IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

CASE NO: 666/2012

Reportable

In the matter between:

MINISTER OF POLICE **First Appellant**

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS **Second Appellant**

and

ASHWELL DU PLESSIS **Respondent**

Neutral Citation: Minister of Police v Du Plessis (666/2012) [2013] ZASCA 119 (20 September 2013).

Coram: NAVSA ADP, PONNAN, BOSIELO & PILLAY JJA & MEYER AJA

Heard: 6 September 2013

Delivered: 20 September 2013

Summary: Lawfully arrested person detained even after it became clear he had played no part in offence for which he had been arrested – prosecuting authority at first and subsequent court appearances gave no consideration to contents of the docket which indicated arrested person had merely been an innocent bystander – pressures under which police and prosecutors operate discussed – detention held to be unlawful – decision to prefer charges held to be without foundation – damages award by High Court justified.

ORDER

On appeal from: The South Gauteng High Court, Johannesburg (Campbell AJ sitting as court of first instance).

The following order is made:

1. The appeal is dismissed with costs including the costs of two counsel.

JUDGMENT

NAVSA ADP, (PONNAN, BOSIELO & PILLAY JJA & MEYER AJA CONCURRING):

[1] It could with some justification be said that the facts on which the appeal before us is premised give credence to the ironic and cynical expression: No good deed goes unpunished.[1] The appeal is about the legality of the continued detention of the respondent, Mr Ashwell Du Plessis (Du Plessis), after what the parties agree was his lawful arrest. It examines, against the specific circumstances of the case, the legal duties resting on the police and on prosecution authorities after an arrest has been made. It brings into sharp focus the independent role that prosecutors should play in the public interest and weighs this against the pressures under which they operate. It considers the balance to be struck between, on the one side, the police force's battle against crime, coupled with the practical difficulties and logistics attendant upon the administration of justice, and on the other side, the premium that our legal system places on personal freedom. The limited facts that emerged during the trial in the court below are set out hereafter.

[1] Attributed to journalist, editor and playwright Clare Booth Luce.

[2] During the night of Saturday 28 February 2004 a robbery took place at the premises of Imperial Cargo and Logistics (Imperial), in Wadeville, Gauteng. A police intelligence unit had earlier obtained information that the robbery was to take place and they were therefore on alert. Apparently the robbers intended to overcome the security personnel and drive off in three of Imperial's trucks that had already been loaded with cargo. A police force of some 30 officers assembled at Germiston Lake in order to thwart and arrest the robbers. The police expected the robbery to take place after 22h00. Instead, whilst they were waiting at the lake, they were informed that the robbery had already occurred at approximately 20h15 and that the security personnel on duty at Imperial Cargo and Logistics had been overcome and subdued. Thus, they arrived at the scene of the robbery after it had already commenced. That notwithstanding, the robbery was ultimately foiled and some people were arrested.

[3] The police informant who had informed the police about the intended robbery had told them that amongst the vehicles to be used by the robbers would be a dark blue Toyota Corolla and a white Hyundai panel van.[2] On their way from the lake to the scene of the robbery the police came across a Toyota Corolla and a Hyundai panel van in the vicinity of Imperial Cargo and Logistics but the vehicles were *then* seemingly abandoned and empty.

[4] It appears that at approximately 20h00 during the night that the robbery took place a Mr David Bosch had acceded to a request by his nephew, Mr Desmond Reynders, to transport him and some of his work colleagues to their places of employment in Wadeville in his Hyundai panel van. It took several hours because of stops and detours along the way before Mr Bosch travelled with a party of six, which included his nephew, to Wadeville. Mr Bosch did not drop his passengers off at their

[2] In respect of the Hyundai, the descriptions 'kombi' and 'panel van' were used interchangeably by witnesses.

places of employment but at a service station in the vicinity at approximately 23h45. Significantly, Mr Bosch had testified during the trial in the court below that whilst travelling to Wadeville he had overheard his passengers talking about a robbery that was being planned at the workplace of one of them. He testified rather unconvincingly that he had not paid much attention to what was being said about the intended robbery.

[5] After his passengers had alighted, Bosch's nephew, Reynders, asked him to wait for a while but after approximately ten minutes he could wait no longer and departed. A kilometre later the Hyundai experienced mechanical problems and he could drive no further. However incomplete the picture leading up to this point might have been from the limited evidence adduced in the court below, it is uncontested that Mr Du Plessis was asleep at his home in Germiston when the police arrived at the scene of the robbery and when Mr Bosch's vehicle broke down.

