

SOUTH AFRICA / JUDGMENT

Msudulu v Minister of Police (2014/6624) [2024] ZAGPJHC 810 (20 August 2024)

[2024] ZAGPJHC 810**COURT**

South Gauteng High Court, Johannesburg

BEFORE

Wright

CASE / FILE NUMBER

2014/6624

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IN THE HIGH COURT OF
SOUTH AFRICA
GAUTENG LOCAL
DIVISION, JOHANNESBURG
CASE

NO: 2014/6624

1.

Reportable: No

2.

Of interest to other judges: No

3.

Revised:

20
August 2024

In the matter between:

SIYABULELA
MSUDULU
Plaintiff
and
THE
MINISTER OF POLICE
Defendant

JUDGMENT

WRIGHT J

1. The plaintiff, Mr Msudulu instituted action in February 2014 against the defendant Minister of Police. In Claim A, it was alleged on his behalf that he had been wrongfully arrested by the police without warrant at Daveyton on Friday, 20 September 2013. Damages claimed were R250 000 as “ general damages “ and R100 000 for “ contumelia. “ No allegation is in made in Claim A as to detention or its length.
2. In Claim B, it was alleged that Mr Msudulu had been detained at the same time “ in a marked police vehicle whilst being transported to the Daveyton police station.” No allegation is made as to the length of detention. The same claims for damages are raised in Claim B as in Claim A.
3. The particulars of claim end with what appears to be a single claim for R350 000, interest and costs.
4. The barebones particulars of claim do not allege any prior medical condition suffered by Mr Msudulu nor is any detail pleaded as to the circumstances of his arrest nor those relating to the conditions in which he was held.
5. Ms HR Mandizha appeared for Mr Msudulu and Ms NE Cingo appeared for the Minister. I got the impression that both legal practitioners commendably did what they could, having apparently received instructions late in the day.
6. A special plea relating to inadequate notice of the claim to the police was abandoned. The trial proceeded only on the agreed remaining issues of merits and quantum.
7. Mr Msudulu testified.
8. He was born on 12 January 1983. He was 30 years old on Friday, 20 September 2013. He was employed as a panelbeater earning R250 per day. He has a Grade 9 education. He left school as he suffers from epilepsy. He was married and had a one year old child. He now lives in a squatter camp on a grant of R350 per month.
9. On the day in question, at about 3pm, he was riding his bicycle in Daveyton, having just obtained green traditional medication in the form of leaves for his epilepsy. It smelled like “ gameti “ which is a “ plant-cigarette.”
10. The police blocked his path, told him to raise his hands, searched him without asking his permission and arrested him. They handcuffed him on the street in front of people, some of whom he knew.
11. He told the police that the substance was his medication but they would not listen.
12. He was taken to the police station. The journey took about ten minutes.

13. He was not allowed to phone his wife to ask her to collect the food that he had been carrying for their child but his wife arrived later anyway, having been informed by those who had witnessed the arrest.
14. His wife later left him, saying that he was a criminal because of the arrest. Sadly, their child died soon after.
15. He was released about 71 hours after his arrest, at 2pm on Monday, 23 September 2013. He was never taken to court.
16. He was kept in a small cell, about 4 metres by 4 metres with about thirty others. The walls had blood on them. A blanket on the floor was urinated on by the inmates as the toilet was not working.
17. Mr Msudulu had an epileptic attack in the cell on the Saturday. He was not attended to by the police. He was not able to wash. There was no water in the cell. He was given no food either Friday or Saturday, other than two slices of bread and cold tea.
18. When Ms Mandizha sought to lead Mr Msudulu on a document, an SAPS 14A form and headed “ Notice of rights in terms of the Constitution “ Ms Cingo objected. It had not been discovered by the plaintiff. Ms Mandizha argued that it need not have been discovered as the plaintiff had received no notice to discover. Ms Cingo argued that under Rule 37(1) the plaintiff, having received notice of a trial date, was obliged to discover. Ms Cingo is correct. Mr Msudulu’s attorney had applied for and received a trial date and then set the matter down for trial.
19. Be that as it may, I allowed the document to be handed in as Exh A by Mr Msudulu after he had identified his signature on it. Ms Cingo had conceded that it would have been seen on caselines by the State Attorney during 2023. There was clearly no prejudice to the defendant by the admission into evidence of the document. Ms Cingo did not allege any.
20. Exh A supported Mr Msudulu’s evidence that he had been arrested and when he had been arrested.
21. Ms Mandizha sought to lead Mr Msudulu further on what happened on the Saturday, Sunday and Monday after the arrest. Ms Cingo then objected on the basis that there was no allegation in the particulars of claim that the detention had been for any length of time.
22. A pretrial minute, signed on 15 May 2023 by both attorneys records that it is the plaintiff’s case that he was detained from Friday, 20 September 2013 to Monday, 23 September 2013.
23. The minute expressly records a denial by the defendant of the arrest and his detention from 20 September 2013 to 23 September 2013. This denial reflects the plea.

