THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case No: 1163/2020

In the matter between:

THE MINISTER OF POLICE	**APPELLANT**

and

SHAWN BOSMAN	**FIRST RESPONDENT**
TANUSHKA DAWSON	**SECOND RESPONDENT**
SERANO DAWSON	**THIRD RESPONDENT**
BRENDA CLAASEN	**FOURTH RESPONDENT**
CHESLYN FOSTER	**FIFTH RESPONDENT**
GRANT MARKLEY	**SIXTH RESPONDENT**
DENVER LACKAY	**SEVENTH RESPONDENT**
CHINE JASS	**EIGHTH RESPONDENT**
MORNAY JASS	**NINTH RESPONDENT**

Neutral citation: *Minister of Police v Shawn Bosman & Others* (1163/2020) [2021] ZASCA 172 (9 December 2021)

Coram: SALDULKER ADP and MATHOPO, MOLEMELA and NICHOLLS JJA and SMITH AJA

Heard: 02 November 2021

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal

website and release to SAFLII. The date and time for hand-down is deemed to be at 10h00 on 09 December 2021.

Summary: Criminal law and procedure – Criminal Procedure Act 51 of 1977 – sections 40(1)*(b)*, *(f)* and *(h)* – unlawful arrest and detention – whether the respondents' arrest and detention was lawful in terms of ss 40(1)*(b)*,*(f)*, and *(h)* of the Criminal Procedure Act 51 of 1977 – arrest and detention justified – award for damages set aside.

ORDER

On appeal from: Eastern Cape Division of the High Court, Grahamstown (Mapoma AJ and Revelas J, sitting as court of appeal):

1 The appeal is upheld with costs.

2 The respondents are to pay the costs of the appeal, such costs to include the costs of two counsel.

3 The order of the full court is set aside and the following order is substituted:

'1 The appeal is upheld with costs.

2 The judgment of the Port Elizabeth Regional Court, under case number ECPERC 845/14, is set aside and replaced with the following order:

"The plaintiffs' claims are dismissed with costs."'

JUDGMENT

Saldulker ADP (Mathopo, Molemela and Nicholls JJA and Smith AJA concurring):

[1] This is an appeal by the appellant, the Minister of Police, against the judgment and order of the Eastern Cape Division of the High Court, Grahamstown (Mapoma AJ, with Revelas J concurring, sitting as a court of appeal) (the high court), in which the arrest and detention of the respondents, Shawn Bosman (first respondent), Tanushka Dawson (second respondent), Serano Dawson (third respondent), Brenda Claasen (fourth respondent), Cheslyn Foster (fifth respondent), Grant Markley (sixth respondent), Denver Lackay (seventh respondent), Chine Jass (eighth respondent) and Mornay Jass (ninth respondent), were confirmed to be unlawful and unjustified,

and the award for damages payable by the appellant upheld.[1] The high court dismissed the appellant's appeal with costs on 28 July 2020. This appeal is with the leave of this Court.

[2] This appeal raises the issues as to whether the arrests of the respondents and their subsequent detention were unlawful, including the issue of the awards made to them with regard to damages. It is necessary to look at what unfolded on the night of their arrest and detention.

Background Facts

[3] On or about 31 December 2013, and at around 20h00 - 21h00, the respondents were travelling together in a black Nissan bakkie, being driven by the first respondent, Shawn Bosman. On the same night, warrant officer Deon Goeda, employed with the South African Police Service (SAPS), and stationed at Gelvandale Police Station, was on duty, performing crime prevention duties, in the vicinity of Schauderville, Port Elizabeth. He was driving a marked police vehicle, G12, a Chevrolet Aveo, in the company of a reservist, Constable Schoenie, when he received information at around 20h00 from radio control that a shooting incident had occurred in Malabar, Extension 6, and that the suspects had fled in a black Nissan bakkie. The radio information was not directed at him personally, but it was a general radio control message to police officers. He could not remember whether any names were reported. He reacted immediately, activated the sirens, the blue lights and proceeded towards the shooting incident at Malabar.

