

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 2019/23157

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|-----|---------------------------------------|
| (1) | REPORTABLE: YES / NO |
| (2) | OF INTEREST TO OTHER JUDGES: YES / NO |
| (3) | REVIEWED: YES/NO |

DATE
SIGNATURE

In the matter between:-

HECTOR TUMELO MABE

Plaintiff

And

MINISTER OF POLICE

First Defendant

**NATIONAL COMMISSIONER OF THE SOUTH
AFRICAN POLICE**

Second Defendant

PROVINCIAL COMMISSIONER OF POLICE, GAUTENG

Third Defendant

THE STATE ATTORNEY

Interested Party

JUDGMENT

Raubenheimer AJ:

Summary

Order

In this matter I make the following order:

[1] The claim for unlawful arrest and detention is dismissed.

[2] The reasons for the order follow below.

Introduction

[3] This is an action for damages on the basis of unlawful arrest and detention by employees of the 1st defendant.

[4] The plaintiff alleges that he was arrested on 26 December 2017 in his residential property and there after detained for 3 days in conditions that were not commensurate with his dignity and human rights.

[5] The trial proceeded on merits and quantum.

[6] The arrest was not affected in terms of a warrant of arrest and consequently, the defendant attracted the onus to prove reasonable grounds for the arrest.¹

¹ Brand v Minister of Justice 1959(4) SA 712 (A), Mhaga v Minister of Safety and Security [2001] 2 All SA 534 (Tk) Minister of Law and Order and Others v Hurley and Another 1986 (3) SA 568 (A)

[7] The defendant called 2 witnesses to testify on its behalf, namely the arresting officer and the official who assisted him in effecting the arrest.

The case for the defendant.

[8] The 1st witness for the defendant was the arresting officer, warrant officer Van Rensburg(Van Rensburg). He works at the Johannesburg flying squad and has been a member of the South African Police Service (SAPS) since 1995 and consequently has 29 years of service as a police officer.

[9] On the night of the incident he was on duty doing general patrol duties accompanied by his crew member.

[10] During the course of his shift he received a look out for a white Lexis motor vehicle that was allegedly hijacked as well as a black Toyota Fortuner that was allegedly used in the hijacking of the white Lexis Lexus.

[11] After receiving the lookout he started tracking the white Lexis on his Global Positioning System (GPS). Before he succeeded in locating the Lexis on his GPS, a colleague, warrant officer Botha. from the K9 division picked the vehicle up on his GPS.

[12] When the lookout was broadcasted the details of both vehicles were provided, namely the make, model, colour and registration number.

[13] Botha, after giving chase behind the Lexis found it abandoned and still idling in the street. At that stage Van Rensburg had not yet reached the position where Botha was standing off at the Lexis.

[14] Whilst standing off Botha observed a black Toyota Fortuner rounding the corner into the street in which he was standing off at the Lexis.

[15] When the driver of the Fortuner saw the police vehicle he made a U-turn and raced away.

[16] Botha gave chase and saw the Fortuner turn into the premises of a residential property.

[17] Botha called for backup, which was provided by Van Rensburg who arrived on the scene shortly thereafter.

[18] The two of them together with their crew members proceeded cautiously into the premises in a tactical manner as the information provided to them was that the hijackers were armed.

[19] When they approached the kitchen door, situated at the back of the residence, they saw that the door was open and that the keys to the door was still in the lock.

[20] They proceeded through the open door into the residential property where they found the plaintiff in his bedroom busy undressing.

[21] Van Rensburg saw items in the room that have been reported to him to have been stolen during the hijack of the Lexis, namely a laptop, a bunch

of keys and a digital camera.

[22] He contacted the complainant via the control centre to enquire of him. whether the items found in the possession of the plaintiff belongs to him. The complainant confirmed that the articles do belong to him.

[23] The description of goods matched the description of that which was broadcasted.

[24] The registration number of the black Toyota Fortuner allegedly involved in the hijacking matched the registration number of the vehicle that was found on the premises.

[25] On closer inspection it was found by Botha that the engine numbers of the vehicle had been tampered with.

[26] When Van Rensburg enquired about the Fortuner the plaintiff indicated that it belongs to his brother.

[27] The plaintiff denied being involved in any hijacking or that the black Fortuner was used in the hijacking. He could give no explanation for the goods found on the premises, neither could he explain the tampering with the engine numbers of the Fortuner.

[28] The plaintiff was the only person present on the premises.

[29] The plaintiff was arrested at around 23:00 on 26 December 2017 and

taken to the Maroka police station where he was detained until 29 December 2017 when he was brought before court and the charges were withdrawn.

Legal position

[30] Arrest without a warrant may only be effected as prescribed by section 40 and 41 of the criminal procedure Act, Act 51 of 1977 or if it is explicitly authorised in terms of any other legislation.²

[31] The only purpose for effecting an arrest is to bring the person to be arrested to court. Any other reason for effecting the arrests would render the arrest unlawful.³

[32] In terms of section 40(1) of the CPA a person may be arrested if the police officer reasonably suspects such person to have committed a Schedule 1 offence.

