

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO
Circulate to Regional Magistrates:	YES / NO



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

CASE NUMBER:536/23

In the matter between:

REMMY EMEKA AMAJOUYI

PLAINTIFF

and

MINISTER OF POLICE

DEFENDANT

Coram: WESSELS AJ

Date: 7 May 2025

ORDER

- i. The arrest and detention of plaintiff as well as the search and seizure of plaintiff's property are declared unlawful.
- ii. Defendant is ordered to pay plaintiff the amount of R180 000 with interest at the prescribed interest rate, as at the date of issuing of the summons, up to the date of final payment.
- iii. Defendant is ordered to pay the costs of suit on Scale A.
- iv. Plaintiff's claim for the loss of property, loss of cash and damage to property is dismissed with costs.

JUDGMENT

- [1] The plaintiff instituted action against defendant for damages sustained as a result of the unlawful arrest and detention, unlawful search and seizure, destruction and loss of property by members of the South African Police Service (SAPS).
- [2] The defendant filed a notice of intention to defend. Although plaintiff filed a notice of bar, it elicited no response from the defendant. This prompted plaintiff to set the matter down for default judgment on 15 April 2024. On this date, the application for default judgment was removed from the roll, and the defendant was ordered to deliver its application for upliftment of the bar within 20 days from the date of the order.

- [3] Again defendant failed to react, this time to the court order, which failure caused plaintiff to re-enrol the application for default judgment. The second application for default judgment now serves before this Court.
- [4] Although the defendant was represented in the proceedings before this Court by an attorney from the Office of the State Attorney, no substantive application for upliftment of the bar had been filed. Defendant remains under bar and did not take part in the proceedings on account of its non-compliance with the court order of 15 April 2024.

Facts

- [5] On 12 January 2023, at about 09:30 at Vryburg, the plaintiff was arrested by police officials on a charge of dealing in liquor without a license.
- [6] The police officials arrested the plaintiff at his shop at the taxi rank in Vryburg. It was the plaintiff's evidence that the police officials failed to explain the reason for his arrest, his rights were not explained, and he was not presented with a search warrant.
- [7] In the process of arresting the plaintiff, he was sprayed with pepper spray before being placed in a police vehicle and transported to his place of residence to conduct a search.
- [8] When the police officials arrived with the plaintiff at his residence, plaintiff's permission to search his residence was not

obtained. The police officials requested the keys to the plaintiff's residence, but plaintiff explained that it could not be provided as it was in his wife's possession, whereupon the police officials broke down the door to plaintiff's residence.

[9] For the duration of the search, which lasted two hours, the plaintiff was detained in the police vehicle, which was parked outside his residence.

[10] In the particulars of claim, plaintiff stated that the police officials confiscated the following goods from his residence:

10.1. a Samsung laptop to the value of R4 800;

10.2. a Hisense cell phone to the value of R2 500;

10.3. a Samsung cell phone to the value of R1 800;

10.4. a Samsung cell phone to the value of R1 700;

10.5. cash in the amount of R4 800.

[11] After the search of plaintiff's residence, he was taken to the holding cells of the police station where he was detained until 16 January 2023 at 11:30, when he was released without appearing in court.

Damages for loss of property

- [12] When property is confiscated by the SAPS, such property is recorded in the SAP13 Property Register. The SAP 13 Property Register is a mechanism to account for seized property by tracking its flow, thereby ensuring the traceability of the property. In terms of s 31(1)(a) of the Criminal Procedure Act¹ (CPA), where goods were confiscated and no criminal proceedings were instituted in connection with such goods, or such goods are not required as evidence at a trial, the goods shall be returned to the person who may lawfully possess it.
- [13] If the goods are not returned, such goods are claimable by means of the *rei vindicatio*. Only if the goods are not capable of being returned, due to loss or destruction, a claimant may claim damages due to the loss of property in terms of the *actio ad exhibendum*. In the judgment of *Frankel Pollak Vinderine Inc v Stanton NO*² the difference between these two remedies were discussed as follows:

'The mere acquisition of the property does not give rise to the actio ad exhibendum, because if the acquirer retained possession, the remedy against him or her would be the rei vindicatio. It is if the property is intentionally disposed of or consumed by the defendant (and possibly if it is destroyed, damaged or lost as a result of his or her negligence), that the defendant is liable.'

