compliance with Act 20 of 1957;
  - b) Non-compliance with section 3(2) of the Legal Proceedings Against Certain Organs of State Act 40 of 2002;
  - c) Non-compliance with Act 40 of 2002; and

d) Prescription in terms of the Prescription Act 68 of 1969 (the Prescription Act)

[6] Counsel for both parties informed me in Chambers, and subsequently confirmed in open court, that the defendants abandon their Special Plea (a) and (c) above. Special Plea (b) and (d) were proceeded with and it was argued in open court. These two special pleas were only in respect of the first defendant.

[7] In *Makhwelo v Minister of Safety and Security*<sup>1</sup> Spilg J concluded that arrest, detention through to discharge is continuous. He further stated the following<sup>2</sup>:

"It is evident that all three cases confined the enquiry to whether there was a single wrongful act which had a continuing injurious effect or whether there was a continuing wrong which until it ceased created a series of individual debts."

In the case of an arrest and detention there is a deprivation of liberty and loss of dignity which will be justified if there is a conviction. It is difficult to appreciate how a debt can be immediately claimable and therefore justiciable which is the second requirement for a debt being due ... prior to the outcome of the criminal trial or prior to charges being dropped or otherwise withdrawn.

"During my research I was fortunate to find that the SCA had considered this issue in *Unilever Bestfoods Robertsons (Pty) Ltd v Soomar* 2007 (2) SA 347 (SCA). The case concerned a special plea of extinctive prescription on a debt that was claimed to be in part one of abuse of legal process.

...

The principle underlying the cases relied on was stated by De Villiers CJ in Lemue's case (at 407) in the following terms: 'While a prosecution is actually pending its result cannot be allowed to be prejudged in the civil action.' A different reason for the rule was given by Solomon J in *Bacon v Nettleton* (supra). He said (at 142 - 3):

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<sup>1</sup> 2017 (1) 274 GLD at 284C-D

<sup>2</sup> *Id* at 288H; 289C-D.



‘The proceedings from arrest to acquittal must be regarded as continuous, and no personal injury has been done to the accused until the prosecution has been determined by his discharge.’”

- [8] In *Mothobi Albert Tlake v Minister of Police and Another*<sup>3</sup> it was held that proceedings from arrest to acquittal must be regarded as continuous and no personal injury has been done to the accused [in the respect to the Plaintiff] until prosecution has been determined by a discharge.
- [9] On the pragmatic view I take of the matter, it may be approached thus: X walks on the streets of Johannesburg, members of SAPS approach him and arrest him on charges of corruption. The moment they arrest X, he is in detention and the prosecution has to start. The State is under a legal obligation to do something to X who is in detention. The prosecutor now reads the SAPS docket and must make a decision – either to decline to prosecute, or to prosecute. Decision is made to prosecute and subsequently X is either discharged in terms of section 174 of the Criminal Procedure Act 51 of 1977 or is found not guilty and discharged. I find myself in agreement with the learned Farlam JA where he found it to be continuous; to hold otherwise, the court is then, to my mind, approaching it piecemeal as it were and that might lead to injustices to be done.
- [10] The court finds that the date of arrest of the Plaintiff, the date of his release on bail, and the date of his discharge by the learned Regional Court Magistrate in terms of Section 174 of the Criminal Procedure Act must be regarded as continuous and no personal injury has been done to the Plaintiff until the prosecution has been determined by his discharge as mentioned.
- [11] Accordingly, the two special pleas are dismissed with costs.

#### *Order*

- [12] The two special pleas are dismissed with costs.
- [13] The matter is set down for trial for 20 – 22 September 2023 and 26 – 27 September 2023,

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<sup>3</sup> (3777/2014) FSHC (20 October 2017)



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COERTSE AJ  
ACTING JUDGE OF THE  
HIGH COURT  
JOHANNESBURG

**APPEARANCES:**

For the Plaintiff: Advocate Ms B.B.  
Ntsimane instructed by TN Ramollo  
Inc. Attorneys

For the Defendants: Advocate Ms N  
Lekgetlo instructed by the State  
Attorney

Date of hearing: 18, 19 & 20 July 2023

Date of judgment: 27 July 2023