[33] The essence of the requirement is that the arresting officer must entertain a reasonable suspicion in respect of the commission of a specific type of crime by the person to be arrested.⁴

[34] The suspicion must firstly be based on factual grounds which forms the foundation for the reasonableness of the suspicion.⁵

² Sect 40(2) of the Criminal Procedure Act, Act 51 of 1977

³ Tsose v Minister of Justice 1951(3) SA 10(A)

⁴ Minister of Safety and Security v Sekhoto and Another 2011 (1) SACR 315 (SCA)

⁵ Ralekwa v Minister of Safety and Security 2004(1) SACR 131 (T)

[35] The reasonable suspicion requirement is satisfied when:⁶

- 35.1 A reasonable person in the position of the police officer;
- 35.2 With the same information at his disposal that the police officer had;
- 35.3 Would have believed that there were sufficient ground for suspecting that the person to be arrested had committed a Schedule 1 offence.

[36] When the mentioned jurisdictional facts are found to be present by the arresting officer the discretion in terms of section 40(1)(b) of the CPA arises.

[37] In the exercise of their discretion arresting officers are free to exercise their discretion as they see fit subject to the rationality requirement.⁷

[38] In the exercise of their discretion an arresting officer should keep the guidelines formulated in *Gellman v Minister of Safety and Security*⁸ in mind. These requirements are as follows:

- 38.1 Consideration whether there are reasonable grounds for the suspicion that a Schedule 1 offence was committed;
- 38.2 The existence of reasonable grounds should be determined with reference to an analysis of the available evidence;
- 38.3 The arresting officer should endeavour to obtain corroborative evidence and not only rely on the witness statements;

⁶ Duncan v Minister of Law and Order 1986(2) SA 805(A), Mabona v Minister of Law and Order 1988 (2) SA 654 (SE)

⁷ MR v Minister of Safety and Security 2016 (2) SACR 540 (CC)

⁸ 2008(1) SACR 446 (W)

38.4 After concluding that there are reasonable grounds for suspicion the arresting officer should then ascertain whether the circumstances satisfy the requirements for effecting an arrest;

38.5 In determining whether the circumstances satisfy the requirements the arresting officer should adhere to any standing orders or national instructions.

[39] The South African Police Service issued a national instruction dealing with arrest.⁹

[40] The national instruction deals specifically with the concept of “reasonable suspicion or grounds” to entail the following:

- (i) he or she really ‘believes’ or ‘suspects’ it;*
- (ii) his or her belief or suspicion is based on certain facts from which he or she has drawn an inference or conclusion; and*
- (iii) any reasonable person would, in view of those facts, also have drawn the same conclusion.¹⁰*

[41] The plaintiff was arrested for being in possession of a stolen motor vehicle and stolen property.

[42] After his arrest the plaintiff was detained and was taken to court on 29 December 2017. His detention thus lasted for 2 days as he was taken to court on the third day.

[43] No evidence were presented in respect of a bail application, neither is such dealt with in the particulars of claim. It is not averred that he should have

⁹ National Instruction 11 of 2019 issued in terms of Sect 25(2) of the South African Police Service Act, Act 68 of 1995

¹⁰ Par 5(2) National Instruction 11 of 2019.

been released on police bail in terms of section 59 of the CPA or that he should have been granted bail by an authorised prosecutor in terms of section 59A of the CPA. Neither of these would in any case find application due to the offences the plaintiff was arrested on does not fall within the ambit of the mentioned provisions.

[44] The plaintiff was brought before court within the permissible 48 hours.¹¹

Application

[45] The arresting officer and his assistant acted on information received from their command centre.

[46] The command centre obtained the information from the local police station within whose area the attempted hijacking had occurred.

[47] The information that was provided was accurate, timeous, comprehensive and obtained from a complainant who had been the victim of a crime.

[48] The responding officers found the abandoned hijacked vehicle with the engine still idling and while on the scene, encountered the other vehicle involved in the hijacking, which then turned around and fled from the scene. The police officer saw the vehicle turning into a residential premises.

[49] When the plaintiff was arrested. he was found in possession of goods belonging to the complainant who identified the articles and confirmed his

¹¹ Sect 50(1)(c) CPA

ownership thereof.

[50] The police officers ascertained that the engine number of the black Fortuner found on the premises where the plaintiff was arrested had been tampered with.

[51] The police officers consequently had a reasonable suspicion that the plaintiff was involved in the commission of a crime and therefore arrested him.

[52] None of the identifying features of the articles found in possession of the plaintiff were disputed by the plaintiff, neither was any of the identifying features of the Fortuner disputed by the plaintiff.

[53] No evidence was presented in respect of the legality of the further detention of the plaintiff, neither was this aspect dealt with in argument by the plaintiff.

[54] In the light of the conclusion reached in respect of the arrest this aspect need not further be dealt with.

Conclusion

[55] For the reasons above, I find that the defendants discharged the onus to prove the existence of reasonable grounds of suspicion that the plaintiff was involved in the commission of a crime.

[56] The claim for unlawful arrest and detention is therefore dismissed.

E Raubenheimer
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **19 December 2024**

COUNSEL FOR THE APPLICANT:	Adv W Davel
INSTRUCTED BY:	Spruyt Lamprecht & Du Preez Attorneys
COUNSEL FOR THE RESPONDENT:	Adv OC Tommy
INSTRUCTED BY:	State Attorney
LAST DATE OF TRIAL:	13 November 2024
HEADS OF ARGUMENT FILED ON	6 December 2024
DATE OF JUDGMENT:	19 December 2024