

SOUTH AFRICA / JUDGMENT

Letlojane v Naeema Cassim NO (CIV APP/MG/09/2024) [2024] ZANWHC 266 (15 August 2024) [2024] ZANWHC 266

COURT

North West High Court, Mafikeng

BEFORE

J T Djaje, M Morgan

CASE / FILE NUMBER

CIV APP/MG/09/2024

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

Reportable:

YES/ NO
Circulate
to Judges: YES/ NO
Circulate
to Magistrates: YES/ NO
Circulate
to Regional Magistrates: YES/ NO
IN THE HIGH COURT OF
SOUTH AFRICA
NORTH WEST DIVISION,
MAHIKENG
CASE NO: CIV APP/MG
09/2024

In the matter between:

BENETE
DANIEL LETLOJANE
APPELLANT
AND
NAEEMA
CASSIM N.O.
RESPONDENT
CIVIL APPEAL

QUORUM:

DJAJE DJP & MORGAN
AJ
ORDER
The following order is

made:

1.
The appeal is dismissed,
2.
No
order as to
costs.

JUDGMENT

DJAJE DJP

- [1] The appellant was successful in the court a quo on a claim for damages suffered from the respondent's malicious prosecution of a protection order. The quantum awarded was the amount of R8 622.50, which was made up of R3 622.50 for legal costs in opposing the final grant of the protection order and R5 000.00 for damages in respect to the inconvenience caused to the appellant. It is this quantum of R8 622.50 that the appellant appeals against. The respondent does not oppose the appeal.
- [2] The appellant instituted an action in the Potchefstroom Magistrates Court for the respondent's malicious prosecution of a protection order. The action was not defended, and a default judgment was granted in favour of the appellant. Initially, the respondent obtained an interim protection order against the appellant under the Protection From Harassment Act 17 of 2011. The protection order related to an incident of noise disturbance in September 2022, in which the respondent accused the appellant of causing. On the return date after the interim order was issued, the respondent failed to appear, and the interim order was cancelled after submissions on behalf of the appellant.
- [3] The appellant, in the particulars of the claim, sought damages in the amount of R303 622.50, with the amount of R3 622.50 being for legal costs of defending the protection order and R300 000.00 for contumelia (humiliation), embarrassment and inconvenience caused by the institution of the proceedings by the respondent. In support of his claim the appellant testified before the court a quo. He stated that he is a tavern owner and many people know him; therefore, they recognised him at court on the return date of the interim order. Considering this, people generally associate court with those who are in conflict with the law, whereas he is a respectable member of the community. He further testified that after the finalisation of the proceedings, the police would attend to his tavern, harassing him about the concerns of the community about his liquor licence. He felt threatened by the actions of the police, especially when the Station Commander attended at his place and asked about his family. The appellant stated that because of the constant visit by members of the South African Police Services, the community thinks he is a criminal, and his business has been severely affected by the wrong perception.
- [4] In awarding damages, the court a quo found as follows:

"[14] Insofar as the injury to his good name, feelings and embarrassment is concerned, the plaintiff is a tavern owner who claims to be a respected member of the community who felt wronged by having to defend himself against false accusations and embarrassed by having to go to court to do so. I accept his evidence on this issue, it being the only evidence before me. The statements made by the defendant in obtaining the interim protection order, apart from having been incorrect on the only version before this court, is however in my view not per se defamatory. All she claimed was that the plaintiff was causing noise, which is disturbing the community. There is no suggestion that there was any publication, outside of the court papers, of the conduct plaintiff was accused of. I accept that the general observer may presume that people who attend court are in conflict with the law. That does however not mean that such a presumption is reasonable. People also attend court as victims, witnesses, people seeking maintenance, etc. I am hesitant to accept that the defendant is to be held liable for other people jumping to incorrect conclusions. In my view this will stretch legal causation beyond its limit, will unjustly limit or dissuade the right to approach court, and will open a floodgate of claims of this nature for any possible well-intended but unsuccessful approach to court. When asked, the plaintiff could simply have negated any wrong perceptions by informing those who asked that he had been brought to court on incorrect facts and on improper process.

