Republic of South Africa

IN THE HIGH COURT OF SOUTH AFRICA

[WESTERN CAPE DIVISION, CAPE TOWN]

REPORTABLE

Case no: 7357/2012

In the matter between:

C A Rautenbach **Plaintiff**

And

The Minister of Safety and Security **Defendant**

Judgment – 11 August 2017

Le Grange J:

[1] The Plaintiff instituted an action for damages in the sum of R346 750 against the Defendant arising from the Plaintiff's arrest and subsequent detention on 12 November 2009 at the local police station in Mosselbay.

[2] It is not in dispute that the Plaintiff's arrest was carried out by Constable Forbes ("Forbes") a member of the South African Police Service ("SAPS") under the provisions of

the Domestic Violence Act, No 116 of 1998 ("the Act") for an alleged breach of a protection order. The said protection order was granted against the Plaintiff in favour of his former wife, Gladys Rautenbach ("the Complainant"). The arrest was executed pursuant to a warrant of arrest that was issued in terms of s 8 of the Act.

[3] The Plaintiff pleaded that his arrest and further detention by the police members was unlawful and wrongful in that, *inter alia*:

3.1 The police member(s) did not and or could not have entertained a suspicion, based on reasonable grounds, that the Plaintiff had committed an offence;

3.2 The police member(s) did not and or could not have entertained a suspicion, based on reasonable grounds that the Complainant, Mrs Gladys Rautenbach may have suffered imminent harm as a result of the Plaintiff's alleged breach of the protection order issued in favour of the Complainant;

3.3 The police member(s) could and should have, instead of arresting the Plaintiff, handed a written notice to the Plaintiff in terms of s 8(4)(c) of the Act, calling upon the Plaintiff to appear before a Court on the charges preferred against the Plaintiff.

[4] The Plaintiff further alleged that even if the police member(s) did entertain any suspicion pleaded, then the police member(s) neglected to take relevant considerations into account when exercising their discretion to arrest and detain the Plaintiff and this

failure resulted in the Plaintiff's arrest, detention and continued detention to be unlawful, unreasonable and arbitrary.

[5] The Defendant admitted the arrest but in defence pleaded that:

5.1 It was lawfully executed in terms of a warrant of arrest that was duly authorised in terms of the Act.

5.2 The police members received an affidavit that was deposed to by the Complainant whereby she under oath recorded that the Plaintiff was firstly, in breach of a protection order and secondly, that the Plaintiff threatened to burn down the Complainant's house, resulting in the Plaintiff being lawfully arrested.

[6] Advocates P H Mouton assisted by Ms L Ellis appeared for the Plaintiff. Advocate L Viljoen appeared for the Defendant.

[7] In the Plaintiff's case, two witnesses testified. The first witness was Ettiene Hugo Du Plessis ("Du Plessis"), the Deputy Sheriff of Mosselbay. The second witness was the Plaintiff. The Defendant relied on the evidence of Forbes. A statement by Salomie Du Toit ("Du Toit"), the Sheriff of Mosselbay; an e-mail from the Plaintiff that was forwarded to the Complainant; and a document containing a criminal profile of the Plaintiff at the time; was in as exhibits by agreement between the parties handed to form part of the record.

[8] Du Plessis' evidence briefly stated was the following. He is the Deputy Sheriff for the magisterial district of Mosselbay. On 10 November 2009 he accompanied the Plaintiff to remove certain household items from the Complainant's premises. The Plaintiff had a court order in his possession which seemed to have given him authorisation to remove the household items. According to Du Plessis, the Complainant had a woman friend who assisted her as the Complainant was apparently very emotional and cried a lot. Du Plessis testified that the Plaintiff and Complainant never spoke to each other. The entire process of collecting the items according to Du Plessis was peaceful. He further testified that he did not hear any threats that were uttered by the Plaintiff towards the Complainant. Moreover, according to Du Plessis the police never approached him for a statement to verify the allegations made by the Complainant.

[9] The Plaintiff's evidence in summary was the following. He admitted forwarding an e-mail in the early hours of 11 November 2009 at about 2.41am to the Complainant. He however denied that he threatened to physically harm the Complainant or to set her and or the house alight on 10 November 2009. According to the Plaintiff, he wrote the e-mail as he was emotional and wanted to rid himself of these emotions. The Plaintiff was adamant that his intentions were not to insult but conceded that the Complainant may find the email offensive. The Plaintiff denied that he misled Forbes as to his whereabouts on the day in question. According to the Plaintiff, on the day of his arrest, he was on his way to Worcester where his children reside. Whilst driving towards Worcester he decided

to turn back to collect certain documents at his house. The Plaintiff denied that he informed Forbes he was already in Worcester. He admitted to have telephonically contacted the Complainant on the morning before his arrest. According to the Plaintiff, Forbes arrived at his house and arrested him. He was taken to the Mosselbay Police Station and remained in custody until the following morning. Despite Forbes' objection to him being released on bail, the Plaintiff was released by the magistrate on bail the same day.