24. Ms Mandizha did not seek an amendment to the particulars of claim. In these circumstances I upheld the objection by Ms Cingo. I ruled that the plaintiff could not testify as to what occurred on the Saturday to the Monday after arrest on the Friday. It is trite that the pleadings define the issues, absent admissions of which there are none relevant in the present case.
25. Mr Msudulu testified that he had been given no reason for his release. Nor did Mr Msudulu receive an apology. His rights were not explained to him. People thought that he was a criminal. He could not return to work as he was thinking about how he had been treated. He felt sick for a week from a blocked chest. He went to the local clinic but did not get treated. His employer said that it appeared that he was a criminal. He never got back his medication that the police had taken.
26. In cross-examination, Mr Msudulu conceded that he had never been diagnosed as epileptic.
27. After Mr Msudulu had testified his case was closed without further evidence. The defendant's case was then closed, no evidence having been led.
28. In my view, there is no doubt that Mr Msudulu was arrested and held at Daveyton police cells for three days. The conditions in the cell were cramped and unhealthy.
29. The onus is on the Minister to justify the arrest and detention. No attempt was made to do so. It follows on the evidence that the arrest and detention were unlawful.
30. On the question of damages, Ms Mandizha handed up written heads of argument. In addition, she relied on the decision of the SCA in *Motladile v Minister of Police* (414/2022) [2023] ZASCA 94 handed down on 12 June 2023. In that case, the plaintiff had been arrested and held for five days and four nights. He had been held in a filthy cell with five other inmates. He had been assaulted and his food was stolen. He had to miss a family wedding. He was an elder in the community and had been traumatised by the arrest and detention. R200 000 was held to be appropriate by the SCA as general damages.
31. In *Mahlangu and another v Minister of Police* (CCT 88/20) [2021] ZACC the Constitutional Court handed down judgment on 14 May 2021. The appellants had been arrested, held for about eight months, two months of which were in solitary confinement. They were tortured and confessions extracted. The court awarded the plaintiffs R500 000 and R550 000 respectively as general damages. This works out at roughly R2 300 per day. The court did not specify different awards for arrest, detention, assault or solitary confinement.
32. The attention of the SCA in *Motladile* was apparently not drawn to the decision in *Mahlangu*. I am bound in the circumstances to follow *Mahlangu*.
33. Mr Msudulu, on his pleaded case, has proved unlawful arrest and detention for about nine hours on Friday 20 September 2013 in filthy

conditions. The circumstances of Mr Msudulu's detention were not nearly as harsh as those in Mahlangu. Allowing for the depreciating value of money over time and taking into account the lighter circumstances of Mr Msudulu's detention compared to those in Mahlangu, R2 000 is all I can award on the case as pleaded.

34. The action commenced in February 2014. Neither side pushed the finalization of the case very hard. Under section 2A2(a) of the Prescribed Rate of Interest Act, 55 of 1975 interest runs on a judgment for an unliquidated debt from the date of demand or summons, whichever is the earlier.
35. It is common cause that summons was served on 28 February 2014. As at 28 February 2014 the prescribed rate was 15.5 % per annum.
36. Once the prescribed rate is triggered in a given case it does not change even with gazetted fluctuations in the rate. See *Davehill (Pty) Ltd v The Community Development Board* 1988(1) All SA 388 A especially at paragraphs 25 to 31.
37. Ms Mandizha sought interest from date of service of summons. I shall accede to this request, subject to the proviso that interest should not exceed capital. It would be unfair to saddle the defendant with interest beyond duplum when the plaintiff or his legal team was not doing much to advance the litigation.
38. The proviso itself needs a proviso. The defendant must pay the capital and interest straight away. If not, then interest should run from the day after judgment until the judgment debt is paid even if duplum has been reached and passed.

ORDER

1. The defendant is to pay the plaintiff R2 000.
2. Subject to paragraph 3 below, the defendant is to pay the plaintiff interest on the said sum at the prescribed rate of 15.5 % per annum from 28 February 2014 to date of payment.
3. Interest is not to exceed capital, provided that interest shall run, on capital and accumulated interest, at the prescribed rate of 15.5% per annum as from the day after judgment if payment of capital and interest is not made by then.
4. The defendant is to pay the plaintiff's costs on the lowest Magistrate's court scale.

GC Wright

Judge of the High Court

Gauteng Division, Johannesburg

HEARD: 19 August 2024 DELIVERED: 20 August 2024 APPEARANCES : Plaintiff Att HR Mandizha
Instructed by Bessinger Attorneys Inc 081 028 7342 bessingerattorneys@gmail.com Defendant Att
NE Cingo Instructed by State Attorney MR G Madikgetla GMadikgetla@justice.gov.za

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