

SOUTH AFRICA / JUDGMENT

Mwebaze v Minister of Police (78627/2019) [2021] ZAGPPHC 626 (21 September 2021) [2021] ZAGPPHC 626

COURT

North Gauteng High Court, Pretoria

BEFORE

Seneke

CASE / FILE NUMBER

78627/2019

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REPUBLIC OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

Case

Number: 78627/2019

NOT

REPORTABLE

NOT

OF INTEREST TO OTHER JUDGES

REVISED

In

the matter between:

ANTHONY

MWEBAZE Plaintiff

and

THE

MINISTER OF

POLICE Defendant

Delivered.

This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand down is deemed to be 10h00 on 21 September 2021.

JUDGMENT

SENEKE AJ

[1] In this matter the plaintiff instituted action proceedings against the defendant in respect of the following three claims:

1.1 Claim A - Unlawful arrest

Paragraph 7 of the particulars of claim states as follows:

On or about the 11th of August 2021⁹ at approximately 15h30 and at or near 18 Juk Street, Wapadrand, Pretoria, Gauteng Province, plaintiff was unlawfully arrested by the South African Police Service (SAPS), members known by the plaintiff as sergeant Mphahlele and Legodi of Garsfontein Police Station, on allegation that he stole his own son whom he is staying with in Cape Town. The said arrest lowered both dignity and reputation of the plaintiff.

Paragraph 8 states as follows:

The arrest was unlawful due to the fact that the arrest did not comply with the law regulating warrantless arrest and also due to the fact that the plaintiff is the biological father of the minor child and has been staying with the child since the mother left the matrimonial house in May 2018 and left the child under the care of the plaintiff. Plaintiff suffered damages amounting to R250,000.00 (Two Hundred and Fifty Thousand Rand) as a result of the unlawful arrest herein.

1.2 Claim B - Unlawful detention

Paragraph 9 states as follows:

Subsequent to the assault as stated above, the plaintiff was unlawfully detained in the motor vehicle for a period of about twenty five minutes and later on taken to the Garsfontein Police Station where he was further detained unlawfully in their holding cells.

Paragraph 10 provides as follows:

The unlawful detention of the plaintiff started after his arrest on the 11th of August 2019 until he was released on the 13th of August 2019 without appearing before court. Prior to his release on the 13th of August 2019, plaintiff was taken to Hatfield Magistrates Court where he was kept at the holding cell with other inmates for almost two hours. He was later told that he was at the wrong court and that he must be taken to Pretoria Central Magistrates Court where he was further kept at the holding cell for almost an hour and then told to go back to the police vehicle only to be transported back to Garsfontein Police station.

Paragraph 11 provides as follows:

The plaintiff was unlawfully deprived of his freedom for the entire of the detention. Plaintiff suffered damages amounting to R350,000.00 (Three Hundred and Fifty Thousand Rand) as a result of the unlawful detention herein.

1.3 Claim C: Psychological damages

Paragraph 12 provides as follows:

As a result of the conduct of the said members of the SAPS as aforesaid, by being unlawfully arrested and unlawfully detained, plaintiff was psychologically traumatized. Plaintiff suffered damaged amounting to R200,000.00 (Two Hundred Thousand Rand).

[2] The rest of the particulars of claim dealt with the following aspect:

2.1 Paragraph 13 provides as follows:

At all material times hereto, the said members of the SAPS mentioned above were employees of the defendant and were acting in the course and scope of their employment with the defendant.

2.2 Paragraph 14 provides as follows:

As a result of the foregoing the plaintiff holds the defendant vicariously liable for the conduct of his abovementioned employees.

2.3 Paragraph 15 provides as follows:

Due to the nature of the damages plaintiff suffered, it is not practical to break them down. Plaintiff claims damages in the amount of R800,000.00 (Eight Hundred Thousand Rand).

2.4 Paragraph 16 provides as follows:

Wherefore, plaintiff claims against the defendant as follows:

2.4.1 Payment of R250,000.00 (Two Hundred and Fifty Thousand Rand) in respect of Claim A;

2.4.2 Payment of R350,000.00 (Three Hundred and Fifty Thousand Rand) in respect of Claim B;

2.4.3 Payment of R200,000.00 (Two Hundred Thousand Rand) in respect of Claim C;

2.4.4 Interest at the rate of 10.25% per annum from date of demand to date of payment; and

2.4.5 Costs of suit.

[3] The defendant pleaded to the claims by plaintiff as follows:

3.1 By raising a special plea in terms of the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002. The basis of the special plea was that the plaintiff has failed or neglected to give the defendant timeous notice contemplated in section 3 of the Institution of Legal Proceeding Act, neither has the defendant consented in writing to the institution of the plaintiff's current legal proceedings as contemplated in the aforesaid statute.

