

SOUTH AFRICA / JUDGMENT

Minister of Correctional Services v Tyatya (1850/2010) [2014] ZAECPEHC 88 (11 December 2014) [2014] ZAECPEHC 88

COURT

Eastern Cape High Court, Port Elizabeth

BEFORE

N G Beshe

CASE / FILE NUMBER

1850/2010

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IN

THE HIGH COURT OF SOUTH AFRICA
(EASTERN
CAPE DIVISION, PORT ELIZABETH)

CASE

NO.: 1850/2010

In

the matter between:

THE
MINISTER OF CORRECTIONAL
SERVICES.....Applicant
And
CHRISTIAN
SIKHOLELO
TYATYA.....Respondent

JUDGMENT

BESHE J:

- [1] This is an application for leave to appeal. I will however refer to the parties as they were during the trial. On the 21 February 2014 I gave judgment in favour of the plaintiff by ordering the defendant to pay the plaintiff a sum of R120 000.00 as and for general damages. This after making a finding that the defendant through his employees was liable for the injuries that were suffered by the plaintiff on three instances when he was attacked by fellow

inmates. That the prison officials were negligent in the performance of their duties / obligations to provide a safe environment for the plaintiff.

- [2] Defendant seeks leave to appeal against the whole of my judgment as aforementioned.
- [3] The grounds upon which it is contended that another court could reasonably come to a different conclusion are the following:

(paraphrased)

1. The plaintiff relied upon three separate incidents of assaults, lumping same together into one claim for purposes of claiming

damages.

2. It was only in respect of the first incidence that there was evidence that an Okapi was used. In respect of the second assault, a stone / rock and/or broken water tap fitting was allegedly used. In respect of the third assault, the knife that was not described.
 3. There is no evidence that the objects used would have been discovered had the cells been searched.
 4. There is no evidence that the implements used in second and third assaults were contraband.
- [4] Plaintiff pleaded that as a result of defendant's employees' statutory breach, alternatively negligent conduct he suffered damages arising from the three instances of assault.
- [5] In his plea, the defendant admitted that the plaintiff was assaulted on three different occasions but denied that the assaults were unlawful, wrongful and intentional. In the alternative defendant pleaded that plaintiff contributed to the assault(s) by participating

therein. Further that he was assaulted by his fellow inmates because he had participated in illegal activities which involved the exchange of money between him and his fellow inmates and the assault was as a result of those activities. In addition, defendant admitted the officials of the department concerned, Correctional Services, have legal obligations in terms of the Correctional Services Act and the Constitution and the defendant is vicariously liable for wrongful acts committed by the department's employees during

the course and scope of their employment, but pleaded that the employees of the defendant took all reasonable steps to safeguard the plaintiff. Alternatively that the employees of the defendant did not foresee and or could not reasonably have foreseen that the assault was going to take place, further alternatively, that they could not prevent the assault and or could not reasonably be expected to have prevented the assault from happening in the circumstances. (I take it this applies to each of the three assaults)

- [6] Section 4 (2) (a) of the Correctional Services Act 111 of 1998 (the Act) provides that “The department must take such steps as are necessary to ensure the safe custody of every inmate and to maintain security and good order in every correctional centre”.

Section 26 which deals with safe custody provides that:

“(1) The right of every inmate to personal integrity and privacy is subject to the limitations reasonably necessary to ensure the

security of the community, the safety of correctional officials and the safe custody of all inmates.

- (2) In order to achieve these the objectives referred to in subsection

- (1) and subject to the limitations outlined in sections 27 to 35, a correctional official may-

- (a) search the person of an inmate, his or her property and the place where he or she is in custody and seize any object or substance which may pose a threat to the security of the correctional centre or of any person, or which could be used as evidence in a criminal trial or disciplinary proceedings.”

- [7] Plaintiff testified that attacks on inmates by inmates are common place. Searches of inmates and cells only take place once every two to three weeks or after a month. He testified that the cells had been searched two to three weeks before the first assault. In respect of the second incident cells had been searched a month before the incident. That he, as would appear from his evidence was attacked three times. After each attack he would ask to be removed to the section with a single cell, in vain. No evidence was led by the defendant. So there is no evidence of what steps were taken to ensure the safety of the plaintiff as required by Section 4 (2) a supra.

- [8] It is trite that the test that is applicable in an application for leave to appeal is whether there is a reasonable prospect of success on appeal. See *Botes and Another v Nedbank Ltd* 1983 (3) 27 (AD); *S v Magadla* 2010 (2) SACR 316 ECM. On the facts of this case I am not persuaded that the appeal bears any prospects of success.

- [9] Accordingly, the application for leave to appeal is dismissed.

N G BESHE

JUDGE OF THE HIGH COURT

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Prepared on 12 October 2026 · Esheria