

SOUTH AFRICA / JUDGMENT

Van Der Laarse v Minister of Police and Another (31378/2012) [2014] ZAGPPHC 614 (18 July 2014)

[2014] ZAGPPHC 614

COURT

North Gauteng High Court, Pretoria

BEFORE

Ebersohn

CASE / FILE NUMBER

31378/2012

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IN THE NORTH GAUTENG HIGH COURT, PRETORIA

(REPUBLIC OF SOUTH AFRICA)

Case No: 31378/2012

Date: 17 July 2014

In the matter between:

LOUW ERASMUS VAN DER LAARSE.....PLAINTIFF

and

THE MINISTER OF POLICE.....1st

DEFENDANT

CAPTAIN EDWARD SELLO SEKELELE.....2nd DEFENDANT

DATE HEARD: 13th SEPTEMBER 2013

DATE JUDGMENT HANDED DOWN: 18th OCTOBER 2013

DATE AMENDED JUDGMENT HANDED DOWN: 18 JULY 2014

JUDGMENT AMENDED IN TERMS OF RULE 42(l)(b)

EBERSOHN AJ

[1] The plaintiff was a major male Export Manager, who was employed at the Beit Bridge Border Post.

- [2] The defendants are the Minister of Police and one Captain Edward Sello Sekelele, a police officer stationed at the Beit Bridge Police Station.
- [3] On or about Friday the 21st May 2012 at the Beit Bridge Border Post the plaintiff was arrested, without a warrant, by the second defendant who was acting within the course and scope of his employment with the first defendant.
- [4] The plaintiff was thereafter detained at the Beit Bridge Police Station and thereafter at the Musina Police Station from about 17:40 on 21 May 2010 until Monday 24 May 2010 at 9:00 when he was released on bail. All charges against the plaintiff were later withdrawn by the Senior Prosecutor of the cluster.
- [5] The plaintiff thereafter issued summons against the defendants wherein he claimed R200 000,00 in respect of loss of liberty, R150 000,00 in respect of contumelia and injury to his reputation, R58 310,05 in respect of legal costs to defend himself in court until the matter was finally withdrawn on the 17th March 2011 and R5 851,96 being for legal costs regarding his bail application.
- [6] The defendants defended the matter but at the hearing the defendants conceded merits and the matter was settled and the Court was only asked to make an appropriate award of damages.
- [7] It is common cause that the plaintiff was treated very cruelly and under horrifying circumstances from the moment of his illegal arrest, which took place in the presence of acquaintances of him, tourists and the general public by the second defendant and his subordinates. He was detained in a hopelessly overcrowded container under filthy conditions. He was arrested by the second respondent who acted as if he was power drunk and in a disgraceful display to all those who beheld what was going on. This Court can only hope that the matter somewhere along the line receives attention from some senior officer for the conduct of the second defendant cannot be left unpunished and he is particularly unsuited to be an officer and to be in charge anywhere.
- [8] The amounts claimed by the plaintiff are , for all intents and purposes, reasonable when compared to the awards made in other cases, especially when the gruesomeness of what the police officers did to the plaintiff and the circumstances under which he was detained, are taken into account.
- [9] The plaintiff was entitled to obtain legal representation and to be reimbursed and to interest a tempore morae.
- [10] When the application for leave to appeal was argued both counsel were idem and the court was satisfied that a patent error was committed by the court regarding the mora dates of two of the amounts awarded to the plaintiff and the court indicated that the judgment would be corrected in terms of the provisions of rule 42 (1) b). This is the corrected judgment.

[11] The orders originally made will be withdrawn and replaced by the fresh orders set out hereunder.

[12] The following orders are made:

A. The orders handed down on the 18 October 2013 are hereby withdrawn and replaced by the orders set out in paragraph B.

B. 1. Judgment is granted in favour of the plaintiff for the payment by the defendants to the plaintiff, jointly and severally, payment by the one absolving the other, of

- a) general damages in the amount of R280 000,00 with interest a tempore morae thereon calculated thereon at the rate of 15,5% per annum from the 13th October 2010 until date of payment of the R280 000,00;
 - b) R5 851 ,96 being for legal costs incurred by the plaintiff to obtain bail in the criminal court with interest thereon a tempore morae at the rate of 15,5% per annum calculated from the 23rd June 2010 to date of payment of the R5 851,96;
 - c) R58 310,05 being the costs of legal representation incurred by the plaintiff during the period the plaintiffs case was postponed from time to time and eventually withdrawn in the criminal court with interest thereon a tempore morae calculated thereon at the rate of 15,5% per annum calculated from the 18th March 2011 to date of payment of the R58 310,05.
2. The defendants are ordered to pay the costs of the action, jointly and severally, payment by the one absolving the other.
3. The Registrar of this court is directed to forward the bundle pleadings in this matter together with a copy of the original judgment, this judgment and the judgment regarding the application for leave to appeal together with a copy of the plaintiffs counsel's heads of argument dated the 16th September 2013, being an exposition of the facts, as no evidence was led in court regarding the merits, to the Independent Police

Investigative Directorate of the South African Police Service for their attention and urgent action against captain Sekelele with the request that they report back to this Court within 12 months what steps have been taken against him.

P.Z. EBERSOHN

ACTING JUDGE OF THE HIGH COURT

Plaintiffs counsel: Adv. M. Naude

Plaintiff s attorneys: Coxwell Steyn Vise & Naude

Ref.Sde Lange/S A5000

Defendants' counsel: Adv. J. Minnaar

Defendants's attorneys: State Attorney

Ref. G. Kock/7175/10/Z35 3487/13/Z3 9

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