[4] En route to the scene of the shooting, they received another radio communication from a police vehicle, G8, that the latter was chasing the black bakkie down Fitchardt Street. When Goeda turned into Fitchardt Street, he saw the bakkie and the police vehicle that was pursuing it, drive past him at a high speed. Goeda gave chase, overtaking the police vehicle, and pursued the fleeing bakkie. The bakkie ignored the sirens and the blue lights and kept on driving at a high speed, ignoring a number of traffic lights.

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[1] The regional court, for the Regional Division of the Eastern Cape, held in Port Elizabeth (the trial court) ordered the appellant to pay each of the eight respondents (the third respondent abandoned his claim) R150 000, except the fourth respondent, who was awarded the sum of R200 000.

[5] During the high speed chase, Schoenie informed Goeda that something had been thrown out of the window of the bakkie. Ultimately, when the bakkie came to a stop, Goeda took out his firearm, approached the bakkie, and ordered all the occupants to disembark. There were 13 people in the bakkie, three females, seven males and three children. The G8 and other police vehicles arrived. The passengers and the bakkie were searched and nothing was found. Some of the passengers smelt of alcohol. After the search, the respondents were made to lie face down on the ground. Goeda then ordered Schoenie and Sergeant van Rensburg to search the area where Schoenie had seen an object being thrown from the bakkie. After some time, Van Rensburg radioed Goeda to inform him that a firearm was found with live ammunition. Forensics and ballistic experts were called to the scene. Primer residue testing[2] was conducted on the respondents, exhibits were sealed and forwarded for forensic analysis.

[6] Goeda testified that he questioned the respondents at the scene of the arrest, but none of the respondents 'owned up' to possessing the firearm. He decided to arrest all the respondents for further investigation, because he had received information about the shooting incident at Malabar, and because of the fact that a firearm was found. He explained to the respondents that he was arresting them for the unlawful possession of a firearm, and that they could possibly be suspects in a shooting incident at Malabar. The children were taken away by family members. One of the respondents, Ms Claasen, a minor, was detained at Nerina One Stop Youth Justice Centre (Nerina House).

[7] Sergeant Claasen, who was a detective in the South African Police Service, attended the shooting incident at Malabar. He was informed by witnesses at the shooting scene that the deceased, Ivan van Wyk, was shot twice by one Romano Foster, and that 'Mano', the first, third, sixth and ninth respondents had assaulted the deceased, and one Bradley Hartbees. He took the statements of two witnesses. The witnesses informed him that the murder suspect had fled in a black bakkie. This information was conveyed via radio to the other police officers who were doing

[2] Primer residue is formed by the ignition of a chemical in the primer when a firearm is discharged.

patrols. Whilst he was still at the shooting incident at Malabar he heard over the radio that the suspects had been arrested after a car chase. He then attended at the Gelvandale police station to verify the names of the persons arrested against the names of the suspects he had received at the shooting incident at Malabar. He interviewed the suspects, all of whom denied being at the shooting incident. Initially, the suspects were arrested for the illegal possession of a firearm, but later when the investigation was completed, some were charged with murder. He received the docket about three days after the incident with instructions to arrange for blood samples to be taken of the respondents. Later in the year some of those who had been arrested, namely Romano Foster, Shawn Bosman (the first respondent), Serano Dawson (the third respondent), Grant Markley (the sixth respondent) and Mornay Jass (the ninth respondent) were charged with the murder. However, these charges were also withdrawn, because one of the witnesses died and the other refused to testify.

[8] The respondents' version was that they were travelling at night from a beach at Summerstrand at which they had been partying. It was New Year's Eve, they were celebrating and had consumed large quantities of alcohol. While travelling to another party, Shawn Bosman, who was the driver, noticed the police vehicle and fled because he was under the influence of alcohol. All the other respondents were asleep in the bakkie. When he finally came to a stop, police approached the bakkie with firearms, and all the occupants, including the children alighted from the vehicle. Primer residue tests were taken on their hands. The respondents denied any knowledge of the shooting incident, and the possession of the firearm. The respondents were arrested and detained. They were released from custody in the afternoon of 2 January 2014, after blood tests were taken from them at a hospital.

[9] At the police station warning statements were taken and a docket was opened. The respondents were charged with the illegal possession of a firearm and ammunition. They were then detained at the Gelvandale police station, in Port Elizabeth. Aggrieved by their arrest and detention, the respondents instituted civil proceedings against the Minister of Police in the regional court, Port Elizabeth (the trial court) on the grounds that the arrest without a warrant and subsequent detention were wrongful and unlawful.

