

SOUTH AFRICA / JUDGMENT

# Sylvia v Minister of Police (307/2021) [2023] ZALMPTHC 5 (24 March 2023)

**[2023] ZALMPTHC 5****COURT**

Limpopo High Court, Thohoyandou

**BEFORE**

TC Tshidada

**CASE / FILE NUMBER**

307/2021

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**Policy****IN****THE HIGH COURT OF SOUTH AFRICA****LIMPOPO****LOCAL DIVISION, THOHOYANDOU****CASE****NO:**

307/2021

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: YES

(3)REVISED.

DATE:24/3/2023

**SIGNATURE:**

TC TSHIDADA J

In

the matter

between:                    RATSHILUMELA  
                                 KHATHUTSHELO  
                                 SYLVIA  
                                 Plaintiff  
                                 And  
                                 MINISTER  
                                 OF  
                                 POLICE  
                                 Defendant

## JUDGMENT

TSHIDADA J.

= : {

## INTRODUCTION

- [1] This is an action instituted against the defendant for delictual damages arising out of an unlawful arrest and detention of the plaintiff by members of the South African Police Services who were there and then acting in their official capacities as employees of the defendant.
- [2] These proceedings were instituted in March 2021. The plaintiff particularized the events relating to the current claim and the course of action in some detail as set out herein below.
- [3] The defendant filed a plea which by and large was a bare denial to the plaintiff's claim against it. The said plea was preceded by a special plea of the plaintiff's non-compliance with the provisions of Section 3 of the Institution of Legal Proceedings against Certain Organs of State Act 40 of 2002.
- [4] However, the defendant did not pursue the special plea when it realized that the plaintiff had in fact complied with section 3 of the above Act.
- [5] At the commencement of these proceedings, both counsel informed the court that the issue of the defendant's liability in this action was amicably resolved by agreement between the parties on 5 July 2022. The defendant has accordingly conceded 100% liability of the plaintiff's damages that are to be agreed between the parties, alternatively to be proven by the plaintiff before court on quantum, in the event parties were unable to settle the matter.
- [6] Essentially the defendant admitted the unlawfulness of the plaintiff's arrest and detention save for the consequent damages allegedly suffered by the plaintiff. Indeed the parties could not settle the outstanding quantum amongst themselves, hence the matter came before me for trial on that respect.

- [7] Therefore, this court became ceased with this matter to determine whether, as a result of the arrest and detention, did the plaintiff suffer any damages and the quantum thereof.

#### FACTUAL BAKGROUND

- [8] The plaintiff is an adult female professional nurse by profession stationed at Donald Fraser Hospital Vhufuli, residing at stand number 1[...] Z[...] L[...], Vhembe district within the Limpopo province.
- [9] The plaintiff avers that a day before the 27 December 2020 upon her return from work, she arrived to a message from her family members that she was being summoned to appear at the Thohoyandou SAPS Detective section the following day.
- [10] On the morning of the 27 December 2020 at around 9h00, the plaintiff was upon her arrival at the Thohoyandou SAPS arrested and detained on allegedly a Contempt of Court order charge under Cas No. 705/12/2020. Worth mentioning is that the arrest was effected without a warrant of arrest authorizing plaintiff's arrest neither was a copy of alleged contempt of court order shown to her before she was arrested and detained.
- [11] Plaintiff spent a day and night in detention. She was released the following day without making any appearance before a court of law, least informed of what has since happened to the court order she was alleged to have violated.
- [12] Ostensibly, this matter demonstrated to me another classic case of abuse of powers and authority by members of SAPS over our helpless innocent law abiding citizens. A continuing conduct that our courts have been frowning over across the country. Sadly, it is a conduct which does not only deprive and violate the Constitutional rights of freedom and liberty of persons like the plaintiff in casu, but equally very costly on the fiscus of the country simply because of the recklessness and uncaring behavior of some of the government officials like the defendant's personnel involved in this matter, the personnel whose conduct and deeds was unbecoming of law enforcement officer/s considering the demonstrated unaccountability and unethical conduct herein, of which it must be stated that most of those identified have all along been allowed to walk away scot-free.
- [13] The court quizzed the defendant to understand the reason why was the plaintiff arrested in such a flagrant manner. It then emerged through the defendant's counsel

#### submissions

that, in fact there was a court order apparently granted by the Magistrate Court for the District of Thulamela held at Thohoyandou on or 12 November 2020 on which the plaintiff was one of parties.

- [14] The said court order read as follows:

Having heard the legal representative for the applicant, and having perused the document filed on record, it is hereby ordered as follows:-

14.1 the non-compliance with the rules is hereby condoned and that this matter is to be heard on urgent basis in terms of Rule 55(5).

14.2 that the first respondent is hereby ordered to give medical condition / background of the minor child to the medical practitioner at Polokwane on the 9 December 2020.

