

**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG**

(1) REPORTABLE: ~~YES~~ / NO  
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO  
(3) REVISED.

CASE NUMBER: 29235/16

  
.....  
SIGNATURE

16/07/2025  
DATE

In the matter between:

**MULAUDZI PATIENCE LUTENDO**

Plaintiff

And

**THE MINISTER OF POLICE**

First Defendant

**THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**

Second Defendant

**Heard: 4-5 February 2025**

**Delivered: 16 July 2025**

**J U D G M E N T**

**YACOOB, J:**

[1] The plaintiff in this matter is the sister of the original plaintiff, Mr Thomas, Mashudu Mulaudzi, and the executrix of his deceased estate. Mr Mulaudzi died in 2021, apparently from complications arising from the Covid-19 virus, at the age of 44. Mr Mulaudzi sued the defendants for damages arising from his arrest on 21 December 2015, an unsuccessful prosecution and his continued detention until he was found not guilty and discharged on 1 June 2016.

- [2] My brother Twala J determined in 2018 that the arrest and detention of Mr Mulaudzi was unlawful, and that the first defendant, the Minister of Police (“the minister”), is 100% liable for Mr Mulaudzi’s damages arising therefrom. Twala J dismissed the claims of malicious prosecution and of assault. The matter is now before me to determine the quantum of damages for which the Minister is liable.
- [3] In dealing with the merits of the matter, Twala J had cause to take issue with the manner in which the defendants ran the case. They were unprepared, produced evidence erratically and called irrelevant witnesses. I must emphasise that this criticism attached more to the Minister’s officials than to counsel. Unfortunately the same is still applicable nearly seven years later.
- [4] Despite the fact that the evidence before me now is common cause, and in fact the matter was argued on the trial record and some further undisputed evidence, and that counsel’s submissions regarding an appropriate award were very similar on both sides, the matter could not be settled simply because the Minister (or the Minister’s authorized representative) declined to give the appropriate instruction. This meant that further costs had to be incurred by briefing counsel on both sides to argue the matter, and court resources, which are notoriously insufficient, applied to determine a matter that could easily have been settled. There would similarly have been no point in requiring the matter go to mediation, since an instruction would have been required to agree to any mediated outcome, and the conduct of the relevant officials demonstrates that such an instruction would have been unlikely to materialize. This conduct is relevant to the costs order the court makes.
- [5] The circumstances of Mr Mulaudzi’s arrest are fully detailed in the judgment of my brother Twala J. I only set out a summary here, as it is not necessary to rehash the facts. Mr Mulaudzi was at work as a dispatch clerk at Diplomat Warehouse. He was called to his superior’s office and was arrested there. He was not told what he was being arrested for. He was handcuffed and placed in the back of a police vehicle, and taken to a place where the employer’s truck was parked. The truck had apparently been hijacked. Mr Mulaudzi testified that he had been assaulted by the arresting officers but Twala J found that this was not

the case. Mr Mulaudzi was told to tell the truth but he knew nothing and told them so.

- [6] Bail was denied because the police told the magistrate that Mr Mulaudzi had provided an incorrect address. However, he had not, the police had mixed up his address with that of the driver of the hijacked truck. Mr Mulaudzi was held for nearly six months at Modderbee prison. The conditions in the prison were deplorable. That is common cause, and in support of the contention the parties relied on the report of the Judicial Inspectorate on Correctional Services for the period. Mr Mulaudzi testified that he was not told at his arrest what he was charged with, and it is not clear at what point he became aware of the charge. A statement was proffered purporting to be a confession from Mr Mulaudzi but he denied ever making it and it was rejected by the trial court as inadmissible.
  
- [7] Mr Mulaudzi was discharged because there was no evidence against him. He did not get his job back because it had already been filled, but at the CCMA hearing the employer said that he had been involved in a hijacking, whereas there was no evidence that he was involved in the hijacking at all.
  
- [8] Mr Mulaudzi was a widower and had three minor children for whom he was responsible and who were left home alone when he was arrested. He was only able to arrange for their care the following day. His reputation and dignity were impaired by being arrested at work and being kept from his children. In addition he was thrown into a rough, violent and barely humane environment and Modderbee prison, apparently surrounded by people who were not the sort of people he ordinarily dealt with. He testified that he would have like to have died in prison because he was being accused of something he did not do. Mr Mulaudzi's worldly goods were stolen from his home.
  
- [9] The effects of the arrest and detention on Mr Mulaudzi were clearly extremely traumatic and catastrophic. Even without assuming, as Mr Kerr-Phillips suggested would be appropriate, that he was assaulted in prison and suffered further trauma from his prison-mates, the very fact of his incarceration in such an environment is bad enough. He was taken from being a gainfully employed, respectable member of his community and a caring father to being someone who

was not even given enough respect that his correct address was verified, let alone that he was properly told what he was being charged with and what his rights were. And all this in addition to the “ordinary” consequences of being incarcerated in one of South Africa’s overcrowded and under-resourced prisons, with all autonomy removed.

[10] The experts retained by both parties agreed that Mr Mulaudzi suffered from Post-Traumatic Stress Disorder and Major Depressive Disorder as a result of the arrest and detention.

[11] It is by now trite that the determination of quantum of damages is not a mathematical exercise, and that it is not a simple calculation of a daily, weekly or monthly rate. The circumstances of the arrest, the circumstances of the detention as well as the length of time detained must be taken into account. The contravention of the plaintiff’s basic human rights and freedoms must be balanced against the fact that the damages are paid from public funds and that the State does not have unlimited resources.

[12] Relying holistically on a large number of authorities, it was submitted for the plaintiff that an appropriate award would be between R700 000 and R1 million. It was submitted for the defendant that an appropriate award would be between R500 000 and R700 000.

[13] I have read the authorities relied on for comparison by both parties. I do not consider it necessary to list them all here.

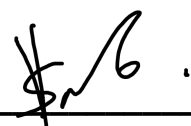
[14] Taking into account the particularly deliberate disregard of Mr Mulaudzi’s personhood displayed by the Minister’s representatives during the arrest and the bail proceedings, I am satisfied that a slightly higher award is justified. I consider the appropriate amount to be R800 000.

[15] Although I would ordinarily be wary of granting a punitive costs order against the State, as it is public funds at issue and the State has many responsibilities, in my view the manner in which the matter has been dealt with by the Minister’s officials leaves much wanting and is deserving of a punitive costs order.

[16] For these reasons, I make the following order:

- (1) The first defendant is to pay to the plaintiff an amount of R800 000, together with interest of 10,5% from 30 August 2016, within 20 days of service of this order together with the appropriate banking details.
- (2) The first defendant is to pay the plaintiff's costs on an attorney and client scale, including all costs of the plaintiff's expert witness and interpreter, with interest at the rate of mora interest from the date of taxation to the date of payment.

This judgment was handed down electronically by circulation to the parties' representatives by email.

  
\_\_\_\_\_  
**S. YACOOB**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, JOHANNESBURG**

### **APPEARANCES**

For the plaintiff:

G.E Kerr-Phillips

J.M Van Rooyen

Instructed by:

P Jordi

Wits Law Clinic

For the defendants:

M. Zondi

Instructed by:

The State Attorney, Johannesburg