[10] It is against this background that the question of the arrest without a warrant and the subsequent detention of the respondents must be decided. The appellant argued that the respondents' arrest, without a warrant, was lawful in terms of ss 40(1)*(b)*, 40(1)*(f)* and/or 40(1)*(h)* of the Criminal Procedure Act 51 of 1977 (CPA). The arresting officer acted in terms of s 205(3) of the Constitution. Furthermore, the subsequent detention of the respondents was lawful and justified in terms of ss 39(3) and 50(1) of the CPA.

[11] Section 12(1)*(a)* of the Constitution enshrines the right to freedom and security of a person, which includes the right not to be deprived of freedom arbitrarily or without just cause.[3] Accordingly, where it is alleged that one has been unlawfully detained, the State bears the burden to justify the deprivation of liberty.[4]

Law

[12] Section 205(3) of the Constitution provides:

'The objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.'

In terms of the relevant provisions of the Criminal Procedure Act 51 of 1977, s 40 states that:

'(1) A peace officer may without 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 lawful custody;

(c) . . .

(d) . . .

(e) . . .

(f) who is found at any place by night in circumstances which afford reasonable grounds for believing that such person has committed or is about to commit an offence;

(g) . . .

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[3] Constitution, s 12(1)*(a)*.

[4] *Zealand v Minister for Justice and Constitutional Development and Another* [2008] ZACC 3; 2008 (6) BCLR 601 (CC); 2008 (2) SACR 1 (CC); 2008 (4) SA 458 (CC) para 24.

(h) who is reasonably suspected of committing or of having committed an offence under any law governing the making, supply, possession or conveyance of intoxicating liquor or of dependence-producing drugs or the possession or disposal of arms or ammunition.'

[13] It is instructive to consider pertinent case law in regard to this matter. In *Minister of Safety and Security v Sekhoto and another* [2010] ZASCA 141; [2011] 2 All SA 157 (SCA); [2011] 2 All SA 157 (SCA), this Court succinctly said, at para 6, that:

'As was held in *Duncan v Minister of Law and Order*, the jurisdictional facts for a section 40(1)(b) defence are that (i) the arrestor must be a peace officer; (ii) the arrestor must entertain a suspicion; (iii) the suspicion must be that the suspect (the arrestee) committed an offence referred to in Schedule 1; and (iv) the suspicion must rest on reasonable grounds.'

And at para 28:

'Once the jurisdictional facts for an arrest, whether in terms of any paragraph of section 40(1) or in terms of section 43 are present, a discretion arises. The question whether there are any constraints on the exercise of discretionary powers is essentially a matter of construction of the empowering statute in a manner that is consistent with the Constitution. In other words, once the required jurisdictional facts are present, the discretion whether or not to arrest arises. The officer, it should be emphasised, is not obliged to effect an arrest. . . .'

Paragraphs 30 and 31:

'He proceeded to say that an exercise of the discretion in question will be clearly unlawful if the arrestor knowingly invokes the power to arrest for a purpose not contemplated by the legislator. This brings me back to the fact that the decision to arrest must be based on the intention to bring the arrested person to justice. It is at this juncture that most of the problems in the past have arisen. Some instances were listed in the judgment of the court below, namely an arrest to frighten or harass the suspect, for example, to appear before mobile traffic courts with the intent to expedite the payment of fines (*S v Van Heerden* (supra) 416g-h); to prove to colleagues that the arrestor is not a racist (*Le Roux* (supra) paragraph 41); to punish the plaintiff by means of arrest (*Louw* (supra) at 184j); or to force the arrestee to abandon the right to silence (*Ramphal* (supra) paragraph 11). To this can be added the case where the arrestor knew that the state would not prosecute.

