

SOUTH AFRICA / JUDGMENT

Gomolemo v Minister of Police (2601/2018) [2022] ZANWHC 21 (21 June 2022) [2022] ZANWHC 21

COURT

North West High Court, Mafikeng

BEFORE

Petersen

CASE / FILE NUMBER

2601/2018

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IN THE HIGH COURT OF
SOUTH AFRICA
NORTH WEST DIVISION,
MAHIKENG

CASE NO: 2601/2018

Reportable: YES/NO

Circulate to Judges: YES/NO

Circulate to Magistrates: YES/NO
Circulate to Regional
Magistrates: YES/NO

In the matter between: MORAKILE
DANIEL
GOMOLEMO
Plaintiff
and
MINISTER
OF
POLICE
Defendant

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be 14h00 p.m. on 21 June 2022.

ORDER

In the result, the

following order is made:

1. The application for judgment in favour of the plaintiff at the close of the case for the defendant is dismissed.
2. Costs shall be costs in the cause.

JUDGMENT

PETERSEN J

Introduction

- [1] This is an opposed application for judgment at the close of the case for the defendant. The plaintiff instituted action against the defendant for damages suffered as a result of his arrest and subsequent detention by a member of the South African Police Service on 1 March 2017 at Tlakgameng in the North West Province.
- [2] The defendant presented the evidence of two witnesses, who were present at the time of the arrest of the plaintiff. The arresting officer has passed away and an application to admit his affidavit in terms of section 3(1)(c) of the Law of Evidence Amendment Act 45 of 1988 was dismissed, prior to the commencement of the trial on merits.

The basis of the application

- [3] The basis of the application is premised on the evidence of the two witnesses for the defendant and a sustained submission by Adv Smit for the plaintiff that the reason for the arrest of the plaintiff remains hearsay evidence. This is juxtaposed against the reason for the arrest against certain offences of the Stock Theft Act 57 of 1959.
- [4] The application by Adv Smit follows a trend in this Division in recent times, which is predicated on a number of judgments, of which three (3) emanate from this Division.[1] The judgments of this Division appear in the main to accord with the decision in Pather v Minister of Police in the Gauteng Division, Pretoria where the following was said:

"31.1 That Plaintiff is entitled to apply for judgement at the close of the Defendant's case without leading evidence and without closing its case. It was submitted on her behalf that the test to be applied is similar to that of absolution from the instance where a Plaintiff has not discharged its onus. It was further submitted that if a Defendant upon whom the onus of proof rests has failed to lead such evidence in discharge of that onus to the effect that a reasonable man could have not

come to the conclusion that it might be accepted, the court would be entitled to give judgement for the Plaintiff.

31.2 This proposition of an application for judgement, where the Defendant bore the onus and before the Plaintiff closing its case or leading evidence, was introduced in the old case of Siko vs Zonsa 1908 (T) 1013 where the court held that it would be a useless

(exercise) waste of time to proceed with the matter further.

31.3 The Siko case was confirmed as an applicable principle in the case of Hodgkinson vs Fourie 1930 TPD 740 at page 743 where it was held as follows: "At the close of the case of the one side upon whom the onus lies, the question which the judicial officer has to put to himself is: Is there evidence on which a reasonable man might find for that side". Further submission was that if the evidence is not only not convincing but actually found by the trial court to be an utter fabrication, then it is evidence on which a reasonable man would not find, and the court would be justified to grant absolution. This court agrees with this submission as logical and sensible."

The test for absolution from the instance at the close of the case for the plaintiff (defendant)

[5] The test for absolution from the instance at the close of the case for a plaintiff is trite. The test in my view applies equally, with the necessary changes, in the circumstances of the present matter, at the close of the case for the defendant. In Gordon Lloyd Page and Associates v Riveira[2], Harms JA restated the test set out in Claude Neon Lights (SA) Pty Ltd v Daniel[3] as follows:

"...when absolution from the instance is sought at the close of the plaintiff's case, the test to be applied is not whether the evidence led by the plaintiff establishes what would finally be required to be established, but whether there is evidence upon which a court, applying its mind reasonably to such evidence, could or might (not should, nor ought to) find for the plaintiff... This implies that a plaintiff has to make out a prima facie case - in the sense that there is evidence relating to all the elements of the claim - to survive absolution because without such evidence no court could find for the plaintiff...

The Court ought not to be concerned with what someone else might think; it should rather be concerned with its own judgment and not that of another "reasonable" person or court. Having said this, absolution at the end of the plaintiff's case, in the ordinary course of events, will nevertheless be granted sparingly but when the occasion arises a court should order it in the interests of justice..."

(my emphasis)

Discussion

[6] I have had regard to the authorities as aforesaid and the nature of the evidence presented. Having regard to the very stringent test for absolution from the instance, and the peculiar application for

judgment in favour of the plaintiff at the close of the case for the defendant without the need for the plaintiff to testify or close his case, and with due regard to the evidence of the defendant, I am not convinced that a case has been made for the relief sought. I further intentionally refrain at this stage of the proceedings, from making any pronouncement on the evidence presented by the defendant or the legal position in respect of the Stock Theft Act 57 of 1959, insofar as it forms the basis of the arrest of the plaintiff.

Conclusion

and costs

[7] The application accordingly stands to be dismissed with costs to be costs in the cause.

Order

[8] In the result, the following order is made:

A H PETERSEN

JUDGE OF THE HIGH COURT,

NORTH WEST DIVISION, MAHIKENG

APPEARANCES

FOR PLAINTIFF : ADV D. SMIT

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: THE STATE ATTORNEY

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MMABATHO

DATE OF HEARING : 08 JUNE 2022

DATE OF JUDGMENT : 21 JUNE 2022

- [1] Patherv Minister of Police (14512/13) (14512/13) [2016] ZAGPPHC 215 (31 March 2016); Moeng v Minister of Police (CIVAPP 3/2016) [2016] ZANWHC 49 (30 JUNE 2016); Mteli v Minister of Police (322/2016) [2017] ZANWHC 27 (8 JUNE 2017); Galenose v Minister of Police (unreported) case number 471/2016.
- [2] 2001
- (1) SA 88 (SCA) at paragraph 2
- [3] 1976
- (4) SA 403 (SA) at 409 G-H
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CASE PAGE <https://chat.esheria.ai/case-law/south-africa/gomolemo-v-minister-unknown-topic-anwhc-2022>

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