

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA MAIN



DIVISION, WINDHOEK

JUDGMENT

Case No: HC-MD-CIV-ACT-DEL-2023/03307

In the matter between:

**KALIMBWE KALIMBWE**

**PLAINTIFF**

and

**THE INSPECTOR GENERAL OF THE NAMIBIAN POLICE  
THE MINISTER OF HOME AFFAIRS, IMMIGRATION SAFETY  
AND SECURITY**

**1<sup>ST</sup> DEFENDANT**

**2<sup>ND</sup> DEFENDANT**

**Neutral Citation:** *Kalimbwe v The Inspector General of the Namibian* (HC-MD-CIV-ACT-DEL-2023/03307) [2024] NAHCMD 694 (15 November 2024)

**CORAM:** PRINSLOO J

**Heard:** 28 October 2024 and 31 October 2024

**Delivered:** 15 November 2024

**Flynote:** Civil – Action – Delict – Constitutional Damages – Unlawful arrest – Burden of proof for unlawful arrest – Infringement of Constitutional Rights – Guideline in determining the quantum of damages.\_

**Summary:** On 16 November 2022, while on duty the plaintiff was arrested and taken to the Otjomuise Police Station, where he was arrested and detained overnight. The plaintiff was released on bail on 17 November 2022, and upon his appearance in court on 25 January 2023, the charges preferred against the plaintiff were withdrawn. The plaintiff pleaded that his arrest and detention were wrongful, unlawful and an infringement of his Article 7, 8 and 11 constitutional rights.

As a result, the plaintiff claims for damages against the defendants, jointly and severally, in the amount of N\$400 000, including interest at a rate of 20 per cent from the date of judgment to the date of payment and the cost of suit.

*Held that* if the arrest was executed without a warrant, it is lawful if it falls within the ambit of s 40 of the Criminal Procedure Act.

*Held that* the general principle applicable is that once an arrest or detention is admitted or proved by a plaintiff, the arrest or detention is prima facie wrongful and unlawful.

*Held that* the damages awarded should commensurate the injury inflicted while reflecting the importance of the right to personal liberty and that the arbitrary deprivation of personal liberty is viewed seriously in our law.

*Held that* judgment is granted in favour of the plaintiff against the first and second defendants, jointly and severally, the one paying the other to be absolved.

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**ORDER**

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1. Judgment is granted in favour of the plaintiff against the first and second defendants, jointly and severally, the one paying the other to be absolved, in the following terms:

1.1 Payment in the amount of N\$15 000.

2. Interest *a tempore morae* at the rate of 20% per annum from the date of judgment to the date of payment.
3. No order as to costs.
4. The matter is removed from the roll and regarded as finalised.

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## JUDGMENT

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PRINSLOO J:

### Background

[1] This is a claim for damages for the alleged wrongful detention of the plaintiff in November 2022.

### The parties

[2] The plaintiff is Kalimbwe Kalimbwe, an adult male, employed as a Security Guard and currently residing at Babylon, Windhoek, Republic of Namibia.

[3] The defendants are as follows:

- a) The first defendant is the Inspector-General of the Namibian Police, duly appointed in terms of Article 32(4)(c)(bb) read with Article 19(1) of the Namibian Constitution. His principal place of business is the Namibian Police

Head Quarters, Julius K Nyerere Street, Windhoek, c/o the Government Attorneys.

b) The second defendant is the Minister of Home Affairs, Immigration, Safety and Security, appointed in terms of Article 32(3)(i)(dd) of the Namibian Constitution and the Minister responsible for policing in terms of s 1 of the Police Act 19 of 1990, c/o the Government Attorneys.

### The pleadings

[4] The plaintiff stated that on 16 November 2022, while on duty at the Standard Bank ATM at Woermann Brock, Otjomuise, he was unlawfully apprehended by members of the Namibian Police. He was taken to the Otjomuise Police Station, where he was arrested and detained without being formally charged or having any complaint made against him. Furthermore, the police officers did not inform the plaintiff about the complainant's identity.

[5] The plaintiff was released on bail on 17 November 2022 and presented with two separate written notices to appear in court on charges of common assault, dated 10 and 16 November 2022, respectively.

[6] Upon his appearance in court on 25 January 2023, the charges preferred against the plaintiff were withdrawn, and the presiding magistrate directed him to take the necessary steps to have his record cleared and obtain a Certificate of Good Conduct.