The law in this regard has always been clear. Such an arrest is not bona fide but *in fraudem legis* because the arrestor has used a power for an ulterior purpose. But a distinction must be drawn between the object of the arrest and the arrestor's motive. This distinction was drawn by Schreiner JA in *Tsose* and explained by G G Hoexter J in a passage quoted with

approval by this court in *Kraatz* (supra) at 507C-508F. Object is relevant while motive is not. It explains why the validity of an arrest is not affected by the fact that the arrestor, in addition to bringing the suspect before court, wishes to interrogate or subject him to an identification parade or blood tests in order to confirm, strengthen or dispel the suspicion. It would appear that at least some of the high court judgments under consideration have not kept this distinction in mind.'

Further, at para 39:

'This would mean that peace officers are entitled to exercise their discretion as they see fit, provided that they stay within the bounds of rationality. The standard is not breached because an officer exercises the discretion in a manner other than that deemed optimal by the court. A number of choices may be open to him, all of which may fall within the range of rationality. The standard is not perfection, or even the optimum, judged from the vantage of hindsight and so long as the discretion is exercised within this range, the standard is not breached.'

Lastly, at para 42:

'While it is clearly established that the power to arrest may be exercised only for the purpose of bringing the suspect to justice the arrest is only one step in that process. Once an arrest has been effected the peace officer must bring the arrestee before a court as soon as reasonably possible and at least within 48 hours (depending on court hours). Once that has been done, the authority to detain that is inherent in the power to arrest has been exhausted. The authority to detain the suspect further is then within the discretion of the court.'

In *Naidoo v Minister of Police and others* [2015] ZASCA 152; [2015] 4 All SA 609 (SCA), this Court stated at paras 40-41:

'And, as was explained by Van Heerden JA in *Duncan v Minister of Law and Order* 1986 (2) SA 805 (A) at 818G–H, once the jurisdictional requirements of the section are satisfied, the peace officer may, in the exercise of his discretion, invoke the power to arrest permitted by the law. However, the discretion conferred by section 40(1) of the CPA must be properly exercised, that is, exercised in good faith, rationally and not arbitrarily. If not, reliance on section 40(1) will not avail the peace officer.'

It is now settled that the purpose of the arrest is to bring the arrestee before the court for the court to determine whether the arrestee ought to be detained further, for example, pending further investigations or trial. (See *Minister of Safety and Security v Sekhoto and another* [2010] ZASCA 141; 2011 (5) SA 367 (SCA) paras 30-3.) Thus it goes without saying that an arrest will be irrational and consequently unlawful if the arrestor exercised his discretion to arrest for a purpose not contemplated by law. . . .'

Further, in *Raduvha v Minister of Safety and Security (Centre for Child Law as amicus curiae)* [2016] ZACC 24; 2016 (10) BCLR 1326 (CC); 2016 (2) SACR 540 (CC) para 44, the Constitutional Court stated:

'In other words the courts should enquire whether in effecting an arrest, the police officers exercised their discretion at all. And if they did, whether they exercised it properly as propounded in *Duncan* or as per *Sekhoto* where the court, cognisant of the importance which the Constitution attaches to the right to liberty and one's own dignity in our constitutional democracy, held that the discretion conferred in section 40(1) must be exercised "in light of the Bill of Rights".'

Lastly, the Appellate Division stated in *Duncan v Minister of Law and Order* [1986] 2 All SA 241 (A) at 243:

'The question whether a peace officer "reasonably suspects" a person of having committed an offence within the ambit of s 40(1)(*b*) of the Act is objectively justiciable. And it seems clear that the test is not whether a policeman believes that he has reason to suspect, but whether, on an objective approach, he in fact has reasonable grounds for his suspicion.'

[14] To sum up, the jurisdictional facts for a s 40(1)*(b)* defence are that (i) the arrestor must be a peace officer; (ii) the arrestor must entertain a suspicion; (iii) the suspicion must be that the suspect (the arrestee) committed an offence referred to in Schedule 1; and (iv) the suspicion must rest on reasonable grounds. The test is objective. It requires reasonable suspicion, but not certainty. The suspicion must be based on factual grounds. Thus, the enquiry is not whether Goeda subjectively suspected that the occupants of the bakkie had been in possession of the firearm and were involved in the shooting incident, but whether a reasonable person in Goeda's position, who had the same information at his disposal would have considered that there were reasonable grounds for suspecting that the occupants of the bakkie had been in possession of the firearm and were involved in the shooting incident at Malabar.

