THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not reportable

Case no: 667/2024

In the matter between:

CYNTHIA NOBUHLE KHEDAMA **APPELLANT**

and

THE MINISTER OF POLICE **RESPONDENT**

Neutral citation: *Khedama v The Minister of Police* (667/2024) [2025] ZASCA 79 (5 June 2025)

Coram: HUGHES JA and DLODLO and STEYN AJJA

Heard: 2 May 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email, publication on the Supreme Court of Appeal website, and release to SAFLII. The date and time for hand-down is deemed to be 5 June 2025 at 11h00.

Summary: Delict – unlawful arrest and detention – fair and reasonable damages – quantum – fair and reasonable compensation for appellant's unlawful arrest and detention for a period of 10 days – factors considered for such determination – appeal upheld.

ORDER

On appeal from: Kwazulu-Natal Division of the High Court, Pietermaritzburg (Poyo Dlwati JP with Henriques J and Gounden AJ concurring, sitting as court of appeal):

1 The appeal is upheld with costs, such costs to include the costs consequent upon the employment of two counsel.

2 The order of the full court is set aside and is replaced with the following:

'(a) The appeal succeeds with costs.

(b) The order of the court a quo is set aside and substituted as follows:

1 The defendant is ordered to pay damages to the plaintiff in the sum of R580 000 arising from her unlawful arrest and detention;

2 The defendant is ordered to pay interest on the aforesaid amount at the prescribed rate per annum from the date of service of the summons to date of payment; and

3 The defendant is ordered to pay the plaintiff's taxed or agreed costs of the action.'

JUDGMENT

Dlodlo AJA (Hughes JA and Steyn AJA concurring):

[1] Before the trial court the appellant claimed damages against the respondent, the Minister of Police for 'embarrassment and humiliation; defamation of character; discomfort and pain and suffering; deprivation of the freedom of movement and wrongful detention and incarceration; psychological shock and trauma; travel and subsistence expenses and disbursements incurred in relation to [her] movements and sojourn to the Court in Phillipi East for all hearings and appearances; all in the total sum of R1 000 000.00'. She was

successful before the trial court. Her claim for damages was, however, reduced on appeal before the full court of the Kwazulu-Natal Division of the High Court, Pietermaritzburg (the full court). That court reduced the quantum granted by Lopes J to the sum of R350 000.00 plus interest at the rate of 15,5% per annum from the date of judgment to date of final payment. Aggrieved by the above decision, the appellant appealed to this Court.

[2] The trial court refused leave to appeal, and this Court subsequently granted leave to the full court of the Kwazulu-Natal Division. The appeal was eventually dealt with by this Court; special leave being granted. The parties made submissions, and the hearing lasted for almost the whole day. I am of the view that the best approach to adopt in this appeal is to revisit the evidence tendered by and on behalf of the appellant during the hearing before Lopes J. It is, in my view, even more important to do so in view of the fact that the appeal deals almost exclusively with the quantum of damages suffered by the appellant.

[3] The summary of the appellant's evidence is that, on 3 December 2011, she was at King Shaka International Airport together with her boss and his wife. They were to leave on business trip to Turkey to source fashion items for a store, owned and operated by the boss in Durban. Two uniform members of the police approached her, and she was led to a room at the airport where she was questioned. She was asked, inter alia, where she was going to, whether she had any fraud matters pending, and who was accompanying her. She was asked further about the nationality of her boss, and she told them that he was from Cameroon. The officials demanded her suitcase in order to check whether she was carrying drugs. She was told that they had to search her, because she was in the company of a 'kwerekwere'.[1] They were to be assisted by another female police member in searching her. They told the appellant she was being arrested

[1] 'Kwerekwere' is a derogatory term used in South Africa to describe foreign nationals, especially those from other African countries. It is widely regarded as a slur and reflects xenophobic attitudes. The term underscores the perception of foreigners as outsiders or not belonging within South African society.

and that her suitcase was retrieved. In the airport charge office, her suitcase was opened, and her belongings fell out of it and she was embarrassed, because her clothing was scattered in full view of the public. She was searched by a female official, but that search did not reveal any incriminating items. She was told to phone her parents. She told the police her parents were deceased and asked that they phone a police officer in Cape Town, who had once spoken to her about averments relating to fraud by perpetrators falsely using her identity number or card. She explained this occurred in Cape Town after she had lost her identity document. The loss was reported to the South African Police Service (SAPS) and she had even opened a case with them and deposed to an affidavit in that regard.