[6] Mr Bosch managed to park his Hyundai at a deserted service station and walked to another where he used a public payphone to call Mr Du Plessis, who is a self-employed motor mechanic and his friend. Du Plessis' wife answered the phone and woke him with a plea that he be of assistance to Bosch. Du Plessis did not have a car of his own but decided to use the vehicle of a client of his that he had recently worked on. That car happened to be a Toyota Corolla, which was charcoal in colour.

[7] Du Plessis drove to Wadeville where he found Bosch and his Hyundai. It is important to note that the Hyundai initially parked at the scene of the robbery when the police arrived is the same Hyundai that Mr Bosch was driving and it bore the same registration number as that supplied by the police informant. The Toyota driven by Du Plessis, however, was distinct from the Toyota found abandoned close to where the robbery had taken place at Imperial's premises. Du Plessis was busy taking steps to

tow the Hyundai with his Toyota when the police arrived at the scene. Du Plessis in his evidence said the following:

'I pulled my car in front of the Kombi [and] hooked the Kombi up with a jack.'

That aspect of Du Plessis' evidence was unchallenged. Despite Du Plessis' explanation about how and why he arrived at the scene he was arrested by Inspector Johan Willemse.

[8] After their arrest Bosch and Du Plessis were conveyed to the Germiston police station where they were handed over to Warrant Officer Stephanus Van der Merwe, the investigating officer. He, in turn, transported them to the Heidelberg police station where they were held in appalling conditions until 2 March 2004 when they appeared in the Germiston Magistrates' Court. There, together with fifteen others, they were charged with armed robbery. The presiding magistrate postponed the case for seven days. Bosch and Du Plessis were then held at the Boksburg police station in similarly disgusting conditions. In addition there was severe over-crowding, and they were permitted no exercise.

[9] On 9 March 2004 Bosch, Du Plessis and their other co-accused appeared once again in the Magistrates' Court. The two were now, for the first time, legally represented. The case was postponed to 11 March 2004 in order for a bail application to be heard. On that day the charges against Du Plessis were withdrawn and Bosch was released on bail.

[10] Du Plessis and Bosch instituted action in the South Gauteng High Court against the Minister of Police (the Minister) and the National Director of Public Prosecutions (NDPP) for damages sustained as a result of what was alleged to be an unlawful arrest and detention. The claim against the Minister for the unlawful arrest and detention

before their appearance in court was that there had been no basis at all for the arrest and detention. The second claim against the NDPP and the Minister jointly and severally was that at the instance of the police, Du Plessis had been brought before the Magistrates' Court and that the police and the prosecutor caused him to be detained until his release. Furthermore, it was alleged that the prosecutor was under a legal duty to inform the Magistrates' Court that there was no evidential or indeed any other foundation to the charges against them.

[11] Campbell AJ who heard the matter held that Willemse's suspicions in the vicinity of the scene of the robbery were reasonable in respect of the arrest of both Bosch and Du Plessis, stating that at that stage there was evidence linking them to the robbery. However, he went on to say the following:

'The police were required to apply themselves to whether or not it was justified to further detain the two plaintiffs *(Mvhu v Minister of Safety and Security and Another* 2009 (2) SACR 291 (GSJ) at para 10). They did not do so and I do not think that their reasonable suspicions survived more than a few hours at the police station.

The first defendant's exculpatory account of how he came to be where he was was conveyed to Willemse at the scene by the second defendant. I accept that Willemse could not corroborate this at the scene of the arrest, but someone could easily have done so at the police station simply by telephoning the first plaintiff's wife.

Van der Merwe testified that the basic paperwork in respect of the detention of each suspect took about an hour. A five minute telephone call to the first plaintiff's wife is not then placing too [indistinct] a burden on the police. I therefore find that the detention of the first plaintiff from about 02:00 on Sunday 29 February 2004 was unlawful. That detention continued until the plaintiff's appearance in the Germiston Magistrate's court on Tuesday 2 March 2004.'

