

SOUTH AFRICA / JUDGMENT

Kome v Minister of Police (2930/19) [2025] ZANWHC 17 (31 January 2025)

[2025] ZANWHC 17

COURT

North West High Court, Mafikeng

BEFORE

WESSELS

CASE / FILE NUMBER

2930/19

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IN THE HIGH COURT OF

SOUTH AFRICA

NORTH WEST DIVISION,

MAHIKENG

CASE NUMBER: 2930/19

Reportable: YES / NO

Circulate to Judges: YES / NO

Circulate to Magistrates: YES / NO

Circulate to Regional Magistrates: YES
/ NO

In the matter between:

BATUMILE

TSHEPANG KOME

PLAINTIFF

and

MINISTER

OF POLICE

DEFFENDANT

Coram: WESSELS AJ

This judgment was handed
down electronically by circulation to the parties' legal
representatives via email. The date and
time for hand-down is deemed
to be 15h00 on 31 January 2025.

ORDER

Judgment is granted

- against the defendant for:
- i.
Payment in the amount of R480 000 as damages for the plaintiff's unlawful arrest and detention.
 - ii.
Interest on the claim amount at the rate of 10.25% per annum calculated from the date of summons to the date of payment.
 - iii.
Costs of suit as between party and party on Scale B.

JUDGMENT

- [1] This is a claim for unlawful arrest and detention that served before this Court on 14 October 2024. At the commencement of the proceedings, the defendant conceded the merits leaving the determination of the quantum in issue.
- [2] The evidence before this Court in relation to the quantum, is contained in the damages affidavit filed by the plaintiff's attorneys. The damages affidavit is deposed to by the plaintiff and has been filed with the consent of the defendant.
- [3] By consenting to the filing of the damages affidavit, the defendant relinquished its right to test the plaintiff's evidence in cross-examination and plaintiff's evidence thus stands uncontested.
- [4] At the onset, it should be mentioned that, although evidently filed with the Registrar of this Court, plaintiff's damages affidavit and the heads of argument of both parties did not reach this Court in accordance with the time frames this Court laid down for its filing. On 1 November 2024, the plaintiff's attorney provided all the aforementioned documents by email. This Court is indebted to plaintiff's attorney, Mr Ntsamai, for his prompt reaction and assistance in this regard.

Facts

- [5] The plaintiff was arrested on 3 September 2018 on a charge of assault with the intention to do grievous bodily harm. Although the plaintiff attempted to explain to the arresting officers that he did not take part in the assault, the officers nonetheless effected the arrest and detained the plaintiff in the holding cells of the Mmabatho Police Station.
- [6] The next day, on 4 September 2018, the plaintiff was charged with assault with the intent to do grievous bodily harm and was returned to the holding cells. Plaintiff was released on 27 September 2018 after being detained for a total period of 24 days. Astonishingly, Plaintiff did not appear in court at any time during his detention despite his protests to police officers.

- [7] According to plaintiff's evidence, the circumstances in the holding cells were all but ideal. Plaintiff was detained in a cell estimated to be 25 square metres in size with around 20 other detainees.
- [8] In this cell, there was a single toilet which was described by the plaintiff as "dirty and smelly". This toilet was situated in the open and was the only toilet in the cell which had to be used by plaintiff in the open sight of the other detainees. Plaintiff describes the fact that the situation frequently presented itself where a detainee would use the toilet where the rest of the detainees were eating their food.
- [9] According to the plaintiff, the showers were out of order and there was access to cold water only. Although the plaintiff does not state that he did not have a blanket, his evidence shows that there was an insufficient number of blankets for use by all the detainees during the cold nights.
- [10] As a result of the fact that the plaintiff did not belong to a gang, he was told to clean the floor of the cell with his t-shirt by an unknown detainee who introduced himself as the leader of the 26-gang. While incarcerated, the plaintiff was threatened and deprived of his food by some of the gang members. To this

extent, the plaintiff describes that he was subjected to constant threats and what he refers to as "bullying" of the gang members.