[4] The appellant heard the Durban police members talking to the police officer in Cape Town (a Captain Bernard). The latter confirmed that he knew who she was and what she had said. She was then instructed to phone her boyfriend, because she was being arrested and her suitcase needed to be removed. The boyfriend subsequently arrived at the airport, together with the appellant's friend. They tried in vain to reason with the members of the police. The appellant was asked about her boyfriend's nationality, and she confirmed that he was not a South African. The police then accused her of being involved with a 'kwerekwere'.

[5] The appellant was then taken from the airport charge office to Tongaat Police Station. She was transported in the back of the police van; handcuffed with her hands behind her back for the duration of her removal from the airport to the police van, where they were removed. According to the appellant, the attitude of the members of the police was harsh and unacceptable in the way they handled her. They did not wish to listen to anything she said; she stated that this affected her very negatively. In the Tongaat Police Station charge office, she was told to remove her jewellery, and this was placed into safe keeping. This was because she was being detained at the police station.

[6] The appellant testified that she was placed in a small cell, where she was kept on her own for the duration of her ordeal. According to her, the toilet in the cell was very dirty with faeces and smelt terribly. There was a filthy grey blanket in the cell. She told the trial court that she placed the grey blanket onto the cement bed and sat on it in her tracksuit. She had no blanket with which to cover herself, and she sat there until daybreak, traumatised and unable to sleep. No food was offered to her. She told the trial court that she was very confused and uncertain as to what would happen to her. She prayed because she knew that she had done nothing unlawful. She developed an intense headache. She told the trial court further that the next morning her fingerprints were taken. She asked members of the police attending to her, to ask her boyfriend to bring her a jacket and some socks. Photographs of her were taken and she was returned to the same cell. She explained that the cell was too small to accommodate another inmate. She described how breakfast, bread and tea were 'thrown' through a hole in the door.

[7] As a result of her distressed state, she was unable to eat or drink and had no appetite. She told the trial court that the stench of the faeces ensured that she had no appetite whatsoever. This was also because of both the shock of her arrest and the dreadful surroundings in which she found herself. She testified that at some stage a female police member brought her some headache tablets. The appellant asked this police member to remind her boyfriend to bring her a jacket, some socks and food from KFC. These were later brought, but she still could not eat the food. She asked for some more water and headache tablets. When these were given to her, she did not take them but later asked for some more. She testified that she was so distressed that she had formed the intention to accrue enough tablets so that she eventually would be able to kill herself. She kept taking the tablets but could not count how many these were. She explained that she was unable to sleep although she used her jacket to cover herself. The appellant was kept at Tongaat Police Station from 3 December 2011 until Friday, 9 December 2011. She appeared in the Verulam Magistrate's court on 5 December 2011. It is

here where she was told that she would be transferred to Cape Town. She told the trial court that she was given no opportunity whatsoever to apply for bail. The magistrate simply informed her that she would be transported to Cape Town and was then taken down to the cells.

[8] During her incarceration at Tongaat Police Station, the appellant was at no stage offered any opportunity to exercise, nor the ability to bathe or wash and clean herself. On Friday, 9 December 2011, the police members from Cape Town arrived, removed her from her cell, handcuffed and informed her who they were and that they were to transport her to Cape Town. There was one male and one female police member. According to the appellant, their attitude was that if she had not done anything wrong, then her ordeal would soon be over. During the journey they stopped at a garage and asked her if she wanted something to eat. When she declined, a female member insisted and bought her 'amahewu' (a soft porridge) and water. She testified that although she drank the water because of her condition, she could not eat. Explaining further, she mentioned that she tried to eat, but she could not stomach food. She testified that she tried to sleep in the police vehicle as much as she could.