[7] The plaintiff pleaded that he was arrested without due cause and as a result his arrest and detention were unlawful and that the wrongful and unlawful arrest and detention were a grave infringement of the plaintiff's constitutionally protected rights under Article 7 (protection of liberty), Article 8 (right to human dignity) and Article 11 (protection against arbitrary arrest). As a result, the plaintiff claims damages against the defendants, jointly and severally, in the amount of N\$400 000 including interest at a rate of 20 per cent from the date of judgment to the date of payment and the cost of the suit.

*Defendants' plea*

[8] Firstly, the defendants raised a point in limine, namely, that the plaintiff's relief sought is either premature or incompetent.

[9] The defendants pleaded that when the plaintiff appeared in court, he was not required to plead, and the notices dated 10 and 16 November 2022 were withdrawn in terms of s 6(a) of the Criminal Procedure Act 51 of 1977 (the CPA). They further pleaded that the plaintiff was issued with new notices directing him to appear in court on 24 November 2023, stemming from the incidents that occurred on 10 and 16 November 2022, respectively.

[10] The defendants pleaded that the plaintiff's action was premature as the criminal charges upon which the arrest was premised are still pending before the magistrate's court.

[11] On the merits of the matter, the defendant pleaded that the plaintiff was not unlawfully apprehended on 16 November 2022 and that the arrest was premised on a charge of assault laid by one Ms Kavita Uaundja and one Mr Leonard David under CR numbers 81/11/2022 and 152/11/2022.

[12] Thus, the arrest was based on two formal criminal charges that were preferred against the plaintiff. Although these charges were withdrawn on 25 January 2023, the complaints are still active because the complainants intend to pursue criminal charges against the plaintiff.

[13] The defendants deny that the plaintiff's constitutional rights were violated. At the time of his arrest on 16 November 2022, the criminal charge under CR 81/11/2022 was

already pending against him. In addition, the plaintiff appeared before the magistrate within 48 hours of his arrest as prescribed in terms of s 50(1) of the CPA.

[14] The defendants denied that the plaintiff suffered damages in the amount of N\$400 000 or any other amount and sought the dismissal of the plaintiff's claim.

#### The pre-trial conference

[15] The issues of law and facts between the parties agreed on the parties is set out as follows:

##### **1. All the issues of fact to be resolved during the trial:**

1.1 The main issue for determination by the court, is whether or not the Plaintiff was unlawfully arrested and detained by members of the Namibian Police, on 16 November 2022;

1.2 Whether or not the Defendant's acted without probable cause when they arrested and detained the Plaintiff;

1.3 Whether or not the charges against the Plaintiff were withdrawn on 25th January 2023.

##### **2. All issues of law to be resolved at trial.**

2.1 The main issue for determination by the court is whether the Plaintiff was unlawfully arrested and detained by the members of the Namibian Police. If the court finds for the Plaintiff on its claim, whether it is entitled to or suffered any damages.'

#### The evidence adduced

[16] The respective parties only called one witness each. The plaintiff testified in support of his case and Sergeant Johannes Shalukeni was called to testify on behalf of the defendants. The evidence of these witnesses can be summarised as follows:

*Plaintiff's case*

[17] The plaintiff testified that he was stationed at the Standard Bank ATM located at Woermann Brock Otjimuse. During his shift, an incident occurred involving a pregnant woman who was about to go into labour. She needed to withdraw money to go to the hospital, but a gentleman insisted that she wait in line with the other customers. Eventually, this gentleman was allowed to go ahead of her. However, when he attempted to withdraw money, the ATM malfunctioned and went out of service.

[18] A while later a police official arrived and told him to accompany him to the police station. The plaintiff stated that he was not prepared to get into an unmarked vehicle. The police official secured an official police vehicle and the plaintiff was transported to the police station.

[19] At the police station, he was informed that he was under arrest and had to surrender his personal belongings. He was moved between three different cells, and each time, the police officer in charge told the other inmates that they "should take their lunch," referring to the plaintiff. When he arrived in the third cell, he recognised one of the inmates and when another inmate became argumentative with the plaintiff, this inmate defended him. However, no assault was carried out against the plaintiff.

[20] The plaintiff was detained in the cells that night but was released the next morning, on 17 November 2022. When he spoke to the investigating officer enquiring about the identity of the complainants in the assault cases, he was informed that he should proceed to court so that he could pay the two N\$500 fines.<sup>1</sup>

[21] The plaintiff testified that he appeared in the Katutura Magistrate's Court on 19 November 2022. The case was postponed until 25 January 2023, at which point it was withdrawn due to the absence of a docket and witnesses in court.

