

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NUMBER: 6027/2020

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED.

Signature:

Date: 30/06/2025

In the matter between:

MAPHILA JOEL MASHIGOANA

PLAINTIFF

AND

MINISTER OF SOUTH AFRICAN POLICE SERVICE

1ST DEFENDANT

**NATIONAL COMMISSIONER OF
SOUTH AFRICAN POLICE SERVICE**

2ND DEFENDANT

LIMPOPO PROVINCIAL COMMISSIONER OF

3RD DEFENDANT

SOUTH AFRICAN POLICE SERVICE

**ONE OTHER MEMBER OF
SOUTH AFRICAN POLICE SERVICE**

4TH DEFENDANT

JUDGMENT

STRÖH AJ

[1] The *Plaintiff* (Maphila Joel Mashigoana) instituted an action against the Minister of the South African Police Service, (hereinafter the *1ST Defendant*), National Commissioner of the South African Police Service (hereinafter the *2ND Defendant*), Limpopo Provincial Commissioner of the South African Police Service (hereinafter the *3RD Defendant*) and One Member of the South African Police Service (hereinafter the *4TH Defendant*) together known as the *Defendants*, for the unlawful arrest by the Defendants. The Plaintiff's reasoning behind their claim is that the arrest was carried out without a warrant of arrest and unlawfully depriving the *Plaintiff* of his freedom from the 30th November 2019 until his release on the 2nd December 2019. The Plaintiff claim for an amount of R 200 000,00 (Two Hundred Thousand Rand) for general damages due to emotional shock, indignity, psychological trauma and humiliation as well as R 400 000,00 (Four Hundred Thousand Rand) for unlawful arrest and detention.

[2] At the start of the trial, the *Plaintiff's* counsel informed the Court that the Plaintiff abandoned his second claim which was a claim for alleged assault against the *Defendant*.

[3] There was a separation of the merits and quantum in this matter, the Court had to adjudicate on only the merits of the case.

[4] The *Plaintiff* states in paragraph seven (7) of his Particulars of Claim that, "During or around 01:00 on 30th November 2019, at or near Jerusalem Village, one member of the South African Police Service ("SAPS") Hlogotlou, Limpopo Province,

arrested the Plaintiff without a warrant, for allegedly being in possession of a stolen motor vehicle. The arrest is *prima facie* unlawful as it was carried out without a warrant."

[5] Paragraph fifteen (15) of the *Plaintiff's* Particulars of Claim states that, "On the 2nd December 2019 at approximately 11h00, the *Plaintiff* was released from the holding cells without having made any court appearance. To date the *Plaintiff* has never been charged for the alleged possession of stolen motor vehicle."

[6] The Defendant in their amended Plea at paragraph five (5) holds that, "The *Defendants* admit that on 30 November 2019 and at next Mantrompi, Public Road, Hlogotlou, the *Plaintiff* was lawfully arrested and lawfully detained after he was found in possession of a stolen motor vehicle, to with a blue Mazda 323 with Reg. B[...]."

[7] When having regard to the *lawfulness of the arrest and detention*, the *Defendant bore the onus to prove the grounds of justification*.¹ This is due to the fact that the justification for the detention, following an arrest, until the detainee's first appearance in court, continues to rest on the police.² *The Defendant in addition, has an onus of proving the lawfulness of the Plaintiff's continued detention until the 2nd December 2019*. The general principle holds that the onus rests on the detaining officer to justify the detention because the *detention is prima facie unlawful*.³

[8] The Plaintiff only bears the onus when he alleges that the arresting officer failed to exercise his/her discretion rationally.

[9] The parties agreed that the *Defendant* would commence with leading evidence in respect of the lawfulness of the arrest and further to call one of the police officers, to lead evidence regarding the *Plaintiff's* detaining officers' evidence. The

¹ **Minister of Law and Order v Hurley** 1986 (3) SA 569 (A) 589 E-F

² **Minister of Police and Another v Du Plessis** [2013] ZASCA 119; 2014 (1) SACR 217 (SCA) at para 17.

³ See **JE Mahlangu and Another v Minister of Police** [2021] ZACC10 at para [32] where it was held that once it has been established that the constitutional right not to be deprived of one's physical liberty has been interfered with, the deprivation is *prima facie* unlawful, and the infringer bears the onus to prove that the inference was justified.

evidence of the Plaintiff's detaining officer is found to be hearsay evidence in terms of section 3(1)(c) of the Law of Evidence Amendment Act 45 of 1988.

[10] Once the *Defendant* has lead evidence that the arrest was lawful and the court accepts the evidence, the onus shifts to the *Plaintiff* to then prove that the arrest of the *Plaintiff* did not meet the threshold of section 40 of the Criminal Procedure Act 51 of 1977 and that the officer who arrested the *Plaintiff*, did not have the reasonable suspicion that was needed, at the time of the arrest.

EVIDENCE GIVEN AT THE TRIAL

[11] The ***Defendant*** called its **first witness, Constable Mapaleng Amos Thekupi (hereinafter referred to as 'Thekupi')**. *Thekupi* testified that on 30 January 2019, he was stationed at Hlogotlou Police Station, working in the investigation section. His evidence was that he was requested to go to the alleged crime scene (first scene), on arrival he found nobody whereafter he was again informed to drive to Montrompi (second scene), which he did and at the second scene he found the two vehicles which had collided with one another at the first scene.

[12] At the second scene the person who reported the incident to *Thekupi* is named Glen. Glen informed *Thekupi* that the other person who collided with his vehicle drove away from the first scene but ran out of petrol causing both vehicles to be at the second scene.

[13] *Mathupi's* evidence was that Glen did not want to press charges since the damage to Glen's car was not that serious and 'anyway' he would not be able to recover the damages from the person who drove away from the first scene.