[9] When they arrived at Mthatha in the Eastern Cape, she was detained in a police cell overnight and the police members told her that they would fetch her the next day. She explained that the weather there was very windy and rainy and that the cell she was later placed in had a leaking roof and a door open to the elements. Wind and rain could enter into the cell. She explained that a blanket was hanging down from the roof and it was similar to the one she had been provided with in Tongaat Police Station, that is, it was filthy and in such a condition that she could not even use as a form of cushion on the cement bed.

[10] The appellant spent the whole night sitting and crying. She explained that the next morning, the female police member asked her if anything had happened

to her. The appellant added that she was asked this, because it was clear that she was in a distressed state. She told the police member that she had not been able to sleep because of mosquitos, wind, rain, cold etc. She further explained that she was not offered anything to eat because they had arrived at the police station late in the evening. The journey to Cape Town continued and they stopped in Monti police station in the Eastern Cape (this was approximately 240 km away) from Mthatha. They stopped at one or more garages on the way. Again, the appellant declined any food, but she drank water. On that night she was placed into a police cell in Monti Police Station, together with other female detainees. Although she had her jacket with her, she was obliged to share a blanket with another female prisoner, a complete stranger to her.

[11] The next morning, the police members arrived early to fetch her, and they continued their journey to Cape Town. Along the way she was asked by the female police member whether she wanted to freshen up and was given a face cloth, toothbrush and toothpaste and allowed to wash herself in a petrol station washroom. In the nine days which had elapsed, she had not been able to change any of her clothing and had not once been given the opportunity to 'freshen up' or bathe. Thus, the extent of her being able to 'freshen up' was that she was once given the opportunity to shower or bathe. She was enabled to brush her teeth, wash her face and her under-arms. This was all done under the eye of the female police member.

[12] They arrived in Cape Town on 11 December 2011. A female police officer took her fingerprints in order to verify whether she was the person of interest being sought. The fingerprints showed that she was not the person who was sought. She was taken to a cell with other females, and she at last felt more comfortable, because of the presence of females who were leading the prisoners in prayer. She was obliged to sleep next to an elderly lady and share a length of sponge with her. This person was also a complete stranger to her.

[13] On the next morning, the appellant was given a breakfast of soft porridge, bread and tea, and thereafter taken to court. She did not eat the food. She explained her position to the Philippi magistrate and requested bail, stating that she cared for her brother's child, who was ten years old, as well as a child of 15 years of age. The children had been left at her neighbour's home. She was concerned that her brothers did not know where she was. The magistrate granted her bail of R1000, but the appellant indicated that she had no money. Bail was then set at R500. She was eventually released on bail on Monday, 12 December 2011 and instructed to return in March 2012. A friend in Cape Town contacted via the female police officer took her to her residence. She was then able properly to clean and refresh herself. She obtained funds from her boyfriend so that she could fly back to Durban.

[14] The appellant had told the magistrate that she made an affidavit concerning her lost identity document and the members of the police then wanted another set of fingerprints to ascertain whether she was the person she claimed she was. It was only in March 2012 that she returned to Cape Town. After again relating her version of events, the magistrate compared her fingerprints with those of the person sought by the SAPS. The SAPS members realised that she was not the person being sought and told her that the matter was finalised. She recovered the bail money, purchased an airplane ticket and was able to return to Durban and to her employment.