[10] Forbes evidence in summary was the following. He joined the SAPS during 2004. He held the rank of Constable until October 2013 when he decided to leave the SAPS. According to Forbes, the Plaintiff was not unknown to him as there had been instances where the police at times had to intervene where the Plaintiff was either a suspect or a complainant. On 12 November 2009, Forbes received the police docket relating to the complaint that was made against the Plaintiff on the previous day. After familiarising himself with the content he telephonically contacted the Complainant. During the conversation she confirmed her complaint against the Plaintiff and the statement made to the police. She further reported that she was a nervous wreck, could not sleep at her own house, that the Plaintiff was at her house during the night and peeped through her windows. According to Forbes, the Complainant further mentioned that she feared for her life and pleaded that he must do something about the matter. He further testified that the Complainant reiterated the alleged threat the Plaintiff made to burn the Complainant and her house down.

[11] Forbes also expressed the view that having read the e-mail that was part of the police docket, the content was definitely demeaning and insulting towards the Complainant. Forbes testified that he contacted Du Toit and obtained an affidavit from her. Therein Du Toit recorded that the Plaintiff failed to inform her that there was a protection order against him and that he was prohibited in terms of the said order to be on the premises of the Complainant. According to Du Toit had she known the full facts she would not have allowed Du Plessis to have accompanied the Plaintiff. Du Toit further recorded that the Plaintiff had misled her to get access to the Complainant's house.

[12] According to Forbes he thereafter made telephonic contact with the Plaintiff, and inform him about the complaint against him. He was then informed by the Plaintiff that he was in Worcester with his children. As the Plaintiff was not in the near vicinity of the Complainant, he decided to inform the Plaintiff to attend at his offices on Monday, 16 November 2009 in order to take down a warning statement from him.

[13] According to Forbes the Complainant soon thereafter contacted him and stated that the Plaintiff phoned her as soon as he became aware that she had laid a charge and reported him to the police. She further informed him that she feared for her life and that the Plaintiff was still in Mosselbay. The Complainant was also certain he lied about his whereabouts.

[14] Forbes then decided to go to the Plaintiff's house and to his surprise found him inside the house. Forbes testified that he confronted the Plaintiff. According to Forbes, the Plaintiff denied that he said to him (Forbes) he was already in Worcester. The Plaintiff suggested he only mentioned that he was on his way to Worcester.

[15] Forbes was extensively cross-examined. The cross-examination *inter alia* related to his method of investigating the complaint against the Plaintiff, and his reasons for arresting him instead of handing him a warning to appear in court as contemplated in s 8(4)(c) of the Act. The sting of the attack against Forbes' evidence was that he failed to properly investigate the matter, acted on insufficient information, in an unreasonable and irresponsible manner arrested the Plaintiff and similarly opposed the release of the Plaintiff on bail.

[16] Forbes denied the suggestion that he acted unreasonably or capriciously in arresting the Plaintiff. He furthermore denied that he opposed the release of the Plaintiff on spurious grounds. Forbes stated he merely made a suggestion to the prosecutor who then formally opposed the release of the Plaintiff on bail. According to Forbes, the Complainant was scared and afraid for her life. Forbes was adamant the Complainant's compliant was not without merit as the Plaintiff breached the protection order when he insulted her in the e-mail and again when he made contact with her, after being informed of the complaint against him. According to Forbes, the Complainant's safety was important and there was a duty on the police to protect her.

[17] The nub of Mr. Mouton's argument was that there was no evidence to support the statement by the Complainant that there was a threat by the Plaintiff on 10 November 2009, to burn her and the house down. Furthermore, according to counsel for the Plaintiff, the only event that could have triggered the complaint against the Plaintiff was the e-mail that was sent during the early hours of the morning of 11 November 2009. It was contented that there was no evidence to suggest that the Complainant was at risk of imminent danger. Mr. Mouton conceded that the contents of the e-mail maybe insulting and amount to a breach of the protection order but argued that the Plaintiff did not therein threaten the Complainant with physical harm. It was further argued that little weight must be attached to the evidence by Forbes that the Plaintiff was allegedly at the Complainant's house in the night peeping through her windows, as this was never put in cross-examination to the Plaintiff to test the veracity thereof.

