

SOUTH AFRICA / JUDGMENT

Ngwenya v Minister of Police (61929/14) [2017] ZAGPPHC 557 (17 August 2017)

[2017] ZAGPPHC 557

COURT

North Gauteng High Court, Pretoria

BEFORE

T Tonjeni

CASE / FILE NUMBER

61929/14

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NO: 61929/14

In

the matter between:

SBONGILE

NGWENYA

PLAINTIFF

and

MINISTER

OF

POLICE

DEFENDANT

JUDGMENT

TONJENI AJ

[1] On the 20th August 2014 the plaintiff issued summons against the defendant, claiming R800 000.00 [Eight Hundred Thousand Rand] in damages, computed as follows:

(i) Unlawful arrest - R200 000.00

(ii) Unlawful detention - R200 000.00

(iii) Pain and suffering - R200 000.00

(iv) Humiliation - R200 000.00

[2] The defendant delivered a notice of intention to defend but failed to plead, despite a notice of bar having been served on him

a) The plaintiff accordingly applied for a default judgement in terms of Rule 31(4). On the 29th April 2016, the application was postponed sine die and an opportunity was granted for the defendant to bring an application for the upliftment of the bar.

b) The main application for default judgement was set down for the 7th August 2017 by the plaintiff, 17 months later and the defendant had failed to take any step, in the matter to uplift the bar. Counsel

requested the indulgence of the court for the matter to stand down to the 11th August 2017 for the parties to try to knock together a settlement on the issue of the quantum of damages, as the merits of the case were no longer in dispute.

c) On the 11th August 2017 it became clear that the parties are unable to be ad idem on the quantum of the award for damages.

[3] The plaintiff's claim arises out of her having been arrested at a Cross Border area between the Republic of South Africa and

Mozambique, on the 13th June 2014. She was arrested and detained on a warrant of arrest under JHB CAS NO. 1621/09/2011 at the Komatipoort

Police holding cells by members of the South African Police Services. On the 15th June 2013, she was transferred to the Johannesburg Central Police Station where she was further detained until the 11th June 2014. She was released from custody after the State declined to prosecute her.

[4] It appears from the plaintiff's affidavit that she was arrested on a mistaken identity as the fugitive under JHB CAS NO.

1621/09/2011. She avers in her affidavit that "there is nothing as gross and painful than being arrested for no reason, detained for such long days...in all these 2 police stations and made to sleep on the floor... later to be told I have no case to answer to." Plaintiff's submission is that the arrest and detention were unlawful and occasioned by the negligence of the members of the SAPS who failed to verify her identity. She further avers that the unlawful arrest caused her unthinkable pain and unfair humiliation.

[5] As indicated already, no defence was tendered by the defendant.

[6] The only issue for the determination of this court is that of the quantum for the award on the damages. The defendant is tendering an amount of R150 000.00 [One Hundred And Fifty Thousand Rand], this being R30 000.00 [Thirty Thousand Rand] for each of the 5 days

plaintiff spent in unlawful detention. Plaintiff is asking for R50 000.00 (Fifty Thousand Rand) for each day. No evidence has been tendered by the plaintiff as being the basis for the amount claimed, besides that this seems to be an amount that is fair if one regard to similar cases in the long list of decided cases of this nature. Counsel referred the court to the following cases in support of their contentions:

Minister of Safety & Security v Seymour 2006 SCA 67

Minister of Safety & Security v Scott & Another 2014 ZA SCA 84

Mofokeng & Another v Minister of Police CASE NO. 2014/A3084

Vincent Ngoben v Minister of Police GNP CASE NO. 49069/2013

These can only serve as a guide. Determining the monetary value to these rights is not dependent on simple mathematical or scientific calculations.

Nugent JA in Minister of Safety and Security v Seymour

(2007) 1 All SA 558 (SCA) as paragraph 17, said:

"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 a whole and few cases are comparable. They are a useful guide to what other courts have considered to be appropriate, but they have no higher value than that."

And at paragraph 20 on page 564: "Money can never be more than crude solatium for the deprivation of what, in truth, can never be restored and there's no empirical measure for the loss"

[7] I am persuaded that the circumstances of this case reflect that of Vuyisa Mgele v The Minister of Police & 2 others, a decision of the Eastern Cape Local Division, Mthatha (Case No. 1257/2011), where it was incumbent upon the court to determine whether the claim for damages in the sum of R600 000.00 [Six Hundred Thousand Rand] was justified. Stretch J considered amongst others, the case of Minister of Safety and Security v Tyulu 2009 (5) SA85 (SCA), where Bosielo JA said the following at paragraph 26 of the

judgement:

"In 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/ 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 injuria accurately. Although it is always helpful

to have regard to the awards made in previous cases to serve as a guide, such an approach if slavishly followed can prove to be treacherous. The correct approach is to have regard to all the facts of this particular case and to determine the quantum on such facts."

[8] In *Masisi v Minister of Security and Safety & Another* 2011 (2) SACR 262 (GNP) at 267 paragraph 18, Magkoka J held as follows:

"The right to liberty is an individual's most cherished right, and one of the foundational values giving inspiration to an ethos premised on freedom, dignity, honour and security. Its unlawful invasion therefore strikes at the very fundament of such ethos. Those with authority to curtail that right must do so with the greatest circumspection, and sparingly. In *Solomon v Visser & Another* 1972 (2) SA 327 (C) at 345 C-E, it was remarked that, where members of the Police transgress in that regard, the victim of abuse is entitled to compensation in full measure for any humiliation and indignity which results. To this I add that, the plaintiff is entitled to a higher amount of damages than would be awarded, absent malice."

[9] In my view, the facts before me do not particularly show any aggravating features other than the plaintiff is a woman that was

incarcerated for five days before she was released.

[10] It is trite law that the defendant is liable for the wrongful and unlawful acts committed by members of the Police during the course and scope of their duties.

This seems to be the view adopted by the plaintiff's legal representative and by the Judges who made previous orders in the matters.

[11] Having regard to all of the above, I am of the view that an award of damages in the sum of R175 000.00 [One Hundred and Seventy Five Thousand Rand] is appropriate, made up as follows:-

(a.) Unlawful Arrest- R35 000.00

(b.) Unlawful Detention.- R 70 000.00

(c.) Humiliation - R70 000.00

[12] I accordingly make the following order:

1.) The defendant is directed to pay the plaintiff the sum of R175 000.00 [One Hundred and Seventy Five Thousand Rand] together with interest thereon determined in the current mora interest rate calculated from the date of judgement to the date of payment.

2.) The defendant is directed to pay the plaintiff's costs of suit at attorney and own client scale - as tendered by defendant's counsel.

3.) The Registrar of this court is directed to forward a copy of this judgment to the National Director of Prosecutions and to the

Independent Investigative Directorate for their attention together with a request that they report back to this court within 12 months regarding any action taken or contemplated with this matter.

T. TONJENI

ACTING JUDGE OF THE HIGH COURT

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Date of Hearing:

7 August 2017

Date of Judgment:

17 August 2017

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