[15] At her place of employment, she encountered suspicion and mistrust. After a period of difficulty, her boss eventually gave her a second chance to travel with him overseas to purchase fashion items. This time too when she arrived at Durban International Airport, she was again confronted by the same two members of the police only to be told that they were 'joking' and had only wanted to establish what happened after her first arrest. She explained again the whole ordeal. Her relationship with her boss was materially affected. The boss instructed her and

demanded that she pay for the first airplane ticket which was wasted. The attitude of the boss rubbed off on her fellow workers and they too did not trust her. She even lost the status of being a sales manager. It was because of her experience and ability that she was nonetheless asked to go on the second trip by the boss. Her relationship with the boss was completely destroyed as he still mistrusted her. However, her boyfriend 'stood by her'. Cross-examination of the appellant only served to strengthen her case and it enabled her to even remember further details of her experience – the manner she was ill-treated by the police members, the horrific conditions she was exposed to upon detention and her eventual transport by the police members to Cape Town.

[16] I have deliberately chosen to briefly summarise the evidence by the appellant and not of the respondent's witnesses. It suffices to mention that one sergeant Pather also testified for the respondent. The trial judge was hardly impressed by sergeant Pather's evidence. This much is clear when the judge stated the following in the judgment:

'I unhesitatingly accept her version in preference to his, because she was the person who suffered a traumatic experience, and is more likely to have remembered it in greater detail. Part of Sergeant Pather's confusion arises from the fact that various police officers dealt with [the appellant] at the airport, and matters may have occurred when he was not present, or subsequent to the duration of the time he was with [the appellant] …'

[17] The trial Judge dealt with the evidence presented very well. I accept that this part of the case presents no challenge. The only reason I decided to summarise the appellant's evidence is to sufficiently inform the reader how horrific the suffering was to which the appellant was subjected. The trial judge decided on the liability aspect and went on to deal with the quantification of damages suffered by the appellant. He was alive to the fact that there could have been another defendant.

[18] Dealing with the foregoing aspect, the trial judge mentions in his judgment that the refusal to grant her an opportunity to apply for bail may be something which concerns the Minister of Justice rather than the Minister of Police and the fact that no malicious conduct was demonstrated on the part of the magistrate, the police officials could have dealt with this aspect in the first instance and they referred to *Minister of Safety and Security and Others v Van der Walt and Another*[2] and *De Klerk v Minister of Police*.[3] No evidence was given to show that the appellant was any threat to society in general, and she was not considered dangerous or violent. Indeed, there was no explanation given as to why it was necessary to continue to detain the appellant at Tongaat Police Station. The trial court was not told as to why a female police officer could not have accompanied her on a flight to Cape Town immediately after her appearance in court in Tongaat on the Monday. There are indeed more questions than answers in this case.

[19] Everyone has the constitutional right not to be treated in a cruel, inhuman or degrading way and the right to bodily and psychological integrity.[4] Constitutionally, an arrested person has the right 'to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at the State expense, of adequate accommodation, nutrition, reading material and medical treatment'.[5] The purpose of pre-trial imprisonment remains to make certain that those accused of crimes and some transgressions attend court which

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[2] *Minister of Safety and Security and Others v Van der Walt and Another* [2014] ZASCA 174; 2015 (2) SACR 1 (SCA) paras 20 – 25.
[3] *De Klerk v Minister of Police* [2019] ZACC 32; 2019 (12) BCLR 1425 (CC); 2020 (1) SACR 1 (CC); 2021 (4) SA 585 (CC) paras 104 – 113.
[4] Section 12 of the Constitution provides: '**Freedom and security of the person**
(1) Everyone has the right to freedom and security of the person, which includes the right-
(a) not to be deprived of freedom arbitrarily or without just cause;
(b) not to be detained without trial;
(c) to be free from all forms of violence from either public or private sources;
(d) not to be tortured in any way; and
(e) not to be treated or punished in a cruel, inhuman or degrading way.
(2) Everyone has the right to bodily and psychological integrity, which includes the right-
(a) to make decisions concerning reproduction;
(b) to security in and control over their body; and
(c) not to be subjected to medical or scientific experiments without their informed consent.'
[5] Ibid s 35(2)*(e)*. See The Bill of Rights, chapter two of the Constitution and s 35 thereof.