- [14] In the matter before this Court, plaintiff's claim is not for the return of the goods, but only for damages suffered as a result of the presumed loss or destruction thereof. The point of

¹ Criminal Procedure Act 51 of 1977

² *Frankel Pollak Vinderine Inc v Stanton NO* [1996] 2 All SA 582 W at 587 I-J

departure of the plaintiff's claim, is premised on the fact that the goods seized by the SAPS are incapable of being returned. It is not the plaintiff's case that the return of the property had been demanded from the defendant, and failing return, this claim for damages was instituted.

[15] The only semblance of a demand for the return of the goods is defendant's cursory and unconvincing oral evidence that he went to look for the goods at the police station, but that it could not be located.

[16] In terms of the provisions of s 31(2) of the CPA, the SAPS may cause confiscated goods to be forfeited to the State, in which case a claimant has to prove the wrongful disposal, consumption or destruction of the goods by the SAPS, while the SAPS had knowledge of the claimant's title or claim. In this regard plaintiff failed to prove the destruction of the goods seized by the defendant, which is a prerequisite for plaintiff's claim for damages.

[17] The particulars of claim contains reference to '*damages to property*' in the amount of R10 000. The causation of such damages has not been properly pleaded in the particulars of claim, and no satisfactory evidence of these damages was placed before this Court.

[18] Plaintiff failed to make out a case for the loss or destruction of his goods while in possession of the SAPS, and neither did he

succeed in satisfying this Court that damage was caused to his property by the police officials who conducted the search.

- [19] In conclusion, the plaintiff's claim for damages for the loss and damage to property should therefore fail.

Arrest and detention

- [20] It is trite that an arrest is prima facie unlawful and that the onus to prove the lawfulness of the arrest rests on the defendant.

- [21] In deciding the quantum of the plaintiff's claim, a balance must be struck between protecting plaintiff's constitutional rights and ensuring that the resulting award accurately corresponds with the circumstances of the matter. This balance must be achieved delicately to ensure that the award does not result in an overcompensation of the plaintiff.

- [22] This principle has its origins in the judgment of the Supreme Court of Appeal (SCA) in *Minister of Safety and Security v Tyulu*³ wherein the following was stated:

'In the assessment of damages for unlawful arrest and detention, it is important to bear in mind that the primary purpose is not to enrich the aggrieved party but to offer him or her some much-needed solatium for his or her injured feelings.'

³ *Minister of Safety and Security v Tyulu* [2009] ZASCA 55 para 26. See in general *Masiteng v Minister of Police* [2024] ZASCA 165

[23] In assessing the quantum of damages in such cases, the SCA in *Motladile v Minister of Police*⁴ confirmed a number of considerations to be employed which considerations are:

'The assessment of the amount of damages to award a plaintiff who was unlawfully arrested and detained, is not a mechanical exercise that has regard only to the number of days that a plaintiff had spent in detention. Significantly, the duration of the detention is not the only factor that a court must consider in determining what would be fair and reasonable compensation to award. Other factors that a court must take into account would include (a) the circumstances under which the arrest and detention occurred; (b) the presence or absence of improper motive or malice on the part of the defendant; (c) the conduct of the defendant; (d) the nature of the deprivation; (e) the status and standing of the plaintiff; (f) the presence or absence of an apology or satisfactory explanation of the events by the defendant; (g) awards in comparable cases; (h) publicity given to the arrest; (i) the simultaneous invasion of other personality and constitutional rights; and (j) the contributory action or inaction of the plaintiff.'

[24] The plaintiff described the cell that he was detained in as a cell of roughly 10 metres by 10 metres, which he shared with 24 fellow detainees. As bedding, plaintiff was provided with a small mattress and a light blanket without any pillows. Mattresses were uncomfortable to such an extent that plaintiff could not sleep properly while he was detained.

[25] There was only one toilet in the cell to the disposal of all the detainees. This toilet was not private and was in all the

⁴ *Motladile v Minister of Police* [2023] ZASCA 94 para 17

detainees' line of sight. The meals provided in the cells were sparse, and plaintiff remained famished for most of his detention.

[26] Although trite that the awards in other comparable cases should not be used as the sole yardstick in the determination of the quantum, it remains a helpful tool⁵. In *Diljan v Minister of Police*⁶, the Supreme Court of Appeal awarded R120 000 to the claimant for arrest and detention of three days. In *Lenoke v Minister of Police*⁷ the Full Bench of this Division granted R30 000 for an unlawful detention that lasted three hours. In *Motladile v Minister of Police*⁸, the claimant, who spent four days and three nights in detention, was awarded damages of R200 000.