[14] *Mathupi* informed this court that at the second scene he obtains information that Glen's vehicle was not a stolen vehicle but that the vehicle of the second person at the second scene (referring to the Plaintiff's vehicle) was reported to be a stolen vehicle.

[15] It was *Mathupi's* further evidence that when he confronted the Plaintiff with the information that his car is reported to be a stolen vehicle, he (the Plaintiff) informed *Mathupi* that he is aware that the vehicle is "crooked." *Mathupi's further evidence holds that* at that stage, the Plaintiff wanted to give *Mathupi* money and asked *Mathupi* to leave the car. It was at this stage that *Mathupi* testified that he knew that the Plaintiff had the knowledge that the vehicle was a stolen vehicle and which was when *Mathupi* then proceeded to arrest the Plaintiff for possession of a stolen vehicle.

[16] During cross examination, *Mathupi's* evidence was that he went alone to the first and second crime scene. *Mathupi* again confirmed in his evidence that Glen did not want to pursue the Plaintiff for damages to his car. The reason given in evidence by *Mathupi* of why Glen did not wish to pursue damages from the Plaintiff, was due to the condition of the Plaintiff's vehicle (a Ford Ranger).

[17] During cross-examination, *Mathupi* confirmed that he exercised his discretion not to open a case because Glen did not wish to pursue the collision any further. It was further testified by *Mathupi* that, the drivers of vehicles in a collision, are obliged to report the collision to the Police themselves, however if a person is injured or died at the scene of the collision, the Police has an obligation to report the incident.

[18] *Mathupi* in his evidence, was asked, by the counsel for the Plaintiff, why the issue of discretion did not come into the picture in this case before the court, *Mathupi* held, that it did feature and even though both drivers came to an agreement not to pursue with the matter, the Police had to open a case of reckless driving.

[19] Counsel for the Plaintiff asked *Mathupi* what had triggered him to inspect the authentication of the two vehicles, to which he replied, he found an opportunity to check both cars.

[20] *Mathupi* again confirmed during cross-examination that the Plaintiff's vehicle was a Mazda 323 and that it was reported to be a stolen vehicle.

[21] *Mathupi* further testified that once it is established that the vehicle was a stolen vehicle, he then has an obligation to enquire from the person (in this instance the Plaintiff) as to where he got this car.

[22] Again in cross-examination, *Mathupi* told this honourable court that the moment the Plaintiff confirms that the vehicle is a stolen vehicle and that he tendered to give him money, he (as *Mathupi*) knew that the vehicle was a stolen vehicle.

[23] *Mathupi* was asked what the law says when considering the circumstances mentioned above, to which *Mathupi* replied that, "If a person say so, he takes out money, we arrest him for bribing a police officer."

[24] This Honourable court was then referred to the statement given by this witness (*Mathupi*) and paragraph 5 was read into the record that states, "I then asked the driver Joel Mashegoane as to where did he get the vehicle. Joel told me that the vehicle he have been tempered with and it's clean now. And he further, promised to give me money so that I can leave the car with him."

[25] Counsel for the Defendant then asked *Mathupi* how the abovementioned paragraph 5 of his statement completes the crime of bribery, to which *Mathupi* answered, "Attempted bribery."

[26] It was put to this witness that the Plaintiff was going to testify that he never offered *Mathupi* money to which *Mathupi's* evidence in court was that, "he will be misleading the court."

[27] It was also put to this witness, by the counsel for the Plaintiff, that the Plaintiff will testify that when *Mathupi* said the vehicle was stolen, the Plaintiff then said he got it from a certain Magane. *Mathupi's* reply in court was: "that's not what he told me."

[28] *Mathupi* testified that he did not take the statement of the Plaintiff because according to him there is a separate division in SAPS that 'take care' of vehicle theft.

[29] It was further put to the witness that the Plaintiff will testify that a 'certain' *Magane* stays 'just' 2 kilometer from the second scene, to which *Matupi* replied that, "he did not tell me."

[30] It was also put to the witness that the Plaintiff will testify that he stayed 'just' one kilometer from the second scene, to which *Matupi* replied, "no not kilometer but forty kilometer."

[31] During cross-examination, *Matupi* acknowledge that he deprived the Plaintiff of two days of Liberty to which he responded "correct."

[32] *Matupi* was asked, "what does the law say if you found somebody in possession of stolen property?" to which he responded, "You ask him what he says about the property and also if there are people involved, we try to follow up."

[33] *Matupi* testified that after he detained the Plaintiff, his task was 'over' and it was the Vehicle Investigation Service and the Call Service Centre responsibility to follow up the stolen vehicle information.

[34] It was put to *Mathupi*, by the Plaintiff's counsel, that at 14h00 the same day the Plaintiff made a written statement of which the content was the same as what the Plaintiff told *Mathupi*. *Mathupi* responded to this by stating that the Plaintiff was misleading this Honourable court.

[35] During re-examination, *Mathupi* told this Honourable court that, at the time of the arrest, the Plaintiff never told him he bought the car from a 'certain *Magane*.'

[36] The Defendant's counsel also asked whether *Mathupi* would have detained the Plaintiff and made the statement that he (as *Mathupi*) had made and more specifically paragraph 5. *Mathupi* responded, 'no there would not have been a reason to detain him.'

[37] *Mathupi* was referred to a certain document in the court bundle (a certificate of registration) in respect of the motor vehicle to which he was asked who the owner of the 323 vehicle is. *Mathupi responded, 'Magane SJ.'*

[38] It is important to note that counsel informed the court that the numbering of the pages of *Mathupi's* statement is incorrect and that page 46 had to be changed to read page 44 and page 44 had to be changed to read 45 and page 45 had to be changed to read 46.

[39] *Mathupi* also testified that the VIN number on his statement Court Bundle C on page 45 paragraph 4 states that the VIN number is NR 4[...] and the VIN Number on the Licence certificate page 19 is A[...] which differs from the Vin Number on page 45.

