

SOUTH AFRICA / JUDGMENT

Pather v Minister of Police (14512/13) [2016] ZAGPPHC 215 (31 March 2016)

[2016] ZAGPPHC 215**COURT**

North Gauteng High Court, Pretoria

BEFORE

V.R.S.N Nkosi

CASE / FILE NUMBER

14512/13

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA****GAUTENG****DIVISION, PRETORIA****CASE****NO: 14512/13****DATE:**

31 MARCH 2016

In the matter

between:

SALOSHINI

PATHER.....Plaintiff

And

THE MINISTER OF

POLICE.....Defendant

JUDGMENT**NKOSIAJ:**

1. This is a claim for damages for unlawful arrest and detention and assault against the Minister of Police. It was alleged by the Plaintiff that the arrests, detention and assault was committed by members of the South African Police Service who acted with the course and scope of their employment with the defendant.
2. By agreement between the parties the issues of liability were separated in terms of Rule 33(4) of the Uniform Rules, and accordingly separated the issues and postponed the aspects of quantum sine die. The matter proceeded on the issue of Defendant's liability only.

3. The Defendant accepted the duty to begin after which he proceeded to call two witnesses. He thereafter closed his case whereupon the Plaintiff applied for judgement in his favour.

Brief Background of this Matter

4. On or about 7 January 2013 the Plaintiff found herself at the Pretoria Railway Station commonly known as Bosman Station. This is the place where the alleged unlawful arrest detention and assault took place before she was taken to Pretoria Central Police. She was allegedly held between the periods as soon after 07h02 and released after 16h00 without appearing in court or being charged.
5. Two members uniform unit of the police who were on their way to catch a Gautrain en route to Johannesburg where they were (are) stationed.
6. Their testimony was that they noticed a group of people surrounding a vehicle as if there was a problem. They approached the scene and the vehicle referred to above was occupied by one lady, the Plaintiff.
7. On enquiry to the crowd the police officers were allegedly informed by members of the public that she allegedly collided with a Anris vehicle and was

trying to flee the scene. The arrest and detention and assault allegedly arose from this.

WITNESSED TESTIMONY

8. In discharge of its obligation the Defendant called its first witness Constable Moagi Petrus Diale who testified under oath that he is the arresting officer.
9. He confirmed his arrival at the Pretoria Station on his way to board a Gautrain to his workplace in Johannesburg in the company of other police officers.
10. It was his testimony that he specifically approached the Plaintiff while sitting in her vehicle, a Mazda 626 with the windows closed. He requested her to show him her drivers licence after she half - opened the window and the engine of the vehicle was running.
11. He asked to switch off the vehicle and she refused to either give him the driver's licence or to step out of the vehicle.
12. It was his further testimony that the Plaintiff was unco-operative and used finger - pointing and making noise that he and the other police officer were mere constables and she wants to leave to go to work. She did not want people to waste her time and that her husband is a high ranking official in the army.

13. He further stated that she failed to take instructions from him as police officers and she tried to put her vehicle in motion. This is when he put his hand in the vehicle switching off the engine and pulled out the key. He distracted her to effect an arrest and pulled her out of the vehicle. He then handcuffed her, for letting the vehicle to be in motion causing a collision with another stationary vehicle. He further advised her to go with them to the police station but she refused and started taking photos from her cellphone.
14. This was described as a second collision for which she was arrested for including an allegation of failing to take instructions and obstructing the traffic, within the parking area of the station.
15. He further stated that the arrest was preceded by a reasonable request for which made it possible to take her to the police station.
16. The second constable Modise has been talking to the driver of the other vehicle while the first witness was talking to the Plaintiff.

CROSS - EXAMINATION

17. It transpired during cross - examination that constable Diale, the arresting officer, had made an arresting affidavit soon after the arrest. It is in this statement where he indicated that he arrested her for negligent driving because she had already bumped into a black Auris Registration BC23NP GP.

18. His reasons for his arrest was questioned and put to him that he acted unreasonably and without a justification for arrest.
19. He left her at the Pretoria Central Police Station and left for Johannesburg with the other police officers. He had no knowledge of how she was released nor her court appearance, if there was any. It was put to him that there was no second collision and that it was a fabrication as it was not contained in his statement.
20. The second witness was Thabo James Modise who also testified under oath that he is a constable within the South African Police Services who was on duty on the 7th of January 2013 with the first witness. They were both on their way to board Gautrain from Pretoria to Johannesburg when their attention was drawn to the commotion at the station's parking area.
21. He confirmed that there was a first collision which they were told, happened before their arrival. No further details of this first collision was ever outlined, except that members of the public were shouting to the Plaintiff that she caused a collision and was trying to flee from the scene.

22. It was put to him that his version of the events that led to Plaintiffs arrest was also a fabrication to justify the unlawful arrest effected by Constable Diale. He insisted that she was obstructing traffic and refused to be taken to the Police Station at the Railway Station to complete an accident report. He further echoed the 1st witness that she was arrested for reckless and negligent driving.

