

SOUTH AFRICA / JUDGMENT

Moloi v Minister of Police (216/2016) [2023] ZANWHC 94 (22 June 2023)

[2023] ZANWHC 94

COURT

North West High Court, Mafikeng

BEFORE

FMM Reid

CASE / FILE NUMBER

216/2016

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IN THE HIGH COURT OF

SOUTH AFRICA

NORTH WEST DIVISION,

MAHIKENG

CASE NUMBER: 216/2016

Reportable: YES/NO

Circulate to Judges: YES/NO

Circulate to Magistrates: YES/NO

Circulate to Regional

Magistrates: YES/NO

In the matter between:-

LETSHWITI

PETRUS MOLOI

Plaintiff

and

MINISTER

OF POLICE

Defendant

JUDGMENT

FMM REID J (WAS SNYMAN)

Introduction:

[1] The plaintiff claims from the defendant for damages suffered as a result of an unlawful arrest and detention from 15 September 2013 to 21 November 2013. The plaintiff was incarcerated for a period

of two (2) months and six (6) days.

[2] The merits of the claim have been conceded by the defendant in favour of the plaintiff. The court has to determine the quantum of the damages suffered by the plaintiff.

[3] The plaintiff was represented by Adv PHS Smit and the defendant was represented by Adv ME Mmolawa. The plaintiff testified in support of his claim and the defendant elected to not call any witnesses.

[4] At the commencement of the hearing, counsel submitted their respective expert psychologists' reports as well as a joint minute by the experts. The court accepted the reports of the experts in terms of Rule 38(2) of the Uniform Rules of Court and the experts were excused from giving oral evidence.

Material

background

[5] At the time of his arrest the plaintiff was employed as a constable in the South African Police Service (SAPS).

[6] The plaintiff has obtained a B. Com Degree in Management from the North West University during 2001. He commenced employment as a member of the SAPS on 23 May 2003.

[7] On the date of his arrest 15 September 2013 the plaintiff was working in the Community Service Centre of Dinokana Satelite Police Station in Lehurutshe. The plaintiff was dressed in SAPS uniform.

He was arrested in front of his colleagues and members of the community. He was handcuffed and taken to his residence.

At his residence the plaintiff was taken to his bedroom and two (2) female police officials instructed him to undress out of his SAPS uniform into civilian clothing. He expressed his discomfort in removing his clothes in front of the female SAPS members and requested privacy but it was denied. He proceeded to undress from his uniform. He was not informed what he was arrested for.

[8] During his period in detention, he was kept in the police detention cells at Ottoshoop, Nietverdiend and Mahikeng Police Stations. He testified that the conditions of the police detention cells were

filthy, he could not eat, there was no space to lie down and sleep most of the times, as they were many people forced in one cell.

The toilet was open and there was no privacy. Some detainees would smoke, which would cause allergies to the plaintiff. He testified that he kept the fact that he is employed as a member of the SAPS secret, as he was afraid of retaliation from the other detainees. The detainees would sometimes become violent with each other and he is traumatised by the events. In some police cells he was detained alone for long periods of times.

[9] The plaintiff claimed for past and future loss of income, past medical expenses and legal costs in defending the criminal matter in which the plaintiff was the suspect. No evidence was presented

to court in support of these claims and suffice to say these claims were not proven.

[10] The evidence by the plaintiff supported his claim for general damages on the basis of contumelia, deprivation of freedom, discomfort, suffering, loss of amenities of life, emotional shock and trauma. Both experts are Clinical Psychologists. Ms Healy, the psychologist on behalf of the plaintiff, commented the following:

“10.1 The Incident

10.1.1 Mr Moloi was subjected to wrongful arrest and detained for two and a half months. Several factors have made this experience highly traumatic for him:

10.1.1.1 He was not informed why he had been arrested and continued to remain unsure for weeks and months during his detainment.

10.1.1.2 He was arrested in front of colleagues, friends and community members who had trusted him. His arrest was very public and this was humiliating. He was also humiliated by having to remove his uniform and undress in front of several officers, including policewomen.

10.1.1.3 He was detained and moved to several holding cells where he described several traumatic instances including spending days alone, having food taken from him by other more powerful inmates and constantly

believing that his life would be taken at the hands of either police officers or fellow detainees.

10.1.1.4 The trauma was not a once-off event but he continued to experience trauma daily for two and a half months. The prolonged nature of the experienced trauma over an extended period and multiple events has compounded the trauma experienced.

10.2 Current Psychological Functioning

10.2.1 It has been approximately nine years since the incident. From his account, Mr Moloi's psychological difficulties have improved from the initial impact of the incident. However, he is still experiencing the following:

10.2.2. Mr Moloin is still experiencing symptoms of Post Traumatic Stress Disorder including the following: he experiences intrusive symptoms including intrusive memories of the incident and night sweats. He is triggered by cues that resemble aspects of the traumatic events. His avoidance symptoms include avoiding people in his community as he feels judged by them as well as avoiding reminders of the incident. He persistently believes that others think of him as a criminal. He is persistently angry at the wrong done to him and also feels fearful that a similar incident will take place. He has reported markedly diminished interest or participation in significant activities and feelings of detachment or estrangement from others. Concerning symptoms of over-arousal, he often feels irritable, has reported hypervigilance, exaggerated startle response and chronic insomnia.

10.2.3. Mr Moloi has reported mild symptoms of depression including

intermittent periods of low mood, linked to his experience of PTSD symptoms. However, he does not experience low mood daily.

