

SOUTH AFRICA / JUDGMENT

Cele and Others v Ethekweni Municipality (3868/2014; 3869/2014; 3870/2014) [2025] ZAKZDHC 12 (27 March 2025)

[2025] ZAKZDHC 12

COURT

Kwazulu-Natal High Court, Durban

BEFORE

Mathenjwa

CASE / FILE NUMBER

3868/2014; 3869/2014; 3870/2014

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IN THE HIGH COURT OF
SOUTH AFRICA
KWAZULU-NATAL LOCAL
DIVISION, DURBAN
CASE
NO: 3868/2014
3869/2014
3870/2014

In the matter between: MsIZI CECIL
 CELE
 FIRST
 PLAINTIFF
 PHILANI LUKHELE
 SECOND PLAINTIFF
 WELCOME
 HLONGWA
 Third
 PLAINTIFF
 and
 ETHEKWINI
 MUNICIPALITY
 DEFENDANT
 ORDER
 In the premises the

following orders are made:

1.
Case number 3868/2014
(a)
The defendant is liable to pay to the plaintiff the amount of R231 000.
(b)
Interest on the aforesaid amount at the rate of 15.5% per annum from the date of judgment to the date of payment.
(c)
The defendant to pay the plaintiffs's costs on scale B.
2.
Case number 3869/2014
(a)
The defendant is liable to pay to the plaintiff the amount of R649 500.
(c)
The defendant to pay the plaintiff's costs on scale B.
3.
Case number 3870/2014
(a)
The defendant is liable to pay to the plaintiff the amount of R240,200.
(c)
The defendant to pay the costs to the plaintiff on scale B.

JUDGMENT

Mathenjwa J

- [1] The plaintiffs issued summons against eThekweni Municipality, claiming damages for unlawful arrest and detention, contumelia and loss of earnings under three different case numbers. The first plaintiff Msizi Cele claims under case number 3868/2014, the second plaintiff Philani Lukhele claims under case number 3869/2014 and the third plaintiff Welcome Hlongwa claims under case number 3870/2014. Liability has been settled at 100 percent in favour of the plaintiffs. The matter comes before me only for quantum.
- [2] All three plaintiffs testified in support of their claims and the defendant closed its case without calling any witness. The undisputed evidence of the plaintiffs' case is that on 15 December 2012, they were walking on Wembledash Road in Chatsworth towards the taxi rank. They had two dumpy of beers in their possession which were still sealed. An eThekweni Metropolitan police officer (Metro police) who was in a private motor vehicle approached and accused them of drinking in public. The plaintiffs denied that they were drinking in public as their beers were sealed.

- [3] They proceeded to the taxi rank, boarded a taxi to Durban and the taxi took off. The Metro police followed behind the taxi in which they were travelling until they came across members of the Metro police who were at a roadblock on the road. The Metro police who were at the roadblock stopped the taxi in which the plaintiffs were travelling and the police officer who was following them pointed them out to the other police officer. They were pulled out of the taxi by the police officers.
- [4] When the plaintiffs asked the Metro police what they have had done wrong, the police did not answer them, instead they kicked them with booted feet and told them that they were going to die. The assault took place in front of members of the public who were in the taxi. The police fired four shots towards the direction of Msizi but missed him and they eventually shot Philani on his knee. The plaintiffs were handcuffed with their hands at their back and put into the Metro police van. They were sprayed with pepper spray by the police while they were inside the van.
- [5] There were no windows in the police van. When Philani told the police that he was suffering from asthma one of the police officer's took out the inhaler from his pocket and inhaled him because he was handcuffed with his hands at the back. The police took them to Chatsworth police station where they were further sprayed with the pepper spray while they were inside the van. The plaintiffs screamed. The police then opened the door of the van, pulled out Msizi and Welcome, made them to sit on the ground and continued assaulting them. Philani was left seated inside the van and blood was oozing from his injured leg. The plaintiffs overheard one of the police officer's telling another officer that they must craft a story that the plaintiffs were attempting to deprive the police officer of his firearm.
- [6] Shortly thereafter an ambulance arrived. The driver of the ambulance got off, spoke to the police officer and then drove away. The police drove away with Philani to hospital where he was admitted and treated for his injury while guarded by the police. At all times when he was in hospital he was handcuffed to a bed. Msizi and Welcome were taken by the police to Bellair police station where they were detained. They were detained in the police cells for four days and thereafter taken to Chatsworth Magistrates' Court where they were released by a police officer without even appearing in court.
- [7] During their four days in detention Msizi and Welcome did not eat any food, they survived by eating a meal given to them by one of the detainee's who was receiving food from his family. Philani spent six days in hospital and thereafter released without appearing in court.
- [8] All three plaintiffs consulted a clinical psychologist and neuro psychologist. In addition, Philani consulted an orthopaedic surgeon. The psychologist and neuro psychologist explain the effect of depression and anxiety that resulted from the arrest and assault inflicted to the plaintiffs. The orthopaedic surgeon found that Philani's injury on the knee affects his ability to ascend, squatting ability as well as his ability to run.