14.3 that the second respondent is restrained / interdicted from denying the first respondent to give medical condition for the minor child on the 9th of December 2020.

14.4 the rule nisi is hereby granted, calling upon the respondent to show cause if any, on the 8th of December 2020 at 15h00 why the interim order should not be made final order of the Court.

[15] It was however not clarified how the police came to be in possession of the above stated court order, neither was it confirmed whether the plaintiff who was the first respondent in those proceedings was aware of the said court order, since the preamble of the court order reflect that the said matter appeared as an ex-parte application brought against the plaintiff and another.

[16] The defendant's counsel frankly revealed that it was the said court order that triggered and prompted the unjustified arrest of the plaintiff.

[17] What is startling though is that upon perusal and scrutiny of the orders granted thereat, nowhere does it appear that the court heard an application for contempt of court order against the plaintiff herein. No order authorizing the arrest of the plaintiff for violating a court order was granted on the day.

[18] Having regard to the above, it therefore leaves much to desire on what exactly was the reason and/or the basis for the plaintiff's arrest when the contents of the order relied upon had nothing to do with the alleged contempt and made no mention of anyone's arrest.

[19] This is one amongst other unfortunate situations or cases which in my view has gone far too long unattended and unabated to the extent that it would be my recommendation to the police ministry and/or relevant authorities that it is about time that there has to be consequent management on some of their unscrupulous personnel and/or government officials in general, which should not exclude intensified training on the police's obligation to always maintain law and order countrywide, more importantly by ensuring proper and thorough investigation before effecting arrest where necessary. This endeavor shall surely minimize and reduce the legal costs of unnecessary litigation against government departments like in the current matter.

[20] In her particulars of claim, the plaintiff averred that, the defendant's officials lured her to the police station, falsely, maliciously

opened and laid a criminal charge of contempt of the court order against her when the implicated officials had no reasonable or probable cause to do so against the background of this case. A conduct of the police which I pause to mention that I find extremely disingenuous and disparaging.

[21] Plaintiff contends the aforesaid arrest and detention was unlawful. I equally have no reason to disagree with the plaintiff in that regard.

[22] In the circumstances I find that the plaintiff's arrest and detention by the police officers on the day under consideration was indeed unjustified and unlawful. There was no basis whatsoever for the police to arbitrarily and without any just cause to deprive the plaintiff for the above stated duration of her liberty, freedom and a day that she was supposed to have woken up from the comfort of her home before proceeding to work.

[23] Her subsequent release the following day without any proper explanation by the police on why she was arrested in the first place, came after the damage was done already.

[24] What was even more embarrassing on the day is that she was arrested in full view and presence of her teenage son for no apparent reason.

[25] The defendant's liability was correctly conceded. The defendant's legal representatives are therefore commended for having appropriately

applied their mind to the matter and for advising their client accordingly.

## QUANTUM

[26] Plaintiff argues in her particulars of claim that as a result of her unlawful arrest and detention for the alluded duration, she was deprived of her freedom of movement, her personal liberty and dignity infringed. She remained embarrassment, emotional shocked and as a result she suffered damages in the amount of R1 000 000.00 (One Million Rand), which she now seeks compensation from the defendant.

## ASSESSMENT OF DAMAGES FOR UNLAWFUL ARREST AND DETENTION.

[27] It is trite law that in cases involving deprivation of liberty, the quantum of damages to be awarded is in the discretion of the trial court. Such discretion is to be exercised fairly, and generally damages calculated according to what is equitable and reasonable and dependent on the merits of the case itself (*ex aequo et bona*).

[28] Countless decisions have been pronounced by our courts dealing with considerations and factors to be taken into account when dealing with matters relating to unlawful arrest and detention.

[29] Visser & Potgieter on Law of Damages[1] sets forth factors which more often than not plays a role in the assessment of unlawful arrest and detention damages.

[30] In *Minister of Safety and Security v Tyulu*[2], Bosielo JA stated the following issues to be considered by the court in order to decide what an appropriate amount of compensation on matters of this nature, which reads thus:

"In the assessment of damages for unlawful arrest and detention, it is important to bear in mind that the primary purpose is not 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 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 made for such infractions reflect the importance of the right 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 with any kind of mathematical accuracy. Although it is always helpful to have regard to 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 of the facts of the particular case and to determine the quantum of damage on such facts (*Minister of Security and Seymour* 2006 (6) SA 320 (SCA) at para 17; *Rudolph and Others v Minister of Safety and Security and Another* 200 (5) SA 94 (SCA) [2009] ZASCA 39 paras 26-29)."

