

SOUTH AFRICA / JUDGMENT

Minister of Police v Samanithan (CA60/2019) [2020] ZAECHGC 62 (9 June 2020)

[2020] ZAECHGC 62

COURT

Eastern Cape High Court, Grahamstown

BEFORE

J.E Smith, M.J. Lowe

CASE / FILE NUMBER

CA60/2019

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IN THE HIGH COURT OF
SOUTH AFRICA
(EASTERN
CAPE DIVISION, GRAHAMSTOWN)
CASE
NO.: CA60/2019
Matter
heard on: 29/05/2020
Judgment
delivered on: 09/06/2020
In

the matter between:

THE
MINISTER OF POLICE
APPELLANT
and
K.
SAMANTHAN RESPONDENT

JUDGMENT

SMITH J:

- [1] This is an appeal against the judgment of the Port Elizabeth Magistrate's Court in terms of which the respondent was awarded damages for unlawful searches of her property and for unlawful arrest and detention. The magistrate awarded the respondent the sums of R45 000 and R40 000, respectively, for the two unlawful searches and R80 000 in respect of unlawful arrest and detention. She also ordered the appellant to pay interest on the damages from the date of service of summons. The appeal is only in respect of quantum and the order that interest is payable from the date of the service of the summons.
- [2] The awards are in respect of two unlawful searches of the respondent's property on 6 March 2017 by members of the South African Police Services and her unlawful arrest and subsequent detention at the Gelvandale Police Station, from 6 March 2017 until about 11:00 on 7 March 2017, a period of some 13 hours.
- [3] In considering the award of fair and reasonable damages to the respondent, the magistrate surveyed various previous awards in a number of comparable cases. She gave extensive reasons for her decision in a well-written and comprehensive judgment. It is manifest that she had due regard to the fact that the respondent had suffered an arbitrary deprivation of her personal liberty and invasion of her privacy by virtue of the unlawful searches. She also suffered emotional shock, and her six year old child, who was present at the time, had been traumatised. The searches were witnessed by her neighbours, and the whole ordeal had been very embarrassing for her. Regarding the conditions of her detention, the magistrate had regard to the fact that the respondent had been incarcerated in a dirty and cold cell and was only released the following morning at about 11:30, after spending about 13 hours in detention.
- [4] It is trite law that the award of damages is a discretionary matter for the trial court and a court of appeal will only interfere if there has been a misdirection regarding the law or the facts, or the damages are so unreasonably exorbitant or inadequate so as to warrant an inference that the trial court did not exercise its discretion properly. In my view none of these grounds is present in this matter. The magistrate has had proper regard to the applicable legal principles and the circumstances, and gave extensive reasons for her decision. While it can be argued that the awards may be generous, in my view they are not so unreasonably exorbitant so as to warrant interference by us. The appeal against quantum must accordingly fail.
- [5] The award of interest is also a discretionary matter for the trial court and an appeal court will also only interfere if there has been misdirection by that court. This discretion includes the power to award interest from the date of the service of the summons, if the court considers it to be just in the circumstances. (*Naidoo v Minister of Police* 2016 (1) SACR 468 (SCA)). In this regard the magistrate has also given convincing reasons for her decision

regarding interest and why she considered it just in the circumstances. I am also not persuaded that the trial court has misdirected itself in this regard.

[6] In the result the appeal is dismissed, with costs.

J.E SMITH

JUDGE OF THE HIGH COURT

I agree.

M.J. LOWE

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