has a duty to make a determination if they are guilty of those crimes or not. It is not necessary to document the suffering experienced by the appellant any further. The trial court fully and properly documented this. She did not only lose her seniority status at her employment; she suffered damage to her reputation as a result of being arrested and detained in the manner it was done. All this played out in the presence of her boss. The latter cannot be blamed for completely changing his attitude towards the appellant. He became suspicious of her and mistrusted her. The boss must have thought that the appellant was indeed the type of personality displayed by the police. Several constitutional rights belonging to the appellant were most certainly taken away from her. Instead of enjoying protection, she suffered in a cruel manner at the hands of the police during arrest and subsequent thereto. The appalling conditions she experienced as a detainee only served to exacerbate the bad treatment meted out to her by the police members.

[20] The appeal is of course against the amount of damages awarded, first, by the trial court and subsequently by the full court of the relevant division. A Court of Appeal will only interfere with the discretion of a trial judge in its determination of an appropriate award if the award is 'palpably excessive or clearly disproportionate in the circumstances of the case'. See *Salzman v Holmes*[6]; *Sandler v Wholesale Coal Suppliers Ltd*[7] and *Bes v Road Accident Fund*[8]. Of course, the Appeal Court can also interfere if it is shown that damages were grossly extravagant or unreasonable.[9] In *Minister of Safety and Security v Tyulu*,[10]*(Tyulu)* Bosielo AJA (as he then was) held as follows:

'In the assessment of damages for unlawful arrest and detention, it is important to bear in mind that the primary purpose is not to enrich the aggrieved party but to offer him or her some much-needed solatium for his or her injured feelings. It is therefore crucial that serious attempts be

[6] *Salzmann v Holmes* 1914 AD 471 at 470.
[7] *Sandler v Wholesale Coal Suppliers Ltd* 1941 AD 194 at 200.
[8] *Bee v Road Accident Fund* [2018] ZASCA 52; 2018 (4) SA 366 (SCA) para 47.
[9] See *Black and Others v Joseph* 1931 AD 132 at 150.
[10] *Minister of Safety and Security v Tyulu* [2009] ZASCA 55; 2009 (5) SA 85 (SCA); 2009 (2) SACR 282 (SCA); [2009] 4 All SA 38 (SCA) para 26.

made to ensure that the damages awarded are commensurate with the injury inflicted. However, our courts should be astute to ensure that the awards they make for such infractions reflect the importance of the right to personal liberty and the seriousness with which any arbitrary deprivation of personal liberty is viewed in our law.'

[21] It was submitted on behalf of the appellant that the award granted by the full court was so disproportional to comparative case law and disparate to the award granted by Lopes J that it warrants an interference by this Court. As pointed out earlier, the appellant's constitutional right was infringed and that alone entitled her to approach the Court for redress. That much is provided for in s 38 of the Constitution. In terms of that section, anyone listed therein possesses a right to approach a competent court and allege that such right has been infringed or even threatened. The court may grant appropriate relief and that includes a declaration of rights. There is no doubt that the appellant's claim which includes the violation of such rights (those the appellant suffered) the appropriate relief sought is the payment of a fair and reasonable sum of money to justly represent such compensation.

[22] In *Ramakulukusha v Commander, Venda National Force*[11] the following observation appears:

'When researching the case law on the quantum of damages, I took note some surprise of the comparatively low and sometimes almost insignificant awards made in southern African courts for infringements of personal safety, dignity, honour, self-esteem and reputation. It is my respectful opinion that courts are charged with the task, nay the duty, of upholding the liberty, safety and dignity of the individual, especially in group-orientated societies where there appears to be an almost imperceptible but inexorable decline in individual standards and values.'

