

SOUTH AFRICA / JUDGMENT

Banda v Minister of Police (A40/24)
[2024] ZAMPMBHC 78 (29 October 2024)
[2024] ZAMPMBHC 78

COURT

Mbombela High Court, Mpumalanga

BEFORE

L. Coetzee, TV Ratshibvumo

CASE / FILE NUMBER

A40/24

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THE

HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION,

MBOMBELA MAIN SEAT

Case Number: A40/24

(1)

REPORTABLE: YES/NO

(2)

OF INTEREST TO OTHERS JUDGES: YES/NO

(3)

REVISED

DATE

29/10/2024

SIGNATURE

In the matter between:

NICOLUS

BANDA

Appellant

and

MINISTER

OF POLICE

Respondent

This judgment was

handed down electronically by circulation to the parties and/or
parties' representatives by email. The date

and time for

hand-down is deemed to be 29 October 2024.

JUDGMENT

COETZEE, AJ

INTRODUCTION:

- [1] This is a full bench appeal against the judgment handed down on the quantum portion of a claim by Regional Magistrate T. Nyambi, at the Mbombela Regional Court (“the court a quo”), on the 25th of April 2024. The court a quo awarded the Appellant the sum of R75 000.00 (Seventy-Five Thousand Rand) as compensation for the unlawful arrest and subsequent

three-days’ detention of the Appellant.

BACKGROUND

AND EVIDENCE:

- [2] The merits of the claim were previously conceded by the Respondent. The matter proceeded to trial solely on the issue of quantum. The Appellant called one witness, the Appellant, to testify. The Respondent closed its case without calling any witnesses.
- [3] The evidence led by the Appellant, which is undisputed between the parties, is that on 11 February 2021, at approximately 07:00, he was arrested at his residence in Nsikazi. Two motor vehicles, one marked as belonging to the police and the other unmarked, arrived at his home. Eight police officers were present during the arrest, which was witnessed by the Appellant's neighbors. The police officers knocked on his door and requested that he accompany them to an office in Kabokweni for further inquiries, a request to which the Appellant complied.
- [4] Upon arriving at the office, the police officers questioned the Appellant regarding his knowledge of a particular crime, to which he responded that he had no knowledge. Thereafter, at around 15:00, he was transported in a police van to White River, where he was detained in a cell containing approximately 20 to 30 other individuals. The Appellant testified that the conditions in the cell were unsanitary, as it was filthy, and he was provided with only a small cloth for personal hygiene. The blanket he received was also dirty. He remained in the cell from Friday until his release on Monday at approximately 12:00.
- [5] The Appellant further testified that he is unmarried and has three children, aged 15, 8, and 5 years, respectively. He described the arrest as a deeply distressing experience and expressed that his reputation within the community had been tarnished, with neighbors now referring to him as a thief. While unemployed at the time of his arrest, the Appellant stated that subsequent attempts to secure employment were unsuccessful, allegedly due to his damaged reputation.

- [6] After evaluating the evidence, the court a quo found that an award of R25,000 per day of unlawful detention was fair and reasonable, resulting in a total award of R75,000, which was granted in favor of the Appellant, together with costs of the trial.

GROUND FOR APPEAL:

- [7] The main ground of appeal advanced by the Appellant is that the Magistrate erred in failing to consider all the proven facts in determining the quantum of damages. The Appellant contends that, had the Magistrate properly considered the entirety of the evidence, a just and equitable award for the unlawful arrest and detention would have been R400,000.00.

PRINCIPLES APPLICABLE ON APPEAL:

- [8] In *Director of Public Prosecutions, Eastern Cape, Makhandia v Coko*[1] the Supreme Court of Appeal (the SCA) reiterated that the powers of an appeal court to interfere with the trial court's factual

findings, are circumscribed. Thus, the appeal court is not at large to interfere unless it is satisfied that the trial court committed

material misdirection or a demonstrable blunder in evaluating the evidence. The SCA quoted from its earlier judgment of *R v Apter and Apter*[2] where the Appellate Division (as it was then known) said:

"[W]here the judicial officer in the trial court has taken every point into consideration and has not misdirected himself or been guilty of any error of law, an appeal court, in a case in which the ground of appeal is that the trial court ought to have had a doubt, will not be entitled to interfere with the verdict unless it is satisfied that the trial court ought to have had a doubt ..."