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<sup>1</sup> For each of the complainants.

[22] After the plaintiff obtained a certificate of good conduct, on the direction of the presiding magistrate, the plaintiff approached the Directorate of Legal Aid to appoint him with a legal practitioner and instituted the current action.

[23] The plaintiff claims that during court-connected mediation, he was told that he had been convicted of assault charges. However, he denies this, stating that he was never subjected to a trial or tribunal, and insists that any conviction would be unfounded and unconstitutional.

[24] During cross-examination, the plaintiff expressed his belief that the arrest was unlawful since he was not provided with the identities of the complainants. He stated that when he asked the arresting officer, Sergeant Shalukeni, about who he allegedly hit or punched. Sergeant Shalukeni was unable to provide an answer.

[25] The plaintiff confirmed that he was not assaulted by either the Namibian Police or the inmates in the cells where he was detained.

[26] This concluded the plaintiff's case.

[27] The defendants called Sergeant Johannes Shalukeni to testify on its behalf. Sergeant Shalukeni is a member of the Namibian Police and appears to be attached to the Criminal Investigation Unit.

[28] He testified that on 16 November 2022, he was on standby in the charge office of the Otjomuise Police Station when Mr Leonard David approached him. Mr David informed him that he had opened a case earlier under CR 152/11/2022 and wanted the suspect arrested.

[29] Sergeant Shalukeni and Mr David, the complainant, drove to the Otjomuise shops, where the complainant pointed out the plaintiff. The witness identified himself as a police officer by presenting his appointment certificate to the plaintiff and informed the plaintiff that a case had been opened against him, requiring his presence at the police station. The plaintiff was hesitant to accompany the officer in an unmarked police



vehicle. Consequently, Sergeant Shalukeni arranged for alternative transportation with a colleague to ensure the plaintiff could be taken to the Otjomuise Police Station. The plaintiff and Mr David were transported to the police station in different vehicles.

[30] Sergeant Shalukeni testified that his aim at the time was to try and resolve the dispute between the plaintiff and the complainant in the criminal case and had a discussion with them when they got to the police station. The parties could, however, not come to an understanding, and he handed the plaintiff over to the charge office personnel to effect the arrest and explain the plaintiff's rights. Sergeant Shalukeni was then informed by a colleague, Sergeant Petrus, that she was also investigating a matter against the plaintiff under CR 81/11/2022. Sergeant Petrus eventually became the investigating officer of the combined dockets involving CR 81/11/2022 and CR 152/11/2022.

[31] The plaintiff was hereafter detained in the police cells but was released the next day after being issued with written warnings to appear in court. When asked how the matter against the plaintiff was resolved, the witness testified that he was informed by the investigating officer that the plaintiff was convicted but could not furnish the court with any details and indicated that he would need to refer back to the docket.

[32] This concluded the case for the defendants.

### Closing arguments

#### *On behalf of the plaintiff*

[33] Mr Ntelamo contended that the plaintiff's arrest and detention were unlawful as there was no just cause for either the arrest or his subsequent detention. The plaintiff was arrested without a warrant of arrest despite the fact that the alleged offence does not fall within the ambit of s 40 of the CPA, in terms of which a warrant of arrest can be legally dispensed with.

[34] Mr Ntelamo submitted that Schedule 1 of the CPA lists serious offences, which do not include common assault. In addition, in order for Sergeant Shalukeni to exercise the power conferred to him in terms of s 40(1)(b) of the CPA, he must have had a reasonable suspicion that an offence listed in Schedule 1 was committed and that suspicion must rest on reasonable grounds. At the time, Sergeant Shalukeni was aware of the allegation against the plaintiff and must have known that there were no grounds on which the plaintiff could be arrested and detained.

[35] Sergeant Shalukeni testified that the complainant in the alleged assault case had no visible injuries and did not mention any injuries despite the assault claims. Mr Ntelamo argued that there was no valid complaint against the plaintiff that would justify his overnight detention, especially since he was released on warning the following day.

[36] Consequently, the complainant and the docket were not presented in court on the hearing date, resulting in the withdrawal of charges against the plaintiff. Mr Ntelamo further contended that the defendants attempted to mask the unlawful acts of arresting and detaining the plaintiff by forcing the narrative of a criminal case that never existed. According to counsel, if the defendants were convinced of their case, then the best evidence would have been to call the complainants in the criminal cases to testify in the current proceeding, but this did not happen.

