

SOUTH AFRICA / JUDGMENT

Seymour v Minister of Safety and Security (26508/01) [2005] ZAGPHC 18; 2006 (5) SA 495 (W); [2005] 2 All SA 296 (W) (16 February 2005) [2005] ZAGPHC 18

COURT
High Courts - Gauteng

BEFORE
N.P. Willis

CASE / FILE NUMBER
26508/01

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IN THE HIGH COURT OF SOUTH AFRICA (Witwatersrand Local Division) Case No: 26508/2001 In the matter between: Dennis SEYMOUR

Plaintiff and The Minister of Safety and Security

Defendant _____ JUDGMENT WILLIS J.

[1] This is a claim for general damages consequent upon an unlawful arrest and related matters.

[2] The plaintiff is a 66-year old man. He grew up in impoverished circumstances in East London as a so-called “coloured person”. He proudly describes himself now as a “Black South African”. His highest level of formal education is Standard 10. For many years he was a trades union official. He is today, the managing director of a public company and chairman of the Ennersdale Farmers’ Co-operative Association. In both these capacities, he was actively involved in the Simunye Dairy Project which received assistance from, among others, the Danish International Development Agency (DANIDA) and the Land Bank. The Simunye Dairy Project has, in the past, received high praise in the press, from the Royal Danish Embassy and the South African Government. The project received public commendation from the provincial and national ministries of agriculture in particular. [3] It is common cause that the plaintiff was arrested on 29th December 2000, without a warrant (on charges for which a warrant for his arrest would have been required) by one Inspector Smith, who, at the time, was acting within the course and scope of his employment with the South African Police Services. Inspector Smith

has since been discharged from service. It is not clear precisely on what charges the plaintiff was arrested. When he was detained

initially, he was told it was for “intimidation”, but the next day, when he was taken to the Johannesburg Central Police Station, he was told it was for fraud. Inspector Smith came to the business premises of the plaintiff late on the afternoon of 29th December 2000, and commanded the plaintiff to accompany him to the Ennersdale Police station, where he informed him he was under arrest. Attempts by the plaintiff’s family to arrange for him to be released on bail were thwarted by Inspector Smith. The plaintiff’s family arranged for him to be visited by the family doctor, Dr Vallabh, the next day. Dr

Vallabh examined the plaintiff during the morning and discovered that he was suffering from angina, an irregular heartbeat, high blood pressure and a high pulse rate. Dr Vallabh informed the police that there were serious risks associated with the health of the plaintiff and that he should immediately be sent to the

Rand Clinic for further tests, observations and treatment. Although the plaintiff had previously suffered from hypertension, Dr Vallabh had no doubt that the plaintiff's medical condition, on that day, was directly attributable to the stress which the plaintiff had been experiencing as a result of his detention. When Dr Vallabh was informed by the plaintiff's family late that afternoon that he had still not been taken to Rand Clinic, Dr Vallabh again prevailed on the police to take him to hospital as a matter of urgency. The police relented, but took him to the hospital only after he had been taken to the Johannesburg Central Police Station. He was put in the back of a van and transported, according to various witnesses, at an unnecessarily high speed and in extreme discomfort. The hospital records confirm the seriousness of Dr Vallabh's diagnosis.

The plaintiff was kept under arrest at the Rand Clinic and was brought to court on 3rd January, 2001. All charges were withdrawn against him and no further charges have since been laid. The plaintiff has a completely clean criminal

record.[4] Subsequent to the plaintiff's release, Superintendent Smith arrived uninvited at a meeting of the Simunye Dairy, at which were present not only the plaintiff but also the Simunye Dairy's auditor, a representative of the Danish International Development Agency (DANIDA), the Land Bank and various other persons. Superintendent Smith was asked by the plaintiff to leave the meeting. He obliged, but before he did so, he said to the plaintiff, in the presence of the others, that he would still "get" the plaintiff "for fraud and misappropriation of funds". Since that date, the Simunye Dairy Project has received no further financial assistance from DANIDA or the Land Bank.[5] Quite why Superintendent Smith acted as he did is not clear. It does seem that some members of Ennersdale Farmers' Co-operative Association were unhappy that, for reasons beyond the control of the plaintiff, they could not participate in the Simunye Dairy Project and complained to the police.[6] The evidence of the plaintiff, his family, Dr Vallabh, who has been his medical doctor both before and after the incidents in question, and Dr Shosana Saffer, a psychiatrist who examined him afterwards, all indicate that the plaintiff suffered extreme stress during his unlawful arrest and detention as well as afterwards as a result thereof. His reputation has suffered and his dignity has been most sorely infringed. The plaintiff had travelled, mainly by dint of hard work, from humble beginnings to being a man of considerable standing in the community. The plaintiff is a proud man and a devout Christian. He is the patriarch of a large family of children and grandchildren. Every year as the Old Year

