

SOUTH AFRICA / JUDGMENT

Boysa v Minister of Police (472/2021)

[2024] ZANWHC 252; [2025] 1 All SA 140 (NWM) (10 October 2024)

[2024] ZANWHC 252

COURT

North West High Court, Mafikeng

BEFORE

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CASE / FILE NUMBER

472/2021

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IN

THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION,

MAHIKENG

CASE

NO: 472/2021

Reportable: YES/NO

Circulate to Judges: YES/NO

Circulate to Magistrates: YES/NO
Circulate to Regional
Magistrates: YES/NO
Inthe matter between: TSHEPO
MOSES BOYSA
Plaintiff
and
MINISTER
OF
POLICE
Defendant
SMIT
AJ

HEARD: 10 SEPTEMBER 2024

DELIVERED: 10 OCTOBER 2024

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses. The date for the hand-down is deemed to be 10 October 2024.

ORDER

(i)

The defendant is ordered to pay to the plaintiff an amount of R95 000.00

(ninety five thousand rand) for the unlawful arrest and detention of the plaintiff.

(ii)

The defendant is ordered to pay interest at the prescribed rate a tempore morae from date of service of summons, until date of final payment.

(iii)

The defendant is ordered to pay the plaintiff's taxed or agreed costs of suit, as

follows:

(a)

Costs

incurred prior to 12 April 2024, on a party-and-party High Court Scale; and

(b)

Costs

incurred after 12 April 2024, on a party-and-party High Court scale, such scale to be Scale B in terms of Rule 67A of the Uniform Rules of Court.

JUDGMENT

[1] The plaintiff is Tshepo Moses Boysa, an adult male who instituted action against the defendant, claiming damages for his arrest and detention. The defendant is the Minister of Police, who is pursuant to the provisions of section 206(1) of the Constitution of the Republic of South Africa, 108 of 1996 ('the Constitution'), responsible for policing and had been cited in his nominal capacity as contemplated in section 2(1) of the State Liability Act 20 of 1957.

[2] The plaintiff, through his action, had two claims, the first being for his arrest and detention, which he claimed to be unlawful, and the second for the warrantless search conducted by the defendant's officials, on him. Plaintiff claims R350 000.00 consisting of R250 000.00 in general damages for the arrest, detention and search; and R100 000.00 for future medical expenses.

[3] On 30 January 2024, and by agreement between the parties, the following order was granted:

"1 THAT: The Defendant is 100% liable for all agreed and/or proven damages as a result of Plaintiff's unlawful arrest and subsequent detention from 20th day of JULY 2020 to 22nd day of JULY 2020.

2 THAT: Plaintiff abandons his claim for unlawful search of person.

3 THAT: Defendant to pay costs to date on a party-party scale.

4 THAT: The Plaintiff will apply for a trial date for the determination of the quantum of the damages.”

[4] The plaintiff was therefore unlawfully arrested and detained, for the period of 20 July 2020 to 22 July 2020. Having abandoned his claim for the search conducted on him, the only remaining aspect to adjudicate, is the quantum of plaintiff’s damages claimed. Prior to commencement of the trial, the respective legal representatives informed the court that they agreed that the plaintiff will present his evidence through affidavit, whereafter heads of argument will be filed. Defendant’s legal representative claimed no prejudice in following this route, and plaintiff, in his affidavit explained that he is not permanently employed and the costs of traveling to the seat of the court will be problematic. Plaintiff now resides in Magoge Town on the Vryburg road. The relief sought was granted, as it was found to be the most convenient route to the parties, the witness (being the plaintiff) and the court.

[5] Through the plaintiff’s heads of argument, it was conceded that no evidence was made available regarding his claim for future medical expenses, and as such this head of damages was also abandoned. The only aspect to decide, therefore, is the general damages for the unlawful arrest and detention. The plaintiff was arrested on 20 July

2020 at Mafikeng, and so detained at the Mmabatho Police Station, by the South African Police Service (SAPS).

[6] Section 10 of the Constitution states that:

“Human dignity. —Everyone has inherent dignity and the right to have their dignity respected and protected.”

[7] Section 12(1) of the Constitution states that:

“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.”

[8] In *J E Mahlangu and Another v Minister of Police* [2021] ZACC 10 at par [27] it was stated:

“The unlawful deprivation of liberty, with its accompanying infringement of the right to human dignity, has always been regarded as a particularly grave wrong and a serious inroad into the freedom and rights of a person. In Thandani, the Court said that:

“sight must not be lost of the fact that the liberty of the individual is one of the fundamental rights of a [person] in a free society which should be jealously guarded at all times and there is a duty on our Courts to preserve this right against infringement. Unlawful arrest and detention constitutes a serious inroad into the freedom and the rights of an individual.”