[40] *Mathupi's* evidence before this Honourable court was that he confirmed to the counsel that the two VIN numbers in the above-mentioned paragraph is an indication that we are talking about two different vehicles.

[41] The witness (*Mathupi*) was then referred to another document in the Court Bundle C page 49 and was asked to read the chassis number of the vehicle. *Mathupi* read the chassis number of the vehicle as number 4[...]. *Mathupi* confirmed that the chassis number and Vin number refers to the same thing and also that 'this ' document on page 49 Court Bundle C and document on page 45 Court Bundle C is the same.

[42] It was put to *Mathupi* by his Counsel that when he referred to Section 36 of General Laws Amendment Act 62 of 1955 he referred to the amended one.

[43] *Mathupi testified in re-examination again, that the Plaintiff 'never' informed him as Mathupi where he got the vehicle.*

[45] *Mathupi's testimony again held that when the Police docket arrived at the Police station, the Contact Service Centre did the necessary contact.*

[46] *Mathupi* further testified to this Honourable court that a crime scene and accident scene is not the same.

[47] The witness also (in re-examination) confirms that when 'if' it would have been a shooting scene he would not have attended it alone.

[48] The **Defendant's second witness (Warrant Officer D. P. Mampuru)** (hereinafter referred to as 'Mampuru') testified that he is employed at Polokwane Crime Investigation Unit (hereinafter referred to as the 'CIU').

[49] *Mampuru* testified that the 30th November 2019 was a working day, and their normal working hours were from 08h00 - 16h00.

[50] *Mampuru* testified that when he arrived at the office on the 30th November 2019 he 'looked' for reported cases and found case 299/11/2019, to which he then went to Nebo Police Station and found the suspect, Joel Mashigoana (the Plaintiff).

[51] *Mampuru's* evidence was that at Nebo Police Station, he questioned the Plaintiff regarding the vehicle which was found in his possession.

[52] *Mampuru* informed the Plaintiff that this vehicle is reported a stolen vehicle at Rietgat Police Station under case nr 215/1/2011 with number plate B[...].

[53] *Mampuru* evidence was that the Plaintiff at Nebo Police Station informed him that AM Magane and him, the Plaintiff exchanged vehicles.

[54] *Mampuru* further testified that the Plaintiff informed him that he had a Ford Bantam Bakkie and AM Magane had a Mazda 323. The Plaintiff also informed *Mampuru* that AM Magane was a builder and that the 323 Mazda was not a vehicle AM Magane could use hence the vehicle exchange with the Plaintiff.

[55] According to *Mampuru* evidence, the Plaintiff wanted to do the vehicle exchange since he wanted to work as a mini-taxi driver.

[56] Mampuru evidence was that after he questioned the Plaintiff, he drove to the place where AM Magane stayed and Mampuru questioned AM Magane regarding the 323 Mazda vehicle to which AM Magane replied he exchanged the Mazda 323 for the Ford Bantam Bakkie.

[57] Mampuru testified that when he asked AM Magane to provide him with the vehicle registration papers of the 323 Mazda , AM Magane said he is not in possession of the registration papers since he has bought it from Joseph Marumo Magane for R 13 000,00 (Thirteen Thousand Rand) and has only paid R 10 000,00 (Ten Thousand Rand) and R 3000,00 (Three Thousand Rand) was still outstanding.

[58] It was also Mampuru testimony, that he then informed AM Magane that the Mazda 323 was a stolen vehicle and Mampuru detained AM Magane and took him to Nebo Police Station where he was charged.

[59] It was also Mampuru evidence that on the following Monday, the Plaintiff appeared in court and his brother appeared with the vehicle registration certificate.

[60] Mampuru evidence was that the vehicle registration papers (certificate) that was given to him and the vehicle that was stolen at Rietgat number plate was different.

[61] Mampuru further testified that the vehicle registration papers (certificate) he was provided with, and the police printout could not relate.

[62] Mampuru further informed this Honourable Court that the vehicle receives a unique number when engine number was tempered with.

[63] It is important to note that the evidence from Mampuru was that when a vehicle is stolen and not tempered, they the Police don't change the engine number, they don't change anything.

[64] The Honourable court asked the witness Mampuru where do we see the unique number, to which Mapuru replied it is on the certificate VIN number "A[...]" and Mampuru also replied this is not the original vehicle VIN number.

[65] Mampuru evidence was further that he informed the Plaintiff that the vehicle registration papers (certificate) and the police printout were not the same vehicle and he requested the Plaintiff to provide him with registration papers of the 323 vehicle to which Plaintiff replied, Mampuru must ask Joseph Marumo Magane (Joseph).

[66] Mampuru informed this Honourable court that the case went to court however the prosecutor informed Mampuru to follow instructions which according to Mampuru, the case was not put on the roll on the 2nd December 2019 and the Plaintiff was released.

[67] Mampuru testified that the Plaintiff did indeed go to court on the 2nd of December 2019.

[68] Mampuru during evidence referred the court to the investigation diary and more specifically what was written on this investigation diary on the 2/12/19 which states:

- "1. Find out what happened Rietgat at case 215/1/2011.
2. Follow up allegations by A3.
3. Obtain also statement of Glen.
4. Case not placed on the roll."

[69] Mampuru when the court asked him questions regarding the Mazda 323 he testified that when he opened the bonnet of the vehicle, he saw the vehicle registration plate (tag) inside the bonnet and when he read that vehicle registration plate(tag) into the system the case of 299/11/2019 at Rietgat came up.

[70] During Cross-Examination the Counsel for the Plaintiff asked the following questions to the witness.

[71] Mampuru was asked what the procedure would be when he arrest a person with a stolen vehicle. Mampuru replied that he would ask the person where did you get this vehicle. If the person who has given the vehicle to the person that Mampuru arrested stays nearby, he Mampuru would drive to that person and ask him if it is his car and take a statement from him and Mampuru will contact the prosecutor to find out if he must open a case. Mampuru also confirmed that he will take a warning statement from the person he arrested for allegedly stolen vehicle.