[15] The respondents were questioned on the scene about the firearm, and they all denied any knowledge thereof. It was reasonable in the circumstances to suspect that any one of the respondents, including Ms Claasen, the fourth respondent who was 16 years old, a minor, and who was an occupant in the bakkie, was involved in the shooting incident and that they had possessed an illegal firearm and ammunition.

[16] Goeda testified that once he had instructed the occupants to disembark from the bakkie, he stood outside the police vehicle. He could not say with certainty that he heard all of the information in respect of the shooting incident over the radio. It does not appear from Goeda's testimony that there was mention of any names specifically communicated over the radio. Even if this Court were to accept that Goeda may have heard the names of the suspects involved in the shooting incident (and that not all of the respondents were suspects) over the radio, a firearm with live ammunition was found to have been thrown out of the fleeing bakkie in which all the respondents were occupants, which gave rise to a reasonable suspicion that they were involved in the shooting incident at Malabar and the possession of the firearm. In such circumstances it was reasonable for Goeda to arrest all the respondents, in order to conduct further investigation in this regard, as it could not be immediately determined which of the respondents may have potentially used the firearm in the shooting incident. This was not unreasonable in the circumstances.

[17] Additionally, the fact that Goeda testified that he could not remember whether he had been given the names of the suspects does not impact on the reasonableness of the arrests. He could not release those of the respondents who were not named as suspects, as this information had not yet been verified. Significantly, it appears from Sergeant Claasen's evidence that even though he had been given names of the suspects at Malabar, he had gone to the police station to verify the information he had received at the shooting incident.

[18] Thus, objectively considered, taking into account the conspectus of information available to Goeda, the arresting officer, I am of the view that a reasonable suspicion existed in the mind of Goeda that the occupants of the black Nissan bakkie had committed an offence. This is because the information available to Goeda was the following: he had received information via radio that a shooting incident had occurred at Malabar; that the suspects had fled in a black Nissan bakkie; he saw the bakkie being chased by the marked police vehicle G8 from the direction of the shooting incident; he saw the bakkie driving in a reckless manner, skipping traffic lights and ignoring the sirens and trying to flee from the police over a distance between 15km to 20km; he was informed by Schoenie during the chase that

something was thrown out of the bakkie; later a revolver was found in the area that Schoenie had observed an object being thrown from the bakkie.

[19] In the circumstances the arrests of all the respondents were lawful, including that of the fourth respondent, Ms Claasen. In terms of the Child Justice Act 75 of 2008, an arrest of a child should be resorted to when the facts are such that there is no other, less invasive way of securing the attendance of such child before a court. Ms Claasen was in a bakkie fleeing from the police with occupants who were suspected of having been involved in the shooting incident at Malabar. During the pursuit, an object that was thrown from the bakkie, in which she was an occupant, turned out to be a firearm. Like the other occupants, she was equally suspected of being in possession of an illegal firearm and/or involved in the shooting incident. In the circumstances no criticism can be levelled against the police for also arresting the fourth respondent for further investigation. Goeda's conduct in arresting all the respondents was eminently reasonable, lawful and justifiable in the circumstances.

[20] In view of all the aforegoing, the jurisdictional facts for the arrest of the respondents in terms of the subparagraphs in s 40(1) of the CPA were present, and therefore a discretion arose. This discretion was, on a conspectus of all the evidence, in my view, properly exercised, in good faith, rationally and not arbitrarily.[5]

[21] I turn to consider whether the respondents' detention was lawful. In terms of s 50 of the Criminal Procedure Act 51 of 1977:

'(1)*(a)* Any person who is arrested with or without warrant for allegedly committing an offence, or for any other reason, shall as soon as possible be brought to a police station or, in the case of an arrest by warrant, to any other place which is expressly mentioned in the warrant.

(b) A person who is in detention as contemplated in paragraph *(a)* shall, as soon as reasonably possible, be informed of his or her right to institute bail proceedings.

(c) Subject to paragraph *(d)*, if such an arrested person is not released by reason that—

(i) no charge is to be brought against him or her; or

(ii) bail is not granted to him or her in terms of section 59 or 59A,

[5] *Duncan v Minister of Law and Order* 1986 (2) SA 805 (A) at 818G-H.

he or she shall be brought before a lower court as soon as reasonably possible, but not later than 48 hours after the arrest.'