[9] Section 35(2)(e) of the Constitution states that:

“Everyone who is detained, including every sentenced prisoner, has the right – to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment.”

[10] It is against this Constitutional backdrop that the plaintiff’s evidence is considered. In evaluating such evidence to determine an appropriate damages award, guidance is found in Visser & Potgieter, Law of Damages, third edition, pages 545 – 548:

“In deprivation of liberty the amount of satisfaction is in the discretion of the court and calculated ex aequo et bona. Factors which can play a role are the circumstances under which the deprivation of liberty took place; the presence or absence of improper motive or ‘malice’ on the part of the defendant; the harsh conduct of the defendants; the duration and nature (eg solitary confinement or humiliating nature) of the deprivation of liberty; the status, standing age, health and disability of the plaintiff; the extent of the publicity given to the deprivation of liberty; the presence or absence of an apology or satisfactory explanation of the events by the defendant; awards in previous comparable cases; the fact that in addition to physical freedom, other personality interests such as honour and good name as well as constitutionally protected fundamental rights have been infringed; the high value of the right to physical liberty; the effects of inflation; the fact that the plaintiff contributed to his or her misfortune; the effect an award may have on the public purse and, according to some, the view that the action iniuriarum also has a punitive function.”

[11] The following is established through the plaintiff’s evidence:

[11.1] At the time of the plaintiff's arrest, he was 40 years old. The plaintiff obtained his grade 12 and holds a certificate in measurement, grinding, cutting and spray painting. Plaintiff is not married, but has a minor son, currently 4 years old who is financially dependant on the plaintiff. On 20 July 2020 at 22:00, and whilst the plaintiff was in detention, his son was born. The plaintiff, during his girlfriend’s pregnancy, looked forward to being present for this moment and had now been deprived of witnessing the birth of his son.

[11.2] The plaintiff was arrested on a charge of arson, for which charge he carried no knowledge. Plaintiff engaged with the concerned officers enquiring as to the reason for his arrest and the facts upon which such arrest was justified. The officers did not answer the plaintiff. Plaintiff did not resist arrest and cooperated with the officers.

[11.3] The Plaintiff was arrested in the presence of his family and friends. There were also neighbours witnessing his arrest. His hands were cuffed behind his back, and he was pushed into the detention compartment of the police vehicle. Plaintiff feels that this conduct violated his honour and good name. Having been placed into the vehicle, his handcuffs were not removed,

and plaintiff was unable to balance himself when the vehicle was driven to the police station. The vehicle was being driven recklessly, swerving into turns in the road. Plaintiff became injured when the vehicle executed a right turn, causing his face to collide with the corner of the detention compartment, cutting his nose. Plaintiff was not afforded any medical assistance.

[11.4] Plaintiff's arrest was affected at approximately 16:30 and on arrival at the police station, the plaintiff was not placed in a main cell, but first spend approximately 5 hours and 30 minutes in a smaller holding cell approximately 4m x 5m in size. This cell had no beds or chairs to sit on, nor did it have a toilet, causing the detainees to urinate on the floor. The plaintiff was effectively forced to stand for the duration of his detention in this cell. At about 22:00 he was moved to a main detention cell, which was approximately 6m x 8m in size. Including the plaintiff, there were approximately 30 detainees in this cell, congesting the cell, making any attempts to lay down, impossible. There was a shortage of blankets and plaintiff could not cover himself against the cold of night.

[11.5] The main cell did have a toilet and one tap, but no privacy and the detainees had to relieve themselves in front of each other, which circumstances resulted in unavoidable bad smelling odours in the cell, being inhaled by all the detainees. At the time of this detention, the Covid-19 pandemic was prevalent. Three of the detainees were sick and coughing. No masks or any other protective measures were provided to the detainees. Plaintiff was fearful of contracting Covid and feared for his life.

[11.6] The plaintiff felt helpless. Adding to this feeling of despair was the fact that plaintiff could not contact a legal representative, as the police officials informed the detainees that they will only be able to contact their legal representatives at their first appearance in court. Plaintiff was never taken to court.

[11.7] The plaintiff was released on 22 July 2020 at approximately 10:00 without appearing in court. The plaintiff received no apology from the police officials for their actions and he has lost all trust and confidence in SAPS.

[12] In considering previous award made, I am mindful of what was held in *Minister of Safety and Security v Tyulu* 2009 (5) SA 85 (SCA):

"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 of the facts of the particular case and to determine the quantum of damages on such facts."

