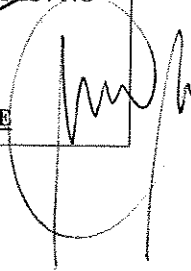




**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / NO	
(2) OF INTEREST TO OTHER JUDGES: YES / NO	
(3) REVISED	
DATE <u>23/06/2017</u>	SIGNATURE 

CASE NO: 37286/2016

In the matter between:-

PAVIER, JOHANNA

Plaintiff

And

MINISTER OF POLICE

Defendant

JUDGMENT

NKOSI AJ

INTRODUCTION

[1] The plaintiff was arrested without a warrant by Constable Ravele who at the time was acting within the course and scope of his employment with the defendant. The arrest took place on the 16 February 2012 at approximately 17H00. The plaintiff was released the next day at about 15H00 without appearing in court. She was arrested for dealing in Second Hand Goods without being in possession of a valid certificate issued in terms of the Act¹. This Court is seized with both issues of liability and quantum.

[2] Following an argument about who bore the onus of proof, I made a ruling that the defendant bore the onus of proof and the duty to begin. My ruling was informed by various court decisions. In *Motsei v Minister of Safety and Security* ² Poswa J stated that

*"It has always been the approach of the courts in this country, long before 1994 that the freedom of person, the liberty of every individual (harbeus corpus) was of the upmost importance"*³

[3] Powa J, went further and referred to *Minister of Justice v Hofmeyr* ⁴ where it was stated that

*"The plain and fundamental rule is that every individual's person is inviolable. In actions of damages for wrongful arrest or imprisonment our Courts have adopted the rule that such infractions are prima facie illegal. Once the arrest or imprisonment has been admitted or proved it is for the defendant to allege and prove the existence of grounds in justification of the infraction"*⁵

¹ Second Hand Goods Act 23 of 1955

² *Motsie v Minister of Safety and Security* (A1174/2006) [201] ZAGPPHC 14 (4 March 2010)

³ At paragraph 15. See also *Minister of Law and Order v Hurley* 1986 93) SA 568 (A), *Minister Van Wet en Order v Mashoba* 1990 (1) SA 280 (A)

⁴ *Minister of Justice V Hofmeyr* 1993 (3) SA 131 (A) 5 at page 153 paragraph E.

⁵ At page 153 paragraphs E.

[4] In this present case, it is common cause that the plaintiff was arrested without a warrant and her detention constituted a violation of her basic right of freedom and security. It therefore follows that the defendant should lead evidence to justify the arrest. Chapter 2 of the Constitution ⁶ deals with the Bill of rights. Section 7 thereof provides:

1. *This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.*
2. The state must respect, protect, promote and fulfil the rights in the Bill of Rights.
3.

Further, Section 12 states that

"(i) everyone has the right of freedom and security of the person, which includes the right –

(a) not to be deprived of freedom arbitrarily or without just cause,"

[5] The constitution enjoins the defendant to respect, protect, promote and fulfil the rights in the Bill of Rights. The right of freedom and security is not only recognised but also protected by the constitution. Section 12(1) affords a person a right not to be arbitrarily deprived of his freedom. In the circumstances of this case there can therefore be no doubt that, the plaintiff is not required to prove any of her rights afforded and protected by the constitution. Section 12 (1) places the onus on the defendant to justify the arrest. The defendant has a duty to prove that the plaintiff was not arbitrarily deprived of her right to freedom and security.

⁶ The constitution of the Republic of South Africa Act 108 of 1996

"Once the plaintiff makes a prima facie case of a warrantless arrest, the burden should shift to the defendant to produce evidence of probable cause. This approach yields the best balance between the competing interests of citizen's constitutional rights. When the burden of proof is placed on the defendant officer he will be required to testify and give his version of the circumstances leading up to the arrest. This burden shift is appropriate because the defendant police officer has the best access to the information on probable cause, and because requiring the officer to present this information will deter misconduct."⁷

"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 plea that he was unlawfully detained. This he did. The respondent then bore the burden to justify the deprivation of liberty, whatever form it may have taken."

