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

IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION MAHIKENG

CASE NO: 2144/2021

In the matter between:

TSHENOLO STANLEY KHORAE **PLAINTIFF**

and

THE MINISTER OF POLICE **DEFENDANT**

Judgment is handed down electronically by distribution to the parties' legal representatives by e-mail. The date that the judgment is deemed to be handed down is ***10 APRIL 2025*** *at* ***14h00***

ORDER

1. The defendant is ordered to pay the sum of R 220 000.00 in respect of the plaintiff's wrongful arrest and detention.

2. Interest in the abovementioned amount of R 220 000.00 will run at the prescribed rate *a tempore mora* from the date of summons until the date of final payment.

3. The defendant is ordered to pay the costs of the suit on Scale B.

JUDGMENT

REDDY J

[1] The crisp issue that falls for determination is what is a just and equitable compensation to be awarded to the plaintiff for his unlawful arrest and detention.

[2] The plaintiff, Mr Tshenolo Stanley Khorae, instituted an action predicated on his unlawful arrest and detention, against the Minister of Police, the defendant, for an award in the amount of R500 000.00 for general damages. The issue of liability was conceded by the defendant.

[3] An award for damages for unlawful arrest and detention, is founded on a judicial discretion. This necessitates that a court find a balance of what is fair and reasonable to all parties, being fully alive as to public policy. In *Hulley v Cox 1923 AD 234 at 246*, the following was postulated:

"We cannot allow our sympathy for the claimant in this very distressing case to influence our judgment."

[4] In the exercise of a judicial balance the courts have been cautioned not to pour out largesse from the horn of plenty at the defendant's expense. See: *Pitt v Economic Insurance Co Ltd* 1957 (3) SA 284 (D) at 287 E- F.

[5] In *Mahlangu and Another v Minister of Police* CCT 88/20) [2021] ZACC 10, 2021 (7) BCLR 698 (CC), 2021 (2) SACR 595 (CC) (14 May 2021), the apex court held that damages are awarded to deter and prevent future infringements of fundamental rights by the organs of state. They are a gesture of goodwill to the aggrieved and they do not rectify the wrong that took place.

[6] In *Minister of Safety and Security v Tyulu* 2009 (5) SA 85 SCA, at [26], the Supreme Court of Appeal remarked as follows:

" 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. It is therefore crucial that serious attempts be made to ensure that the damages awarded are commensurate with the injury inflicted."

[7] It follows that the correct approach is to have regard to all the facts of the case and to determine the quantum of damages on such facts for each case is determined on its own exigencies'. Towards this end, it is a salutary practice in our judicial culture that previous awards in a claim for damages of this nature should only serve as a useful guide and should not be followed slavishly.

[8] In *Minister of Safety and Security v Seymour,* 295/05) [2006] ZASCA 71; [2006] SCA 67 (RSA); [2007] 1 All SA 558 (SCA) (30 May 2006, it was held that:

"The assessment of awards of general damages with reference to awards made in previous cases is fraught with difficulty. The facts of a particular case need to be looked at as a whole and a few cases are directly comparable. They are a useful guide to what other courts have considered to be appropriate but they have no higher value than that".

[9] The Supreme Court of Appeal continued that:

" Money can never be more than a crude solatium for the deprivation of what in truth can never be restored and there is no empirical measure for the loss....It needs to be kept in mind when making such awards that there are many legitimate calls upon the public purse to ensure that other rights that are no less important also receive protection.."

[10] Against the backdrop of these principles, the evidence of the plaintiff was simply this. On 24 October 2024, two police officers arrived at his home. One of these officers exhibited documents to him contending that the plaintiff had contravened an interim harassment order, within the structure of The Protection from Harassment Act, 17 of 2011.

[11] Towards this end, the police officer was in possession of a warrant of arrest that was to be executed. The applicant in these harassment proceedings was the plaintiff's late neighbour, Mr Ncongne Moses Moleko, (Moleko). The plaintiff then inquired as to what had

transpired with the charge of assault, which he had registered against Moleko for having stabbed him with a knife. To substantiate this averment the plaintiff produced the relevant corroborating documentation.

[12] In *lieu of* retorting to the plaintiff's concern regarding the delayed arrest of the late Moleko, the plaintiff was arrested and placed at the back of the police van. This arrest was executed in the presence of his life partner and their three children aged sixteen (16), thirteen (13) and eight (8) years of age respectively. Additionally, his cousin Mr Mtatle Moelwa, his wife and children witnessed same.

[13] On arrival at the Huhudi Police Station, the plaintiff was charged. A 'Notice of Rights' as evinced in section 35 of the Constitution was issued to him. These rights were not read out to him, neither was it explained. Notwithstanding this, the plaintiff appraised himself of same by reading the Notice. Pursuant to this, he was again secured at the back of the van police. He was then transported from Huhudi Police Station to Pudimoe Police Station (which was approximately thirty (30) kilometres away from his place of abode).

[14] At the Pudimoe Police Station, the plaintiff was detained with seven (7) other detainees. These detainees all originated from Pudimoe. As the only detainee from Huhudi, the plaintiff was coerced into cleaning the cell and washing the blankets. Furthermore, his meal portions were confiscated by the fellow detainees. Therefore, he did not have food during the day. He was only allowed to eat in the evenings.