passed and the New Year was ushered in, the plaintiff and his family would experience the event with prayers of thanks for things

past and prayers of hope and faith for things new. It hurt both the plaintiff and his family deeply that he was detained in this manner and in these circumstances at the height of the festive season. For reasons which are not clear the relationship between the plaintiff and his wife deteriorated as a result of these incidents, according to Dr Vallabh. The plaintiff's wife took it very badly. She has since died.[7] The plaintiff has claimed R10 million as general damages for "pain and suffering, emotional shock, deprivation of liberty, post-traumatic syndrome, invasion of privacy, intimidation and contumelia".[8] Essentially, all that is in issue is the question of quantum. Mr Stockwell, who appears for the plaintiff, agreed that it would be best that I make a single award for "general damages" rather

than separate awards for specific items: the events and the trauma arising therefrom are so closely inter-related that it would not be sensible to do otherwise.[9] Counsel from both sides referred me to various cases relevant to the question of quantum. I have read others as well. These, in chronological order, are the cases which I have read to decide the question: *May v Union Govt.* 1954 (3) SA (N); *Solomon v Visser and Another* 1972 (2) SA 327(A); *Donono v Minister of Prisons* 1973 (4) SA 259(C); *Areff v Minister van Polisie* 1977 (2) SA 900(A); *Minister van Polisie en 'n Ander v Gamble en 'n Ander* 1979 (4) SA 759(A); *Minister van Wet & Orde v Van Den Heever* 1982(4) SA 16 (C); *Stapelberg v Afdelingsraad Van Die Kaap* 1988 (4) SA 875 (C); *Ramakulukusha v The Commander Venda National Force* 1989(2) SA 813(V); *Ochse v King Williams' Town Municipality* 1990 (2) SA 855(E); *Thandani v Minister of Law & Order* 1991 (1) SA 702(E); *Mthimkulu and Another v Minister of Law and Order* 1993 (3) SA 432(E); *Tdt v Ipser* 1993 (3) SA 577(A); *Moses v Minister of Law and Order* 1995 (2) SA 518 (C); *Bentley and Another v Mc Pherson* 1999 (3) SA 854(E); *Themba v Minister of Safety and Security* (unreported judgment in this division of my brother Marais J, Case No. 14968/97 delivered 8 Mar 2000); *Tobani v Minister of Correctional Services* NO [2000] 2 All SA 318 (SE); *Liu Quin Ping v Akani Egoli (Pty) Ltdt/a Gold Reef City Casino* 2000 (4) 68 (W); *Manase v Minister of Safety and Security and Another* 2003 (1) 567 (CKHC).

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JUDGMENT

WILLIS J.

[1] This is a claim for general damages consequent upon an unlawful arrest and related matters. [2] The plaintiff is a 66-year old man. He grew up in impoverished circumstances in East London as a so-called "coloured person". He proudly describes himself now as a "Black South African". His highest level of formal education is Standard 10. For many years he was a trades union official. He is today, the managing director of a public company and chairman of the Ennersdale Farmers' Co-operative Association. In both these capacities, he was actively involved in the Simunye Dairy Project which received assistance from, among others, the Danish International Development Agency (DANIDA) and the Land Bank. The Simunye Dairy Project has, in the past, received high praise in the press, from the Royal Danish Embassy and the South African Government. The project received public commendation from the provincial and national ministries of agriculture in particular. [3] It is common cause that the plaintiff was arrested on