[18] The Plaintiff's counsel relied heavily on the dictum in Seria v Minister of Safety and Security and Others 2005 (5) SA 130 (C) for the proposition that Forbes failed to properly investigate the matter; did not exercise his discretion to arrest the Plaintiff in a reasonable manner; and that the arrest and subsequent detention of the Plaintiff was irregular and unlawful.

[19] The main submissions on behalf of the Defendant were the following: Forbes was an honest and reliable witness; he investigated the matter and after such investigation

there were reasonable grounds to have suspected that the Complainant may suffer imminent harm; he properly exercised his discretion in arresting the Plaintiff in terms of s 8(4)(b) and 8(5) of the Act. It was further argued that the Plaintiff on the other hand misled Du Toit in order to get access to the premises of the Complainant; he willingly contravened the protection order against him; and his arrest in the circumstances was justified and lawful.

[20] It is now well accepted that the Act was promulgated in response to the alarming high incidence of domestic violence within South African society. The central purpose of the Act is to afford victims of domestic violence the maximum protection the law can provide. In this regard see Minister of Safety and Security v Venter and Others 2011 (2) SACR 67 (SCA) paras [19]-[22].

[21] In terms of the Act a court of law is entitled to grant a protection order for the protection of a victim of domestic violence and simultaneously issue a warrant of arrest of the perpetrator. The execution of such a warrant of arrest may then be suspended subject to compliance with any prohibition, condition, obligation or order as deem fit by the court.

[22] In the present instance, it is not in dispute that a final protection order was granted on 22 October 2009 against the Plaintiff and simultaneously a warrant of arrest issued. The warrant was suspended on certain conditions which incorporated the orders that the

Plaintiff is prevented from *inter alia* committing further domestic violence, assaulting and or insulting the Complainant; to enter the premises and or to be present at 30 Heidepark, Mosselbay.

[23] The Plaintiff was at all times aware of the final protection order and his arrest occurred as contemplated in terms of s 8(1) of the Act.

[24] The question now arises whether Forbes properly exercised the discretion entrusted to him as contemplated in terms of ss 8(4) and 8(5) of the Act to arrest the Plaintiff. The relevant sections provides as follows:

> *"8 Warrant of arrest upon issuing of protection order*
>
> *(1)…..*
> *(2)….*
> *(3)….*
> *(4) (a) A complainant may hand the warrant of arrest together with an affidavit in the prescribed form, wherein it is stated that the respondent has contravened any prohibition, condition, obligation or order contained in a protection order, to any member of the South African Police Service.*
>
> *(b) If it appears to the member concerned that, subject to subsection (5), there are reasonable grounds to suspect that the complainant may suffer imminent harm as a result of the alleged breach of the protection order by the respondent, the member must forthwith arrest the respondent for allegedly committing the offence*

referred to in section 17(a). [The offences referred to in s 17(a) are the contravention of any prohibition, condition, obligation or order imposed in terms of s 7.]

(c) If the member concerned is of the opinion that there are insufficient grounds for arresting the respondent in terms of paragraph (b), he or she must forthwith hand a written notice to the respondent which-

(i) specifies the name, the residential address and the occupation or status of the respondent;

(ii) calls upon the respondent to appear before a court, and on the date and at the time, specified in the notice, on a charge of committing the offence referred to in section 17(a); and

(iii) contains a certificate signed by the member concerned to the effect that he or she handed the original notice to the respondent and that he or she explained the import thereof to the respondent.

(d) The member must forthwith forward a duplicate original of a notice referred to in paragraph (c) to the clerk of the court concerned, and the mere production in the court of such a duplicate original shall be prima facie *proof that the original thereof was handed to the respondent specified therein.*

(5) In considering whether or not the complainant may suffer imminent harm, as contemplated in subsection (4)(b), the member of the South African Police Service must take into account –

(a) the risk to the safety, health or wellbeing of the complainant;

(b) the seriousness of the conduct comprising an alleged breach of the protection order; and

(c) the length of time since the alleged breach occurred.

(6) Whenever a warrant of arrest is handed to a member of the South African Police Service in terms of subsection (4)(a), the member must inform the complainant of his or her right to simultaneously lay a criminal charge against the respondent, if applicable, and explain to the complainant how to lay such a charge."