[22] Thus, s 50 of the CPA allows the police to lawfully detain an arrested person for a period not exceeding 48 hours before bringing him/her before a court or releasing him.[6] In this case, the respondents were apprehended by the police after a high speed chase on the night of 31 December 2013. They were questioned and all the respondents denied being at the scene of the shooting incident at Malabar (even though eye witnesses placed some of them at the shooting scene). Further they denied any knowledge of the firearm that was thrown out of the bakkie. One or some of them must have had knowledge of the firearm. This, and their version that they had slept through the high speed chase was so improbable, that it clearly showed that the respondents were mendacious. Thus, as it could not be established at the time of the arrest which of the respondents had been in possession of the firearm, they were then arrested without a warrant, on a suspicion of being in possession of an illegal firearm and ammunition, and that they may possibly be involved in the shooting incident at Malabar. They were taken to the Gelvandale police station where they were detained.

[23] The validity of their arrest is not affected by the fact that Goeda, in addition to arresting them, detained them for further investigation.[7] He took them to the police station, as he intended to interrogate or subject them to blood tests in order to confirm, strengthen or dispel his suspicion.[8] In the circumstances, there appears to be no reason why through further investigation, ie arrest, detention and questioning of the suspects/respondents, pertinent information could not be obtained about the shooting incident and the firearm. In fact, this is the proper purview and mandate of the SAPS.

[24] At the police station, the respondents were charged with the unlawful possession of a firearm and ammunition under crime docket Gelvandale CAS 02/01/2014. In terms of the Notice of Rights the respondents were advised of their

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[6] *Minister of Safety and Security v Sekhoto and another* [2010] ZASCA 141; [2011] 2 All SA 157 (SCA); [2011] 2 All SA 157 (SCA) para 42.
[7] *Naidoo v Minister of Police and others* [2015] ZASCA 152; [2015] 4 All SA 609 (SCA) para 41.
[8] *Sekhoto* para 31.

rights at around 01h30 - 02h30 on 1 January 2014. The official time of detention recorded by the police was at around 03h30 on 1 January 2014.

[25] In addition, it also appears that another docket was opened in respect of a murder charge, in which the first, third, sixth and ninth respondents, together with Romano Foster (who was also in the bakkie, but not a respondent in this case), were implicated. These dockets were later combined, as the cases were ostensibly linked. This warranted further investigation, as the charges were serious, ie murder, and the firearm found by Schoenie and Van Rensburg was possibly the murder weapon.

[26] Constable Jacques Grobler, who was on standby for the Gang Task Team of the South African Police Service, testified that he received the docket for further investigation on 2 January 2014. This was for both the murder and the unlawful possession of a firearm charges. The docket contained instructions from the senior public prosecutor to obtain warning statements from the respondents, arrange for the drawing of blood and processing of DNA samples, and to release them, except for Romano Foster. The evidence linked the murder suspect (Romano Foster) to the possession of the firearm. None of the respondents were linked. The warning statements were taken at about 14h00 and the blood drawn at the Dora Nginza Provincial Hospital at approximately 15h30 on the same day. The respondents were released on 2 January 2014. When the respondents' counsel asked Grobler why those processes could not have been done on the 1st of January, he replied as follows:

'Your Worship, I only received the docket myself on the 2nd and even if we received it on the 1st I still don't think we would have been able to release them, because we had no district surgeon available on the 1st of January, due to the fact that it is a public holiday.'

[27] An arrest made under s 40(1)*(b)* of the CPA is not unlawful where the arrestor entertained the required reasonable suspicion but intends to make further investigation after the arrest before deciding whether to release the arrestee or whether to proceed with a prosecution as contemplated in s 50(1) of the CPA. From the point of view of the police, the possibility existed that the illegal possession of the firearm that the respondents were suspected of could very well have been part of the shooting incident at Malabar. Further investigation had to be carried out not at the

scene of the arrest but at the police station where they were detained. This would include obtaining statements of the witnesses mentioned at the scene of the shooting, so as to verify the information at the police station. Thus, in view of the aforegoing, the subsequent detention of the respondents, including that of Ms Claasen, was justified and lawful in terms of s 39(3) of the CPA.