[72] Mampuru was also asked to reply to the question: "Is it our law that a person who is found in possession of stolen vehicle be charged with stolen vehicle?" To which Mampuru replied:" No he should not be charged, the person we found with the vehicle stolen we ask how he is related to that car. If he bought the car we ask, where did you buy it, and we go with him to the place where he bought the car and take a statement from that garage owner and release the person without opening a case."

[73] Mampuru confirmed that he took two warning statements, one from AM Magane and one from the Plaintiff.

[74] During cross-examination it was put to Mampuru that he testified that once a person explains that the person he bought the vehicle from is nearby he follows up. It was also put to him that he went to the person's address and took a statement from AM Magane. He was then referred to the statement of AM Magane who states that they (Plaintiff and AM Magane) exchange vehicles because of the one a bricklayer and the other one a taxi driver.

[75] It was further put to witness that considering the evidence of the previous paragraph, there are no doubts about the Bona Fide of the Plaintiff to which the witness, Mampuru confirmed Yes.

[76] Mampuru was then asked "why not release the Plaintiff" to which Mampuru replied "since he opened a case he must take instructions from the prosecutor."

[77] Mampuru also confirmed during testimony that he tried to contact the prosecutor but could not get hold of him.

[78] Mampuru also made a comment that states: "Because Monday is not far."

[79] It was put to the witness Mampuru by the Counsel for the Plaintiff that: "Are you aware that between the prosecutor and yourself the Plaintiff was in custody 30th, 1st and 2nd?" to which Mampuru answered: "I see that as the docket was already open and I get my directives from the prosecutor. In the absence if I release him, allegations against me as Police men."

[80] Mampuru testified that at Nebo Police station he satisfied himself that the 323 Mazda was a stolen vehicle under Case number 299/11/2019 at Rietgat.

[81] Mampuru was referred to page 8 on the Bundle marked D and asked to read into the court what was written next to the time 14:40 which states as follows: "Suspect Charged: w/o Mampuru charged Cell 290/11/2019 Joel Mashegoane on Cas 299/11/2019 poss of suspected S/M/V."

[82] Mampuru was then referred to page 30 of Bundle D and asked to read into the court what was written next to the time 14:25 which states as follows: "Arrest: D/W/O Mampuru of Polokwane VCIU arrested cell 04/12/19 Alfred Magane on Hlogotlou 299/11/2019 possession of suspected stolen m/vehicle. The detainee was informed of his rights SAPS 14A R 8764194 and was taken to the cells free from visible injuries or complaint inspected by W/O Pheku."

[83] Mampuru was asked during cross-examination that he has two suspects, one the owner and the other one that explain to which he replied that he did try to call the prosecutor and that once a docket is opened he has no control, the prosecutor has the final say.

[84] Paragraph 5. 6 and 7 of the amended plea was read into the record and I found it necessary as Judge to repeat that was said in these paragraphs:

"Paragraph 5: The defendants admits that on 30 November 2019 and at next Mantrompi, Public Road , Hlogotlou, the Plaintiff was lawfully detained after he was found in possession of a stolen motor vehicle, to wit, a blue Mazda 323 with Reg. B[...]."

"Paragraph 6: The status of the aforesaid motor vehicle at the time of the Plaintiff's arrest was that the vehicle was sought on reason of theft at Rietgat under Cas 215/1/2011."

"Paragraph 7: In the premise, the Defendants submit that there was a reasonable suspicion that the Plaintiff had committed an arrestable offence."

[85] Mampuru confirmed that as a Police Officer he acts in terms of the Criminal Procedure Act and that he was aware of the right of each person in court.

[86] Mampuru confirmed the preservation of a person's right to Liberty must be done.

[87] Mampuru also confirmed during testimony that Section 40(1)(b) of the Criminal Procedure Act talks about the reasonable suspicion that a person committed an offence.

[88] Mampuru was asked if he agrees that once he was in contact with the owner of the car, the further detention of the Plaintiff was unlawful! to which Mampuru replied and I states: "But I could not take decision on my own, if case is open, the directive comes from the prosecution."

[89] Mampuru during re-examination confirms that when he approaches AM Magane, he could not provide him with the alleged stolen vehicle papers.

[90] Mampuru was asked in re-examination in the absence of vehicle papers is he in a position to let the accused go, to which Mampuru replied the investigation was not finalized. He said the Plaintiff said AM Magane bought the alleged stolen vehicle from his brother Joseph Marumo Magane and the Plaintiff and AM Magane exchanged vehicles.

[91] Mampuru was referred to the following namely that AM Magane said to Mampuru that he doesn't have his brother Joseph Marumo Magane telephone number.

[92] Mampuru was referred to the re-examination questions and answers and was asked if a reasonable police officer would have let go of that person (referring to the Accused/Plaintiff) to which Mampuru replied no.

[93] Mampuru was asked if he think the further detaining of the Plaintiff was legal, to which he replied: "Yes, taking into account the time he stayed in the cells."

[94] The Plaintiff counsel for the Plaintiff after the two witnesses for the Defendant testified proceeded the following day with leading evidence for the Plaintiff by calling the Plaintiff himself.

[95] The **Plaintiff Mamphila Joel Mashigoane** confirmed that he lodged a claim against the Minister of Police for unlawful arrest, detention and assault.

[96] The Plaintiff explained to this Court that he is not proceeding with the claim of assault due to the fact that when he tried to get documentation from the hospital, they could not provide him with the documentation regarding his assault.

[97] The Plaintiff was asked to explain to this court what occurred on the 30th November 2019. The Plaintiff explained that he went to a place called Mosterlose (first scene) and that was at 01H00. He, the Plaintiff was driving a Mazda 323 and when he parked the car at the Tavern at Mosterlose, he was informed by a certain person who was driving a Corsa that the Plaintiff collided with the person driving a Corsa.