[37] The court was further called upon to note that key witnesses were not called to testify during the current proceedings without providing a reason why they did not testify and that a negative inference may be drawn from this.

[38] In support of the quantum of the plaintiff's claim, Mr Ntelamo invited the court to recognise that the plaintiff's rights to personal liberty and human dignity were infringed when he was subjected to arbitrary arrest and detention and that the court should show its disapproval of the wanton conduct of the arresting and detaining officers.

[39] Mr Ntelamo conceded that the plaintiff's claim for N\$400 000 is excessive and should be reduced at the court's discretion.

*On behalf of the defendants*

[40] From the onset, Mr Halweendo did not make much of an argument about the lawfulness of the plaintiff's arrest and conceded that the law clearly states that a warrant of arrest is required for an arrest to be lawful, except in the circumstances set out in the CPA.

[41] He argued that the arrest could be considered lawful under s 40(j) of the CPA, which allows a police officer to arrest a person without a warrant if that person willfully obstructs the officer in carrying out their duties. To elaborate, Mr Halweendo stated that Sergeant Shalukeni testified he approached the plaintiff alongside one of the complainants to help resolve their dispute. However, when asked to accompany the police to the station, the plaintiff refused to enter the unmarked vehicle, even after being shown Sergeant Shalukeni's appointment certificate. Counsel further noted that once the officer presented a clear certificate identifying himself, it was reasonable for the plaintiff to comply.

[42] Mr Halweendo argued that the plaintiff's claim for constitutional damages is bad in law and referred the court to *Road Fund Administration v Scorpion Mining Company (Pty) Ltd*,<sup>2</sup> confirming the position in our law to be that relief should first be sought by way of the common law before resorting to the Constitution. The result is it would be impermissible for this court to award constitutional damages to the plaintiff where he should've sought common law damages first.

[43] A further argument advanced by Mr Halweendo was that the plaintiff did not plead any basis for the quantum sought, nor did he establish the quantum via his evidence. The plaintiff seeks an award for damages in the sum of N\$400 000, which seems to be squarely based on the alleged infringement of the plaintiff's constitutional rights. Mr Halweendo, however, pointed out that the purpose of a damages award is not to enrich the plaintiff but to offer him *solatium* for his injured feelings, and the damages award should be commensurate with the injury suffered.

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<sup>2</sup> *Road Fund Administration v Scorpion Mining Company (Pty) Ltd* 2018 (3) 829 (SA) at para 45.

[44] Mr Halweendo contended that apart from the inconvenience suffered by the plaintiff, no evidence was adduced of any other prejudice suffered. Mr Halweendo was of the view that the plaintiff was, in any event, not innocent of this whole incident as he was aware of what occurred during the altercation at the ATM where he was stationed, and there was nothing malicious in the subsequent arrest.

[45] In his heads of argument Mr Halweendo compared matters similar to the one at hand and the awards that the court deemed appropriate given the circumstances of those cases. In *Minister of Safety and Security v Tyulu*,<sup>3</sup> the respondent, a magistrate, was wrongfully arrested and detained for a few hours. The court awarded damages in the amount of N\$15 000.

[46] In *Iyambo v Minister of Safety and Security*,<sup>4</sup> the plaintiff was brought before a magistrate four days after his arrest and detention in violation of Article 11(3) of the Namibian Constitution. The plaintiff was awarded damages for 'loss of freedom and attendant psychological pain' in the amount of N\$12 000.

[47] Mr Halweendo argued that if the court determines that s 40(j) of the CPA applies to the circumstances surrounding the arrest, then the plaintiff's case should be dismissed. He further contended that if the court does not accept the defendants' claims regarding the lawfulness of the arrest, then no damages should be awarded for the improper pursuit of constitutional damages. He stated that such damages should only be considered after common law relief has been sought. However, if the court is inclined to grant damages in favour of the plaintiff, Mr Halweendo suggested that an amount of N\$5000 would be reasonable under the circumstances.

### Evaluation of the evidence

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<sup>3</sup> *Minister of Safety and Security v Tyulu* 2009 (5) SA 85 (SCA) at 93D-F.

<sup>4</sup> *Iyambo v Minister of Safety and Security* Unreported (I 3121/2010) [2013] NAHCMD 38 (12 February 2013).