- [6] It is abundantly clear from our jurisprudence that in cases of arrest without a warrant, the onus of proof shifts and the defendant shoulders the responsibility of justifying the arrest. In order to do so, the defendant bears the duty to begin and lead his evidence.

FACTUAL BACKGROUND

- [7] The defendant called Constable Ravele ("Ravele") as his witness. He testified that on the day of the arrest, he was with student Constable ("Sithole") as his crew member. He received an order from his Commander through a two – way police radio to proceed to Reclam Scrap yard where he would meet someone driving a grey bakkie with a load of copper cables and who is suspected of dealing in Second Hand Goods. He was instructed to conduct an investigation.

⁷ Sarah Hughes Newman "Proving probable cause: allocating the burden of proof in false arrest claim under 1993.The University of Chicago Law Review (2006) 347 at 349. Also *Woite v the Minister of Security and Security* (08/00081) [2014] ZAPGJHC 93 (11 April 2014) at para 29

- [8] He immediately proceeded to Reclam and after enquiring about the grey bakkie the plaintiff introduced herself as the driver, she had just off- loaded and sold the copper cable off – cuts to Reclam . Ravele suspected her of dealing in Second Hand Goods and asked her to produce a certificate authorising her to deal in Second Hand Goods.
- [9] She produced with confidence an affidavit dated 16 February 2012 deposed to by herself and it reads;

"I bring the off cuts of copper wire and steal, the old geysers and scrap metal from(Illegible) Louis Trichardt..... (Illegible) and the owner is Van der Merwe so it is not stolen "

It is common cause that she deposed to her affidavit at Makhado Police Station on the very same day of her arrest and before she embarked on her journey to Reclam in Louis Trichardt to sell the copper cable off – cuts and other scrap metals.

- [10] Ravele was not satisfied with the affidavit because it was not the certificate he asked for. Mr Van Gass, plaintiff's counsel, asked Ravele during cross examination to describe how the certificate looks like. Ravele confessed that he had never seen the certificate before. He had no idea how it looks like. All what he knows is that it always reflects the last date of the calendar year, In other words "31 December". The affidavit did not have this date. He therefore told her she was under arrest for dealing in Second Hand Goods without a valid certificate.

- [11] Upon hearing that she was under arrest, she immediately produced a letter and handed it to Ravele to read. The Letter is written in Afrikaans and reads as follows:

"WIE DIT MAG AANGAAN

Hiermee verkoop ek, Gert Van Der Merwe ID No. _____ van bo genoemde besigheid, al my afval"Off Cuts" Afval stukke electriese Kabel asook ander stroot yster aan: Mev JE Pavier President Straat LOUIS Trichardt ID..... . Die Metale is van af, Plaas Tromp met my wete en goedkeuring verwyder.

Geteken. Gert V.D Merwe
Cel 082.....

- [12] Ravele testified that he cannot read Afrikaans. He did not seek assistance from his crew member Sithole, employees at Reclam or any person to explain the contents of the letter before detaining the plaintiff. He just took the letter and ordered the plaintiff to follow him in her bakkie to the police station. At the police station his commander confirmed that the letter was not the required certificates and that she should be detained and placed in holding cells.
- [13] He opened and registered the docket under CAS 256/02/2012. The nature and description of offence is stated by him on the docket as "contravening of Second Hand Goods Act 23 of 1955". However in his evidence in chief , he further mentioned that the arrest was justified in terms of section 40 (2) of the Criminal Procedure Act ⁸

