

SOUTH AFRICA / JUDGMENT

Morrison v Minister of Safety & Security (80/2017) [2021] ZAECMHC 2 (12 January 2021) [2021] ZAECMHC 2

COURT

Eastern Cape High Court, Mthatha

BEFORE

B Majiki

CASE / FILE NUMBER

80/2017

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IN THE HIGH COURT OF
SOUTH AFRICA

(EASTERN CAPE LOCAL
DIVISION, MTHATHA

CASE NO: 80/2017

Date of hearing: 08

December 2020

Delivered

on : 12 January 2021

In

the matter between:

LUNDI

MORRISON

Plaintiff

And

MINISTER

OF SAFETY AND SECURITY

Defendant

JUDGMENT**MAJIKI J:**

[1] There are three plaintiffs in this matter. They initially sued the defendant in separate actions but those on 13 February 2019 were consolidated under the present case number. The cause of action arose out of the same incident. They were arrested by members of the South African Police Services (SAPS) near the Total garage at Madeira Street, Mthatha (Total garage). They claim that their arrests and their subsequent detention were unlawful. They now sue the defendant as the person who is vicariously liable for unlawful acts and omission by the members of the SAPS during the course and within the scope of their employment. The action was defended up to the period before the commencement of trial. It

had been postponed a number of times at the instance of the defendant, who promised to consider a memorandum sent on the merits

of the matter. Eventually, the matter was heard in the absence of the defendant. The matter is before court for determination

of liability only.

[2] The evidence of all the plaintiffs was to a great extent, materially similar. As a result, it will be summarised together. They all reside at Corhana location. They were out in the night as friends and needed money for petrol. The three of them had remained near FNB, York road for those who had gone back to Corhana to fetch a bank card. They decided to walk towards Total garage, in order to buy cigarettes.

[3] When approaching the garage, they saw police vans and members of SAPS searching people there. They were called by the police, they were also searched and the police found nothing in them, except for their cellphones and a sum of R3.00. They were ordered to get into the police van. They joined other people who were already in the police van and were taken to the police station.

[4] On their arrival at Madeira police station, they were offloaded and ordered to do a frog jump from the van to the charge office. They were directed towards the reception counter and were caused to wait behind the counter. Whilst there, two ladies and two gentlemen walked in. They pointed at them, one said Mr Mlambo took their phones, cards and money. Another said Mr Morrison took their motor vehicle at gun point and bumped it. They were not allowed to speak to the people who were accusing them. Nevertheless, they protested saying they knew nothing about the accusations. They were each handcuffed and taken to separate rooms. Each had their separate bad experiences which would be more relevant when quantum of their claims is determined.

[5] Around 4 a.m. they were taken to Central police station. They were detained from 19 March 2016. They were charged on Sunday 20 March 2016 and appeared in court on 22 March

2016. They were also detained in separate cells. They were remanded in custody at Wellington prison for bail application. They were eventually released on bail on 11 April 2016. They continued to attend court until charges against them were withdrawn. The plaintiffs denied any wrongful-doing.

[6] No evidence was led on behalf of the defendant. In his plea he had admitted the arrests but stated that they were lawful as they pertained to a common robbery by them. Unfortunately, as the party who had the onus to justify the arrest, he did not do so.

[7] The plaintiffs were arrested without a warrant of arrest. The legal position is that, arrest without warrant is *prima facie* unlawful and requires justification from the arresting officer. It does not seem as if the police exercised any discretion as to whether the plaintiff ought to have been arrested, from the time of arrest up to the time following being pointed out by their accusers. From the evidence it does not appear that the plaintiffs were known to the police. They were not told that they were suspects in relation to any offence. They were pointed out much later at the police station. We also have no insight of what the officers gathered during the interviews and what they considered in order to make the decision to detain the plaintiffs.

[8] There are statutorily limited instances where arrest without warrant may be justified. Section 40(1) lists those instances. In any of them it would have been the arresting officer who would have had to place facts before court, in order to satisfy the court that the arrest was justified.

Section 12(1)(a) of the Constitution of the Republic of South Africa, 1996 guarantees the right to freedom in that no one shall be deprived of his liberty arbitrarily or without just cause. In *Minister of Safety and Security v Sekhoto* 2011

(1) SACR 315 (SCA) at paragraph 16, it was affirmed that the plaintiff need only allege the deprivation of his freedom and require of the defendant to plead and prove justification.

[9] In my view the plaintiffs have satisfied what was required of them by alleging the arrests. Also in evidence I accept their evidence as true. It was simple consistent and honest.

[10] In the circumstances, the defendant is found to be liable for the plaintiff's unlawful arrest and detention up to the time of their first appearance in court. They did not, in this court, testify about the circumstances surrounding their further detention, except to state that the matter was remanded in order for them to make an application for bail.

In the result,

1. The defendant is hereby held liable for the plaintiff's damages as a result of their unlawful detention from 19 March 2016 to 22 March 2016.

B MAJIKI

JUDGE OF THE HIGH COURT

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