[9] The parties agree that all plaintiffs were employed at the time of the incident and were further gainfully employed after the incident. The defendant does not dispute that Philani's loss of earnings amount to R19 500, Msizi's amounts to R9 000 and Welcome's amounts to R18 200. Both counsel have referred to case law regarding the determination of quantum for damages. The defendant referred to the cases of *Lamula and Other v Minister of Police*[1] where the plaintiff was paid R100 000 for arrest and detention of five days; in *Peterson v Minister of Safety and Security*[2] the plaintiff was awarded an amount of R60 000.00 in respect of damages for unlawful arrest and detention and in *Nkosi v Minister of Safety and Security*[3] the plaintiff was awarded the amount of R100 000 for assault which resulted in a cut lip and tenderness of his testicles.

[10] Counsel for the plaintiffs referred to the cases of *Minister of Police v Sabisa and Another*[4] where the plaintiff was awarded R400 000 for unlawful arrest and detention for nine days and R110 000 for assault, torture and

contumelia. In *Minster of Police v Khedama*[5] the plaintiff was awarded R350 000 for detention for twelve days.

[11] It is trite that the primary purpose of an award for damages 'is not to enrich the injured party but to offer him or her some much-needed solatium for his or her injured feelings' commensurate with the injury inflicted.[6] In assessing the amount of damages to award to a plaintiff who was unlawfully arrested and detained the court must have regard to the various factors including:[7]

'(a) the circumstances under which the arrest and detention occurred; (b) the presence or absence of improper motive or malice on the part of the defendant; (c) the conduct of the defendant; (d) the nature of the deprivation; (e) the status and standing of the plaintiff; (f) the presence or absence of an apology or satisfactory explanation of the events by the defendant; (g) awards in comparable cases; (h) publicity given to the arrest; (i) the simultaneous invasion of other personality and constitutional rights; and (j) the contributory action or inaction of the plaintiff.' (Footnote omitted.)

[12] The number of days spent by a plaintiff in detention and having regard to awards made in previous cases serve as a guide and is not determinative of the amount to be awarded to the plaintiff.[8] The circumstances of the present case demonstrate the presence of malice when the Metro police arrested the plaintiffs. It is evident on the undisputed evidence of the plaintiffs that when they were assaulted one police officer informed another that they should concoct a story that the plaintiffs were attempting to deprive them of their firearms. The police were not investigating any offence nor did they suspect the plaintiffs of having committed an offence when the plaintiffs were arbitrarily arrested. The police shot at the plaintiffs who were unarmed and posing no danger to them. They victimised the people whom they are mandated to protect .

[13] Having regard to the foregoing I am of the view that an award of damages in the sum of R231 000 is appropriate for Msizi Cele, made up as follows:

- (a) past loss of earnings: R9 000;
- (b) unlawful arrest and detention: R162 000; and
- (c) assault and contumelia: R60 000.

[14] Welcome Hlongwa is to be awarded the amount of R240, 200, made up as follows:

- (a) past loss of earnings: R18 200;

[15] Philani Lukhele's position is distinguishable from the other plaintiffs. He was shot at and sustained a severe injury to his knee. It is not in dispute that the injury still affects him. He spent six days in hospital where he was detained and guarded by police. For these reasons, an award of damages in the sum of R649 500 is appropriate, made up as follows:

- (a) past loss of earnings: R19 500;
- (b) unlawful arrest and detention: R230 000; and
- (c) assault, contumelia and pain and suffering: R400 000.

Order

[16] In the premises the following orders are made:

- (c) The defendant to pay the the plaintiff's costs on scale B.
- (a) The defendant is liable to pay to the plaintiff the amount of R240, 200.
- (c) The defendant to pay the plaintiff's costs on scale B.

Date of hearing: 10 & 11 March 2025

Date of judgment: 27 March 2025

Appearances: Plaintiffs' counsel: Mr T P Nortjie Instructed by: Pregen Govindasamy & Associates
Durban North Defendant's counsel: Ms M A Mbonane Instructed by: Linda Mazibuko & Associates Durban

[1] Lamula and Others v Minister of Police [2013] zagpjhc 130.

[2] Peterson v Minister of Safety and Security [2009] ZAECGHC 65.

[3] Nkosi v Minister of Safety and security

[2012] ZAGPJHC 110.

[4] Minister of Police v Sabisa and Another [2024] ZASCA 105.

[5] Minister of Police v Khedama [2024] ZAKZPHC 23.

[6] Minister of Safety and Security v Tyulu 2009

(5) SA 885 (SCA) para 26.

[7] Motladile v Minister of Police 2023

(2) SACR 274 (SCA) para 17.

[8] Tyulu above fn 6.

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