[48] There is very little in dispute between the parties. The defendants do not deny the plaintiff's arrest and detention. The plaintiff willingly accompanied Sergeant Shalukeni to the police station, and it is undisputed that the plaintiff was arrested at the police station and detained overnight where after he was released on warning and was issued with a written warning in terms of s 56 of the CPA, to appear in court on a later date. The criminal charges preferred withdrawn against the plaintiff were subsequently withdrawn.

[49] It is common cause that when the plaintiff accompanied Sergeant Shalukeni to the police station, Sergeant Shalukeni did not have a warrant of arrest.

[50] There were some contradictions between the plaintiff's case and that of the defendants. For example, it was Sergeant Shalukeni's evidence that he identified himself as a police official to the plaintiff, but he did not arrest the plaintiff at his place of employment in Otjomuise. He wanted to see if he could resolve the issue between the two parties by having a discussion with them, but he was unable to have the matter resolved amicably. This evidence is directly contrary to that of the plaintiff, who testified that he was not told who the complainant was in the criminal charges laid against him. When given the opportunity, this version of Sergeant Shalukeni was not tested or disputed.

[51] Thus, it is clear that the plaintiff is feigning ignorance as to the identity of at least one of the complainants. It is further clear that the incident at the ATM that the plaintiff referred to in his evidence gave rise to Mr David's filing of the criminal complaint.

[52] The details regarding what transpired after the plaintiff was released from custody are unclear, except for the fact that the case was withdrawn in January 2023. According to the pleadings, a new summons was issued for the plaintiff to appear in court during the second half of 2023. However, no evidence has been provided regarding the outcome of this subsequent summons. Regardless, it does not merit the argument advanced on behalf of the plaintiff. The defendants attempted to mask their

unlawful acts of arresting and detaining the plaintiff by ‘forcing the narrative of a criminal matter, which never existed’.

[53] There were criminal cases registered against the plaintiff, and only one of those was registered on 16 November 2022. The one wherein the complainant was Ms Uaundja was already registered on 10 November 2022.

[54] What is further clear from the evidence is that there was no resistance to accompany Sergeant Shalukeni to the police station, and in any event, the arrest did not occur at the time when the plaintiff was picked up near his place of employment. The suggestion by Mr Halweendo that the plaintiff resisted arrest holds no merit that s 40(j) of the CPA applies, given the evidence of Sergeant Shalukeni, falls flat. It was, in any event, not pleaded by the defendants.

## Discussion

### *Unlawful arrest and detention*

[55] The general principle applicable is that once an arrest or detention is admitted or proved by a plaintiff, the arrest or detention is prima facie wrongful and unlawful.<sup>5</sup> It is unnecessary for a plaintiff to allege or prove this. The defendant must allege and prove the lawfulness of the arrest or detention, as the burden of proving lawfulness rests on the defendants.

[56] If the arrest was executed without a warrant as in the matter before the court, it is lawful if it falls within the ambit of s 40 of the CPA, which *inter alia* includes when the person committed or attempted to commit an offence in the peace officer's presence (s 40(1)(a)) or if, at the time of the arrest, the arresting officer had a reasonable belief that the person committed a Schedule 1 offence (s 40(1)(b) or who willfully obstructs a peace officer in the execution of his duty (s 40)(1)(j)).

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<sup>5</sup> *Minister of Home Affairs v Bauleth* 2004 NR 68 (HC) at 71G. Also see *Tjipepa v Minister of Safety and Security and Others* 2015 (4) NR 1133 (HC) para 27.

[57] If regard is to be had to the pre-trial order, it is clear that the lawfulness of the arrest and detention of the plaintiff was an issue in dispute between the parties. However, due to the failure to call the relevant witnesses, the defendants dismally failed to discharge their onus. As a result, the acts of arrest and detention were unlawful.

### *Damages*

[58] The term constitutional damages is loosely used between the parties. The plaintiff did not claim constitutional damages even though the plaintiff pleaded that his constitutional right to liberty, dignity and right against arbitrary detention was violated. I am of the view that normal common law damages may be awarded as appropriate relief for the breach of constitutional rights.<sup>6</sup>

[59] The right to liberty is a fundamental principle of human rights. Law enforcement officers or any other person who exercises the power of arrest must thus realise and take cognisance of the fact that the power of arrest is a significant interference with the right to liberty.<sup>7</sup>

[60] The damages awarded should be commensurate with the injury inflicted while reflecting the importance of the right to personal liberty and the arbitrary deprivation of personal liberty, which is viewed seriously in our law.<sup>8</sup> It is, therefore, important to consider other similar cases which would serve as a guideline in determining the quantum of damages.