[98] The Plaintiff evidence was that 3 persons tried to assault him at the Tavern, and he then decided to leave the Tavern at Mosterlose and drive to Montrompi (second scene).

[99] The Plaintiff evidence was further that on his way to Montrompi his vehicle ran out of petrol. Plaintiff also confirmed that the person who alleged the Plaintiff collided with him at the first scene followed the Plaintiff to the second scene.

[100] It was further testified by the Plaintiff that they were stationed at the second scene for a short time when the Police arrived. It seemed to the Plaintiff that the other person who followed him phoned the Police on the way to the second scene.

[101] According to the Plaintiff, the Police Officer that arrived at the second scene was called Thekupi and he was driving a Nissan Hard Body Bakkie, Double Cab, unmarked. Thekupi arrived alone at the second scene no other police officer accompanied him.

[102] The Plaintiff testified upon Thekupi arrival at the scene at Montrompi, he (Thekupi) spoke to the other persons who followed the Plaintiff and they informed Thekupi that the Plaintiff collided with their vehicle. It was the Plaintiff's evidence that Thekupi did not want to listen to what the Plaintiff had to say.

[103] The Plaintiff evidence was that Thekupi checked both vehicles and informed the Plaintiff that his vehicle was a stolen vehicle.

[104] The Plaintiff further testified that Thekupi asked him where did he get the stolen vehicle to which he replied, he exchanged his vehicle with that of a certain AM Magane.

[105] The Plaintiff was then referred to page 45 of Bundle C and more specifically paragraph 5 which was then read into the record which states: "I then asked the driver Joel Mashegoana as to where did he get the vehicle. Joel told me that the vehicle have been tempered with and its clean now. And he further promised to give me money so that I can leave the car with him." The Plaintiff informed this Honourable Court that he never told that to Thekupi, what was written in paragraph 5 of the statement. The Plaintiff said Thekupi just clapped him, cuffed him and put him in the van.

[106] The Plaintiff evidence to this court was that he never confirmed to Thekupi that there was a problem with the car neither did he offer Thekupi any money.

[107] The Plaintiff further testified that Thekupi called the breakdown at the scene and he, the Plaintiff together with Thekupi left the scene before the breakdown arrived.

[108] The Plaintiff evidence was that he was taken to a police station but was kept at the charge office whereafter he was again transported at 08h00 to Nebo Police Station. Mampuru (the Defendant's witness) then interviewed the Plaintiff and took the statement.

[109] The Plaintiff testified that Mampuru interviewed him on a Saturday, which was the same day he was arrested.

[110] According to the witness, Mampuru asked the Plaintiff where did he get the alleged stolen vehicle. The Plaintiff answered that he got the alleged stolen vehicle from AM Magane, who is a builder. The Plaintiff also explained that he himself works as a mini taxi driver.

[111] The Plaintiff did testify that Mampuru asked for the address of AM Mampuru. He also testified that AM Mampuru was brought to the Police station and put in the cells.

[112] It was the Plaintiff's evidence that he stayed one (1) kilometer from the scene of the arrest and AM Magane stayed two (2) kilometers from Mosterlose.

[113] The Plaintiff testified he was kept in the Police cells on the Saturday of the arrest, Sunday and Monday.

[114] The Plaintiff evidence was that he was released on the Monday by Mampuru after seeing the document and he Mampuru did not give the Plaintiff a reason. It was the Plaintiff's evidence that he did not go to court that Monday.

[115] The Plaintiff was asked by his counsel if he knew that there were issues with the alleged stolen vehicle when he swapped vehicles to which he replied that he did not know.

[116] The Plaintiff was asked when he was arrested for driving a stolen vehicle how did he feel to which he replied and I states: "it did not go well with him."

[117] The Plaintiff evidence was also that he was never arrested before this incident.

[118] During Cross-Examination the Plaintiff confirms that Thekupi's evidence was correct and more specifically that the Plaintiff made his warning statement a few hours after his arrest.

[119] The Plaintiff also in his evidence before this Honourable Court denied that he told Thekupi that he tempered with the alleged stolen vehicle and that he wanted to give Thekupi money.

[120] The Plaintiff was then referred to Court Bundle C, the last paragraph of his warning statement on page 41 which was read into the record. The last paragraph states: "Then on the 19th November 2019 I change the engine of Mazda 323 of Mr Magane as it has a problem of biring".

[121] The Plaintiff acknowledge in his evidence before Court that he made the warning statement before he was arrested and also that he changed the engine before the arrest.

[122] The Plaintiff again testified to this Honourable Court that on 10 November 2019 he changed the engine of the alleged stolen vehicle.

[123] The Plaintiff also testified that the engine of the alleged stolen vehicle in his own words: "Mangane's engine gave me problems."

[124] It was put to the Plaintiff in cross-examination that Warrant Officer Mampuru testified in this court that he told the Plaintiff that he would go to MA Mangane and

get a statement from him. MA Mangane also confirmed that he doesn't have the papers of the alleged stolen vehicle and neither does he have the phone number of his brother. The Plaintiff replied in court to this statement made by Counsel for the Defendant that yesterday during evidence it was the first time that he, the Plaintiff heard that Warrant Officer Mampuru did not get the phone number of MA Mangane's brother.

[125] The Plaintiff's evidence was that he never saw the vehicle registration papers that were given to Warrant Officer Mampuru.

[126] The Plaintiff was also in court referred to the statement on page 15 of the court bundle "C" and was further informed that this statement was the statement of MA Magane's brother, Joseph Magane.

[127] The Plaintiff during his evidence in court confirmed that the engine number of the vehicle referred to on page 15 of court bundle "C" and the engine number of the vehicle on the registration papers of the alleged stolen vehicle is the same number which is V[...].

[128] The Plaintiff was then referred to page 49 of the court bundle "C" and confirmed that the engine number on page 49, nr B[...] is a different number to the engine numbers on page 15 and the registration papers number.