⁸ Criminal procedure Act 51 of 1977

- [14] It is common cause that the plaintiff was never handcuffed or, assaulted by Ravele at Reclam or at the police station and further that at the police station she was informed that she was to be detained in the police holding cells. She immediately collapsed upon hearing of her intended detention. An ambulance was called and took her to a local hospital. Ravele has no knowledge of what happened to her thereafter.
- [15] The next and final witness to be called was Captain Natshaulu ("Captain"). He is not the Station Commander as alleged in the particulars of claim. He is responsible for inspecting dockets and booking them out to investigating officers. He made a note on the diary of docket CAS 256/02/2012 to the effect that the investigating officer should get a statement from Reclam, verify A2 and A3, which are, Van der Merwe's letter and plaintiff's affidavit respectively, obtain a warning statement from the suspect and refer the docket for a decision.
- [16] He confirmed that a warning statement was obtained by the investigating officer and the plaintiff was released shortly thereafter. The docket was referred to court for a decision whether to prosecute. The plaintiff paid an admission of guilt and the details thereof were endorsed on the docket.
- [17] The reason he decided to refer the docket for a decision is because he doubted the letter by Van der Merwe. It did not have a date. The letter was therefore susceptible to abuse in future. He was also not satisfied with the affidavit deposed to by the plaintiff in that it was not completed in full.

CLAIM

- [18] The declaration contains two separate claims. The first claim relates to unlawful arrest and detention which took place on the 16 February 2012. She claims payment of **R 150 000.00** for contumelia, **R 25 000.00** for loss of amenities of life and **R 25 000.00** for the violation of her constitutional rights. The Second Claim is for payment of **R 200,000.00** for the unlawful assault by unknown Police Officer.

PLAINTIFF'S REBUTTAL

- [19] The plaintiff was the only witness to testify in her case. She materially corroborated the evidence of Ravele up until the stage when she collapsed and was taken to hospital. Her ordeal regarding the unlawful assault started in hospital.
- [20] She alleged that she was handcuffed by Ravele at the police station. This cannot be correct. According to the report by Limpopo Province Emergency Medical Services seen on page 39 of Bundle F , it is stated that

*"± 60 years female found lying on supine position with HX
(History) of collapse. She is a known b frost."*

Her glasco coma scale was 10/15 and has serious chronic medical condition noted. It is her evidence that upon arrival at the police community centre, she remained standing next to the counter until she collapsed.

- [21] She regained consciousness at a clinic and was later transferred to a hospital. Her one arm was handcuffed to the hospital bed. The handcuff was in full view of her children who came to visit her. One of the police officers told her "Jy moet lekker lê" because next day at 06H00 you would be taken into the police cells where criminals belong and would be raped. "She was very frightened by these remarks."
- [22] Later, she asked to use a toilet. She was dragged with the handcuffs. Her one wrist was kept handcuffed and the police officer held the other end of the handcuffs. She did not have full privacy in the toilet. She felt humiliated and degraded.
- [23] The next day she was escorted into the police van and was ordered to climb into the back of the police van. She obviously had difficulties doing so because of her one arm which was on a handcuff. Her age and pre-existing medical condition did not help either. She attempted to climb into the van but found it difficult to do so.
- [24] She asked the police officer to assist her to climb into the back of the van. The police officer replied "I do not render assistance to rubbish". As she was climbing the said police officer slammed the door against her causing injury to her right shoulder, right hip, right knee and right foot. The police officer persistently slammed the door against the aforementioned limbs as she tried to climb into the police van. She finally managed to get into the back of the van. Her one arm was thereafter handcuffed to the van. According to her the driver found joy in driving at a high speed and into any available potholes in the road to cause her discomfort longer to reach his destination because he deliberately took unscheduled detours purely to keep her longer at the back of the police van.

- [25] During the journey she used her cellphone to take a video footage of herself with the handcuffs on. She was alone at the back. Due to the speed at which the van travelled and being brought to a sudden halt, she fell and hit her body against the hard steel surface of the back of the van.
- [26] I have seen the video footage several times, during the hearing and shortly before I wrote this judgement. It was taken by her using her personal cell phone. I did not at any stage get the impression that the footage was rehearsed or fabricated. She appears on the footage and it clearly depicts her wrist handcuffed to the back of the police van which was moving at a high speed. She appears to be in severe distress, very anxious and traumatised. Her facial expression tells it all. Her age, and medical condition do not suggest that she was a flight risk worthy of being handcuffed to the back of the van or at all.
- [27] The handcuff was removed at the police station when she was taken into the police cell. She was released at about 15H00 after warrant officer Bekker intervened.