- [9] It has further been stated in *R v Dhlumayo & Another*[3] that:

"The trial court has advantages which the appellate court cannot have - in seeing and hearing the witnesses and in being steeped in the atmosphere of the trial. Not only has the trial court had the opportunity of observing their demeanour, but also their appearance

and whole personality. This should never be overlooked. The mere fact that the trial court has not commented on the demeanour of the witnesses can hardly ever place the appeal court in as good a position as it was. Even in drawing inferences the trial court may be in a better position than the appellate court, in that it may be more able to estimate what is probable or improbable in relation to the particular people whom it has observed at the trial... The appellate court should not seek anxiously to discover reasons adverse to the conclusions of the trial court.... Where the appellate court is constrained to decide the case purely on the record, the question of onus becomes all-important. In order to succeed, the appellant has to satisfy an appellate court that there has been 'some miscarriage of justice or violation of some principle of law or procedure'."

QUANTUM:

[10] In the matter of Minister of Safety and Security v Tyulu 2009 (5) SA (SCA) at paragraph 26, the Supreme Court of Appeal 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 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. I readily concede that it is impossible to determine an award of damages for this kind of injuria with any kind of mathematical accuracy. Although it is always helpful to have regard to awards made in previous cases to serve as a guide, such an approach if slavishly followed can prove to be treacherous. The correct approach is to have regard to all the facts of the particular case and to determine the quantum of damages on such facts (Minister of Safety and Security v Seymour 2006

(6) SA 320 (SCA) 325 para 17; Rudolph & others v Minister of Safety and Security & others (380/2008) [2009] ZASCA 39 (31 March 2009) (paras 26-29).”

[11] In Protea Assurance Co Ltd v Lamb 1971

(1) SA 530 (A) at page 535G – 536B the then court held:

“It should be emphasized, 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. At the same time, it may be permissible, in an appropriate case, to test any assessment arrived at upon this basis by reference to the general pattern of previous awards in cases where the injuries and their sequelae may have been either more serious or less than those in the case under consideration.”

[12] In the matter of Pitt v Economic Insurance Co Ltd 1957

(3) SA 284 (N) at page 287E the court held as follows: “...the Court has to do the best it can with the material available, even if, in the result, its award might be described as an informed guess. I have only to add that the Court must take care to see that its award is fair to both sides - it must give just compensation to the plaintiff but must not pour our largesse from the horn of plenty at the defendant's expense.” (own underlining)

[13] It was stated by Makaula AJA in Diljan v Minister of Police (Case no 746/2021) [2022] ZASCA 103 (24 June 2022) at paragraph 18, “the acceptable method of assessing damages includes the evaluation of the plaintiff's personal circumstances; the manner of the arrest; the duration of the detention; the degree of humiliation which encompasses the aggrieved party's reputation and standing in the community;

deprivation of liberty; and other relevant factors peculiar to the case under consideration.”

COMPARABLE CASE LAW:

[14] In *Ngwenya v Minister of Police* 2019 (7K6) QOD 484 (NWM), the court, having previously determined that the plaintiff, a 48-year-old male, had been unlawfully arrested and detained, proceeded to assess the quantum of damages at a subsequent hearing. The plaintiff had been arrested on a Friday morning and detained over the weekend in a police cell with fourteen other inmates who confiscated his food. He was compelled to share a blanket with a younger inmate and was severely assaulted by other detainees. He was released by the court the following Monday. In determining the appropriate award for damages, the court considered several factors, including the plaintiff's age, the circumstances of his arrest, the nature and duration of his detention, and the alleged assault, despite the absence of medical evidence regarding the latter. Taking these factors into account, the court awarded damages in the amount of R45,000.00 in 2019, which, when adjusted for inflation, equates to approximately R57,000.00 in 2024.