[13] In *Minister of Safety and Security v Seymore* 2006 (6) SA 320 (SCA) it was held:

“The assessment of awards of general damages with reference to awards made in previous cases is fraught with difficulty. The facts of a particular case need to be looked at as a whole and few cases are directly comparable. They are a useful guide to what other courts have considered to be appropriate, but they have no higher value than that.”

[14] The concerned legal representatives provided, in their heads of argument, several cases dealing with arrest and detention periods for a relatively short period of time. Plaintiff, in the matter at hand, was detained for approximately 42 hours. I have considered the cases referred to and remain mindful of the fact that the period of time for which a person is detained after an arrest, is not the only factor to be considered when determining the extent of the damages suffered. All prevailing circumstances should be considered cumulatively.

[15] In *Madijeng v Minister of Police* (2045/2021) [2024] ZANWHC 139 (6 June 2024) the plaintiff instituted action against the defendant for her unlawful arrest and detention, as well as an unlawful assault. The assault claim was raised separately from that of the arrest and detention. In dealing with the damages suffered as a result of the arrest and detention, Hendricks JP held, at paragraph [21]:

“The particular facts and circumstances of this case is outlined earlier on in this judgment. Amongst the facts to be considered inter alia are the age of the plaintiff, the fact that she is a woman and the mother of two minor children, the inhumane treatment she received, the xenophobic accusations at the hand of the police, she was pepper sprayed in her face and in particular her eyes, and also further physically assaulted in the presence of other people, arrested and placed at the back of a police motor vehicle (van). She was detained in a police cell for 37 hours and 10 minutes in circumstances far less than ideal or conducive. The food was also not good. It was cold and she had to endure sleeping under dirty blankets. As it was during the period of the COVID pandemic lockdown, her family could not bring clean clothes and toiletries for her. She had to consult a medical doctor upon her release and photographs were taken of the bruises and the red eyes she sustained. According to her, she had not committed any crime and

was never tried for any alleged offence in a court of law.”

[16] In the *Madijeng* matter (*supra*) the plaintiff was awarded R90 000.00 in damages for her unlawful arrest and detention.

[17] In *Mmadu v Minister of Police* (3058/2019) [2024] ZANWHC 143 (21 June 2024) and in relation to the plaintiff's claim for unlawful arrest and detention, where the plaintiff was detained for 28 hours, Hendricks JP held at paragraph [18]:

“...Amongst the facts to be considered inter alia are: the plaintiff is 34 years old and unmarried. He has one child who resides with the mother. He was brutally assaulted until he passed out. This happened on two occasions. He was later placed in a cell. The cell was small. The cell had a toilet without a door. The plaintiff had to sleep on the floor without a blanket or mattress. The plaintiff could not sleep because he was in pain. He received no medication or any medical treatment. The next day, 18 November 2018,

the plaintiff was taken to the Huhudi police station by the Investigating Officer, Mr Jacobs, where he was charged, given a court date, and released at around 13:00. The conduct of the police, namely the unlawful arrest, detention and assault, negatively affected him. The plaintiff is scared of police and testified that when seeing police his heart rate increases. He has no trust in the police. He suffers from chest pains. Since this ordeal, he cannot 'hold relationships'. He was frightened, traumatized and 'much scared'. He still experiences this even upon only hearing police sirens."

[18] In the Mmadu matter (supra) the court awarded the plaintiff damages, for his unlawful arrest and detention, in the amount of R60 000.00.

[19] In the matter of Syce and Another v Minister of Police (1119/2022) [2024] ZASCA 30 (27 March 2024), and only pertaining to detention the first appellant therein (being Mr Syce) was awarded R40 000.00 as damages for his 13-hour unlawful detention. The court held:

"[56] Mr Syce claimed R80 000 as his damages, whereas the Minister submitted that R30 000 would be a reasonable amount. Among the factors considered are the personal circumstances of the plaintiff and the circumstances of the detention. Regarding his personal circumstances, Mr Syce was 36 years of age, and not married, although he had a partner. He held a tertiary qualification in the form of a N2 in engineering and was employed by Transnet. Apart from this, there is no evidence about his earnings or standing in the community.

[57] Mr Syce described the conditions of the cell as bad. He said that there was a smell of urine; that the toilets were dirty, and it was unbearable inside the cell. There were seven other detainees. He was given a dirty blanket which had fleas on it. There was no mattress in the cell. He was afraid that the other detainees could harm him.