[12] Turning to the question of the role and obligations of prosecutors the court below said the following in relation to Du Plessis' appearances in court subsequent to his arrest:

'As explained by Harms DP in *Sekhoto's* case the relevant decision is no longer that of the police but of the court. But before the court's decision comes the decision of the prosecutor to charge each accused. Mr Pretorius was the prosecutor, he studied the information furnished to him by the police and decided to proceed against all the accused, including both plaintiffs.

He had no basis for proceeding against the first plaintiff. Only two statements implicated the first plaintiff. The first was the first plaintiff's own statement which set out the version that I have already recorded, i.e. that he was summoned to Wadeville after 12 o'clock on the night of Saturday 28 February 2004 to assist the second plaintiff.

The second plaintiff confirmed this. There was nothing else. When confronted with this Mr Pretorius sought refuge in vacuous generalities such as the "totality of the evidence", but was never able to point to anything in the docket that indicated possible guilt on the part of the first plaintiff, nor to any logical process that he had undertaken from which he could, by drawing inferences, have formed the view that there was any basis at all for believing that the first defendant had been involved in the robbery.

In my view there was no basis at all for Mr Pretorius charging the first plaintiff on 2 March 2004. He simply gave no consideration to the matter.

In my view the role of the prosecutor in charging suspects is an important one. The first plaintiff was nothing other than an innocent bystander but after arrest he was in the hands of the authorities, he was reliant upon them to assess the evidence against him objectively and competently. His liberty was at stake. If the decision went against him he was then in the hands of the court in the sense that his liberty could only be recovered by way of a bail application.

He was therefore reliant on Mr Pretorius to conscientiously apply his mind to the docket. But Mr Pretorius did not do this and his decision, especially in the light of his weak explanations disclosed a dereliction of duty.'

[13] In respect of the damages he awarded to Du Plessis, Campbell AJ made the following order:

'1. The first defendant is ordered to pay the amount of R100 000.00 to the first plaintiff, plus interest at the rate of 15.5 per annum from 24 February 2012 to date of payment.

2. The second defendant is ordered to pay the amount of R120 000.00 to the first plaintiff plus interest at the rate of 15.5 percent per annum from 24 February 201 to date of payment.
3. The defendants are ordered jointly and severally, the one paying the other to be absolved, to pay the first plaintiff's costs of suit.'

He dismissed Bosch's action with costs. The Minister and the NDPP now appeal against the findings referred to above and the order set out in this paragraph.

[14] Police bear the onus to justify an arrest and detention. In *Minister of Law and Order and others v Hurley and another* 1986 (3) SA 568 (A) at 589E-F the following is stated:

'An arrest constitutes an interference with the liberty of the individual concerned, and it therefore seems to be fair and just to require that the person who arrested or caused the arrest of another person should bear the *onus* of proving that his action was justified in law.'

[15] Our new Constitutional Order, conscious of our oppressive past, was designed to curb intrusions upon personal liberty which has always, even during the dark days of apartheid, been judicially valued, and to ensure that the excesses of the past would not recur.[3] The right to liberty is inextricably linked to human dignity. Section 1 of the Constitution proclaims as founding values, human dignity, the achievement of equality and the advancement of human rights and freedoms. Put simply, we as a society place a premium on the right to liberty.

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[3] See *Minister of Safety and Security v Seymour* 2006 (6) SA 320 (SCA) para 14. See also s 12(1) of the Constitution of the Republic of South Africa, 1996 which reads as follows:
'Everyone has the right to freedom and security of the person, which includes the right –
(a) not to be deprived of freedom arbitrarily or without just cause;
(b) not to be detained without trial;
(c) to be free from all forms of violence from either public or private sources;
(d) not to be tortured in any way; and
(e) not to be treated or punished in a cruel, inhuman or degrading way.'

[16] In *Zealand v Minister of Justice and Constitutional Development and Another* 2008 (4) SA 458 (CC) para 24 the following is said:

'The Constitution enshrines the right to freedom and security of the person, including the right not to be deprived of freedom arbitrarily or without just cause, as well as the founding value of freedom. Accordingly, it was sufficient in this case for the applicant simply to plead that he was unlawfully detained. This he did. The respondents then bore the burden to justify the deprivation of liberty, whatever form it may have taken.'