CONSIDERATION OF THE LAW

- [28] The onus is on the defendant to justify the arrest. The plaintiff was arrested for contravening the Second Hand Goods Act 23 of 1955. I will pause to examine the relevant provisions of the said Act. The Act has sixteen sections and none of them make provision for the arrest of an offender. At most the Act makes provision for the imposition of a fine. Section 4 of the Act deals with the granting of a certificate

enabling the holder to deal in Second Hand Goods .Section 5 stipulates that the validity of the certificate shall expire on the 31 December of the year it was granted. Section 10 deals with the powers of police. The relevant provision of the Act is to be found in subsection (e) which provides:

"Any policeman may at all reasonable times:-

(e) Seize any goods, books, records or documents which may afford evidence of a contravention of any provision of this Act"

The Section does not empower the police to arrest a person for contravening the Act

[29] Section 11 which deals with offences and penalties provides that :

"Any person who:-

- (a) Contravenes or fails to comply with any provision of this Act which is applicable to him or any condition on which he has under paragraph (b) of subsection (2) of section two been exempted from compliance with any such provision;
- (b) makes any incorrect entry in any register required to be kept under this act.
- (c) in connection with any information or explanation which he is in terms of this act required to furnish ,knowingly makes a false statement; or
- (d) obstructs or interferes with any policeman in the exercise of his powers or the performance of his functions under this act or refuses or fails to afford to any policeman any assistance or facilities lawfully required by him ,

Shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand or imprisonment for a period not exceeding twelve months or both such fine and such imprisonment "

- [30] None of the provisions of the Act deal with the arrest of an offender or empower the police officer to arrest the offender. The justification for the arrest as stated by the defendant is therefore clearly incorrect. The fact that the word "arrest" is not found in the Act, indicates that the legislature never intended that a person who contravenes any provision of the Act should be arrested. This is further demonstrated by the fact that the Act only provides for the imposition of a fine at most.
- [31] It was argued by Mr. Kwindu, counsel for the defendant, that Act 23 of 1955 should be read with Section 40 (2) of the Criminal Procedure Act. In order to sustain the defendant's argument Section 40 (2) should therefore empower the police officer to arrest an offender for transgressing the provisions of Act 23 of 1955 if Act 23 of 1955 allows that. Section 40 (2) permits an arrest of a person by a peace officer without a warrant of arrest if a person may be arrested under any law without a warrant and subject to the conditions or the circumstances set out in that law.
- [32] The defendant laboured under the impression that Section 40 (2) of the Criminal Procedure Act was applicable and furthered its course. That is not correct. Section 40 (2) is clearly not applicable. The Second Hand Goods Act 23 of 1955 is also found wanting. It does not give a police officer the power to arrest. I therefore find that the defendant failed to discharge the Onus of proving that the arrest and detention was justified. I therefore conclude that the arrest and detention were unlawful.

ASSAULT

- [33] The constitution does not discriminate against arrested suspects. It accords them their fundamental rights and enjoins the defendant to protect such rights. Section 10 of the constitution provides that :

"Everyone has inherent dignity and the right to have their dignity respected and protected"

The right to dignity is not acquired by any other means except through birth.

In *S v Makwanyane and Another*⁹ Justice O Regan remarked:

"The right to human dignity and life are entwined. The right to life was more existence, it was a right to be treated as a human being with dignity, without dignity human life was substantially diminished, without life there cannot be dignity"

- [34] Her evidence about the humiliating treatment she received from the police officers in hospital and the incident of assault at the door of and inside the police van remain unchallenged by the defendant. The defendant failed to call a witness notwithstanding the fact that the defendant was always aware of the nature of her claims. The fact that she was handcuffed to the hospital bed, which was cruel given the fact that she was an elderly woman of approximately 61 years of age and was in hospital due to a medical condition, leads me to believe that the police officers were so insensitive and cruel. The police behaviour leads me to a conclusion that it is highly probable that they slammed the door of the police van against her upper and lower limbs causing her injuries. Her further unchallenged evidence is that shortly after her release from custody; she went and consulted a

⁹ *S v Makwanyane and Another* [1995] ZACC3, 1995 (3) SA 391 para 326 – 7

medical practitioner due to the injuries sustained. I therefore accept her evidence as reasonably possibly true.