[59] There is no evidence that Mr Syce suffered any degree of humiliation beyond that inherent in being detained. Although his cell was overcrowded and dirty, there is no suggestion that he was harassed in the cell by any of the inmates, although he was apprehensive of them. His unlawful detention extended from his return to the police station until his release shortly after noon on the following day. This was a period of approximately 13 hours."

[20] The circumstances of the plaintiff's arrest and detention had been canvassed herein above. Amongst these circumstances it is highlighted that the plaintiff was 40 years old at the time of arrest, and even though he was not married, he was in a relationship. Plaintiff was arrested in the presence of his family, friends and curious neighbours; his handcuffs were not removed when he was placed in the police vehicle, thereby prevented him from bracing against the impact of the swerving motor vehicle. He became injured as a result thereof and was not afforded medical assistance. Plaintiff spent approximately 5 hours and 30 minutes in a cell where the detainees were forced to urinate on the floor. No chairs were provided, and the plaintiff was forced to remain standing. No protective measures against Covid were provided. The main cell was so congested that the plaintiff could not lay down. Plaintiff was not allowed to contact his legal representative during the period of detention. Plaintiff missed the birth of his son due to the unlawful detention.

[21] In *EF v Minister of Safety and Security* 2018 (2) SACR 123 (SCA) at paragraph [33] it was held:

“Arriving at an appropriate award for general damages is never an easy task. The broadest general consideration and the figure arrived at must necessarily be uncertain, depending upon the court’s view of what is fair in all circumstances of the case. See Sandler v Wholesale Coal Suppliers Ltd 1941 AD 194 at 199 and De Jongh v Du Pisanie NO 2005 (5) SA 457 (SCA). In the latter case, this court noted that there was a readily perceptible tendency towards increased awards in respect of general damages in recent times. However, it reaffirmed conservatism as one of the multiple factors to be taken into account in awarding general damages (para 60). It concluded that the principle remained that the award should be fair to both sides –

it must give just compensation to the plaintiff, but ‘not pour out largesse from the horn of plenty at the defendant’s

expense’, as pointed out in *Pitt v Economic Insurance Company Limited* 1957 (3) SA 284 (D) at 287E-F.”

[22] Having considered the circumstances of the arrest and detention, I am of the view that a just, fair and equitable award for the plaintiff’s unlawful arrest and detention, would be R95 000.00.

[23] The Plaintiff is entitled to his costs. Whether such costs are to be on a magistrate’s court scale or high court scale, has been settled in *Motladile v Minister of Police* (414/2022) [2023] ZASCA 94 (12 June 2023) wherein it was held that the plaintiff, notwithstanding the quantum amount, was entitled to approach the high court. In par [26] it was stated:

“The high court ordered the respondent to pay the appellant’s costs on the magistrates’ court scale on the basis that the matter was not of such complexity that it warranted the attention of the high court; that the amount claimed and awarded fell within the monetary jurisdiction of the magistrates’ court; and that no special circumstances were advanced to warrant the institution of the proceedings in the high court. What the high court failed to grasp in arriving at this conclusion, is the importance that our courts accord to the deprivation of a person’s liberty when determining the scale on which to award costs. In De Klerk v Minister of Police, which also concerned an unlawful arrest and detention, this Court said – regarding costs – that although the total quantum awarded [R30 000] is far below the jurisdiction of the high court, the appellant was justified in approaching the high court because the matter concerned the unlawful deprivation of his liberty. For this reason, this Court is entitled to interfere with the high court’s costs order.”

[24] The plaintiff claims interest as from date of delivery of the letter of demand. Section 2A(2)(a) of the Prescribed Rate of Interest Act 55 of 1975 states:

“2A. Interest on unliquidated debts (1) ... (2)(a) Subject to any other agreement between the parties and the provisions of the National Credit Act, 2005 the interest contemplated in subsection (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.”

[25] In Motladile (supra) the court awarded the plaintiff interest from date of service of summons. Therefore, in line with the Motladile decision, interest is awarded from date of service of the summons.

[26] Consequently, the following order is made:

- (a) Costs incurred prior to 12 April 2024, on a party-and-party High Court Scale; and
- (b) Costs incurred after 12 April 2024, on a party-and-party High Court scale, such scale to be Scale B in terms of Rule 67A of the Uniform Rules of Court.

D. SMIT

ACTING JUDGE OF THE HIGH COURT

NORTH WEST DIVISION, MAHIKENG

APPEARANCES

DATE OF HEARING

: 10 SEPTEMBER 2024

DATE OF JUDGMENT : 10 OCTOBER 2024

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