[17] Justification for the detention after an arrest until a first appearance in court continues to rest on the police.[4] Counsel for the appellants rightly accepted this principle. So, for example, if shortly after an arrest it becomes irrefutably clear to the police that the detainee is innocent, there would be no justification for continued detention.[5]

[18] In respect of Du Plessis's claim against the police we are faced with a position where it is accepted that a basis existed for the arrest but it is contended that a most cursory investigation by the police immediately thereafter would have resulted in them becoming aware of his innocence, and that this ought to have led to his release. In short, Du Plessis pleaded that the police owed him a legal duty and that in breach of that duty they failed to cause even the most perfunctory enquiries to have been made, which would have resulted in his release. The State contends that after his initial lawful arrest there was no duty on the police to consider whether Du Plessis' further detention was justified.

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[4] In *Minister van Wet en Orde v Matshoba* 1990 (1) SA 280 (A) at 284H-I the following appears:
'Hoewel hierdie passasies slegs verwys na 'n inhegtenisneming – dit was al wat daar in geskil was – geld dieselfde beginsel klaarblyklik ook vir die aanhouding van 'n persoon.'

[5] In *Duncan v Minister of Law and Order* 1986 (2) SA 805 (A) at 821A-C the following appears:
'It is clear, however, from the decision in *Duke's* case that that duty does not relate to the time of the arrest, but to the period of detention prior to bringing the arrestee to justice or releasing him, as the case may be. It is only when a policeman in England has subsequent to the arrest, but whilst the arrestee is still lawfully detained, reached the conclusion that *prima facie* proof of the arrested person's guilt is unlikely to be discovered by further investigation that it is his duty to release him from custody: *Duke's* case at 1058*b.* But a South African policeman is under a similar duty.'

[19] The court below agreed with that submission on Du Plessis' behalf and in the passages referred to in para 11 above indicated that the police could easily have corroborated Du Plessis' version of how he had arrived at the scene by telephoning his wife when they arrived at the Germiston police station.

[20] If one accepts, as one is constrained to because this was not disputed on Du Plessis' behalf that the arrest was lawful based on: his proximity to the crime; and, association with Bosch who was in a vehicle that the informant had indicated would be used in the robbery and bearing the registration number supplied by the informant then, in my view, it is too simplistic to suggest that a mere telephone call to his wife was all that was required to cause the police to re-consider his position. For, in those circumstances the police could justifiably have been sceptical of her corroboration of his alibi.

[21] Nonetheless, by 01h00 on Sunday morning 29 February 2004 the police had obtained a statement from the security guard at Imperial which reflected that he had been confronted by eight men who informed him of their plan to commit the robbery. He was assaulted and ran away. A short while later the police arrived with the suspects they had arrested, and the security guard identified two of them. He stated that he would be able to identify the other robbers who had initially confronted him.

[22] By 02h05 that morning another statement was obtained by Van der Merwe, from a fellow police officer, Inspector Johan Williams. That statement indicated that prior to the robbery an informant had provided the registration number of the Hyundai that would be used in the robbery. Inspector Williams also notes in his statement that he seized a *charcoal* coloured Corrolla from Du Plessis. That vehicle bore no connection to the information provided by the informant.

[23] By 9h30 on Sunday morning the investigating officer had obtained a number of witness statements including one by Mr Andries van Wyk, head of security at Imperial, in which he described how an informant had telephoned him to convey information that the security guards at Imperial had already been assaulted and that three vehicles were being used by the robbers in the execution of the robbery, namely, a gold coloured Pajero, a white Hyundai panel van and a *dark blue* Toyota Corrolla. It is important to note that according to Willemse the informant had taken part in the robbery.

[24] By then it must have become abundantly clear to the police that the totality of the information then available to them pointed ineluctably to Du Plessis innocently having been at the wrong place at the wrong time. He had been found at the scene in the process of preparing to tow the Hyundai using a jack and a tow line. This is hardly the typical pose of someone who had just committed a robbery, particularly with a sizeable and noticeable police contingent in the immediate vicinity. He had provided an explanation for his presence consistent with his actions. His explanation was corroborated by Bosch. Du Plessis' vehicle did not match the description of any vehicle used in the execution of the robbery. Another vehicle that matched the description, namely a Toyota of a different colour, had in fact been abandoned at the scene of the robbery. Another important feature is that a security guard at Imperial had been brought by the police to identify Du Plessis and Bosch at the scene of the robbery but he denied seeing either of them at the premises as part of the gang of robbers.