[35] I was asked by Mr. Kwindu to disregard the evidence of the video footage and the photos and declare them inadmissible because such evidence was not pleaded in plaintiff's particulars of claim. A distinction should be drawn between "Facta Probanda" and "Facta Probandia"

"every fact which it would be necessary for the plaintiff to prove if traverse, in order to support his right to judgment of the court , it does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proven"¹⁰

The facts regarding the incident of assault are well pleaded. The plaintiff does mention the date of the alleged assault although it is incorrect, and how she was assaulted. The video footage and the photos constitute the piece of evidence which is necessary to prove each fact. These therefore, should not necessarily be pleaded. The video footage and the photos support her evidence that her arm was handcuffed and tightly. The video footage and the photos do not introduce anything new or different from her testimony except to corroborate her testimony as pleaded.

[36] I agree with Mr. Kwindu, that the plaintiff's claim ought to contain sufficient particularity. Rule 18(4) provides :

¹⁰ Mc Kenzie v Farmers Co 1922 AD 16 at 23; also see Evins v Shield Insurance Co Ltd 1980 (2) SA 814 (A) at 838 E-F.

"Every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim or defence or answer to any pleading, as the case may be, with sufficient particularity to enable the opposite party to reply thereto." ¹¹

In *National Director of Public Prosecution v Phillip and others*,¹² it was stated:

"Pleadings must be lucid logical and intelligible. A litigant must plea his cause of action or defence with at least such clarity and precious as is reasonably necessary to alert his opponent to the case he has to meet. A litigant who fails to do so may not thereafter advance a contention of law or fact if its determination may depend on evidence which his opponent has failed to place before the court because he was not sufficiently alerted to its relevance".

[37] The particulars of claim relevant to her second claim read as follows:

"On the 16th of February 2012 and at Musina ,plaintiff was unlawfully assaulted by unknown members of the South African Police Services, by pushing her around ,handcuffing her too tightly around her wrists ,driving around with her in the back of a police van, thus incurring injuries to her shoulders, head and back arms."

It is common cause that there was no incident of assault on the 16 February 2012. The evidence on record reveals that the assault took place on the 17 February 2012. It is her unchallenged evidence that her wrist was handcuffed to the hospital bed on the 17 February 2012 and was dragged or pulled around whilst handcuffed. Mr. Kwinda argued that the plaintiffs claim should fall or stand by its pleadings. He argued further that the assault claim should fail because the plaintiffs failed to amend its particulars to reflect the 17th February 2012 as the date of the alleged assault.

¹¹ Erasmus Superior Court Practice (B1 – 127) Uniform Rule of Court GN – R 415 (19834)of 12 March 1999

¹² 2002(4) SA 60 (W) 106 E – H

- [38] Indeed so, the plaintiff did not amend the date. However, I do not entirely agree with the defendant's argument. Resulting from the assault of the plaintiff is the violation of her constitutional right to dignity. The right is fundamental and should be respected. The evidence on record speaks for itself and it overshadows the defendant's argument which is based on the issue of procedure and not the substance of the matter. The constitution reigns supreme over the rules of court. It requires that we must respect and protect the right.
- [39] It is defendant's evidence that no assault took place on the 16 February 2012 and further that the plaintiff was in hospital on the 17 February 2012 and later that day transported by a police van back to the police station. I was expecting the defendant to call the driver of the police van to give evidence about the plaintiff's allegations of the assault and humiliating treatment whilst in police detention. No witness was called in this regards and there was no explanation at all. I am therefore inclined to draw an inference and in my view the only reasonable inference to be drawn is that the defendant knows and is hiding the truth. The defendant must have known that calling the driver of the police van or the police officers who kept the plaintiff under guard at hospital as witnesses would have subjected them to cross examination leading to possible concessions, in favour of the plaintiff's case.
- [40] I accept the provisions of rule 18 (4) however I am not bound by them especially in matters affecting the constitutional rights of individuals .The rule is there to regulate procedures but not the substantive requirements of the Bill of Rights especially where the evidence dictates that the individuals fundamental right ought to be protected.

