

SOUTH AFRICA / JUDGMENT

Madueke v Minister of Police (195/2017) [2022] ZANWHC 16 (23 March 2022)

[2022] ZANWHC 16**COURT**

North West High Court, Mafikeng

BEFORE

M E Mahlangu

CASE / FILE NUMBER

195/2017

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Source record**IN THE NORTH WEST HIGH****COURT, MAHIKENG****Case no: 195/2017****Reportable: YES / NO****Circulate to Judges: YES****/ NO****Circulate to****Magistrates: YES / NO****Circulate to Regional****Magistrates: YES / NO****In the matter between:**

RICHMOND TOBE

MADUEKE

Plaintiff

and

MINISTER OF

POLICE

Defendant

Date

of hearing:

22 MARCH 2022

Date

of judgement: 23 MARCH 2022
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 23 MARCH 2022
ORDER
Consequently,

the following order is made:

(a)
The defendant is ordered to pay the sum of three hundred and twenty thousand ran (R320 000.00) to the plaintiff, as damages.

(b)
The defendant is ordered to pay interest, in respect of the aforesaid amount, at the prescribed rate from date of judgement until date of final payment.

(c)
The defendant is ordered to pay the costs of suit on a party-party basis and on the applicable Magistrate Court scale.

JUDGMENT

M E MAHLANGU AJ

INTRODUCTION

- [1] On 18 May 2016 the plaintiff was arrested and detained at Vryburg Police Station on a charge of possession of drugs. Plaintiff was released from the police custody on 3 June 2016 without him appearing at court. He was detained for 16 days.
- [2] Subsequent to his arrest plaintiff instituted an action against the defendant for unlawful arrest and detention and wrongful infringement of his constitutional rights.
- [3] At the hearing of this matter, the defendant admitted that the arrest and detention were unlawful and thereafter conceded 100% liability on the damages suffered by the plaintiff..
- [4] The issue to be determined by this court Is quantum.

BACKGROUND

FACTS

- [5] In the particulars of claim attached to the summons, the plaintiff claim that:

“

11.

As a result of the conduct of the police officers, the Plaintiff's freedom and liberty was unlawfully curtailed, consequently suffered damage in his contumelia, loss of freedom, dignity and liberty.

12

As a result of the aforesaid arrest and subsequent detention Plaintiff suffered damages at the amount of two million rand (R2 000 000.00)."

[6] The plaintiff testified that he was selling sneaker shoes (takkies) at the time of his arrest. He was selling them from the street at Vryburg Town, in the North West Province. He was arrested and taken into custody at Vryburg Police station where he was detained for 16 days. He was thereafter released without appearing in court. He was detained in a cell together with more than 15 inmates. The conditions of the cell were not good. He was threatened with an armament and was searched by other inmates but did not report it to the police. They were only given breakfast and supper which he did not like.

Legal principles

[7] It is trite that in cases involving deprivation of liberty, the quantum of damages to be awarded is in the discretion of the trial court, to be exercised fairly, and generally calculated according to what is equitable and good, and on the merits of the case itself.

[8] Various factors play a role in determining an appropriate amount, including the circumstances under which the deprivation of liberty took place, the presence of improper motive or 'malice' on the part of the police officers, the harsh conduct of the police officers during the arrest; duration and nature of the deprivation of liberty; the extent of publicity given to the deprivation of liberty; awards in previous comparable cases (together with the effect of inflation) and the fact that, in addition to physical freedom, other personality interests (such as good name and honor) and constitutionality protected fundamental rights have been infringed.

[9] In *Minister of Safety and Security v Tyulu* 2009

(5) SA 85 (SCA) Bosielo AJA said the following at paragraph 26 of the judgement:

"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 damages awarded are commensurate with the injury inflicted. However, our courts should be astute to ensure that the award 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 the facts of the particular case and to

determine the quantum of damages on such facts (Minister of Safety and Security v Seymour 2006 (6) SA 320 (SCA) at 325 para 17; Rudolph and others v Minister of Safety and Security and Another 2009 (5) SA 94 (SCA) ([2009] ZASCA 39) paras 26-29)."

- [10] In *Rahim and 14 others v The Minister of Home Affairs* 2015(7K6) QOD (SCA), at para 27, it was held that:

"[27] The deprivation of liberty is indeed a serious matter. In cases of non-patrimonial loss where damages are claimed the extent of damages cannot be assessed with mathematical precision. In such cases the exercise of a reasonable discretion by the court and broad general considerations play a decisive role in the process of quantification. This does not, of course, absolve a plaintiff of adducing evidence which will enable a court to make an appropriate and fair award. In cases involving deprivation of liberty the amount of satisfaction is calculated by the court ex aequo et bono. Inter alia the following factors are relevant:

27.1 circumstances under which the deprivation of liberty took place;

27.2 the conduct of the defendants; and

27.3 the nature and duration of deprivation.

Having regard to the to the limited information available and taking into account the factors referred to it appears to me to be just to award globular amounts that vary in relation to the time each of the appellants spent in detention".

- [11] In *Olgar v The Minister of Safety and Security* 2008 JDRJ582 (E) at para 16, Jones J remarked that:

"In modern South Africa a just award for damages for wrongful arrest and detention should express the importance of the constitutional right to individual freedom, and it should properly take into account the facts of the case, the personal circumstances of the victim, and the nature, extent and degree of the affront of his dignity and his sense of personal worth. These considerations should be tempered with restraint and proper regard to the value of money, to avoid the notion of extravagant distribution of wealth from what Holmes J called the 'horn of plenty', at the expense of the defendant."

- [12] It is useful for the court to consider the assessment of awards for damages in previous cases although this exercise has its own challenges. It should also be taken into consideration that each case is decided on its own merits and the determination of quantum is at the discretion of the court.

- [13] The defendant has conceded that the arrest and detention of plaintiff for a period of 16 days was unlawful. Having assessed all the circumstances of this case, the circumstances under which he was arrested, the nature and duration of detention relevant for consideration, and the evidence regarding the cell in which he was placed, I am of a view that it would be fair and appropriate to award damages in the amount of twenty thousand rand (R20 000.00) per day.

[14] In so far as costs are concerned, it should follow the results and be awarded in favour of plaintiff. However, it must be borne in mind that the amount falls within the jurisdiction of the Magistrate Court. The costs should therefore be on the Magistrate Court scale.

[15] Consequently the following order is made:

M. E MAHLANGU

ACTING JUDGE OF THE HIGH COURT

NORTH WEST DIVISION, MAHIKENG

APPEARANCES

DATE OF HEARING

: 22 MARCH 2022

DATE OF JUDGMENT

: 23 MARCH 2022

COUNSEL FOR THE APPLICANT: ADV D SMIT

INSTRUCTED BY NIENABER & WISSING ATTORNEYS

MAHIKENG

COUNSEL FOR THE DEFENDANT: MR P NKONWANA

STATE ATTORNEY

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