[25] As stated previously, counsel for the Plaintiff relied heavily on the dictum in Seria *supra,* for the proposition that Forbes failed as a reasonable police officer to properly exercise the discretion entrusted to him in terms of s 8(4) and 8(5) of the Act. In that case the court considered whether the immediate arrest as contemplated in s 8(4)(b) read with s 8(5) was justified or whether a written notice to the plaintiff as intended in s 8(4)(c) could have been sufficient. It appeared that the police officer in Seria, arrested the plaintiff on the basis of information by the complainant that she feared for her life because of the plaintiff's threatening behaviour, the contents of a threatening letter received by the complainant, and the report by the complainant that she had fled her home on receipt thereof, as well as a further statement which blamed the plaintiff as the suspected author of the threatening and abusive note. The note in question read*: "You are being watched. Your time is limited. You will not live to see your son come back home from England."* In discussing the evidence, the court came to the conclusion that the police officer in deciding to arrest the plaintiff was swayed by the hysterical demeanour and persistence of the complainant, and the police officer's own desire to help, and that there was a complete failure to investigate the matter.

[26] The court, *inter alia*, held that had the police officer sufficiently and objectively scrutinise and consider relevant information that was available she would have established that the plaintiff and his lawyer had attended at the Lansdowne Police Station the previous night. The arresting officer's superiors had decided at about midnight the previous night that there were not reasonable grounds to suspect that the complainant may suffer imminent harm and accordingly the plaintiff was not arrested.

[27] The court further held that the abusive note and statement may have provided grounds for the plausible inference that the plaintiff was the note's author but did not provide reasonable grounds for a suspicion, in the absence of further investigation that the complainant may suffer imminent harm. As a result, it was found that the police officer's failure to further investigate the matter, failed as a reasonable police officer to properly exercise the discretion entrusted to her as contemplated in ss 8(4) and 8(5) of the Act and that the information at the time before her had provided insufficient grounds for forthwith effecting an arrest. The court was however satisfied that the information was certainly sufficient for apprehending the plaintiff under section 8(4)(c) of the Act.

[28] In recent times, as stated in Seria at 145 B, the term "*reasonable grounds to suspect*" and the phrase "*reasonable suspicion*" have enjoyed considerable attention by our courts. In Seria the Court referred to R v Van Heerden 1958 (3) SA 150 (T) at 152E

where Galgut, AJ (as he then was) stated that the term "*reasonable grounds to suspect*":

> *"[…] must be interpreted objectively, and the grounds of suspicion must be those which would induce a reasonable man to have the suspicion."*

[29] Reference was also made to Ralekwa v Minister of Safety and Security 2004 (2) SA 342 (T) wherein it was held at 347D-E that, *"[t]o decide what is a reasonable suspicion there must be evidence that the arresting officer formed a suspicion which is objectively sustainable".* The phrase 'reasonable suspicion' has often been considered particularly within the context of s 40(1)(b) of the Criminal Procedure Act, 51 of 1977 ("CPA"). The section permits an arrest by a police officer without a warrant where the arrestor "reasonably suspects" the arrestee of having committed an offence.

[30] In Minister of Safety and Security v Sekhoto and Another 2011 (5) SA 367 (SCA) the said section came under the spotlight again and was revisited with reference to the Bill of Rights as entrenched in our Constitution. In that matter the Supreme Court of Appeal held that once the required jurisdictional facts were present and the discretion whether or not to arrest arose, '*peace officers were entitled to exercise this discretion as they saw fit, provided they stayed within the bounds of rationality. This standard was not breached because an officer exercised the discretion in a manner other than that deemed optimal by the court. The standard was not perfection, or even the optimum, judged from the vantage of hindsight, and, as long as the choice made fell within the range of rationality, the standard was not breached'*. See Headnote and Paragraphs [28] and [39] at 379 D-E. It was held further that '*the power to arrest was to be exercised only for the purpose of bringing the suspect to justice; however, the arrest was but one step in that process. The arrestee was to be brought to court as soon as reasonably*

possible, and the authority to detain the suspect further was then within the discretion of the court'. See Paragraphs [42] – [44].

[31] In considering the question of whether a police officer, as in the present instance, acted rationally and within the boundaries of the Act or not, it is in my view necessary to be reminded of what the Court held in Minister of Safety and Security v Venter and Others 2011 (2) SACR 67 (SCA) para [27]: '*The extensive protection available under the Act would be meaningless if those responsible for enforcing it, namely SAPS members, fail to render the assistance required of them under the Act and the Instructions. The legislature clearly identified the need for a bold new strategy to meet the rampant threat of ever increasing incidences of domestic violence. Its efforts would come to naught if the police, as first point of contact in giving effect to these rights and remedies, remain distant and aloof to them…'*.