[25] In the circumstances sketched in the preceding paragraphs, it can hardly be said that there was any justification for the continued detention of Du Plessis after 9h30 on Sunday morning. There is a time difference of approximately seven and a half hours between what the court below held was the time at which Du Plessis should have been released and this conclusion reached by me. Counsel for the parties were agreed that

this time difference is not such that on its own it would materially affect the award of damages.

[26] In reaching this conclusion, I am not unmindful of the pressures under which the police operate. They are more often than not called upon to deal with emergency situations such as the one encountered here. In the present case a number of people were arrested and several witnesses had to be interviewed before a full picture could emerge. That notwithstanding, the police, if they had properly considered all the information they had by 09h30 on the Sunday morning, could only have come to one conclusion, namely that Du Plessis had played no part in the robbery.

[27] Counsel for the second appellants rightly conceded that a conclusion that the police were legally obliged to release Du Plessis before the appearance by Bosch and Du Plessis in court on the morning of Tuesday 2 March 2004 would negatively impact on the case for the NDPP.

[28] Once an arrestee is brought before a court, in terms of s 50 of the Criminal Procedure Act 51 of 1977 (CPA), the police's authority to detain, inherent in the power of arrest, is exhausted. In this regard see *Minster of Safety and Security v Sekhoto and Another* 2011 (1) SACR 315 (SCA) para 42. As pointed out by Campbell AJ in the court below, before the court makes a decision on the continued detention of an arrested person comes the decision of the prosecutor to charge such a person. A prosecutor has a duty not to act arbitrarily.[6] A prosecutor must act with objectivity and must protect the public interest.[7] In *State v Jija and others* 1991 (2) SA 52 (E) at 67I-68B the following appears:

[6] See E du Toit, FJ de Jager, A Paizes, A St Quintin Skeen & S van de Merwe *Commentary On the Criminal Procedure Act* (2013) at 1-4O.
[7] See *Carmichele v Minister of Safety and Security and Another (centre for Applied Legal Studies Intervening)* 2002 (1) SACR 79 (CC) para 72.

'I must also mention that the Court had an uneasy feeling that State counsel had misconceived his function. It appeared to the Court from the nature of his address and attitude that he regarded his role as that of an advocate representing a client. A prosecutor, however, stands in a special relation to the Court. His paramount duty is not to procure a conviction but to assist the Court in ascertaining the truth (*R v Riekert* 1954 (4) SA 254 (SWA) at 261D-G; *R v Berens* [1985] 176 ER 815 at 822). See also *R v White* 1962 (4) SA 153 (FC); *R v Tapera* 1964 (3) SA 771 (SRA); *S v Van Rensburg* 1963 (2) SA 343 (N); *R v M* 1959 (1) SA 434 (A) at 439F.'

[29] In *Democratic Alliance v President of the RSA and others* [2012] 1 All SA 243 (SCA) this court, after a discussion concerning prosecutorial independence in democratic societies, quoted, with approval, the following part of a paper presented at an international seminar by Mr James Hamilton, a then substitute member of the Venice Commission and Director of Public Prosecution in Ireland: [8]

'Despite the variety of arrangements in prosecutor's offices, the public prosecutor plays a vital role in ensuring due process and the rule of law as well as respect for the rights of all the parties involved in the criminal justice system. The prosecutor's duties are owed primarily to the public as a whole but also to those individuals caught up in the system, whether as suspects or accused persons, witnesses or victims of crime. Public confidence in the prosecutor ultimately depends on confidence that the rule of law is obeyed.'[9]

We should all be concerned about the maintenance and promotion of the Rule of Law. Given increasing litigation involving the NDPP, these principles cannot be repeated often enough. We ignore them at our peril.

[30] A prosecutor exercises a discretion on the basis of the information before him or her. In *State v Lubaxa* 2001 (2) SACR 703 (SCA) para 19 this court said the following:

[8] Paras 77 to 82.
[9] The seminar was organised by the European Commission for Democracy Through Law (Venice Commission), conducted at Trieste, Italy, between 28 February and 3 March 2011, under the title 'The Independence of Judges and Prosecutors: Perspectives and Challenges'.

'Clearly a person ought not to be prosecuted in the absence of a minimum of evidence upon which he might be convicted, merely in the expectation that at some stage he might incriminate himself. That is recognised by the common law principle that there should be "reasonable and probable" cause to believe that the accused is guilty of an offence before a prosecution is initiated . . . and the constitutional protection afforded to dignity and personal freedom (s 10 and s 12) seems to reinforce it. It ought to follow that if a prosecution is not to be commenced without that minimum of evidence, so too should it cease when the evidence finally falls below that threshold.'