- [11] Feelings of utter frustration were expressed by the plaintiff due to the fact that he was continuously detained in the cell until his release and was never allowed to leave the cell during this period.
- [12] Around the eleventh day of the plaintiff's detention, he was forced to join the 26-gang. Membership of this gang came with the promise that his stay in the cell would be comfortable and plaintiff joined the gang out of desperation. After the plaintiff was recognised as a member of the gang it was no longer necessary for him to clean the cell floor and he was allowed to have all his food.
- [13] As part of the plaintiff's initiation into the gang, the number

"2\$6" was tattooed, using a self-made steel needle, on what is described by plaintiff in the damages affidavit as the

anterior of his tibia. It is understood to mean that plaintiff received a tattoo on the of his calf.

- [14] While detained, plaintiff was not allowed the opportunity to call his family and was not brought in contact with a legal representative.

- [15] The feelings described by plaintiff while detained were feelings of frustration, helplessness, abuse and shame.

Legal principles

[16] The rights of individual freedom lie at the heart of our constitutional dispensation. There can be no question that there was a serious infraction of the constitutional rights of the plaintiff. In deciding the quantum of the plaintiff's claim, a balance must be struck between enforcing constitutional rights and ensuring that the resulting award accurately corresponds with the circumstances of the matter. This balance must be achieved delicately to ensure that the award does not result in an overcompensation of the plaintiff.

[17] This above principle has its origins in the judgment of the Supreme Court of Appeal ('SCA') in *Minister of Safety and Security v Tyulu*[1] where the following was stated:

'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.'

[18] In assessing the quantum of damages in such cases, the SCA in *Motladile v Minister of Police*[2] confirmed a number of considerations to be employed in the process of assessment of the amount of damages as follows:

'The assessment of the amount of damages to award a plaintiff who was unlawfully arrested and detained, is not a mechanical exercise that has regard only to the number of days that a plaintiff had spent in detention. Significantly, the duration of the detention is not the only factor that a court must consider in determining what would be fair and reasonable compensation to award. Other factors that a court must take into account would include (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.'

[19] In *Diljan v Minister of Police*[3], the SCA warned against the deviation from the principles mentioned above, in the process of determining the quantum of damages in cases of wrongful arrest. From this judgment, it is clear that although a balance should be achieved between the award and the injury inflicted, the court cautioned that the Minister of Police should not be used as the proverbial 'cash cow'.

[20] At the time of plaintiff's arrest, he was working as a gardener

for two days a week where he earned a monthly salary of R1 500. As a result of the detention, plaintiff lost his job as he was replaced by another gardener during his absence from his employment.

[21] Plaintiff is a 30-year-old male with grade 9 as his highest qualification. Although unmarried, Plaintiff has two young children for whom he inevitably has to provide financially and emotionally.

Conclusion

[22] Plaintiff was subjected to a harsh and demeaning environment that put a strain on his person. Apart from physical strain, plaintiff was deprived of his personal liberty.

[23] Taking into account the length of the detention, the circumstances in which the plaintiff was detained and plaintiff's personal circumstances, this Court is of the considered view that an amount of R 480 000 would be a just and equitable amount under the circumstances.

Costs

[24] There is no reason to deviate from the trite principle that costs should follow the result. The merits of this matter or the underlying legal principles are not complicated and under normal circumstances, a cost order on Scale A would have been warranted.

[25] It must however be taken into account that the defendant conceded the merits on the proverbial 'steps of the court' but could have done so much sooner in the litigation process. For this reason, costs are awarded on scale B.

Order

[26] Resultantly the following order is granted:

- i. Payment in the amount of R480 000 as damages for the plaintiff's unlawful arrest and detention.
- ii. Interest on the claim amount at the rate of 10.25% per annum calculated from the date of summons to the date of payment.
- iii. Costs of suit as between party and party on Scale B.

M WESSELS

ACTING JUDGE OF THE HIGH COURT

Heads of argument

Provided

: 1 November 2024

Date of judgment : 31 January 2025

APPEARANCES

Counsel for Applicant : Adv O Ntsamai

Instructed by

: Ntsamai Attorneys

Mahikeng

Counsel for Respondent : Adv OY Dibetso-Bodibe

Instructed by

: State Attorneys

- [1] Minister of Safety and Security v Tyulu [2009] ZASCA 55 para 26. See also Masiteng v Minister of Police [2024] ZASCA 165
 - [2] Motladile v Minister of Police [2023] ZASCA 94 para 17
 - [3] Diljan v Minister of Police [2022] ZASCA 103 at paragraph 17
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