

SOUTH AFRICA / JUDGMENT

Mbana v Minister of Police [2023] ZAGPPHC 247; 54035/21 (29 March 2023)

[2023] ZAGPPHC 247

COURT

North Gauteng High Court, Pretoria

BEFORE

Molotsiaj

CASE / FILE NUMBER

54035/21

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, PRETORIA

CASE

NO: 54035/21

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED

DATE:

31/3/2023

SIGNATURE:

In
the matter

between: MDUDUZI
ERICK MBANA
PLAINTIFF
AND
MINISTER
OF
POLICE
DEFENDANT

JUDGEMENT

MOLOTSIAJ

- [1] In this matter the plaintiff, Mr Mduduzi Erick Mbana, an adult male residing at 8[...] 2[...] A[...], Wedela, Carletonville, Gauteng, is suing the defendant, who is the Minister of Police, for wrongful and unlawful arrest and detention as a result of which he suffered damages in the sum of R700 000.00.
- [2] The action arose out of the arrest and detention of the plaintiff on 12 June 2021 at Wedela police station.
- [3] At the start of the trial proceedings, the parties narrowed down the issues. The defendant admitted the arrest and detention of the plaintiff. The only issue that this Court must determine is the lawfulness of the arrest and detention of the plaintiff on 12 June 2021.
- [4]. The plaintiff in his particulars of claim stated that following his unlawful arrest and detention, he was assaulted with a pistol on his left eye by the members of the defendant where he sustained serious injuries. He was arrested, detained, and assaulted for alleged obstruction of justice (hindering police official in their duties), malicious injury to state property and common assault.
- [5] The defendant denied that the arrest and detention of the plaintiff was unlawful and pleaded that the arrest was effected by members of the South African Police Services in terms of section 40(1)(b) of the Criminal Procedure Act 51 of 1977 and that the plaintiff was arrested for malicious injury to property which is schedule 1 offence.
- [6] The defendant further pleaded that since the matter was mediated, the plaintiff lost his alleged civil claim because of mediation.
- [7] During the trial, the plaintiff called two witnesses. The first witness was the plaintiff himself. He testified that:
- [7.1.] On 12 June 2021 he was at Harry's pub (tavern) in Wedela Carletonville, and he was playing pool.

[7.2.] It was around pass 21h00 at night when the police arrived at the tavern. The police spoke to the owner of the tavern. His friend known as Papa asked the owner why is he closing the tavern at 21h00 whereas the President said that taverns can close at 24h00.

[7.3] The police then dragged Papa with his clothes.

[7.4] He used his cell phone video to record the police dragging Papa with his clothes. The police then left Papa after they realized that he was recording them. He continued playing pool and then a person by the name of Themba, who was working at the tavern, took the pool balls and indicated that they are closing the tavern.

[7.5] Another police official arrived and grab Papa by his clothes. The plaintiff again took a video of the police grabbing Papa by his clothes. The police told him that he is obstructing them in their work. He took the video because the police were illtreating Papa.

[7.6] He continued recording whilst holding the pool stick with his other hand. The police then grabbed him on his back and arrested him for defeating the ends of justice. He was taken to the back of the police vehicle.

[7.7] The police took him to Wedela police station. At the police station another police officer spoke to him about the video that he took and that he must delete the video from his cell phone and apologize to the police. He refused. He continued to use his cell phone video at the police station. One of the police officers was drunk. The police wanted to take his cell phone from him.

[7.8] He jumped on top of the bench. A police officer attempted to grab the phone from his hand. The police officer fell on the table. He wanted to give his cell phone to his mother who had arrived at the police station.

[7.9] The other police officer throttled him. During that time another police officer hit him on the chest. A police officer then hit him with the back of the firearm on his face. He lost consciousness. He woke up inside the cell.

[8] Lindi Mbana, the second witness for the plaintiff testified that:

[8.1] The plaintiff is her son. On 12 June 2021 she was at home.

[8.2.] She received a call from the plaintiff to retrieve the spare key for his vehicle. She had to fetch his vehicle at the police station as the police arrested him.