[28] In this matter, the decision to arrest and detain the respondents could not, on the basis of the factual circumstances of this case be wrong or inequitable. There is no basis to suggest that Goeda or any of the other police officers involved in the arrest or further detention had an ulterior motive, acted irrationally and arbitrarily. There was no mala fides[9] in detaining them for further investigation.

[29] The respondents were released from custody when during the further investigation, it appeared that the arrested persons could not be linked to the commission of the crime. Thus, no criticism can be levelled against the SAPS for arresting and detaining all the respondents, including Ms Claasen, for further investigation. The docket was sent to the senior public prosecutor, so as to determine whether there was sufficient evidence to bring a charge against them. The prosecutor informed the SAPS on 2 January 2014 that the respondents should be released, only after blood samples for DNA testing were taken. This the SAPS duly did and the respondents were released on 2 January 2014 at around 16h00. The respondents were therefore in custody for less than 48 hours.

[30] The conduct of the police was within the lawful parameters of detention, as provided for in the legislation (s 50 of the CPA). There can be little doubt that the police officers charged with the investigations acted with alacrity and the requisite sense of urgency after they received the docket on the morning of 2 January 2014.

[31] In my view, Grobler's explanation as to why it was not possible to undertake the required processes on the 1st of January 2014 was eminently reasonable. Notwithstanding, the challenging task of having to take warning statements from all the respondents, completing the necessary forms and transporting them to the

[9] See *Minister of Safety and Security v Sekhoto and another* [2010] ZASCA 141; [2011] 2 All SA 157 (SCA); [2011] 2 All SA 157 (SCA) para 34.

hospital for the drawing of blood, the police officers still managed to complete the investigations in time to release the respondents that same afternoon. It must be appreciated that the taking of blood tests for further investigation cannot, as a matter of course, be expected to be done on a public holiday. Therefore, it cannot be said that the appellant failed in its duty to secure the earlier release of the respondents, as 1 January 2014 was a public holiday. They were released as soon as it was established that 'prima facie proof of the arrested person's guilt [was] unlikely to be discovered by further investigation'.[10] This was able to be done once the docket instruction was received on 2 January 2014.

[32] Our constitutional dispensation has brought about a primacy on individual human rights, particularly the right not to be deprived of freedom arbitrarily or without just cause. However, to place unreasonable constraints on the SAPS would hamper their law enforcement functioning. Even though there may be circumstances where criticism may justifiably be levelled against the efficiency of the SAPS, the SAPS ought to be allowed the proper scope to arrest, detain and conduct necessary investigations, all within the lawful bounds as provided for by the legislature through, inter alia, s 50 of the CPA. The police are thus in terms of the law entitled to arrest and detain and release a person within 48 hours, as happened in this case.

[33] Assessed objectively, in consideration of the totality of the information available at the time of the arrest, the arresting officer, Goeda, entertained a reasonable suspicion which led to the lawful arrest and detention of the respondents. In view of all the aforegoing, both the arrest and detention of the respondents by the SAPS were lawful, beyond reproach and justified.[11] It follows that the order of the trial court must be set aside, including the award of damages to the respondents. The appeal must succeed.

[34] In the result, the following order is made:

1 The appeal is upheld with costs.

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[10] *Duncan v Minister of Law and Order* 1986 (2) SA 805 (A) at 821B–C.
[11] See *Minister of Police and Another v Du Plessis* 2014 (1) SACR 217 (SCA) para 17.

2 The respondents are to pay the costs of the appeal, such costs to include the costs of two counsel.

3 The order of the full court is set aside and the following order is substituted:

‘1 The appeal is upheld with costs.

2 The judgment of the Port Elizabeth Regional Court, under case number ECPERC 845/14, is set aside and replaced with the following order:

“The plaintiffs’ claims are dismissed with costs.”.’

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H K SALDULKER

ACTING DEPUTY PRESIDENT

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APPEARANCES

For appellant:	F Petersen (with V Madokwe and L Hesselman)
Instructed by:	State Attorney, Port Elizabeth State Attorney, Bloemfontein
For respondent:	M du Toit
Instructed by:	Carol Geswint Attorneys, Port Elizabeth Lovius Block Incorporated, Bloemfontein