29th December 2000, without a warrant (on charges for which a warrant for his arrest would have been required) by one Inspector Smith, who, at the time, was acting within the course and scope of his employment with the South African Police Services. Inspector Smith has since been discharged from service. It is not clear precisely on what charges the plaintiff was arrested. When he was detained initially, he was told it was for "intimidation", but the next day, when he was taken to the Johannesburg Central Police Station, he was told it was for fraud. Inspector Smith came to the business premises of the plaintiff late on the afternoon of 29th December 2000, and commanded the plaintiff to accompany him to the Ennersdale Police station, where he informed him he was under arrest. Attempts by the plaintiff's family to arrange for him to be released on bail were thwarted by Inspector Smith. The plaintiff's family arranged for him to be visited by the family doctor, Dr Vallabh, the next day. Dr Vallabh examined the plaintiff during the morning and discovered that he was suffering from angina, an irregular heartbeat, high blood pressure and a high pulse rate. Dr Vallabh informed the police that there were serious risks associated with the health of the plaintiff and that he should immediately be sent to the Rand Clinic for further tests, observations and treatment. Although the plaintiff had previously suffered from hypertension, Dr Vallabh had no doubt that the plaintiff's medical condition, on that day, was directly attributable to the stress which the plaintiff had been experiencing as a result of his detention. When Dr Vallabh was informed by the plaintiff's family late that afternoon that he had still not been taken to Rand Clinic, Dr Vallabh again prevailed on the police to take him to hospital as a matter of urgency. The police relented, but took him to the hospital only after he had been taken to the Johannesburg Central Police Station. He was put in the back of a van and transported, according to various witnesses, at an unnecessarily high speed and in extreme discomfort. The hospital records confirm the seriousness of Dr Vallabh's diagnosis. The plaintiff was kept under arrest at the Rand Clinic and was brought to court on 3rd January, 2001. All charges were withdrawn against him and no further charges have since been laid. The plaintiff has a completely clean criminal record.

[4] Subsequent to the plaintiff's release, Superintendent Smith arrived uninvited at a meeting of the Simunye Dairy, at which were present not only the plaintiff but also the Simunye Dairy's auditor, a representative of the Danish International Development Agency (DANIDA), the Land Bank and various other persons. Superintendent Smith was asked by the plaintiff to leave the meeting. He obliged, but before he did so, he said to the plaintiff, in the presence of the others, that he would still "get" the plaintiff "for fraud and misappropriation of funds". Since that date, the Simunye Dairy Project has received no further financial assistance from DANIDA or the Land Bank.

[5] Quite why Superintendent Smith acted as he did is not clear. It does seem that some members of Ennersdale Farmers' Co-operative Association were unhappy that, for reasons beyond the control of the plaintiff, they could not participate in the Simunye Dairy Project and complained to the police.

[6] The evidence of the plaintiff, his family, Dr Vallabh, who has been his medical doctor both before and after the incidents in question, and Dr Shosana Saffer, a psychiatrist who examined him afterwards, all indicate that the plaintiff suffered extreme stress during his unlawful arrest and detention as well as afterwards as a result thereof. His reputation has suffered and his dignity has been most sorely infringed. The plaintiff had travelled, mainly by dint of hard work, from humble beginnings to being a man of considerable standing in the community. The plaintiff is a proud man and a devout Christian. He is the patriarch of a large

family of children and grandchildren. Every year as the Old Year passed and the New Year was ushered in, the plaintiff and his family would experience the event with prayers of thanks for things past and prayers of hope and faith for things new. It hurt both the plaintiff and his family deeply that he was detained in this manner and in these circumstances at the height of the festive season. For reasons which are not clear the relationship between the plaintiff and his wife deteriorated as a result of these incidents, according to Dr Vallabh. The plaintiff's wife took it very badly. She has since died.[7] The plaintiff has claimed R10 million as general damages for "pain and suffering, emotional shock, deprivation of liberty, post-traumatic syndrome, invasion of privacy, intimidation and contumelia".

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The plaintiff has claimed R10 million as general damages for "pain and suffering, emotional shock, deprivation of liberty, post-traumatic syndrome, invasion of privacy, intimidation and contumelia

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[8]Essentially, all that is in issue is the question of quantum. Mr Stockwell, who appears for the plaintiff, agreed that it would be best that I make a single award for "general damages" rather than separate awards for specific items: the events and the trauma arising therefrom are so closely inter-related that it would not be sensible to do otherwise.

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Counsel from both sides referred me to various cases relevant to the question of

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May v Union Govt

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1954 (3) SA (N)

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Solomon v Visser and Another

1972 (2) SA 327(A)

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Donono v Minister of Prisons

1973 (4) SA 259(C)

1973 (4) SA 259

Areff v Minister van Polisie

1977 (2) SA 900(A)

1977 (2) SA 900

Minister van Polisie en 'n Ander v Gamble en 'n Ander

1979 (4) SA 759(A)

1979 (4) SA 759

Minister van Wet & Orde v Van Den Heever

1982

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SA 16 (C)

Stapelberg v Afdelingsraad Van Die Kaap

1988 (4

) SA 875 (

C)

Ramakulukusha v The Commander Venda National Force

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(2) SA 813(V)

Ochse v King Williams' Town Municipality

1990 (2) SA 855(E)

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Thandani v Minister of Law & Order

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Tdt v Ipser

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Moses v Minister of Law and Order

1995 (2) SA

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Bentley and Another

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1999 (3) SA 854(E)

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Themba v Minister of Safety and Security

(unreported judgment

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my brother

Marais J

, Case No.