[32] In Seria *supra* at page 146A-C the phrase *'imminent danger'* was also considered and held that it is safe to say that imminent harm is '*harm which is about to happen, if not certain to happen'*.

[33] Turning to the present matter. In order for me to pronounce that Forbes exercised his discretion irrationally, I must conclude that the Plaintiff's arrest was not in accordance with s 8(4) of the Act, and that Forbes failed to apply the standards specified as contemplated in s 8(5) in arriving at the decision to arrest him. These subsections as fully quoted above make it clear that for Forbes to have been permitted to arrest the Plaintiff in terms of the Act, it had to appear to him that there were '*reasonable grounds to suspect'* that the Complainant may suffer '*imminent harm*' as a

result of the alleged breach of the protection order. (My underlining). The word may in this context does not mean that the arresting officer must be convinced that '*harm is about to happen, if not certain to happen'*. It only suggests there may be a possibility that it (*imminent harm*) may well happen.

[34] It is now well accepted that each case must be decided upon its own facts and that the Defendant bear the onus of alleging and proving that the arrest was lawful. See Sekhoto *supra* at para [45].

[35] In the present instance Forbes testified that after he received the police docket, he familiarised himself with the contents thereof which contained an affidavit by the Complainant and an e-mail that was sent to her from the Plaintiff's email address. He thereafter telephonically contacted the Complainant. It was during that conversation that the Complainant again confirmed her complaint against the Plaintiff. She further reported that she was a nervous wreck, could not sleep at her own house and that the Plaintiff was at her house during the night and peeped through her windows. The Complainant had further mentioned that she feared for her life and pleaded that Forbes must do something about the matter. Counsel for the Plaintiff in argument was critical about Forbes' version regarding the alleged conduct of the Plaintiff during the night as this was not put in cross-examination to the Plaintiff by the Defendant's counsel to test its veracity. The cross-examination of the Plaintiff may have been perfunctory but Forbes was, despite the extensive cross-examination, an impressive witness.

[36] Forbes as part of his further investigation, contacted Du Toit, who filed an affidavit in this regard. The Plaintiff was also contacted. He was informed of the alleged charge against him. The Plaintiff was thereafter told to report the following week Monday to his offices as the Plaintiff was in Worcester. There was some dispute as to what exactly was said to Forbes regarding the issue whether the Plaintiff at the time was already in Worcester or on his way there. Forbes was adamant the Plaintiff told him he was already in Worcester.

[37] On a conspectus of all the evidence there is no plausible reason to disbelieve Forbes as to what the Plaintiff told him. Even if the Plaintiff was on his way to Worcester, what the evidence overwhelmingly established is that Forbes was not swayed by any demeanour and or persistence of the Complainant or by some desire of his own to help, to ardently arrest the Plaintiff without any further investigation. In fact, in this instance unlike in the Seria matter, Forbes did indeed do further investigation. He firstly established that the Plaintiff was indeed the author of the e-mail that was sent to the Complainant. Secondly, the contents thereof were vulgar, insulting and demeaning and that on the face of the protection order, the Plaintiff was in breach thereof. The Plaintiff on his version was not in the near vicinity of the Complainant and secondly that there would be no imminent threat or danger to her whilst the Plaintiff was in Worcester.

[38] The next step whereby Forbes warned the Plaintiff to attend to his offices on the Monday, can hardly be criticised. The manner in which Forbes up to that stage dealt with the matter, must give credence to the fact that he was mindful to the enormous responsibility the Act entrusted to police officers to effect arrests in these types of matters.

[39] As to the events that unfolded thereafter, Forbes was adamant that there were *'reasonable grounds to suspect'* that the Complainant maybe in *'imminent danger'* as a result of the alleged breach of the protection order. According to Forbes the important factors he considered before the arrest were *inter alia*: the safety of the Complainant; the fact that she was afraid of the Plaintiff and believed that he may cause physically harm to her by burning her and the house down; the contents of the e-mail which the Plaintiff sent in the early hours of the morning to the Complainant, which according to him was not only a clear breach of the protection order but indicative of a person who is not in control of his emotions; the fact that the Plaintiff made contact with the Complainant soon after he had been informed of the charges against him; and the fact that he was still in Mosselbay. Furthermore, he considered the statement of Du Toit wherein she under oath recorded the Plaintiff misled her in order to gain access to the Complainant's property and his own belief that the Plaintiff also misled him about his whereabouts.

