

SOUTH AFRICA / JUDGMENT

Mashile and Others v Minister of Police and Another (77818/2014, 77826/2014, 77825/2014, 77827/2014) [2017] ZAGPPHC 1039 (22 March 2017) [2017] ZAGPPHC 1039

COURT

North Gauteng High Court, Pretoria

BEFORE

SP Mothle

CASE / FILE NUMBER

77818/2014, 77826/2014, 77825/2014, 77827/2014

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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

22/3/2017

In the matter

between:

Cases number: 77818/2014

77826/2014

77825/2014

77827/2014

TC MASHILE

First

Plaintiff

NT MASEKO

Second

Plaintiff

ZA NTOMBELA

Third

Plaintiff

J M

NYANDENI Fourth

Plaintiff

and

MINISTER OF

POLICE First

Defendant

NATIONAL DIRECTOR OF PUBLIC
PROSECUTION Second
Defendant

JUDGEMENT

MOTHLE J

1. Each of the four Plaintiffs instituted action against the Minister of Police and the National Director of Public Prosecution

for damages arising out of alleged unlawful arrest and detention.

2. The four men were arrested and detained together and further charged with the same offence. The cause of action, the objective

facts and the Defendants were the same in each action. Consequently, the court on application ordered the consolidation of the actions.

3. In the particulars of claim, all the Plaintiffs allege that on the 10 August 2014, they were arrested by police officer Mahlangu, a member of the South African Police, acting within his scope and course of employment, and were detained at four police stations

during the period of detention. They were detained at the following police stations, namely Vosman, Blinkpan, Hendrina and Middelburg,

for a period of 11 days. It is further claimed in the summons that each Plaintiff suffered damages in the amount of R400,000.00, as a result of the unlawful arrest and detention.

4. It is trite that in an action for unlawful arrest and detention, where the police are the defendants, once such defendant admits that there was an arrest, the onus is on that defendant to prove that such arrest was lawful, see: *Brand v Minister of Justice* 1959 [4] All SA 420 (A) and *Minister of Law and Order v Hurley* [1986] ZASCA 53; [1986] 2 All SA 428 (A) at paragraph 32. Consequently, the defendant has the duty to begin. See in this regard *Intramed (Pty) Ltd v Standard Bank of South Africa Ltd* 2004 (6) SA 252 (W) and *Topaz Kitchens (Pty) Ltd v Naboom Spa (Edms) Bpk* 1976 (3) SA 470 (A).
5. On the day of the hearing, the Court was informed by the Defendants' counsel that they did not have witnesses and consequently closed their case without leading any evidence to discharge the onus. The defendants' plea is a bare denial of the allegations raised in the particulars of claim. The Plaintiff then applied for judgment against the Defendants which this Court granted, ordering that the Defendants would be liable for the Plaintiff's proven damages.
6. The Plaintiffs then presented the evidence. The First Plaintiff testified that after their arrest, they were held in detention in the various police stations referred to in this judgment, where the conditions were appalling. In Vosman for example, the cell was dirty, the toilet not

flushing and there was no water to drink. In Blinkpan, the cell in which they were kept was undergoing renovation, was dirty and dusty as the walls were being stripped to apply new paint. In Hendrina the cells smelt, looked dirty with the blankets being dirty, and the other inmates found there were smoking in the cells. In Middelburg, they were held in the cells where they were subjected to threats of assault by other inmates.

7. The First Plaintiff further testified that they appeared in Court four times and were represented by an attorney. They were, however, denied bail. It was only on 21 August 2014 that they were released from detention without any charge or criminal offence being proven against them.
8. Counsel for the Plaintiff submitted that after their first appearance in Court on the 12 August 2014, all further detentions

authorised by the Magistrate was simply a continuation of the unlawful arrest. In support of this contention, the Court was referred to a number of authorities such as *Minister of Police v Du Plessis* 2014 (1) SACR 217 (SCA) and *Woji v Minister of Police* [2015] 1 All SA 68 (SCA), where it was decided that the period of detention would, in appropriate cases where the arrest was unlawful, include any further detention authorised by the Court. In granting judgment, the Court held the defendants liable for the period of 11 days of detention.