[129] The Plaintiff was asked if he agrees that due to the two different engine numbers, we in court now deal with two different vehicles to which the Plaintiff said he could not agree.

[130] The Plaintiff confirmed that the engine numbers were not the same, but he again stated that we are not dealing with two vehicles.

[131] Counsel for the Defendant informed the Plaintiff that he was arrested in the early hours of 30th November 2019, he was charged by Warrant Officer Mampuru and that he was transported to court on Monday and due to this, the Police were cautious when dealing with this matter. The Plaintiff responded to this statement by

the Defendant counsel by informing this court that he cannot say that they (Police) were cautious, the Plaintiff said that before he got into the Police vehicle he was assaulted.

[132] The Plaintiff was again asked in court how far the house was where MA Mangane stayed from scene two, to which he replied two kilometers.

[133] Counsel for the Plaintiff referred the Plaintiff to the testimony of Warrant Officer Mampuru and more specifically to his evidence that MA Mangane stayed 40 km from scene two to which the Plaintiff replied that Mosterloos and Groblersdal is 18 km apart and that scene two was not at Groblersdal but Mosterloos.

[134] During Re-examination Plaintiff confirmed in Court that he was charged by Warrant Officer Mampuru.

[135] Plaintiff was asked by his counsel if he was asked at scene two where Thekupi arrested him about the engine of the car, to which he replied Thekupi only talked about the stolen vehicle.

[136] The Plaintiff was again referred to page 8 of bundle "D" and more specifically to what was written next to the time 14:40. The Plaintiff read this then into the record: "Suspect Charged: W/O Mampuru charged Cell 290/11/2019 Joel Mashegoana on Cas 299/11/2019 pass of suspected S/MN."

[137] The Plaintiff also testified that he did not know that MA Magane brought the vehicle certificate to Warrant Officer Mampuru.

[138] The Plaintiff also confirmed during cross-examination that at the time that he exchanged the Mazda 323 with the Ford Bantam bakkie, he was not given the registration papers of the Mazda 323 as he was told by MA Magane that his brother will bring it in December.

[139] The Plaintiff again was asked by his counsel if he told Mampuru that the papers were with MA Magane to which he replied that they (Plaintiff and MA Magane)

exchanged vehicles and that he (Plaintiff) did not receive the alleged stolen vehicle registration papers.

[140] When the Plaintiff was asked in court if he knew where the Mazda 323 was at the time of being asked, he responded by telling this court that he had seen the vehicle at Nebo Police station.

[141] The Plaintiff was also asked in court what happened between himself and MA Magane to which he responded that he (Plaintiff) collected the Bakkie without a fight.

THE FIRST LEGAL QUESTION BEFORE THE COURT IS A CONSTITUTIONAL ONE:

[142] In terms of Section 12 of the Constitution:

"12(1) Everyone has the right to freedom and security of person which include the right:

- (a) not to be deprived of freedom arbitrarily or without just cause;**
- (b) not to be detained without a trial;**
- (c) free from all forms 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.**

[143] In terms of Section 14 of the Constitution:

Everyone has the right to privacy, which includes the right not to have"

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

[144] In **Zealand v Minister of Justice and Constitutional Development and Another**⁴, the court said: "This is not something new in our law. It has long been firmly established in our common law that every interference with physical liberty is prima facie unlawful. Thus, once the claimant establishes that an interference has occurred, the burden falls upon the person causing the interference to establish a ground of justification."⁵

[145] In **Minister of Law and Order and Others v Hurley and Another**,⁶ the court said: "An arrest constitutes an inference 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."

[146] In **Duncan v Minister of Law and Order**⁷ in order for a warrant to be lawful, it must satisfy these four factors which are:

- (a) the arrestor must be a peace officer;
- (b) she must entertain a suspicion;
- (c) the suspicion must be that the suspect has committed an offence listed in schedule 1 of the Criminal Procedure Act;
- (d) such suspicion must be based on reasonable grounds.

[147] In Duncan case at 818 G-H further referred to **Ingram v Minister van Justisie**,⁸ which stated the test to be applied as: "The words "reasonable suspicion" may tend to indicate some subjective test to be applied; however, that is not so; the test as to whether "reasonable suspicion" could have existed and did exist, is to be determined by an objective standard, namely that of the reasonable man with the knowledge and experience of a peace officer based on the facts and circumstances then known to the arresting officer."

⁴ 2008 ZACC 3

⁵ At paragraph 25

⁶ **1986 (3) SA 568 (A)** at 589 E-F

⁷ **1986 (2) SA 805 (A)** at paragraph G-H

⁸ **1962 (3) SA** at 229 G-230A

[148] **JE Mahlangu and Another v Minister of Police**,⁹ where it was held that once it has been established that the constitutional right not to be deprived of one's physical liberty has been interfered with, the deprivation is prima facie unlawful, and the infringer bears the onus to prove that the inference was justified.

[149] In **Mabona and Another v Minister of Law and Order and Another**¹⁰ the court said: "Would a reasonable man in the second defendant's position and possessed of the same information have considered that there were good and sufficient grounds for suspecting that the plaintiffs were guilty of conspiracy to commit robbery or possession of stolen property knowing it to have been stolen? It seems to me that in evaluating his information a reasonable man would bear in mind that the section authorizes drastic police action. It authorizes an arrest on the strength of suspicion and without the need to swear out a warrant, i.e. something which otherwise would be an invasion of private rights and personal liberty. The reasonable man will therefore analyse and assess the quality of the information at his disposal critically, and he will not accept it lightly or without checking it where it can be checked. It is only after an examination of this kind that he will allow himself to entertain a suspicion which will justify an arrest. This is not to say that the information at his disposal must be of sufficiently high quality and cogency to engender in him a conviction that the suspect is in fact guilty. The section requires suspicion but not certainty. However, the suspicion must be based upon solid grounds. Otherwise, it will be flighty or arbitrary, and not a reasonable suspicion."