[40] Forbes concern as to the safety of the Complainant having regard to the e-mail cannot be faulted. Any reasonably informed person would have been concerned about the safety of the Complainant. The contents of the e-mail were offending, extremely vulgar and derogatory. Despite the Plaintiff's wording in the e-mail that he did not wish to harm the Complainant there is very little doubt the main purpose of it was to torment, demean and indeed emotionally harm the Complainant. In one of the paragraphs, the Plaintiff recorded the following in Afrikaans: *"Ek sal nie gaan le nie. Jy weet wat mense van my se. Ek byt soos 'n "BULLDOG" en los nie voor ek my sin kry nie."* (Loosely translated it means that 'the Plaintiff will not let go. You know what people say about me. I bite like a bulldog and will not rest until I have my way'). The bulk of the e-mail's content was therefore in stark contrast to the Plaintiff's oral evidence that he meant no harm to the Complainant. Moreover, the Plaintiff on his own version was deliberately in breach of the protection order.

[41] The Complainant's fear in this instance was therefore not based on some hysterical demeanour and persistence on contrived grounds but on real grounds of domestic violence that falls squarely within the Act.

[42] Forbes' belief that the Complainant may be in imminent danger can also not be faulted. The information to his disposal at the time was, in my view, more than sufficient to have alerted any reasonable officer that the Plaintiff was emotionally unstable. In addition, Forbes formed the opinion that he was abusive towards the

Complainant and that she needed to be protected from him to avoid further abuse. Forbes further concern that the Plaintiff was deceitful and untrustworthy can also not be criticised. Du Toit recorded under oath she was misled by the Plaintiff. Furthermore, he immediately made contact with the Complainant after being informed that she had laid a charge against him and he was indeed in the near vicinity of the Complainant and not in Worcester. The Complainant's fear for her wellbeing and safety was therefore not based on some imaginable hysteria or on flimsy and unreasonable grounds.

[43] The criticism that Forbes failed to investigate the matter and acted unreasonably or capriciously in arresting the Plaintiff is on a conspectus of all the evidence, without merit. Seria is therefore distinguishable from this matter. A full and complete investigation regarding all the allegations in a statement by a Complainant before an arrest in terms of s 8(4) and s 8(5) of the Act is not what our law requires. All that is required is that the arrestor exercise his or her discretion rationally within the boundaries of the Act and 'to bring the arrestee to justice'. Sekhoto *supra* at para [28] and [39]. The fact that Forbes may not have fully investigated the alleged threat uttered by the Plaintiff regarding the burning of the Complainant and her house does not detract from the fact that Forbes acted, with the available information to his disposal, rationally. As stated previously, the standard was not breached because an arrestor exercised the discretion in a manner other than that deemed optimal by the court. The standard is not perfection, or even the optimum, judged from the advantage

of hindsight, and, as long as the choice made fell within the range of rationality, the standard was not breached.

[44] The claim that the Plaintiff was not a flight risk as his full details and address was well known and that Forbes and or SAPS members acted with *animo iniuriandi*, in effecting the Plaintiff's arrest, detention and continued detention, is contrived. The mere fact that the full details of a suspect may be known to the police, as in this instance, can hardly be the only relevant factor to consider whether or not to release such a person on warning as envisaged in terms of s 8(4)(c) of the Act. It certainly can be one of the many other relevant factors that an arresting officer may consider in exercising his or her discretion in terms of the Act. Moreover, once Forbes had arrested the Plaintiff and brought him before the court, his authority to detain, that is inherent in the power to arrest, is exhausted. The authority to detain the suspect further is then within the discretion of the court. Sekhoto *supra* at para [42]. In any event the reasons advanced by Forbes that he merely made a suggestion to the prosecutor who then formally opposed the release of the Plaintiff on bail was not gainsaid.

[45] On a conspectus of all the evidence Forbes clearly exercised his power to arrest for the purpose of bringing the Plaintiff to justice. The evidence further shows that once the Plaintiff was arrested he was as soon as reasonably possible brought before the magistrate.

[46] For these stated reasons I am satisfied that the Defendant has proven on a balance of probabilities that Forbes has properly exercised his discretion to arrest the Plaintiff.

[47] It follows that the Plaintiff's claim cannot succeed and falls to be dismissed.

[48] In the result the following order is made.

The Plaintiff's claim is dismissed with costs.

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LE GRANGE, J