



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Not Reportable

Case no: 1088/2024

In the matter between:

TSHEPISO CLIFFORD SEETSENG

APPELLANT

and

MINISTER OF POLICE

FIRST RESPONDENT

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

SECOND RESPONDENT

Neutral Citation: *Seetseng v Minister of Police and Another* (1088/2024) [2026]
ZASCA 128 (29 September 2026)

Coram: MEYER, NORMAN, WINDELL and PETSE JJA and KOOVERJIE
AJA

Heard: 9 September 2026

Delivered: 29 September 2026

Summary: Delict – unlawful arrest and detention – liability for subsequent detention – effect of declaration of unlawfulness – different parties may be liable for different periods of detention – pleadings define the scope of the case – appellant bound by pleaded case – Minister of Police liable only for period specifically pleaded against him – appeal dismissed.

ORDER

On appeal from: North-West Division of the High Court, Mahikeng (Petersen ADJP) sitting as a court of first instance:

The appeal is dismissed with costs.

JUDGMENT

Windell JA (Meyer, Norman and Petse JJA and Kooverjie AJJA concurring):

[1] This appeal concerns the length of the period for which the first respondent, the Minister of Police (the Minister), is liable to compensate the appellant, Mr Tshepiso Clifford Seetseng, for his unlawful arrest and detention. The unlawfulness of the detention is no longer in issue. What remains is the extent of the Minister's liability for it.

[2] The background facts are common cause. The appellant was arrested without a warrant on 7 December 2013 on charges of rape and robbery with aggravating circumstances. He appeared in court on 9 December 2013 and was thereafter remanded in custody. The charges against him were eventually withdrawn on 12 February 2015, 431 days after his arrest. In March 2016, he instituted action against the Minister, as first defendant, and the National Director of Public Prosecutions (NDPP), as second defendant, claiming damages for unlawful arrest and detention and malicious prosecution, respectively. He claimed R8 million in damages from the Minister alone.

[3] The matter first came before Djaje J. The parties had agreed to separate the aspect of liability from quantum. Quantum stood over for later determination, if necessary, and only the issue of liability proceeded before her. She dismissed both claims for unlawful arrest and detention and malicious prosecution.

[4] On appeal, the full court (Gura and Kgoele JJ and Morwane AJ), in a judgment delivered on 4 July 2019, found that the appellant's arrest and subsequent detention were unlawful. It dismissed the appeal against the NDPP in respect of the claim for malicious prosecution. The full court did not, however, determine which party was liable for the different periods of the appellant's detention, nor did it specify the period for which the Minister was liable.

[5] That question pertinently arose when the matter subsequently came before the court a quo, Petersen ADJP, for the determination of the quantum. At that stage, the Minister was the only defendant. The court held the Minister liable for the appellant's detention only for the period from 7 to 9 December 2013 and awarded him R60 000 in damages.

[6] The appellant contended that the full court's finding that his arrest and subsequent detention were unlawful established the Minister's liability for the entire period of his detention, i.e. 431 days. It was submitted that the court a quo was not entitled, in proceedings confined to the determination of quantum, to revisit the merits and limit the period for which the Minister was liable.

[7] The aforesaid submission cannot be sustained. The unlawfulness of an arrest does not, without more, render the arresting authority liable for the entire period of subsequent detention. Where the arrested person is brought before the court within a reasonable time prescribed in s 50(1)(c)(ii) of the Criminal Procedure Act, 51 of 1977, liability for detention thereafter requires a separate enquiry. Different parties may, depending on the case pleaded and proved, be liable for different periods of detention.¹

[8] Pleadings define the issues between the parties and the case which a court is called upon to determine. A party is bound by the case pleaded and may not plead one

¹ *Minister of Police and Another v Erasmus* 2022 JDR 0979 (SCA) paras 11 - 12; see also *De Klerk v Minister of Police* 2021 (4) SA 585 (CC) paras 37 – 45 and 59 – 63.

case and seek to establish another. In *Minister of Safety and Security v Slabbert*,² this Court reaffirmed this principle in the context of a claim for unlawful arrest and detention.

[9] Paragraphs 11 and 17 of the appellant's amended particulars of claim are material. They read:

'[11] As a result of the unlawful conduct by the first defendant the Plaintiff was detained from 7th to 9th December 2013 when he appeared in court. The Plaintiff was further detained from 9th December 2013 to 12th February 2015 as a subsequent conduct of the second defendant whereby the Plaintiff spent a number of 429 days, making a total number of 431 days spent in custody.'

'[17] As a result of the second defendant's conduct as aforesaid the plaintiff was arrested and held in further detention for 429 days.'

[10] The pleading expressly attributed the appellant's detention from 7 to 9 December 2013 to the Minister and his further detention from 9 December 2013 to 12 February 2015 to the NDPP. The dismissal of the malicious prosecution claim against the NDPP did not, without more, impose liability for the latter period on the Minister. There was no lis between the appellant and the Minister concerning those 429 days, as no such case had been pleaded against him.

[11] The general terms of the full court's order cannot alter that position. The court a quo was therefore correct to limit the Minister's liability to the period from 7 to 9 December 2013.

[12] The court a quo awarded the appellant R60 000 in damages for that period. At the hearing of the appeal, counsel for the appellant conceded that, if the Minister's liability was confined to those two days, the amount awarded was just and reasonable. There is accordingly no basis to interfere with the award. The appeal must accordingly be dismissed.

² *Minister of Safety and Security v Slabbert* 2009 JDR 1218 (SCA) para 11.

[13] In the result the following order is made:
The appeal is dismissed with costs.

L WINDELL
JUDGE OF APPEAL

Appearances

For the appellant: X Nyoka and K T Monthusi
Instructed by: T L Seeletso Attorneys, Mmabatho
Mhlokonya Attorneys, Bloemfontein

For the respondents: T Masike
Instructed by: State Attorney-Mahikeng
State Attorney-Bloemfontein.