[8.3] She went to the police station accompanied by the plaintiff's girlfriend. When she arrived at the police station, she saw the plaintiff being escorted from the police vehicle accompanied by three police officers.

[8.4] She followed the police inside the police station, and she asked the police what the plaintiff had done. A police officer, was busy hitting the plaintiff on the face and chest. The plaintiff ran to the corner. At the corner, there was a bench. He climbed on top of the bench.

[8.5] She tried to block the police from hitting the plaintiff and she was pushed away. One of the police officers throttled the plaintiff. The plaintiff asked her to take his phone and take a video. The police told her that she will be arrested for defeating the ends of justice. One of the police officers fell and when he stood up, he hit the plaintiff with the firearm.

[8.6] The plaintiff then fell. She later saw the plaintiff sitting down and oozing blood from his eye.

[9]. The defendant called the evidence of three witnesses. The first witness was Christopher Tefo Sekete. He testified that:

[9.1.] He is employed by the South African Police Service, and he holds the rank of a sergeant and has sixteen years of service with the SAPS.

[9.2] He is based at Wedela SAPS, and his section is operational, domestic violence co-ordinator.

[9.2] On 12 June 2021 he was on a special operation with Constable Siphunzi. He was deployed to check whether the taverns were complying with the Covid- 19 regulations. Their mandate was to ensure that the taverns were closing at 22h00 as per the regulations.

[9.3] They went to Harry's tavern (pub) and arrived at the tavern around 21h50 or 21h55. Upon arrival at the tavern, they noticed that there no sanitizers and that the tavern was overcrowded with patroons. Some of the patroons were not wearing masks.

[9.4.] He proceeded to speak with the tavern owner. While he was engaging the owner, the plaintiff approached them. The plaintiff said to him 'you police are always harassing people'. He reprimanded the plaintiff and told him that they are not talking to him but to the owner. The plaintiff then left.

[9.5] Few minutes later, the plaintiff returned with his cell phone in his hand saying he wanted to take a video of them. He again reprimanded the plaintiff. The plaintiff said to him 'Ke tla ho bontsha masepa' (loosely translated 'I will show you s*it).

[9.6] It was already after 22h00 and the plaintiff was becoming unruly and said that he will not leave the tavern and that he will continue drinking as he was using his money. He continued drinking even though it was already after 22h00. The plaintiff kept on saying to them that he is with the South African National Defence Force (SANDF) task force and that they will not do anything to him.

[9.7] The plaintiff also told them that should anything happen to him, he is going to sue the police. They then decided to arrest the plaintiff for interfering with their duties as police officers. While they were reading his rights, the plaintiff indicated that he knows his rights and there was no need for them to read his rights.

[9.8.] They then took the plaintiff to Wedela police station. The plaintiff continued to be unruly and abusive at the police station. At the community service centre (CSC) there is a wooden bench. The plaintiff climbed on top of the wooden bench and kicked him on his chest, and he fell.

[9.9] Whilst the plaintiff was on top of the wooden bench, the bench broke under his weight, and he fell injuring his left eye. It was at that time that they subdued him and put him in the cell. The plaintiff was later taken to hospital due to the nature of his injuries.

[9.10] The plaintiff's mother was outside the CSC at the time the plaintiff fell and injured his left eye. It is not true that the plaintiff was hit with a firearm. He did not carry the firearm. The plaintiff's injuries are not consistent with the injuries of someone hit with a firearm.

[9.11] He opened a case against the plaintiff and plaintiff also opened a case against him. The cases were eventually mediated and withdrawn.

[10] The second witness for the defendant was Mr David Phika. He testified that:

[10.1.] He is employed by the South African Police Service for seventeen years and he holds the rank of a sergeant. He is based in the crime prevention unit.

[10.2] On 12 June 2021 he was doing duty at Wedela closing taverns as the covid- 19 regulations were in place. They visited Harry's pub. They told Harry Nkondo, the owner of the tavern to close the tavern as it was the time for the tavern to close. The tavern patrols were not social distancing and were not wearing masks.