3.2 The plea as to the merits in respect of the three claims A, B and C is a bare denial.

The merits

[4] The defendant conceded the merits 100% in favour of plaintiff.

The hearing

[5] The hearing on 30 August 2021 was in respect of the issue of quantum. Counsel for plaintiff and defendant proceeded with the matter without calling oral evidence. The parties filed heads of argument which were used to argue the matter.

The plaintiff's heads of argument

[6] The plaintiff referred in its heads of argument to what constitutes reasonable compensation that should be awarded to the plaintiff for damages suffered by referring to applicable legal principles and the decides cases. In terms of *Minister of Safety and Security v M Tyulu* 2009 (5) SA 85 (SCA) at paragraph 26, the court directed that:

"When assessing 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 are made to ensure that the damages awarded are commensurate with the injury inflicted."

[7] In *Minister of Safety and Security v Seymour* DT [2006] SCA 67 (RSA) at paragraph 17, it was held that:

"The assessment of awards of general damages with reference to awards made in previous cases is fraught with difficulty. The facts of a particular case need to be looked at as a whole, and few cases are directly comparable."

[8] In *Rahim v Minister of Home Affairs* (965/2013) (2015) ZASCA 92 (29 May 2015), the Supreme Court of Appeal held that the following factors are relevant in determining an appropriate award in a case of deprivation of liberty.

- (i) The circumstances under which the deprivation of liberty took place;
- (ii) The conduct of the defendants; and
- (iii) The nature and duration of the deprivation.

Circumstances applicable to the plaintiff

[9] It was submitted that the plaintiff is a lecturer at the University of Cape Town with a Master's Degree. He was unlawfully detained for two days at Garsfontein Police Station, kept in a filthy police cell with a non-functioning toilet situated at the corner of the police cell affording the plaintiff no right to privacy. He was made to sleep on a dirty and wet floor with no blankets. He was made to sleep with other prisoners that he was scared of.

Recommendation

[10] It was recommended that bearing in mind the applicable case law that an amount of R120,000.00 (One Hundred and Twenty Thousand Rand) will be a fair and reasonable compensation for the unlawful arrest and detention endured by the plaintiff. There was also a recommendation for costs at High Court scale.

The defendant's heads of argument

[11] In determining the general damages for arrest and detention the defendant referred the Court to the case of *Pitt v Economic Insurance CO Ltd*[1] which stated:

"I have only to add that the court must take care to see that its award is fair to both sides - it must give just compensation to the plaintiff, but it must not pour out largesse from the horn of plenty at the defendant's expense."

[12] During argument there was an exchange between the Bench and both counsel with regard to the stature of the plaintiff; that is him being a lecturer at a prominent university and the filthy conditions under which he was detained. Counsel for the defendant submitted that the stature of the plaintiff and the filthy conditions under which he was detained were not part of the plaintiff's pleaded case and accordingly implored the court to disregard the written submissions which are contained in the heads of argument of the plaintiff on these two aspects.

[13] I agree with the submission of counsel for the defendant and would disregard those submissions as they appear in the heads of argument as they are not part of the plaintiff's pleaded case. Had those aspects been part of the plaintiff's pleaded case, I would have taken them into consideration when making the reasonable amount of compensation that the plaintiff would be entitled to.

[14] The defendant recommended that an amount of R80,000.00 (Eighty Thousand Rand) for general damages would be a just and equitable compensation for the arrest and detention of the plaintiff.

[15] The defendant did not make any submissions with regards to costs.

[16] I accordingly make the following order:

1. The plaintiff is awarded an amount of R80,000.00 (Eighty Thousand Rand);
2. Interest at the rate of 10.25% per annum from 22 October 2019 to date of payment; and
3. Costs of suit.

SENEKE A

ACTING JUDGE OF THE HIGH COURT

Date of hearing: 30 August 2021

Date of Judgment: 21 September 2021

Appearances:

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[1] 1957 (3) SA 284 (D) at 287.

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