[15] In *Tsele and Another v Minister of Police* 2021 (8K6) QOD 115 (NWM), the two plaintiffs, who are brothers, were arrested on 29 November 2018 and subsequently released on 3 December 2018. The first plaintiff was arrested at approximately 08:00, and the second plaintiff was arrested later that day at around 14:30. Both were initially taken to Lehurutshe Police Station before being transferred at approximately 20:00 to Groot Marico Police Station, where they were detained in a cell with approximately fifteen other individuals. They remained in detention until 3 December 2018, when they were brought before the District Court of Lehurutshe, where they were informed that the charges against them had been withdrawn. The first plaintiff was detained for just over four days, while the second plaintiff was detained for approximately three and a half days, both being released around 10:00 on 3 December. The conditions in the police cell were poor. The plaintiffs had to share a single blanket and slept on the floor. Although meals were provided, consisting mainly of porridge, beans, tea, and bread, the food was of low quality. They were also deprived of basic toiletries and had to share a facecloth, which they received from a fellow inmate. Upon his release, the first plaintiff experienced social ostracism within his

community due to the negative perceptions stemming from his arrest. Considering the circumstances under which the plaintiffs were

arrested, the humiliation and distress they endured during their unlawful detention, and the deplorable conditions in the cell, the court deemed it fair, reasonable, and just to award damages at a rate of R15,000.00 per day or part thereof. Accordingly, the second plaintiff, who was detained for approximately three and a half days, was awarded R52,500.00 in 2021, which, when adjusted for inflation, amounts to R62,000.00 in 2024.

[16] In *Lesomo v Minister of Police* 2023 (8K6) QOD 315 (NWM), the plaintiff, a 30-year-old male, received a message on 2 December 2016, instructing him to report to the police station concerning a criminal charge laid against him. The plaintiff complied and presented himself

at the police station the same day. However, in the absence of the officer who had initially contacted him, another officer called his colleague, who instructed him to arrest the plaintiff. The plaintiff was summarily arrested and detained from 2 December 2016 to 5 December 2016 without being informed of the charges under investigation. No formal charges were laid against him during this period. The plaintiff was held in a small cell with five other detainees under unhygienic conditions. There was no running water in the cell, and the detainees were unable to wash themselves. The food provided was of poor quality, and they were forced to sleep on the floor with only blankets for comfort. Despite being detained for several days, the plaintiff was released without appearing before a court. As a result of the arrest, the plaintiff, who is the father of six children, lost his employment. Having considered the circumstances of the unlawful arrest and detention, the conditions of his detention, and the impact on his livelihood, the court awarded the plaintiff damages in the amount of R75,000.00 in 2023, which is adjusted to R79,000.00 in 2024 terms.

CONCLUSION:

- [17] Upon a thorough consideration of the evidence presented and the applicable legal principles, this Court is satisfied that the court a quo did not misdirect itself in its assessment of the quantum of damages. The Regional Magistrate carefully evaluated the uncontested evidence regarding the circumstances of the Appellant's arrest, the conditions of his detention, and the emotional and reputational harm suffered as a result. The award of R75,000.00, based on a rate of R25,000.00 per day for the three days of unlawful detention, was fair and reasonable under the circumstances.
- [18] The Appellant's contention that the Regional Magistrate failed to consider all proven facts, and that an award of R400,000.00 would have been just, has not been substantiated by any demonstrable misdirection or error in law by the court a quo. As indicated above, it is well-established that an appellate court will not interfere with the factual findings of a trial court unless material misdirection or a clear error is evident. In this instance, no such misdirection or error has been shown.
- [19] The trial court's findings were consistent with the evidence and supported by appropriate legal reasoning. In the absence of any material misdirection or demonstrable error, the appeal must fail, and the judgment of the court a quo is upheld. Accordingly, the following order is made:

ORDER:

- [20] The appeal is dismissed, with costs.

L. COETZEE

ACTING JUDGE OF THE HIGH COURT

MPUMALANGA DIVISION, MBOMBELA

I agree.

TV RATSHIBVUMO

ACTING DEPUTY JUDGE PRESIDENT

MPUMALANGA DIVISION

Appearances:

Attorney for the Appellant: M.P. Maseko Instructed by: MP Maseko Inc. Attorney for the
Respondent: M. Mdluli Instructed by: State Attorney, Mbombela Date heard: 02 August 2024

Judgment

delivered: 29 October 2024

[1] (248/2022)

[2024] ZASCA 59 (24 April 2024) at par. 38.

[2] See reference made in R v Dhlumayo 1948 (2) SA 677 (A) at p. 687.

[3] 1948

(2) SA 677 (A) at 705-706.

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