[41] The plaintiff did not call any medical practitioner to testify about the nature and extent of her injuries. There is also no expert evidence lead about her psychological trauma. The plaintiff did not lead any evidence or herself testified about her past and future medical expenses as well as the past future loss of earnings. The plaintiff opted to abandon her claim in respect of past and future medical expenses, and past and future loss of earnings. She is pursuing general damages in respect of both her claims against the defendant.

QUANTUM

[42] "It is trite that the assessment of general damages for pain, suffering and shock is a subjective inquiry which depends, inter alia, on the time, degree and intensity of the discomfort and suffering. In determining a fair sum our courts generally have regard to comparable previous decisions. While this is a salutary practice which ensures consistency and fairness, no two cases are the same and courts should guard against slavishly adhering to precedents to the extent that their discretions may be impermissibly fettered."¹³

[43] The plaintiff was unlawfully arrested and detained by police for approximately 22 hours. She spent approximately more than three quarters of her detention in hospital under police guard and the remaining third from the moment of her arrest at Reclam, driving in her van under police escort to the police station and at the police holding cells shortly before her release on the 17 February 2012.

¹³ Protea Insurance Co Ltd v Lamb 1971 (1) 530 (A) at 535 A – 536 B; also see Nomezwa King No. V Minister of Police ' [EL : 801/10, ECD : (1701 /10) [2012] ZAECELL 8 (15 May 2012)

[44] She was 61 years at the time of her arrest and suffers from a chronic illness. This arrest and detention was her first experience ever, and it was very shocking and humiliating. She was left to stand at the community service centre (the charge office) for an unspecified period whilst Ravele was busy with the paper work and registering the docket. She became fatigued and when she was told in a very insensitive and disrespectful manner that she was going to be placed in a police cell, she collapsed. She was rushed by an ambulance to a clinic and immediately transferred to the hospital. The evidence about her being in a clinic is very sketchy hence my omission to refer to it earlier in this judgment. Her constitutional right to dignity was impaired during her detention. All of these factors militate against the consideration of an award on lower scale if I were to refer to previous decisions closest to the circumstances of this case. I do not find any mitigating circumstances on the part of the defendant. The deeper I search, I am confronted with more aggravating factors for instance, the police failed to investigate the claim of dealing in Second Hand Goods and apply their mind to the provisions of Act 23 of 1955 before informing her that she was to be placed in police cells.

[45] These aggravating circumstances compel me not to slavishly adhere to previous court decisions but to apply my mind in order to give an equitable and reasonable award. The absence of mitigating factors does not give me unfettered discretion to give any award which tends to take advantage of the lack of mitigating circumstances. Such discretion has still to consider what is just and equitable. The previous decisions will still remain a persuasive and relevant guide but not a decisive one.

- [46] In *Motsie v Minister of Safety and Security*¹⁴ the plaintiff spent one night in detention and was awarded **R 50,000,00** seven years ago.
- [47] In *Oliver v Minister of Safety and Security and Another* 2009 (3) SA 134 (w)¹⁵, the plaintiff, a senior police officer arrested by and in full view of his colleagues and detained for six hours at the very same police station where he worked was awarded **R 50,000.00**.
- [48] The awards in the *Motsie* and *Oliver's* cases are the same. However the circumstances are not. This is a clear demonstration of the court's discretion informed by the proven facts and not some form of a tariff which operates as a general rule to determine an amount of damages applicable to a specified duration of detention.
- [49] In *Mahlangu v Minister of Police*¹⁶ the plaintiff, a young woman detained for 2 days and released without being charged was awarded **R 150, 000.00**.
- [50] In my opinion and having regard to the circumstances relevant to the award, the evidence on record, the previous decisions and others which I did not refer to herein purely not to burden the judgment, a just and equitable award is the lump sum of **R 75 000.00** in respect of her first claim.

¹⁴ *Motsie v Minister of Safety and Security* [2010] ZA GPPHC 14, 14 March 2010.