The submission by appellant's counsel is that the full court failed to recognise the historical negative financial values inherent in past awards that flowed through into our constitutional era. The result is that the full court themselves by using

[11] *Ramakulukusha v Commander, Venda National Force* 1989 (2) SA 813 (V) at 847 B-C.

past cases with low awards misdirected themselves and made the error in making findings which are disproportional to the trial judge's award. Notably in *Tyulu* this Court warned thus '…our courts should be astute to ensure that the awards they make for such infractions reflect the importance of the right to personal liberty and the seriousness with which any arbitrary deprivation of personal liberty and the seriousness with which any arbitrary deprivation of personal liberty is viewed in our law.'

[23] The Constitutional Court in *Mahlangu and Another v Minister of Police*[12] *(Mahlangu)* where police officers tortured the first plaintiff to make a confession confirmed the decision of this Court in *Tyulu*. In *Mahlangu* he and his supposed co-perpetrator were placed in 'solitary confinement for two months to protect them from attack and taunting by fellow detainees who believed they had killed their relatives.' They were detained for eight months and ten days and were awarded R550 000 and R500 000 respectively by the Constitutional Court. That decision was confirmed in *Minister of Police v Nontsele*.[13]

[24] Although the period of detention in *Mahlangu* was significantly longer – amounting to eight months and ten days – compared to the ten days of detention in the present case, the award in this judgment underscores that the assessment of damages is not based solely on the duration of detention.[14] Rather, it gives weight to the overall treatment of the detainee. While the length of detention is undoubtedly a relevant consideration as stated in *Rahim v Minister of Home Affairs*[15] *(Rahim)*, it is not the sole determinant of the quantum of damages. This

[12] *Mahlangu and Another v Minister of Police* [2021] ZACC 10; 2021 (7) BCLR (CC); 2021 (2) SACR 595 (CC).
[13] *Minister of Police v Nontsele* [2024] ZASCA 137; [2025] 1 All SA 44 (SCA) para 29.
[14] See *Mahlangu* para 52 and 53.
[15] *Rahim v Minister of Home Affairs* [2015] ZASCA 92; 2015 (4) SA 433 (SCA) *(Rahim)*.

approach, together with the impact of inflation,[16] ought to be taken into account alongside the factors set out in *Rahim*[17] and *Woji v Minister of Home Affairs*.[18]

[25] In *Lumba (WL) vs Secretary of State for the Home Department*,[19] the Supreme Court found that both individuals were subjected to false imprisonment because the Secretary of State applied an unpublished and unlawful policy when deciding to detain them pending deportation. I accept that the appellant was subjected to cruel and degrading treatment. The full court rather drastically reduced the damages awarded by the trial court. In my view, regard being had to what treatment and conditions prevalent in almost all places where she was detained, she rightfully must have thought that it would be better for her to rather die. The cruelty displayed by the police towards her leaves one with no room to imagine that the police thought that they were still dealing with a fellow human being. The treatment meted out to her was so harsh that one would perhaps be justified to think this was an effort to enable the appellant to be so frustrated as to rather take her life. She testified she had decided to drink all the tablets she was collecting in order to rather die. It was even forgotten that she belonged to the human race too. Most certainly the award by the full court must be revisited and replaced with an award which this Court considers to be just and fair, regard being had to the circumstances attendant to this particular matter.

[26] When it comes to factual findings and evaluation of evidence, this Court will invariably be hesitant to interfere with the factual findings and evaluation of

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[16] *Protea Assurance v Lamb* 1971 (1) SA 530 (A) at 535G – 536B where Potgieter JA said: 'The above quoted passages from decisions of this Court indicate that, to the limited extent and subject to the qualifications therein set forth, the trial Court or the Court of Appeal, as the case may be, may pay regard to comparable cases. It should be emphasised, however, that this process of comparison does not take the form of a meticulous examination of awards made in other cases in order to fix the amount of compensation; nor should the process be allowed so to dominate the enquiry as to become a fetter upon the Court's general discretion in such matters. Comparable cases, when available, should rather be used to afford some guidance, in a general way, towards assisting the Court in arriving at an award which is not substantially out of general accord with previous awards in broadly similar cases, regard being had to all the factors which are considered to be relevant in the assessment of general damages.'
[17] *Rahim* para 27.
[18] *Woji v Minister of Police* 2015 (1) SACR 409 (SCA); [2015] 1 All SA 68 (SCA).
[19] *Lumba (WL) vs Secretary of State for the Home Department* [2011] UKSC 12, (United Kingdom).