[27] The plaintiff did not produce expert evidence of the impact that the arrest had on his mental state, but testified that the arrest (and search) had a profoundly detrimental effect on his psyche in that he was arrested in plain sight of many members of the community with whom he shares his daily existence. The arrest furthermore affected the reputation of the plaintiff, as many patrons were hesitant to purchase from his shop thereafter, as the perception had been created that he was a criminal.

⁵ See in general *Minister of Safety and Security v Tyulu* (327/08) [2009] ZASCA 55

⁶ *Diljan v Minister of Police* [2022] ZASCA 103

⁷ *Lenoke v Minister of Police* [2024] ZANWHC 277

⁸ *Motladile v Minister of Police* (414/2022) [2023] ZASCA 94

[28] In the absence of any evidence by the defendant relating to the lawfulness of the detention, this Court concludes that the ensuing detention of the plaintiff was unlawful.

[29] Plaintiff was detained for a period of five days and summarily released without being brought before a court. Objectively viewed, the arrest was effected without any justification. Once the arrest is proven, the onus to prove the lawfulness thereof rests on the defendant, in the absence of which the arrest is unlawful. As the plaintiff was detained up to his release without having been brought before a court, it follows that the detention was evenly unlawful and this Court need not dwell on the issue any further.

[30] Having considered all the facts and circumstances for the determination of a just, fair and equitable award, an amount of R150,000 for unlawful arrest and detention is just under the circumstances.

Search and seizure

[31] The search of plaintiff's residence was conducted without a warrant. The constitutional protection of any person's right to privacy should be jealously guarded. Section 14 of the Constitution⁹ provides for the following protection against unlawful search and seizure:

⁹ Constitution of the Republic of South Africa

'Everyone has the right to privacy, which includes the right not to have-

- (a) their person or home searched;*
- (b) their property searched;*
- (c) their possessions seized; or*
- (d) the privacy of their communications infringed.'*

[32] The functions of the SAPS as, inter alia, regulated by the CPA, should always be executed under the strict guidance of our constitutional principles. The CPA not only dictates the proper procedure for the execution of police functions but also serves as a ground of justification in substantive law against unlawful conduct. A warrantless search is conducted in terms of the provisions of s 22 of the CPA, which section reads as follows:

'22. Circumstances in which article may be seized without search warrant.-A police official may without a search warrant search any person or container or premises for the purpose of seizing any article referred to in section 20-

(a)if the person concerned consents to the search for and the seizure of the article in question, or if the person who may consent to the search of the container or premises consents to such search and the seizure of the article in question; or

(b)if he on reasonable grounds believes-

(i) that a search warrant will be issued to him under paragraph (a) of section 21 (1) if he applies for such warrant; and

(ii) that the delay in obtaining such warrant would defeat the object of the search.'

[33] The search and seizure did not result in any charges being brought against the plaintiff, a fact that is evident from the failure of the SAPS to bring the plaintiff before a court. Apart from the unsanctioned invasion of plaintiff's privacy, the search constituted a serious infringement of his dignity, a right that is protected by s 10 of the Constitution¹⁰. On the evidence (or lack thereof) before this Court, it is difficult to ascertain on which reasonable grounds the police officials conducting the search and seizure may have acted in the execution of this warrantless search.

[34] The rights of privacy and dignity of the plaintiff infringed by the police officials in the execution of the warrantless search was in clear disregard of the provisions of the CPA and subsequently unlawful.


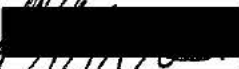
[35] Upon consideration of the conspectus of the evidence placed before this Court, an amount justifying compensation for unlawful search in the amount of R30 000 will be appropriate and fair.

¹⁰ Ibid, fn3

Order

[36] Resultantly, the following order is made:

- i. The arrest and detention of plaintiff as well as the search and seizure of plaintiff's property are declared unlawful.
- ii. Defendant is ordered to pay plaintiff the amount of R180 000 with interest at the prescribed interest rate, as at the date of issuing of the summons, up to the date of final payment.
- iii. Defendant is ordered to pay the costs of suit on Scale A.
- iv. Plaintiff's claim for the loss of property, loss of cash and damage to property is dismissed with costs.

M WESSELS
ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG

Date of hearing : 20 January 2025
Date of judgment : 7 May 2025

APPEARANCES

Counsel for Plaintiff : Adv G Maree
Instructed by : Nienaber Wissing Attorneys
Mahikeng

Counsel for Respondent : No formal appearance