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Tobani v Minister of Correctional Services NO

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2000 (4) 68 (W);

Manase v Minister of Safety and Security and Another

2003 (1) 567 (CkHC)

Each case must be decided on its own merits and the facts in each of the above cases are distinguishable from the facts in the present one.

[10]

The case which I find most illuminating, however, is

supra

).

In that case

an advocate was wrongfully arrested and detained for a few hours. Broome JP awarded the plaintiff1000. This

amount

would be worth of the order of R350 000 to R400 000 today.

The compounding effect of the erosion of the value of money over time is truly astonishing.

Of course, it is dangerous to try to determine the present value of money which was used 50 years ago: over such a period of time there are considerable changes in the ways in which people live and move and have their being. Nevertheless, it is clear that 1000, 50 years ago, was a substantial sum of money.

The case was decided

0 years before we had constitutionally enshrined rights to freedom and dignity and much else besides. In

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amakulukusha

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case

the learned judge (at 847 B-C) expressed his surprise at "the comparatively low an

d insignificant awards made in S

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frican courts for infringements of personal safety, dignity, honour, self-esteem and reputation." I share his surprise.

It is nevertheless sobering to reflect that, at the time when the learned judge delivered his judgment, detention without trial was a measure sanctioned and not infrequently resorted to by the State. So careless was the State as to the concept of dignity that rights and privileges were allocated according to a person's race.

It seems to me that the Courts must move, however glacially, to reflect in their awards for damages in cases of this nature, the changes in values which have occurred not only in society as a whole but which we as judges are expected to apply.

[11]

Section 12 of our Cons

itution gives everyone th

right to "

freedom and security of the person, which includes the right-

(a)

not to be deprived of freedom arbitrarily or without just cause;(b)not to be detained without trial.”

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rarily or without just cause;

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not to be detained without trial.”

Section 14 confers on everyone the right to privacy. Section 35 gives detailed rights to arrested, detained and accused persons, including the right to be brought expeditiously to court, to be released if the interests of justice permit and upon reasonable conditions, to humane conditions of detention, including medical treatment and to be informed of the reasons for their detention.

[12] All these rights were in some degree infringed. The plaintiff, most passionately, and perhaps most tellingly as a man of “the struggle,” invoked his right to dignity in terms of section 10 which provides that: “Everyone has inherent dignity and the right to have their dignity respected and protected.” Unquestionably this right was infringed. [13] Later this year, people of goodwill everywhere will celebrate the 60th anniversary of the end of the Second World War. It will be an appropriate time for us to remind ourselves, once again, how important the human rights enshrined in our Constitution are. If we, as Courts, value those rights, this must be reflected in our judgments. The police necessarily have massive and ferocious powers. The Courts must be astute to stand resolute against any abuse thereof. It is we alone who are the last defence against the denial of freedom. In my respectful view, more than a judicial “slap on the wrist” is warranted in this case. It is trite that the primary function of awards for damages under the *actio injuriarum* is to compensate the victim for his or her *iniuria* and is not exemplary. Lest it be thought that I have misunderstood the position, I wish to emphasise that my conclusion is this: a shift, even though it is not a so-called “sea-change”, must be manifested in the value which the Courts attach to freedom and, correspondingly, the value to be applied to a person’s deprivation thereof.

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[14] Taking everything into account, the following order is made: The defendant is to pay the plaintiff - (a)

[14]

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defendant is to pay the plaintiff

The sum of R500 000,00 (Five hundred thousand rands); (b) Interest on the aforesaid sum, at the prescribed rate of interest, from date of judgment to date of payment; (c) Costs of suit.

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(Five hundred thousand rands);

Interest on the aforesaid sum

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(c)

Costs of suit.

DATED AT JOHANNESBURG THIS 16th DAY of FEBRUARY, 2005 N.P. WILLIS JUDGE OF THE HIGH COURT

DATED AT

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THIS 16

DAY of FEBRUARY, 2005

N.P. WILLIS JUDGE OF THE HIGH COURT

Appearance for the Plaintiff: Mr Moodliyar (attorney) of Moodliyar and Bedhesi For the Defendant: R Stockwell SC Attorneys for Defendant: State Attorney

Appearance for the Plaintiff: Mr Moodliyar (attorney) of Mo

dliyar and Bedhesi For the Defendant: R

SC

Attorneys for Defendant: State Attorney

Dates of hearing: 14

and

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February, 2005

Date of judgment:

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