the evidence by the trial court.[20] Similarly in cases involving deprivation of liberty, the quantum of damages which is to be awarded, is always in the discretion of the trial court. Importantly, that discretion must be exercised fairly and in accordance with what is good and equitable considering the merits of the case itself.[21] In this regard too, this Court should be slow to interfere unless specific reasons exist to do so. Yes, regard may indeed be had to comparable cases and awards made in those cases. But those cases 'are nothing more than a useful guide to what courts have considered to be appropriate on the facts before them. They have no higher value than that.'[22]

[27] On the question whether the appellant is entitled to interest from the date of the summons in terms of the Prescribed Rate of Interest Act 55 of 1975 (the Act), one – in my view – need go no further than having regard to s 2A (2)(a) and s 2A(5) of the Act. The sections state that:

'(2)(a) ……

and …

(5) Notwithstanding the provisions of this Act but subject to any other law or an agreement between the parties, a court of law, or an arbitrator or an arbitration tribunal may make such order as appears just in respect of the payment of interest on an unliquidated debt, the rate at which interest shall accrue and the date from which interest shall run.'

The default position is that a Court is obliged to grant interest from the date of service of the summons or demand which is earlier, s 2A being peremptory. In *Drake Flemmer & Orsmond Inc and Another v Gajjar NO*,[23] Rogers AJA stated '[t]he legislature exercised that policy choice by inserting s 2A into the Interest Act with effect from 11 April 1977. That section provides that interest at the prescribed rate runs on an unliquidated debt from the date on which payment was claimed by service of a demand or summons, whichever is the earlier, unless the court in the interest of justice determines a different date or rate…' The provisions

[20] *Rex v Dhlumayo and Another* 1948 (2) SA 677 (A).
[21] See *Neethling v Du Preez*; *Neethling v Weekly Mail* 1995 (1) SA 292 (A).
[22] *Masiteng v Minister of Police* (944/2023) [2024] ZASCA 165 (04 December 2024) para 14.
[23] *Drake Flemmer & Orsmond Inc and Another v Gajjar NO* 2018 (3) SA 369 (SCA) para [63].

of s 2A(2)(a) are clear that subject to any other agreement between the parties and the provisions of the National Credit Act, the interest contemplated in subsec (1) shall run from the date on which payment of the debt is claimed by the service on the debtor of a demand or summons whichever date is the earlier.

[28] Accordingly, I am of the view that the amount of damages awarded by the full court must be revisited and set aside in order to be replaced with what is a fair amount. The fair amount of damages is the sum of R580 000.

[29] The following order is therefore made:

1 The appeal is upheld with costs, such costs to include the costs consequent upon the employment of two counsel.

2 The order of the full court is set aside and is replaced with the following:

‘(a) The appeal succeeds with costs.

(b) The order of the court a quo is set aside and substituted as follows:

1 The defendant is ordered to pay damages to the plaintiff in the sum of R580 000 arising from her unlawful arrest and detention;

2 The defendant is ordered to pay interest on the aforesaid amount at the prescribed rate per annum from the date of service of the summons to date of payment; and

3 The defendant is ordered to pay the plaintiff’s taxed or agreed costs of the action.’

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D V DLODLO

ACTING JUDGE OF APPEAL

Appearances

For the appellant:	T N Aboobaker SC and M Maharaj
Instructed by:	Abdul Shaikjee Attorneys Inc, Durban
	Honey Attorneys, Bloemfontein
For the respondent:	M Govindasamy SC and M E Mbambo
Instructed by:	State Attorney, Durban
	State Attorney, Bloemfontein.