[15] The holding cell in which the plaintiff was detained was subdivided as follows. The back area of approximately twenty square metres served as the sleeping area. Positioned here was an open latrine which was not fully functional. Once flushed water overflowed from the toilet bowl on to the floor. When this occurred, it was the duty of the plaintiff to sweep out the water as part of his forced duties.

[16] The front area of the cell was known as the control room. In the control area it was permissible to exercise within the specific timeframes. The shower was not in a working condition.

[17] The further inhumane conditions were exacerbated by *inter alia* :

(i) There were no proper facilities to bath, resultantly the plaintiff used the wash basin to maintain personal hygiene.

(ii) He was not provided with a mattress as the Pudimoe narrative was consistently applied. Therefore, he used two blankets to sleep on the cell floor, which was clean as per his imposed duty. No additional bedding was provided.

(iii) No reading material was provided, notwithstanding him being an avid reader of soccer magazines.

(iv) No medication was provided to him.

(v) No family visited him as his life partner did not have transport to get to the Pudimoe Police Station.

(vi) The eight (8) days that he was detained.

[18] It is a trite principle in our constitutional eon that a person's freedom and security are sacrosanct and are protected by our supreme law. In *Mahlangu and Another v Minister of Police* 2021 (2) SACR 595 (CC) at para 43, the apex court vocalized this as follows:

> " It is now trite that public policy is informed by the Constitution. Our Constitution values freedom, understandably so when regard is had to how, before the dawn of democracy, freedom for the majority of our people was close to non-existence. The primacy of "human dignity, the achievement of equality and the advancement of human rights and freedoms" is recognized in the founding
>
> values contained in section 1 of the Constitution... These constitutional provisions and the protection in section 12 of the right of freedom and security of the person are at the heart of public policy consideration. "

[19] Given the nature of the exercise, the assessment of damages is not a systematic process. Therefore, no peculiar factor supersedes the other in the determination of what would be a just and equitable award for the plaintiff's unlawful arrest and detention. It bears mentioning that the duration of the detention is not the only factor. 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. See: *JM Potgieter et al, Visser & Potgieter Law of Damages* 3 ed (2012) at 545-548; HB

Klopper *Damages* (2017) at 255-259, *Motladile v Minister of Police* (414/2022) [2023] ZASCA 94; 2023 (2) SACR 274 (SCA) (12 June 2023) at para [17]

[20] Thusly, I have taken due cognizance of *inter alia* that the plaintiff was unlawfully arrested and detained for eight (8) days in inhumane conditions and was the subject of the unrequited attention of fellow detainees. The tasks that he was coerced into executing must have been made even more difficult given his disability which affected his hands. It bears mentioning that for this condition he was the recipient of a disability grant. Moreover, he had to endure a subservient existence whilst being detained, which impacted on his overall well-being. There is no underscoring that the arrest and detention of the plaintiff resulted in several of his intersectional rights as evinced in the Constitution, Act 108, 1996 being impugned.

[21] Our supreme law failsafe's the right guaranteed in section 12(1) not to be arbitrarily deprived of freedom and security of the person. The right not to be deprived of freedom arbitrarily or without just cause applies to all people in this country. These rights, together with the right to human dignity, are fundamental rights entrenched in the Bill of Rights. The State is required to respect, protect, promote and fulfil these rights, as well as all other fundamental rights. They are also part of the founding values upon which the South African constitutional state is built. See: S1(a), S 10, S 7(1) 7(2) of the Constitution 108 of 1996.

[22] The unlawful deprivation of liberty, with its accompanying infringement of the right to human dignity, has always been regarded as a particularly grave wrong and a serious inroad into the freedom and rights of a person. See: *Peterson v Minister of Safety and Security* [2009] JOL 24495 (ECG) and *Areff v Minister van Polisie* 1977 (2) SA 900 (A) 914 and *May v Union Government* 1954 (3) SA 120 (N).

[23] In *Thandani v Minister of Law and Order* 1991 (1) SA 702 (E), at para 707 A-B, the Court underscored the right to freedom in the following manner:

"sight must not be lost of the fact that the liberty of the individual is one of the fundamental rights of a [person] in a free society which should be jealously guarded at all times and there is a duty on our Courts to preserve this right against infringement. Unlawful arrest and detention constitutes a serious inroad into the freedom and the rights of an individual."

[24] Appropriate *solatia* after a consideration of all the facts, (inclusive of awards in relevant cases) in my considered view, is an award of R 220. 000.00.

[25] In relation to costs, two principles are fundamental to our jurisprudence, First, the award of costs, unless otherwise expressly enacted, is in the discretion of the court. Second, the successful party is generally entitled to their costs. There is no basis to deviate from these.

Order

[26] In the premises I, make the following order:

1. The defendant is ordered to pay the sum of R 220 000.00 in respect of the plaintiff's wrongful arrest and detention.

2. Interest in the abovementioned amount of R 220 000.00 will run at the prescribed rate *a tempore mora* from the date of summons until the date of final payment.

3. The defendant is ordered to pay the costs of the suit on Scale B.

A REDDY
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION MAHIKENG

APPEARANCES

Counsel for the Plaintiff	: Advocate CJ Swiegelaar
Attorneys for the Plaintiff	: Nienaber & Wissing Attorney 4204 Palmer Crescent Leopard Park Mmabatho
Counsel for the Defendant:	Advocate D Ntsamai
Attorney for the Defendant:	The State Attorney First Floor, East Gallery Mega City Complex Cnr. Sekame Road Mmabatho
Judgment reserved:	21 February 2025
Judgment handed down:	10 April 2025