[31] In *Minister of Safety and Security v Seymour* supra, at paragraph 17 Nugent JA made the following pronouncement, and I quote:

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

[32] Factors which usually plays a role are the circumstances under which the deprivation of liberty took place, such as the presence or absence of improper motive or 'malice' on the part of the defendant, the harsh conduct of the defendants, the duration and nature of the deprivation of liberty, the status, standing, age, health and disability of the plaintiff, the extent of the publicity given to the deprivation of liberty, awards in previous comparable cases together with the effect of inflation is also taken into account. In addition to deprivation of physical freedom, other personality interests such as good name and honor and constitutionally protected fundamental rights infringed must also be considered.

[33] The Constitutional rights to one's freedom of movement and liberty is enshrined on Section 35 (2)

(e) of the Constitution of the Republic which reads thus,

"everyone who is detained including every sentenced prisoner has the right to conditions of detention that are consistent with human dignity, including at least exercise and provision of adequate accommodation, nutrition, reading material and medical treatment at the state expense."

- [34] The plaintiff has succinctly enumerated her case against the defendant which I have summarized afore and the circumstances under which she considers her arrest and detention to be unlawful.
- [35] The worrying aspect in this matter is the failure of the arresting officer/s to read and understand the contents of the court order which has caused the plaintiff's arrest or to alternatively seek a legal opinion from their department or their office legal advisor on the meaning of the contents of the court order before effecting the arrest herein.
- [36] If proper diligence and care was applied, the police would have realized that the court order presented to them instigating the arrest of the plaintiff had nothing to do with commission of a crime of contempt of court nor did it authorize them to arrest the plaintiff and that the alleged reported crime did not exist. The police failed to take the basic step of verifying the document presented to them before rushing to arrest the plaintiff. Only if the officers had applied their minds to the matter and allowed themselves to do the necessary, the taxpayers funds or country's revenue which the plaintiff must be compensated from, could have been saved for a good cause.
- [37] Their conduct was malicious and against the provisions of Section 205 of the Constitution which provides that:
- " the objective of the police service officials is to prevent, combat and investigate crime, to maintain the public law, order, to protect and secure the inhabitants of the Republic and their property and to uphold and enforce the rule law within the boundaries of our country."
- [38] Plaintiff's counsel argued that plaintiff was locked up with other inmates in an unhygienic, dirty, stinking holding cell with only one open toilet in which inmates relieved themselves in full view of others under inhumane conditions.
- [39] It is undisputable that plaintiff's constitutional rights were infringed by the conduct of the defendant's employees.
- [40] I am duty bound to consider and apply fairness demanded of me when considering all circumstances relevant to quantify the harm caused by the violation of one's constitutional rights.
- [41] The period of time for which a person is detained after an arrest cannot only be the factor to be considered when determining the extent of the damage suffered. All prevailing circumstances should be considered cumulatively.
- [42] It is common cause that by virtue of the plaintiff's profession, she was a respectable woman of considerable standing and service to the community in her capacity as a Nurse. Therefore, the harm caused by the embarrassment and humiliation following her arrest, in my view is despicable.

[43] In light of the above reasons, I am satisfied that the plaintiff has proven and made out a case for the granting of an appropriate award in respect of her claim for general damages suffered as a result of her arrest and detention which I have found to be unlawful.

[44] Both counsel referred the court to various authorities meant to guide and assist the court in determining the fair and reasonable amount of compensation to be awarded to the plaintiff. This court has also considered past and recent awards in comparable cases.

[45] Having considered all the relevant facts of this matter, the plaintiff's age, social and professional standing, circumstances of her arrest and the duration of her detention.

[46] I am satisfied that an appropriate solatium to be awarded to the plaintiff should be an amount of R 100 000.00 (One Hundred Thousand Rand)

[47] In the circumstances I grant the following order:

47.1 The defendant is ordered to pay the plaintiff an amount of R 100 000.00 (One Hundred Thousand Rand), in respect of her claim for general damages.

47.2 Interest thereon to be paid at an appropriate scale per annum from the date the payment becomes due until date of payment.

47.3 Defendant is further ordered to pay the costs of suit on a high court scale.

T.C TSHIDADA

JUDGE OF THE HIGH COURT LIMPOPO LOCAL DIVISION,

THOHOYANDOU

APPEARANCES:

1.For the Plaintiff: Mr S Vengesa Instructed by: Shemaya Vengesa Attorneys 2.For the Defendant: Adv. R A Ramuhala Instructed by: State Attorney Thohoyandou 3.Heard on: 23 November 2022 4.Date of Judgment: 24 March 2023

NOTE: The Registrar is directed to transmit a copy of this judgment to SAFLII and further cause a copy of this judgment to be delivered to the Station Commander of Thohoyandou SAPS and the Provincial Division of the Limpopo SAPS for their attention.

[1] Visser & Potgieter: Law of Damages, Third Edition pages 545-548

[2] 2009

(5) SA 85 SCA

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Prepared on 9 October 2026 · Esheria