THE SECOND LEGAL QUESTION BEFORE THE COURT IS THE INTERPRETATION OF SECTION 36 GENERAL LAWS AMENDMENT ACT 62 OF 1955 AND 40 OF THE CRIMINAL PROCEDURE ACT

[150] In terms of **Section 36 General Laws Amendment Act 62 Of 1955**:

⁹ 2021 ZACC 10 at para 32

¹⁰ 1988 (2) SA 654 (SE) at 658

(a) the goods must be found in possession of the suspect; (b) there must be a reasonable suspicion that the goods have been stolen; and (c) the suspect must be unable to give satisfactory explanation of his possession."¹¹

[151] **Section 36 of General Laws Amendment Act 62 of 1955** provides:

" Failure to give satisfactory account of possession of goods - any person who is found in possession of any goods, other than stock or produce as defined in section one of the Stock Theft Act, 1959 (Act No. 57 of 1959), in regard to which there is reasonable suspicion that they have been stolen and is unable to give a satisfactory account of such possession, shall be guilty of an offence and liable on conviction to the penalties which may be imposed on a conviction of theft."

[152] **Section 40 of the Criminal Procedure Act** provides that:

Section 40(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;
- (e) who is found in possession of anything which the peace officer reasonably suspects to be stolen property or property dishonestly obtained, and whom the peace officer reasonably suspects of having committed an offence with respect to such thing;"

[153] In **Nkosi and Another v Minister of Police and Others**¹² the court held that:

In casu, it is common cause that:

- [i] The arresting officers were "peace officers" as envisaged in the Act;
- [ii] That the charcoal grey Toyota Etios motor vehicle was stolen;
- [iii] That the two Plaintiffs as well as Ghadani were at or near the motor vehicle at the time when they were arrested:

¹¹ C R Snyman: Criminal Law 6th ed (2015) at 515

¹² **(164072/022) [2024] ZAGPJHC 320 (28 March 2024)** at para 36

[iv] That theft of a motor vehicle is an offence referred to in Schedule 1 of the Act."

THE THIRD LEGAL QUESTION BEFORE THE COURT IS STANDARD OF PROOF IN CIVIL CASE

[154] In **Pillay v Krishna and Another**¹³ the court held that the standard of proof in a civil case is proof on the balance of probabilities.

[155] In **National Employers' General Insurance Co Ltd v Jagers**¹⁴ the court held:

" It seems to me, with respect, that in any civil case, as in any criminal case, the onus can ordinarily only be discharged by adducing credible evidence to support the case of the party on whom the onus rests. In a civil case the onus is obviously not as heavy as it is in a criminal case., but nevertheless where the onus rests on the plaintiff as in the present case, and where there are two mutually destructive stories, he can only succeed if he satisfies the Court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the other version by the defendant is therefore false or mistaken and falls to be rejected. *In deciding whether that evidence is true or not the court will weigh up and test the plaintiff's allegations against the general probabilities. The estimate of the credibility of a witness will therefore be inextricably bound up with a consideration of the probabilities of the case and, if the balance of probabilities favours the plaintiff, then the Court will accept his version as being the probably true.* If however the probabilities are evenly balanced in the sense that they do not favour the plaintiff's case any more than they do the defendant's , the plaintiff can only succeed if the Court nevertheless believes him and is satisfied that his evidence is true and that the defendant's version is false"

[156] In **Elgin Fireclays v Webb**¹⁵ the court held that: " it is true that if a party fails to place the evidence of a witness, who is available and able to elucidate the facts,

¹³ 1946 (AD) 946 at 952-3

¹⁴ 1984(4) 437 (ECD) 440 D-G

before the trial Court, this failure leads naturally to the inference that he fears that such evidence will expose facts unfavourable to him"

EVALUATING EVIDENCE AGAINST THE LEGAL PRINCIPLES, LAW AND CASELAW

[157] Regarding the *lawfulness of arrest and detention*, the defendant bore the onus to prove the ground of justification.

[158] The Defendants first witness (Thekupi) testified that the person who was involved in the accident at the first scene was a person by the name of Glen.

[159] It is important to note that the Defendant only called Thekupi and Mampuru as witnesses. Mampuru, however, was not at the second scene where the Plaintiff was arrested and contradicting evidence was given in court between the Plaintiff and Thekupi as to what occurred at the second scene.

[160] Thekupi evidence is relevant when one considers the grounds of justification for the arrest. It is clear from the evidence that Mampuru gave who only arrested AM Magane and who was also the person involved in taking the statement of the Plaintiff as well as that of AM Magane.

[161] According to Thekupi's evidence in court, his reason for arresting the Plaintiff was when the Plaintiff after Thekupi obtained information at the second scene that the vehicle was stolen, offered Thekupi money (attempted bribe) and requested Thekupi to leave the alleged stolen vehicle with the Plaintiff.

[162] If one looks at Section 40 of the Criminal Procedure, the arrest by the peace officer without a warrant is allowed by law if a peace officer in terms of section 40(1)(b) of the Criminal Procedure Act, reasonably suspects a suspect of committing an offence referred to in Schedule 1 of the Criminal Procedure Act as well as in terms of section 40(1)(e) of the Criminal Procedure Act which reads: "who is found in

possession of anything which the peace officer reasonably suspects to be stolen property or property dishonestly obtained, and whom the peace officer reasonably suspects of having committed an offence with respect to such thing."

[163] In **Ingram v Minister van Justisie**¹⁶ the court said, "The words "reasonable suspicion" may tend to indicate some subjective test to be applied; however , that is not so; the test as to whether "reasonable suspicion" could have existed and did exist, is to be determined by an objective standard, namely that of the reasonable man with the knowledge and experience of a peace officer based on the facts and circumstances then known to the arresting officer."