8. Like arrest, detention in police custody results in the deprivation of liberty and movement rights, which are protected by the Constitution. In the matter of *Minister of Correctional Services v Tobani* [2001] 1 All SA 370 (E) the court stated the principle at 371F thus:

"So fundamental is the right to personal liberty that the lawfulness or otherwise of a person's detention must be objectively

justifiable, regardless of the bona fides of the gaoler and regardless even of whether or not he was aware of the wrongful nature

of the detention."

9. The action instituted by the Plaintiffs is based on contumelia. It is trite that there is no particular formula in determining an appropriate award as compensation for unlawful arrest and detention. Each case depends on its own merits.
9. Determining the monetary value to these rights is not dependant on simple mathematical or other scientific calculations. Neither is case law very helpful in this regard. However, case law serve only as a guideline. In the words of Nugent JA in *Minister of Safety and Security v Seymour* [2007] 1 All SA 558 (SCA) at paragraph 17:

"The assessment of awards of general damages with reference to awards made in previous cases is fraught with difficulty. The facts of a particular case need to be looked at as a whole and few cases are directly comparable. They are a useful guide to what other courts have considered to be appropriate but they have no higher value than that".

48. And at 326 paragraph 20:

"[20] Money can never be more than a crude solatium for the deprivation of what, in truth, can never be restored and there is no empirical measure for the loss."

49. The following cases were considered as a guide by the Court in the Seymour matter, namely:

"In *Solomon v Visser and Another* 1972 (2) SA 327 (C), a 48- year-old businessman who was detained for seven days, first in a police cell and then in a prison, was awarded R4 000 (R136 000). In *Areff v Minister van Polisie* 1977 (2) SA 900 (A), this Court awarded a 41- year-old businessman who was arrested and detained for about two hours R 1 000 (R24 000). In *Liu Quin Ping v Akani Egoli (Pty) Ltd tla Gold Reef City Casino* 2000 (4) SA 68 (W), a businessman who was unlawfully detained for about three hours was awarded R12 000 (R 16 978). In *Manase v Minister of Safety and Security and Another* 2003

(1) SA 567 (Ck) in which a 65-year-old businessman was unlawfully detained for 49 days, incarcerated at times with criminals, the sum of R90 000 (R102 000) was awarded. In *Seria v Minister of professional man* who was arrested and detained in a police cell for about 24 hours, for a time with a drug addict, was awarded R50 000 (R52 000).

50. The Supreme Court of Appeal in the matter of *Minister of Safety and Security v Tyulu* [2009] 4 All SA 38 (SCA) awarded compensation in the amount of R15 000 for a magistrate who was arrested and briefly detained for being drunk in the early hours of the morning.

10. In determining an appropriate compensation for each of the Plaintiffs in this matter, the Court will have to be guided by previous awards made by the Courts and in particular the evidence of the Plaintiffs through the mouth of the First Plaintiff, which

evidence was not contested.

11. The First Plaintiff testified in support of his claim and that the other three Plaintiffs. Since the actions have been consolidated

in terms of rule 10, and the fact that throughout the incarceration the four Plaintiffs were held together, his evidence applies to the other Plaintiff's actions as well. The amount determined as a fair and reasonable compensation for the damages in respect of the First Plaintiff will thus be appropriate for each of the other three Plaintiffs.

12. Having regard to the evidence and a guide from the court cases cited above, I am of the view that the following is a fair and

reasonable compensation for the unlawful arrest and detention, namely R180,000.00 for each of the Plaintiffs.

13. On the question of costs, the Plaintiffs were represented by a senior counsel appearing with a junior counsel. In my view, the circumstances of this case are such that only one counsel would have been sufficient to prosecute this claim. I will therefore allow the costs of one counsel.
14. In the premises I make the following order:
 1. The claims by the Plaintiffs succeed.
 2. The Defendants are held liable for damages suffered by each of the Plaintiffs as a result of the unlawful arrest and detention of each of the Plaintiffs.
 3. Each of the Plaintiffs is awarded an amount of R180,000.00 as a fair and reasonable compensation for damages suffered consequent to their unlawful arrest and detention.
 4. The Defendants are ordered to pay the costs of suit including costs of one counsel.
 5. Being jointly liable, one Defendant paying, the other will be absolved.

SP MOTHLE

Judge of the High Court.

Gauteng Division Pretoria

For the Plaintiffs: Adv.

T P Kruger SC

Assisted by: Adv.

J. Pienaar

Instructed by: Marais

Sasson Inc

Pretoria

For the Defendants: Adv

Mabunda

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