[10.3] While they were talking to the owner, the plaintiff approached them and told them that he is from the special force of the South African Defence Force and that he will continue drinking. He said the police are small boys.

[10.4.] The plaintiff had a cell phone in his hand and started taking a video. The plaintiff refused to move away from them, and sergeant Sekete arrested the plaintiff for interfering with the police duties.

[10.5] They then took the plaintiff to the police station. They wanted to search the plaintiff before they put him into the cell as he could not get into the cell with any property in his possession. The plaintiff jumped on top of the wooden counter as he did not want the police to take his cell phone.

[10.6] Sergeant Sekete tried to grab him, and the plaintiff kicked sergeant Sekete. The plaintiff then fell from the counter. The plaintiff was not assaulted. The plaintiff sustained injuries from the fall.

[11] The third witness of the defendant was Mr Richard Nyathi. He testified as follows:

[11.1] He is employed by the South African Police Service for eleven years and he holds the rank of a sergeant. He confirmed the contents of the statement that he wrote.

Evaluation

- [12] There is a material differences between the evidence of the plaintiff and the defendant. The plaintiff's evidence that the police were manhandling or grabbing his friend at Harry's tavern on 12 June 2021 is not corroborated by the statement or evidence of his friend. The Plaintiff's friend did not open a criminal case against the police for their ill treatment towards him.
- [13] The evidence of the plaintiff is the evidence of a single witness which is not corroborated especially in respect of the events which took place at Harry's tavern (pub). Accordingly, the plaintiff's evidence must be approached with caution.
- [14] Both sergeant Sekete and sergeant Phika testimony did not refer to a friend of the plaintiff that they manhandled or assaulted at Harry's tavern. Other than the owner of the tavern, the only person that the police officers spoke to at Harry's tavern was the plaintiff. It was the plaintiff who was abusive and rude towards the police when they were executing their duties of making sure that the tavern complies with covid- 19 regulations.
- [15] The plaintiff was drinking on 12 June 2021, and he did not want the police to tell the owner of the tavern to close as per covid- 19 regulations. This Court accept the evidence of sergeant Sekete and sergeant Phika in respect of what transpired at Harry's tavern. There was no reason to doubt their evidence. The slight differences in their statements does not mean that their evidence must not be accepted. It further does not mean that their evidence is fabricated.
- [16]The plaintiff decided to continue drinking even though the police informed the owner to close tavern and there was generally non- compliance with the regulations in that there were no saniters and the tavern was overcrowded, and some patroons were not wearing masks. The enforcement of the covid- 19 regulations was part and parcel of the police duties.
- [17] The plaintiff deliberately and intentionally did not want to heed the police's instructions for the tavern close as per the covid-19 regulations. This act of the plaintiff was unjustified and unreasonable and constituted a criminal offence of obstructing the police in executing their duties. The plaintiff refused to move away from the police whilst they were executing their duties.
- [18] This Court rejects the evidence of the plaintiff that the police manhandled or assaulted his friend by the name of Papa at Harry's tavern on 12 June 2021 hence he decided to take a video. If indeed the plaintiff's friend was ill-treated and manhandled or assaulted by the police, he ought to have opened a criminal case or lodged a complaint against the police. This was not done. No statement nor evidence from Papa was tendered in the trial.
- [19] This Court can only come to one conclusion, namely, the so-called grabbing of Papa by his clothes or assault of Papa, is a creation of the plaintiff and far removed from the actual events which took place at Harry's tavern on the night of 12 June

