

SOUTH AFRICA / JUDGMENT

Mbabaza v Minister of Police (67/2020) [2022] ZAECMHC 2 (1 February 2022)

[2022] ZAECMHC 2

COURT

Eastern Cape High Court, Mthatha

BEFORE

Majiki

CASE / FILE NUMBER

67/2020

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THE

HIGH COURT OF SOUTH AFRICA

(EASTERN

CAPE LOCAL DIVISION – MTHATHA)

CASE

NO. : 67/2020

Date

of hearing: 28 October 2021

Date

delivered : 1 February 2022

In

the matter between:

GOLDEN
MBABAZA
Plaintiff
And
MINISTER
OF
POLICE
Defendant

JUDGMENT

MAJIKI J:

- [1] The plaintiff sued the defendant in his capacity as the person who is vicariously liable for acts and omissions committed by members of South African Police Service (SAPS) in the course and within the scope of their employment. According to the plaintiff he was arrested without a warrant of arrest and detained from 16 November 2018 to 19 November 2018, Friday to Monday, He quantified his damages to the amount of R900 000.00. The defendant filed a notice of intention to defend but failed to file a plea. The matter was before court as undefended.
- [2] Shortly after the hearing of the matter the court file was mislaid. The court's gratitude goes to the plaintiff's attorneys who, in the past week, kindly had it reconstructed. Only the plaintiff testified in support of his claim. The background facts are that, on 14 November 2018 one Sibusiso allegedly attacked and locked in the plaintiff's wife and daughter at the plaintiff's homestead. Sibusiso dragged his daughter saying he would rape and her mother. When alerted of the attack telephonically, the plaintiff went home with a view to defend them. He knew that Sibusiso was armed. On his arrival he confronted Sibusiso about what he was doing. Sibusiso did not respond. After firing a warning shot, he shot at him and bruised his arm.
- [3] The next day he was summoned by the police telephonically and was advised to bring his firearm on 16 November 2018. At 09h00 upon presenting himself at the police station, he was arrested and his firearm was confiscated. On Monday he was caused to appear in court and was remanded on bail of a sum of eight hundred rand (R800.00). After three (3) court attendances, his legal representative told him, the matter would be withdrawn due to insufficient evidence.
- [4] He said he was detained in a filthy, lice-ridden small cell. They were fourteen (14) inmates cramped up, such that they had to fold their legs throughout. He slept on the floor and was spared a light blanket by a fellow inmate. The toilet had no door, everyone had to use it in full view of other cell mates.
- [5] He said he lost respect of his subjects as a sub-headman. Community members in social gatherings no longer stood up when he entered. He even decided to stay away because there was resistance in affording him his traditional earned sitting place, that of being third from the door. He was relieved of his slaughtering duties as a speer carrier by the one faction of his family. The ordeal left him hurt and anxious. He has become forgetful.
- [6] It is common cause that arrest and detention is prima facie unlawful. The defendant bears the onus to justify its lawfulness. In the circumstances of this case, the evidence of the plaintiff was not contested, the unlawful arrest was therefore proved. Judgment on liability was entered in the plaintiff's favour for damages that he may have proved.

- [7] The issue to be determined is the quantum of his damages.
- [8] The plaintiff was detained for three (3) days under disgusting conditions. The arrest hurt him, he lost respect of his subjects and that of a faction of his relatives. Arrest and detention is viewed as a serious violation of a person's right to freedom, entrenched in section 12 of the Constitution of the Republic of South Africa, 1996.

Section 12(1) (a) provides:

'Everyone has the right to freedom and security of a person, which includes the right not to be deprived of freedom arbitrarily without just cause'.

The unjustified interference with that right has consequences of damages which calls for compensation.

- [9] It is the duty of the court to determine the amount that should be awarded to the plaintiff. In *Minister of Safety and Security v Tyulu* 2009 (5) SA85 (SCA) paragraph 26 the court held:

'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 so much-needed solatium for his or her injured feelings. It is therefore crucial that serious attempts be made to ensure that the damages awarded are commensurate with the injury inflicted. However, our courts should be astute to ensure that the awards 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.'

- [10] In the determination of the quantum of damages herein the court must exercise a broad discretion in order to reach what can be viewed as commensurate compensation. The plaintiff's claim consisted of various heads damages, namely:

Emotional shock and discomfort

R 100 000.00

Impairment of dignity

R 200 000.00

Pain and suffering

R 200 000.00

Unlawful detention

R 200 000.00

Contumelia and invasion of privacy

R 200 000.00

In Rudolph and Others v Minister of Safety and Security and Others 2009 (2) SACR 271 (SCA) paragraph 26 the court stated:

‘The ever-changing value of money makes reference to previous decisions not altogether helpful. As was stated in Minister of Safety and Security v Seymour 2006 (6) SA320 (SCA) paragraph 17, in the assessment of general damages the facts of the particular case must be looked at as a whole ...’

[11] In Rudolph supra, in March 2009 the appellants were awarded a total R150 000.00 for overall four (4) days arrest and detention, of which in the first three (3) nights the conditions of their detention were more or less similar to those in the present case. In Minister of Police v Page (CA 231/2019) [2021] ZAECG 22, delivered on 23 February 2021 the court of appeal reduced an award of R60 000.00 for detention of approximately one day to R30 000.00. Nothing extraordinary was recorded about the conditions of the appellant’s detention.

[12] In the present case, above the invasion of the plaintiff’s privacy and violation of his constitutional rights, he continues to suffer humiliation and degradation in his family and community. The background facts which led to his arrest relate to circumstances where, a father of girl children was responding to a call for his wife and daughter’s protection, who were being attacked in the comfort of their home. He had reported at the police station on his own. In the proper exercise of their discretion whether to have the plaintiff arrested, the police ought to have considered those circumstances as militating against the plaintiff’s arrest and detention.

In the circumstances the following order is made:

1. The defendant is hereby ordered to pay the plaintiff a sum of R110 000.00 as and for damages for his arrest and detention.
2. Payment of interest on the said amount at the prescribed rate from thirty (30) days from the date of service of the order to the date of payment.
3. Costs of suit.

B MAJIKI

JUDGE OF THE HIGH COURT

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