- [15] insofar as the injury to his good name, feeling and damage to his business as a result of the conduct of other police officers is concerned, I am similarly not satisfied that the defendant can be held liable therefor. No legal causation between her obtaining an interim protection order and the subsequent conduct of other police officers was established. This was also not the case the defendant was called upon to meet in the particulars of claim.
- [16] That leaves the inconvenience caused to the plaintiff in having to defend the proceedings. In my view the inconvenience is of a trivial nature. He attended court twice. He was not called upon to appear, to give evidence or profess his innocence. The application was removed from the roll due to the non-appearance of the defendant and as a result of a technically raised by the plaintiff's attorney.
- [17] The plaintiff has claimed R300 000.00 for the damages to his reputation, injury to his feelings and inconvenience. The amount claimed is in my view exorbitant and unrealistic. The authorities relied upon by the plaintiff in justifying the claim amount is also distinguishable from the facts of this case. In my view, an award of R5 000.00 towards general damages will be reasonable, appropriate and just under the circumstances of this case. Greater care ought to have been clear that these proceedings should be pursued in the district court. For this reason, I am of the view that costs are to be awarded on the Magistrates' Courts scale."
- [5] As this appeal is unopposed, the only submissions considered were those of the appellant. It was argued that the court a quo misdirected itself by finding the respondent liable for injury to the appellant's good name but only awarded damages for the inconvenience caused by the harassment proceedings. It was submitted that this was a misdirection that warrants interference by this Court.

[61] The appellant argued that the award was inconsistent with the relevant authorities and previous awards. Counsel in his heads of argument referred to several authorities dealing with malicious prosecution. They are as follows:

"4.2 The KwaZulu-Nata/ High Court was asked with the determination of quantum in a matter involving malicious prosecution in the case of Mdletshe N.O and Another v Minister of Police (AR 135/2022) [2023] ZAKZPHC 106 (23 June 2023). At paragraph 62 onwards the Court found:

"Malicious prosecution

[62] In Law of Damages, [58] the learned writers had this to say in assessing damage for malicious prosecution:

'Satisfaction is assessed ex aequo et bone. Factors influencing the amount are, for example, the seriousness of the crime for which the plaintiff was prosecuted and the severity of the penalties in the case of a conviction: the period of incarceration; the period during which the charge hung over the plaintiffs' heads; despite the plaintiff acquittal.

Persistence by the defendant in the charge had not been withdrawn but proceeded with until the plaintiff was acquitted at the end of the State case; malice on the part of the defendant' "the plaintiff has the right to be compensated for personal insult, indignity, humiliation and ... inevitable defamation"; the absence of an apology on the part of the defendant; and previous awards is comparable cases (taking inflation into account)' (Footnotes omitted).

[63] In Rautenbach v Minister of Safety and Security and Others [59] the plaintiff appeared four to five times in court and charges were withdrawn after six months. Damages were awarded in the amount of R150 000.. The plaintiffs arrested received media coverage as the plaintiff was a chairperson of a Local Community Police Forum.

[64] In Sithole v Minister of Safety and Security and Another [60] the plaintiff was arrested on 13 October 2010 and remained in custody until charges were withdrawn on 25 October 2010. Damages were awarded in the amount of R170 000.

[65] In Sikhumbozo Mfanafuthi Mthethwa v The Minister of Police [61] the magistrate awarded damages in the amount of R20 000 for malicious prosecution that lasted for three months. On appeal, the High Court held that such an amount was inadequate and awarded the full amount of R200 000.

[66] Recently, in Gumbi v Minister of Police [62] the court (per Lopes J) awarded an amount of R570 000 for malicious prosecution. The plaintiff appeared 19 times in court and his case attracted media publicity.

[67] The appellant's prosecution is exceptionally different to the cases cited above in that the serious charges hung over their heads for almost six years with each facing minimum sentences of 15 years' imprisonment. I am of the view that they deserve the full amount (as claimed) of R200 000 each under this head"

(own emphasis)

4.2.1 From the above it can be noted that malicious prosecution does not merely cause 'inconvenience' as found by the Court a quo. The harassment proceedings had far reaching effects on the appellant's dignity and reputation. The false accusations by the Respondent did not merely inconvenience the Appellant, same embarrassed him and caused fear and humiliation."

[7] Malicious prosecution was defined in *Relyant Trading (Pty) Ltd v Shongwe & another* [2007] 1 All SA 375 (SCA) as follows:

"Malicious prosecution consists in the wrongful and intentional assault on the dignity of a person comprehending also his or her good name and privacy. The requirements are that the arrest or prosecution be instigated without reasonable and probable cause and with 'malice' or 'animus iniuriarum'. Although the expression 'malice' is used, it means, in the context of the *actio iniuriarum*, *animus iniuriandi*."