2021. The video footage of 12 June 2021 at Harry's tavern was not tendered as evidence in the trial. This could have gone a long way in supporting the plaintiff's claim. But such was not tendered, and the plaintiff's evidence remained uncorroborated.
- [20] The defendant's evidence was however corroborated. The witnesses of the defendant were credible and tendered satisfactory evidence.
- [21] The plaintiff pushed sergeant Sekete and continued to take video of the police whilst they were conducting their work at Harry's tavern. The balance of probabilities is that the plaintiff on 12 June 2021, while the police were executing their duties at Harry's tavern, he interfered and obstructed them in executing their duties and in the process defeated the administration of justice.
- [22] The plaintiff did this by continuing to drink alcohol after 22h00 on 12 June 2021 when the police were enforcing covid- 19 regulations.
- [23] The plaintiff's conduct of being rude and abusive to the police at the time when they were executing their duties and pushing sergeant Sekete whilst doing his work amounts to obstructing the police in performing their duties. Taking the video of the police while they are conducting their work; refusing to move away from the police and being abusive to the police while they are executing their duties amounts to obstruction of administration of justice.
- [24] It is finding of this Court that the plaintiff on 12 June 2021 at Harry's tavern was lawfully arrested and detained. The version of the plaintiff as to what transpired at Harry's tavern is rejected. His version is farfetched, fabricated and does not make sense.
- [25] The police then took the plaintiff to the police station. At the police station the plaintiff continued being unruly and abusive towards the police. The statement and evidence of sergeant Nyathi is accepted. There was no reason to doubt his evidence. Sergeant Nyathi in his statement indicated that the plaintiff jumped aggressively on top of the counter. The plaintiff was abusive towards the police officers from Harry's tavern and the abusive conduct continued at the police station.
- [26] It is common cause that the plaintiff climbed on top of the wooden bench at the community service centre (CSC). Whilst on top of the wooden bench, the plaintiff kicked sergeant Sekete. The wooden bench eventually broke under the weight of the plaintiff. The evidence of sergeant Phika, that at the police station, they wanted to search the plaintiff so that he does not enter the cell with any property is accepted. There were justifiable reasons why the police wanted to search the plaintiff at the police station.
- [27] The plaintiff refused to be searched hence he climbed on top of the wooden bench. There were no justifiable reasons why the plaintiff refused to hand over his cell phone to the police before he was placed into the cell. He could not enter the cells while he was in possession of his cell phone.

- [28] The wooden bench eventually broke, and the plaintiff fell. The plaintiff sustained the injuries to his left eye because of the fall. The injury was not caused because of the assault.
- [29] The plaintiff's mother testified that the police kicked the plaintiff on his chest and the plaintiff did not testify that he was kicked on the chest. The evidence of sergeant Sekete was that the plaintiff's mother was outside the community service centre (CSC) when the plaintiff climbed on top of the wooden bench and fell. This Court accept this evidence of sergeant Sekete.
- [30] It is therefore inconceivable for the plaintiff's mother to witness the events which took place at the community service centre (CSC) whilst she was standing outside the police station.
- [30] Furthermore, the evidence shows that when the plaintiff climbed on top of the wooden bench, the police officers attempted to subdue him. In the process of trying to subdue the plaintiff, the wooden bench broke, and the plaintiff fell. It is probable that the plaintiff would not have sustained his injuries had he not refused to be searched by the police and had he not climbed on top of the wooden bench. There was absolutely, no reason for him to climb on top of the wooden bench.
- [31] The idea that he climbed on the wooden bench as he was assaulted by the police officers is rejected. He simply climbed on top of the wooden bench as he did not want the police to confiscate his cell phone.
- [32] I accordingly find that the defendant was able to prove the lawfulness of the plaintiff's arrest and detention on 12 June 2021. There were reasonable and justifiable grounds for the arrest and detention of the plaintiff.
- [33] It is a further finding of this Court that the plaintiff failed to prove that he was assaulted by the police at Wedela police station on 12 June 2021. The injuries sustained by the plaintiff were caused by the fall from the wooden bench. When the wooden bench broke, the plaintiff fell with his face to the floor.
- [34] The plaintiff's claim must therefore fail.
- [35] I accordingly make the following order:
- [35.1.] The plaintiff's claim is dismissed.
- [35.2] There is no order as to costs made.

Acting Judge of the High Court, Pretoria

Date of the hearing: 8 & 9 November 2022 Date of Judgement: 29 March 2023 Counsel for the Plaintiff: Mr N Mashabela Counsel for the Defendant: Mr Mahasha

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