ON CROSS - EXAMINATION

23. He conceded that he is the one appearing on a photo taken by the Plaintiff from her vehicle before her arrest. This photo depicts that he was standing in front of the camera and behind him there was a vehicle on a parking. This contradicted the fact that Plaintiff was obstructing traffic and confirms that she was parked adjacent the vehicle this witness claimed to have collided with. It further confirms that there was no obstruction of traffic as Plaintiffs vehicle was at a parking lot adjacent to another vehicle.
24. He further conceded on cross-examination that, on his statement, there is no mention of a collision between Plaintiffs vehicle and the Auris which Constable Diale testified that it was the cause to arrest her for committing an offence in his presence.
25. He further did not know if the Plaintiff was formerly charged and whether she appeared in court or not and whether the case was finalised or not.
26. It was put to both witnesses that excessive force was used in the arrest of the Plaintiff which was denied by both witnesses. This was not taken any further.
27. It was further put to both witnesses that there was no reason for the arrest of the Plaintiff whom, it was contended on her behalf that she did not commit any offence let alone a Schedule 1 offence. The arresting officer was said to have not entertained a reason suspicion against the Plaintiff to justify an arrest. It was put to both witnesses that the arrest and detention of the Plaintiff was unlawful.
28. Defendant closed its case without proving any collision of either the 1st collision nor the 2nd collision. No further evidence was led to prove the lawfulness of the arrest and detention of the Plaintiff, nor leading of evidence that there was a reasonable suspicion to justify an arrest was reasonable or based on objective grounds.

29. PLAINTIFFS CASE

Plaintiff closed its case without testifying.

30. Plaintiff applied for judgement to be granted in her favour to the following effect that:

30.1 The Defendant is liable to compensate her for 100% of her proven damages in respect of her unlawful arrest, detention and assault on 7 January 2013;

30.2 The Defendant is to be ordered to pay the cost of suit to the date of the determination of the aspect of liability;

31 PLAINTIFFS FURTHER ADDRESS IN SUPPORT OF ITS APPLICATION TO BE CONSIDERED:

31.1 That Plaintiff is entitled to apply for judgement at the close of the Defendant's case without leading evidence and without closing its case. It was submitted on her behalf that the test to be applied is similar to that of absolution from the instance where a Plaintiff has not discharged its onus. It was further submitted that if a Defendant upon whom the onus of proof rests has failed to lead such evidence in discharge of that onus to the effect that a reasonable man could have not come to the conclusion that it might be accepted, the court would be entitled to give judgement for the Plaintiff.

31.2 This proposition of an application for judgement, where the Defendant bore the onus and before the Plaintiff closing its case or leading evidence, was introduced in the old case of Siko vs Zonsa 1908 (T) 1013 where the court held that it would be a useless (exercise) waste of time to proceed with the matter further.

31.3 The Siko case was confirmed as an applicable principle in the case of Hodgkinson vs Fourie 1930 TPD 740 at page 743 where it was held as follows: "At the close of the case of the one side upon whom the onus lies, the question which the judicial officer has to put to himself is: Is there evidence on which a reasonable man might find for that side".

Further submission was that if the evidence is not only not convincing but actually found by the trial court to be an utter fabrication, then it is evidence on which a reasonable man would not find, and the court would be justified to grant absolution. This court agrees with this submission as logical and sensible.

31.4 I am of the view that it will be unreasonable for the Plaintiff to lead evidence as the Defendant has not made out a prima facie case which warrants evidence in rebuttal from the Plaintiff

31.5 It is accepted that the evidence by both Defendant's witnesses was a fabrication in an attempt to justify a wrongful arrest which was not based on objective or reasonable grounds:

31.5.1 no offence was committed in the presence of the arresting officer

31.5.2 no evidence of reckless and negligent driving was proven

31.5.3 no proof of any collision or damages on the vehicles alleged to have collided nor a witness who saw the first collision and/or the driver of the Auris

31. Consequent upon the above the following facts are found to have been proven:

- a) That the Plaintiff was arrested without a reasonable cause;
- b) She was detained between the period between 08H00 to 16H00 on the 7th January 2013.
- c) The Defendant's action was unlawful in both the arrest and detention and that the Defendant has failed to prove the lawfulness of such arrest and detention.

32.1 therefore find that the version by both Defendant's witnesses with regard to the circumstances that led to the Plaintiffs arrest as unpersuasive, not corroborated, neither credible nor reliable. Their evidence was riddled with inconsistencies and contradictions and deviations from their own written statements.

34. It is my further finding that no case of assault was proven and therefore this aspect is rejected.

35.1 am therefore in full agreement with the views expressed in the leading case on unlawful arrest and detention: Minister of Safety & Security vs Sekhoto and Another and my conclusion is that the arrest and detention of the Plaintiff was not based on the reasonable grounds and therefore not lawful. The Defendant has failed to establish an essential element of defence: lawfulness.

36. In the result the following order is made:

36.1 Judgement is granted against the Defendant as follows:

- a) The Defendant is liable for 100% for proven damages resulting from unlawful arrest and detention
- b) The quantum is postponed sine dies
- c) The Defendant is ordered to pay the Plaintiffs costs to date hereof on party to party scale.

V.R.S.N NKOSI

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION,

PRETORIA

Advocate for the Plaintiff: J.C Van Heerden

Briefed by: Geldenhuys Malatji Inc.

Advocate for the Defendant: M.S Phaswane

Briefed by: The Office of the State Attorney

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