[164] It is clear from the evidence given by Thekupi that from an objective standard, he had the knowledge and experience of a peace officer and further based on the facts and circumstances at the crime scene (scene where the arrest took place) and the evidence given in court, he could arrest the Plaintiff.

[165] A more important aspect in this judgement is the detention and more specifically the grounds for justification for the continued detention of the Plaintiff until the date of his release. The evidence of Thekupi is not relevant with regards to the detention since he also testified in court that, after he detained the Plaintiff, his task was completed and it was the Vehicle Investigation Service and Call Service's responsibility to follow up on the alleged stolen vehicle; and this is precisely where the evidence of Mampuru plays an important role.

[166] The Defendant's other witness, Mampuru, testified in court that on the day of the arrest of the Plaintiff, he questioned the Plaintiff and the Plaintiff informed Mampuru that the alleged stolen vehicle previously belonged to AM Magane and that he and AM Magane exchanged vehicles.

[167] Mampuru also testified that he went to AM Magane's residence (home) and was informed by AM Magane that he and the Plaintiff did exchange vehicles.

¹⁶ **1962 (3) SA** at 229 G-230A

[168] Due to the fact that AM Magane could not provide registration papers of the alleged stolen vehicle, AM Magane was arrested by Mampuru notwithstanding AM Magane's explanation as to why he doesn't have the registration papers.

[169] The aspect of lawfulness of detention of the Plaintiff must be looked at from the point of view of **Mabona and Another v Minister of Law and Order and Another**,¹⁷ even though Mabona refers to arrest, the same principle applies to detention namely, that of a "reasonable man will therefor analyze and assess the quality of the information at his disposal critically, and he will not accept it lightly or without checking it where it can be checked. It is only after an examination of this kind that he will allow himself to entertain a suspicion which will justify the arrest."

[170] If one considers the evidence of Mampuru, it is clear that AM Magane informed Mampuru that he doesn't have the registration papers (license certificate) of the alleged stolen vehicle because he still owes his brother Joseph Magane money for the alleged stolen vehicle that he bought from him.

[171] The question to ask now is, would a reasonable man detain the Plaintiff further after the evidence/explanation given by AM Magane to Mampuru, taking into consideration that this explanation to Mampuru was given on the same day of the arrest of the Plaintiff.

[172] During evidence in court Mampuru testified that he could not release the Plaintiff because once he opened a case, he must get instructions from the prosecutor.

[173] In **JE Mahlangu and Another v Minister of Police**,¹⁸ the Honourable Court held that the Minister of Police was liable not only till date of first appearance of accused in court but till date of release of accused, if found not guilty. From this it is clear that it was not correct in terms of law for Mampuru to wait for instructions from the prosecutor to release the Plaintiff.

¹⁷ 1988 (2) SA 654 (SE) at 658

¹⁸ 2021 ZACC 10 at para 32

[174] If one now evaluates the evidence of the Plaintiff, which contradicts what Thekupi was saying in his statement, as well as in this court, the question then must be asked is why did the Defendant not call Glen to come and testify as to what was said by the Plaintiff to Thekupi at the arresting scene of the Plaintiff?

[175] Immediately one tends to look at **Elgin Fireclays v Webb**¹⁹ and considers the question of whether "it is true that if a party fails to place the evidence of a witness, who is available and able to elucidate the facts, before the trial Court, this failure leads naturally to the inference that he fears that such evidence will expose facts unfavourable to him."

[176] The standard of proof in civil cases that has been discussed in this judgement is set out in **Pillay**²⁰ and **National Employers' General Insurance Co Ltd v Jagers**.²¹

[177] In this judgement, I as the Presiding Judge already confirmed and agreed that as far as the Defendant's case is concerned, the Plaintiff was lawfully arrested by Thekupi. Regarding the issue of detention and more specifically lawful detention, I am of the opinion that the version of the Plaintiff as far as the exchange of the alleged stolen vehicle is concerned, is on a preponderance of probabilities, true and accurate and therefore acceptable.

[178] The question to answer now is in light of the judgement given in **JE Mahlangu and Another v Minister of Police**²² and the fact that the Plaintiff and the Defendant confirms during evidence in Court that the Plaintiff and AM Magane was interviewed on the same day of the arrest by Mampuru and that the evidence of AM Magane in the court bundle corresponded with that of the Plaintiff (namely that an exchange of vehicles exist between Plaintiff and AM Magane), one cannot then say that the Defendant was lawfully correct to detain the Plaintiff until the day the Plaintiff was released in this matter.

¹⁹ **1947 (4) SA 744 (A)** at 749-750

²⁰ **1946 (AD) 946** at 952-3

²¹ **1984(4) 437 (ECD)** 440 D-G

²² **2021 ZACC 10** at para 32

[179] To further stress the reasoning in this Judgement, nothing could have prevented the Defendant from releasing the Plaintiff the same day of the arrest and keep the alleged stolen vehicle in a safe place until the correct license certificate was given to the Defendant.

In the circumstances the following order is made:

- 1. The Defendants shall be liable for 100% of the proven damages of the Plaintiff claim sustained due to unlawful arrest and detention on the 30th November 2019**
- 2. The adjudication of quantum is postponed sine die**
- 3. The Defendants shall pay the costs to date with regard to the merits of the Plaintiff and which pertains to the Defendant.**
- 4. The Plaintiff however shall pay the cost of the Defendant with regards to the withdrawal of the assault claim.**

J D STRÖH
ACTING JUDGE OF THE HIGH COURT

Appearances:

For the Plaintiff: Adv T Tshabalala

Instructed by: MK Mabote Incorporated c/o Cipu Attorneys, Polokwane

For the Defendant: Adv S Mbali

Instructed by: State Attorney, Polokwane

Dates Heard: 17th and 18th March 2025

Date Reserved: 18th March 2025

Closing Heads of Arguments Received: 22nd April 2025

Date Delivered: 30th June 2025