[8] Having found that the respondent was liable for damages suffered by the appellant herein, an award of R8622.50 was ordered. In this appeal, the issue is whether the amount awarded was reasonable in the circumstances of the case.

[9] In assessing damages, the purpose is not to enrich the plaintiff but rather to offer him solatium for his injured dignity and loss of liberty. See *Minister of Safety and Security and M Tyulu* [327/08] [2009] ZASCA 55 (29 May 2009). An award for damages for the plaintiff's *injuria* cannot be calculated with mechanical precision; thus, recourse must be had for guidance in previous similar fact decisions.

[10] In awarding damages, it is essential for the court to look at the circumstances of the matter and those of the appellant. Previous

awards also serve as a guide in determining an appropriate amount. The authorities cited and relied on by the appellant are distinguishable. They all involved instances where the claimants' prosecutions were for long periods, and they had to attend court on several occasions. Also, in cases like *Sithole v Minister of Police and Another* (63897/2011) [2016] ZAGPPHC 394, the plaintiff had been arrested and remained in custody. There was no such arrest in this case, and the appellant appeared twice before the Court. This does not negate the inconvenience he may have experienced in coming to court, but it merely shows that his reliance on those cases does not assist him.

[11] In this matter, the appellant testified that the interim order was unjustified as he did not cause the noise disturbance the respondent complained about. Further, he contends that the respondent's failure to attend court was malicious, whilst the appellant attended court on two dates. This impaired his dignity and reputation as a tavern owner. There was no evidence adduced how the appellant's reputation was damaged by the appearance in court. He did not provide any evidence that demonstrated that perhaps he lost income due to his appearance in court and or that the community in which he lived and worked viewed him as a criminal. The argument that people perceive the court with negative actions is clearly not

justified. It can be accepted that there are several services rendered by our courts that do not necessarily have to do with being in conflict with the law. In other words, no criminal stigma follows merely because someone was seen in the halls of a court.

- [12] Considering the appellant's claim for R300,000 in a malicious prosecution case, assessing the justification for such an amount is crucial based on the evidence presented. However, as alluded to above, the appellant must demonstrate a sufficient basis to justify

this substantial sum.

- [13] First, the appellant has not provided concrete evidence of significant reputational damage. While the wrongful prosecution undoubtedly had some adverse effects, the appellant has not shown how it specifically impacted his standing within the community or professional sphere to the extent that would justify such a high claim. The absence of detailed evidence, such as testimonies or documentation of lost business opportunities, undermines the claim's credibility.

- [14] Secondly, the emotional and psychological distress claimed by the appellant, though understandable, lacks substantial corroboration. There is no detailed account or expert testimony outlining the severity and impact of the mental anguish suffered. Without medical or psychological evaluations to support the extent of emotional harm, it is challenging to validate the claimed amount as reasonable compensation.

- [15] It is so that the appellant had to incur legal costs and attend court on two dates. The award by the court a quo herein made a provision for the legal costs incurred by the appellant. There was no evidence that the case was widely published. Indeed, there was a level of inconvenience caused to the appellant, but the amount claimed in the particulars of claim cannot be justified. The court a quo awarded an amount of five thousand rand (R5 000.00) which in my view is reasonable for the inconvenience suffered by the appellant having to attend court twice.

- [16] Having regard to the circumstances of this matter and the appellant's evidence, I am of the view that the award of eight thousand six hundred and twenty-two rand and fifty cents (R8 622.50) is appropriate, and it is not necessary for this court to interfere therewith. There was a cost order against the respondent on Magistrates' Court scale and there is no reason to interfere therewith.

Costs

- [17] The appeal was not opposed and there will be no cost order.

Order:

Consequently, the following order is made:

1. The appeal is dismissed

2. No order as to cost

J T DJAJE

DEPUTY JUDGE PRESIDENT

I agree

M MORGAN

ACTING JUDGE OF THE HIGH COURT

APPEARANCES

DATE OF HEARING: DATE OF JUDGMENT: 31 MAY 2024 15 AUGUST 2024 COUNSEL FOR THE
APPELLANT ADV RILEY

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZANWHC/2024/266.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/letlojane-v-naeema-unknown-topic-anwhc-2024>

Prepared on 9 October 2026 · Esheria