His symptoms of low libido can also be attributed to psychological factors. Nonetheless, he is still able to enjoy various

activities in his life and does not report experiencing anhedonia. He has reported good energy levels and positive self-regard. Mr Moloi's symptoms suggest that he is not currently experiencing a mood disorder.

...

10.2.7 In summary, this incident has caused moderate to severe psychological pain for Mr Moloi. This has been a watershed in his life as there has been a significant impact on his relationships with friends and community members, his relationship with his oldest son as well as an impact on his career progression and income. He is still experiencing symptoms of PTSD, but only mild mood-related symptoms."

[11] In the joint minutes of the experts the following factors are highlighted:

11.1. Prior to the arrest the plaintiff had no history of any trauma.

11.2. They agreed that the plaintiff was probably of average cognitive capacity and functioning prior to the incident.

11.3. The plaintiff was a fully functioning and upstanding member of the SAPS prior to his arrest.

11.4. The plaintiff was not emotionally vulnerable prior to his arrest but the arrest contributed to making him an emotional and vulnerable person.

11.5. The plaintiff portrays residual cognitive deficits, disturbing flashbacks and severe anxiety as recorded in their respective assessments.

11.6. The experience of self-loathing, distress, anger, bitterness and emotional pain also contribute to fluctuations in his day-to-day cognitive functioning.

11.7. The plaintiff's quality of life has been compromised and he suffered substantial loss of amenities of life. The plaintiff perceives his social failures resulted in devalued sense of self.

[12] The joint minutes of the experts indicated their agreement that the plaintiff receive psychotherapy on the basis of the plaintiffs compromised physiological ailments, his adversely affected emotional resilience and psychological vulnerability. They expressed that the above and the symptoms of PTSD will in all probability contribute to the plaintiff's remaining prone to stress and depression and that supportive psychotherapeutic measures will ameliorate his clinical depressive hopelessness and acute anxiety and symptoms of depression. They both recommended 12 sessions of psychotherapy with a consultation fee of R1,500.00 per session, totalling R18,000.00. Both opined that psychiatric medication is not needed at present.

Considering Quantum

[13] In the assessment of damages for unlawful arrest and detention, the Constitutional Court in *JE Mahlangu and Another v Minister of Police* (2021) ZACC 10 at paragraphs 50 and 51 held that damages are awarded to deter and prevent future infringements of fundamental rights by organs of State. Damages is a gesture of goodwill to the aggrieved and does not rectify the wrong that took place. However, so it was held, 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.

[14] In *Minister of Safety and Security v Tyulu* 2009 (5) SA 85 (SCA) at paragraph [26] the Supreme Court of Appeal 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 some 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 mathematical accuracy. Although it is always helpful to have regard to awards made in previous cases to serve as a guide, such approach if slavishly followed can prove to be treacherous. The correct approach is to have regard to all the facts of the particular case and to determine the quantum of damages on such facts."

- [15] In *Woji v Minister of Police* 2015 (1) SACR 409 (SCA) the Supreme Court of Appeal took into account the following: the cells where the plaintiff was kept were overcrowded, dirty and there were insufficient beds to sleep on, he was subjected to the control of a gang who raped other prisoners, he suffered the appalling, humiliating and traumatic indignity of being raped on two occasions which he did not report to the authorities for fear of retaliation from the gang members. The plaintiff was incarcerated for a period of 13 months and the court found an award of R500,000.00 suitable.
- [16] In *Phistos Pheloane v Minister of Police* in this Division under case number 1359/14, delivered on 24 May 2018, the plaintiff was awarded an amount of compensation of R350,000.00 for unlawful arrest and detention of 55 days.
- [17] I find the fact that the plaintiff in casu was arrested in front of his colleagues and members of the community whilst he was performing duties as a police official in SAPS uniform, as a factor that humiliated the plaintiff. It was furthermore humiliating that he was forced to undress in front of female SAPS members. He was kept in police cell and transferred between police cells, without any explanation being provided by the SAPS. The psychologist reports confirm that the plaintiff suffered PTSD from the incident, and that the arrest and detention was a watershed event in his life. The psychologists reports speak for themselves as to the extent of the plaintiff's psychological damage suffered as a result of the arrest and detention.
- [18] Having carefully considered all the relevant factors I find that an amount of R550,000.00 (Five Hundred and Fifty Thousand Rand) would reflect a fair and reasonable amount for the general damages suffered by the plaintiff for the 66 days of unlawful detention following the unlawful arrest.
- [19] In addition to the above, the plaintiff should be compensated for future medical expenses which the plaintiff has proven to be in the amount of R18,000.00 (Eighteen Thousand Rand).

Costs

[20] The normal rule is that the successful party is entitled to its costs.

[21] I find no reason that the normal rule should not find application.

Order:

[22] In the premises I make the following order:

- i) The defendant is to compensate the plaintiff the total amount of R568,000.00 (Five Hundred and Sixty Eight Thousand Rand).
- ii) The defendant is ordered to pay the costs of the plaintiff, including the costs of expert witnesses where so employed.
- iii) The abovementioned amount is to carry interest a tempore more from date of this court order.

FMM REID (WAS SNYMAN)

JUDGE OF THE HIGH COURT

NORTH WEST DIVISION MAHIKENG

DATE OF HEARING:

23 FEBRUARY 2023

DATE OF

JUDGMENT:

22 JUNE 2023

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Prepared on 10 October 2026 · Esheria