



**IN THE HIGH COURT OF SOUTH AFRICA**  
**NORTH WEST DIVISION, MAHIKENG**

**CASE NO: 627/16**

In the matter between:

**MAKAPANE KEBONWE aka  
TSHITSO SOJANE**

Plaintiff

**And**

**MINISTER OF POLICE**

Defendant

---

**J U D G M E N T**

---

**GURA J:**

- [1] The plaintiff sued the defendant for unlawful arrest and detention and general damages. The defendant admitted the arrest and detention without a warrant of arrest, hence, the defendant bore the onus to prove the lawfulness of the arrest.
- [2] The plaintiff's (the accused in the criminal case) evidence is that on Sunday 6 December 2015, at around 18H00 – 19h00 he was arrested unlawfully by the police at his friend's place of residence, Imperial reserve. He was handcuffed and put at the back part of the van. They travelled to the police station.
- [3] Upon arrival at the police station, he was detained in a police cell and he spent the night there. On the subsequent Tuesday, the police informed him that he would be taken to court on Wednesday, indeed he was in court on Wednesday but his case was postponed until Friday of the same week.
- [4] On Friday plaintiff's mother came to the police station and paid bail for him which had been

fixed by the court on Wednesday. He was accordingly released on that day.

- [5] In cross-examination the plaintiff testified as follows: The reason for his arrest and detention was the assault he had meted out on one Shorty. He had assaulted him on the head with an object made out of plastic. Shorty was consequently injured. This is the end of the evidence of the plaintiff.
- [6] The defendant also lead the evidence of one witness, detective Motsamai. According to him, on 7 November 2015 he was instructed to investigate a case of assault with intent to do grievous bodily harm. He drove to the complainant's house where he arrived at around 18H00. He found two unknown gentlemen there who turned out to be the plaintiff in this case (civil case) and the complainant in the criminal case of assault.
- [7] The complainant had sustained a wound on the head. It had been stitched. The complainant told Motsamai that the plaintiff accused him of stealing his cellphone. Motsamai warned the plaintiff that he was under arrest for assaulting the complainant and he explained his rights. The plaintiff was then detained in mahikeng police station cells. This was on the same day of arrest (7 November 2015) at 18H00.
- [8] The subsequent day on 8 November 2015 at 16H00 Motsamai charged the present plaintiff with assault with intent to do grievous bodily harm. On 9 November 2015, the plaintiff and his police docket were taken to court for his first appearance. He was granted bail of R500.00 on that very same day. The case was postponed to a further date for investigations.
- [9] On his second appearance in court Motsamai was not present (in court). The case was withdrawn and the public prosecutor wrote the reason for the withdrawal of the case on the police docket as "Complainant untraceable". Motsamai then went to check the complainant at his place and he discovered that he was no longer staying there. He called his cell phone number, but it was answered by a different person who did not know the complainant.
- [10] Motsamai wrote down his statement when he arrested the plaintiff. He handed in to court the whole police docket in respect of this case as exhibit 'A'. His (Motsamai's) statement is at page 7 of the docket. He referred the court to paragraph 3 where the date is reflected as

7 December 2015. He accordingly conceded that when he referred to the arrest of the plaintiff in his oral evidence as 7 November 2015 he was wrong but the correct date is 7 December 2015. Despite that Motsamai did not ask for the change of the name of the month in which they first took the plaintiff to court it is correct to assume that it was December and not November.

- [11] Motsamai then referred the court to page 9 of the docket stating that this was his second statement which he wrote in compliance with the public prosecutor's instruction. In this latter statement (dated 1 February 2016), he (Motsamai) mentions that he can no longer find the complainant in the assault case. That is the end of Motsamai's evidence.
- [12] The court has carefully gone through the docket and I have taken note of what is written in Exhibit A (case docket). The statement of the complainant in the criminal case against the present plaintiff was taken down by the police on a Monday, 7 December 2015 at 02H20 at Mahikeng police station. In this statement, the complainant told the officers that he was assaulted by the suspect (the present plaintiff) on 6 December 2015 at 15H00. The case docket further reflects that the suspect was arrested on 7 December 2015 at 18H00.
- [13] The authenticity of the docket and its contents have not been challenged by the plaintiff before me. I have no reason not to rely on this information in the docket in order to determine whether the plaintiff was arrested on 6 or 7 December 2015. In fact, during Motsamai's cross-examination by the plaintiff's counsel, his testimony that the plaintiff was arrested on 7 and not 6 December 2015 was not challenged. Motsamai himself appeared to me as an honest, impartial and a reliable witness.
- [14] It is the Court's findings that the plaintiff was arrested by the by the police on 7 and not 6 December 2015. How would it have been possible for the complainant to make a complainant to the police at 02H20 on 7 December 2015 when the police had already detained the suspect (the plaintiff) the previous evening, 6 December 2015. This version by the plaintiff goes against credible oral documentary evidence on behalf of the defendant. I find that under the circumstances, the police are not guilty of any misdemeanour. I am satisfied that the arrest and detention of the plaintiff was within the permissible parameters of the Criminal Procedures Act 51 of 1977 and the Constitution.

[15] Consequently, the plaintiff's claim is dismissed with cost.

**SAMKELO GURA**

**JUDGE OF THE HIGH COURT**

**NORTH WEST DIVISION**

**APPEARANCES:**

DATE OF HEARING: 14 MARCH 2018

DATE OF JUDGMENT: 02 NOVEMBER 2018

COUNSEL FOR PLAINTIFF: ADV MONGALA

COUNSEL FOR DEFENDENT: ADV SHIBE

ATTORNEYS FOR PLAINTIFF: MOTSHABI & MODIBOA ATTORNEYS

ATTORNEYS FOR DEFENDENT: THE STATE ATTORNEY; MAHIKENG