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<sup>6</sup> *Fose v Minister of Safety and Security* (CCT14/96) [1997] ZACC 6; 1997 (7) BCLR 851; 1997 (3) SA 786 (5 June 1997) at [67].

<sup>7</sup> *Simon v Minister of Home Affairs, Immigration, Safety and Security* (HC-MD-CIV-ACT-DEL-2021/02450)

[2023] NAHCMD 298 (6 June 2023) at para [24].

<sup>8</sup> *Shiwovanhu v Minister of Home Affairs, Immigration, Safety and Security* (HC-MD-CIV-ACT-DEL-2022/05094) [2024] NAHCMD 244 (22 May 2024).

[61] That being said, it would be born in mind that the arrest of the plaintiff was in no way different from a normal arrest and detention, and the damages are not for any assault or injuries inflicted on him as a result of the arrest, nor is it for medical or legal expenses.

[62] By comparison of damage awards granted by our courts in similar cases, the following can be listed:

a) In 2013, in *Iyambo v Minister of Safety and Security*,<sup>9</sup> N\$12 000 was awarded to a primary school teacher for his unlawful arrest and four-day detention.

b) In 2017, in *Lazarus v The Government of the Republic of Namibia (Ministry of Safety and Security)*,<sup>10</sup> the plaintiff was awarded N\$300 000 for being unlawfully detained on three different occasions for a few days at a time, totalling about ten days. That award was confirmed on appeal.

c) In 2023, in *Hamunyela v Minister of Home Affairs, Immigration, Safety and Security*,<sup>11</sup> the sum of N\$90 000 was awarded to a decorated member, a Major General, and a retired army officer of the Namibian Defence Force for his unlawful arrest and detention for about two days. When detained he was not provided with any blanket (bedding), mattress or food.

d) In 2023, in *Nghidinua v Minister of Home Affairs, Immigration, Safety and Security and Others*<sup>12</sup> the court awarded N\$20 000 for an unlawful arrest and detention

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<sup>9</sup> *Iyambo v Minister of Safety and Security* (I 3121/2010) [2013] NAHCMD 38 (12 February 2013).

<sup>10</sup> *Lazarus v The Government of the Republic of Namibia (Ministry of Safety and Security)* (I 2954/2015) [2017] NAHCMD 249 (30 August 2017).

<sup>11</sup> *Hamunyela v Minister of Home Affairs, Immigration, Safety and Security* (HC-MD-CIV-ACT-DEL-2021/01244) [2023] NAHCMD 459 (31 July 2023).

<sup>12</sup> *Nghidinua v Minister of Home Affairs, Immigration, Safety and Security and Others* (HC-NLD-CIV-ACT-DEL-2021/00244) [2023] NAHCNLD 111 (23 October 2023).



for one day under unhygienic conditions which led to the plaintiff developing an itchy allergic reaction on her entire body after she had to use a dirty toilet while in detention.

e) In 2024, in *Shiwovanhu v Minister of Home Affairs, Immigration, Safety and Security*,<sup>13</sup> the court awarded unlawful arrest and detention for a few hours and N\$26 000 for the assault.

[63] Considering the awards made in the aforementioned matter for unlawful arrest and detention, the plaintiff's claim for N\$400 000 for his unlawful arrest and detention overnight is excessive in my view. The court believes that a fair and appropriate award of damages for the plaintiff's unlawful arrest and detention is an amount of N\$15 000.

#### Costs

[64] Lastly is the issue of costs, and as this is a legally aided plaintiff, I am of the view that no order should be made as to costs.

[65] My order is thus as follows:

1. Judgment is granted in favour of the plaintiff against the first and second defendants, jointly and severally, the one paying the other to be absolved, in the following terms:

1.1 Payment in the amount of N\$15 000.

2. Interest *a tempore morae* at the rate of 20% per annum from the date of judgment to the date of payment.
3. No order as to costs.
4. The matter is removed from the roll and regarded as finalised.

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<sup>13</sup> *Shiwovanhu v Minister of Home Affairs, Immigration, Safety and Security* supra at footnote 7.

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J S Prinsloo

Judge

Appearance:

Plaintiff:

N NTELAMO

Of Ntelamo & Associates Incorporated

Windhoek

Defendants:

N HALWEENDO

Of Nafimane Halweendo Legal Practitioners

Windhoek