¹⁵ *Oliver v Minister of Safety and Security and Another* 2009 (3) SA 134 (W)

¹⁶ *Mahlangu v Minister of Police* (2011/6573) [2012] ZAGPJHC 180(5 October 2012)

- [51] I now turn to deal with the award in respect of her claim for assault. The same principle enunciated in the King and Protea Assurance Co Ltd ¹⁷ cases referred to above equally apply to this part of her claim.
- [52] The nature and extent of her injuries were not fully canvassed. She was not hospitalised for her injuries however she consulted a medical practitioner shortly after her release from hospital. Her doctor and other witness were not called to testify on her behalf regarding her injuries. Resulting from the assault. I was left with the impression that she was not so confident about the damages of her assault claim.
- [53] What I understand from her evidence about the assault is that the handcuff on her wrist was too tight and the police refused to loosen or remove it. The door at the back of the police van was slammed against her body as she tried to climb into the back of the police van as ordered. The right hip, knee, back and foot were injured. As indicated before, the extent and nature thereof are unclear. In light of the fact that she was not hospitalised after her release from detention I assume that the injuries she sustained were not of a serious nature. They were most probably bruises and soft tissue injuries. The tight handcuff most probably caused her mental anguish, severe discomfort, bruises and possibly laceration more so in that she was dragged with the handcuffs on her wrist. The psychological trauma cannot be measured by any form of compensation. It should be remembered that she was 61 years old and the arrest and detention were her first experience. She appears to have been a law abiding citizen for 61 years.

¹⁷ See footnote 13, Supra

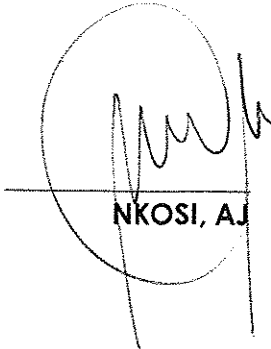
- [54] In King's case referred to above, the plaintiff sustained multiple bruises to her upper limb, abrasions on her thigh and right elbow; she also sustained bruises, open wounds and tenderness, on the right arm, and haematoma on the back and left eye. There was also a 2cm laceration on the scalp, left eye and lower leg. She was awarded **R 140 000.00** in damages for assault about seven years ago. There is no doubt that the injuries sustained in King's case are more serious than those in the present case.
- [55] In *Duarte v Minister of Police*¹⁸ the plaintiff was punched on his right eye, forced to drink alcohol by the police before her blood alcohol level could be tested. She was awarded **R 60, 000.00** for assault.
- [56] I have taken into consideration the age of the plaintiff, the effect and sequelae of the psychological trauma and assault, the absolute disregard of plaintiff's constitutional right to dignity, the pain and suffering she must have endured and the duration thereof. The evidence reveals that her ordeal is not limited to a single scene but several scenes. Firstly her wrist was handcuffed too tight to a hospital bed and it was in full view of her children, Secondly she was dragged with the wrist handcuffed to an office within the hospital for her warning statement to be taken by a police officer. The handcuff was still too tight and causing her pain Thirdly, her upper and lower limbs were injured by the door of the police van as she tried to climb to the back of the police van and Lastly, her wrist was handcuffed to the van and the van was driven at a high speed and into potholes causing her to fall.

¹⁸ *Duarte v Minister of Police* (2011/24042) [2013] ZAGPJHC 51 (7 Mach 2013)

[57] Having regard to the above (para 56) I am of the view that the justice scale favours the upper end of awards in previous decisions closer to the facts of this case in comparison. In my considered opinion, the amount of **R 85 000.00** is just and equitable.

[58] I therefore make the following order :

1. Claim A and Claim B succeed.
2. The defendant is liable to pay to the plaintiff the sum of **R 160 000.00**
3. The defendant is interest at 10.25% per annum from date of judgment
4. The defendant is liable to pay costs of suit.



NKOSI, AJ

For Plaintiffs : Advocate V. Gass
Instructed by : ERWEE Attorneys

For Defendant : Advocate T.C. Kwindu
Instructed by : The State Attorneys

Date of Hearing : 15th March 2017

Date of Judgment : 23rd June 2017