[31] Courts are not overly eager to limit or interfere with the legitimate exercise of prosecutorial authority.[10] However, a prosecuting authority's discretion to prosecute is not immune from the scrutiny of a court which can intervene where such a discretion is improperly exercised. See generally *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) para 37. Indeed a court should be obliged to and therefore ought to intervene if there is no reasonable and probable cause to believe that the accused is guilty of an offence before a prosecution is initiated.

[32] In the present case the information referred to in paras 21 to 23 above was in the prosecutor's docket as were additional statements. The prosecutor had both the statement by Bosch which was exculpatory and Du Plessis' own statement which explained how he arrived at the scene. Significantly, the prosecutor had a statement by Mr Jefferey "Boy" Louw who confirmed that he had taken his car, a silver Toyota Corrolla, to Du Plessis to be repaired. From all the information in the prosecutor's docket it was clear that Du Plessis was merely an innocent bystander and that there was no basis for prosecuting him. In addition the police and the prosecutor had access to the informant. If there was no reason for the police to continue to detain Du Plessis before his first appearance in court, the emergence of more exculpatory evidence was even greater cause for his release. Mr Braam Pretorius, the prosecutor in charge at material times did not have due regard to the evidence in the docket.

[10] Du Toit et al *op cit* at 1-4P to 1-4Q and the authorities there cited.

[33] The following comment written in the docket almost a year after Bosch and Du Plessis' first appearance in court by Ms Linda Lamprecht, a senior prosecutor at Germiston, is telling:

'Hierdie saak is met alle respek nie behoorlik ondersoek nie.'

The conclusion by Campbell AJ that Pretorius simply gave no consideration to the matter is fully justified.

[34] Prosecutorial authorities no doubt have an onerous task, faced as they are with clogged court rolls and the pressures of collating and analysing the evidence in their dockets. In *May v Union Government* 1954 (3) SA 120 (N) at 128D-E Broome JP, in dealing with warrants issued at the instance of prosecuting authorities, said the following:

'It may be objected that this view of the law places an intolerable burden upon prosecuting authorities in that they must, at their peril, come to a correct conclusion of law before they apply for a warrant of arrest. What of cases where the facts are known with certainty but a genuine doubt exists as to whether those facts constitute an offence? Are suspected persons, in such cases, to be allowed to be at large, however serious the offence which their conduct is believed in law to constitute? There are two answers. First, even if the burden upon prosecuting authorities is heavy, the subject's right to personal liberty requires that the burden should be imposed. . . '

That comment is apt. A prosecutor's function is not merely to have the matter placed on the roll to then simply be postponed for further investigation. A prosecutor must pay attention to the contents of his docket. As set out above, a prosecutor must act with objectivity and must protect the public interest. In the present case that was not done.

[35] The present appeal was also directed against the amounts awarded as damages by Campbell AJ for the unlawful arrest, detention and prosecution. Counsel for the

appellants was unable to argue with any real conviction that the amounts awarded were disproportionate when viewed against the award approved by this court in *Minster of Safety and Security v Seymour* 2006 (6) SA 320 (SCA) and after consideration of awards in other cases considered in that decision.[11] In any event, as pointed out by Nugent JA in the *Seymour* judgment, caution should be exercised in comparing awards because each case must of necessity be decided on its own facts. The total period of incarceration was close to ten days and the conditions under which Du Plessis was held were appalling. In addition he was a self-employed motor mechanic and testified that the period of his incarceration and the knowledge in his community that he had been arrested in connection with an armed robbery was devastating to his business. In my view, the awards by the court below are not extravagant and it cannot be said that a case had been made out for overturning them.

[36] The following order is made.

1. The appeal is dismissed with costs including the costs of two counsel.

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MS NAVSA

ACTING DEPUTY PRESIDENT

[11] Paras 12 to 16.

APPEARANCES:

FOR APPELLANT:	Adv. D J Joubert
	Instructed by:
	State Attorney, Johannesburg
	State Attorney, Bloemfontein
FOR RESPONDENT:	Adv. E Killian (with him Adv. C McKelvey)
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	S S Wangra Attorneys, Johannesburg
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