

SOUTH AFRICA / JUDGMENT

V.F v Minister of Police (2464/2019)

[2023] ZANWHC 24 (8 March 2023)

[2023] ZANWHC 24**COURT**

North West High Court, Mafikeng

BEFORE

Mahlangu AJ

CASE / FILE NUMBER

2464/2019

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record**SAFLII****Note: Certain**

personal/private details of parties or witnesses have been redacted from this document in compliance with the law and SAFLII

Policy**IN**

THE NORTH WEST PROVINCIAL DIVISION,
MAHIKENG

Case**no: 2464/2019****In**

the matter between:

V[...]
F[...]
PLAINTIFF
and
THE
MINISTER OF
POLICE
DEFENDANT
Date

of hearing:

7 February 2023
Date

of judgement:

8 March 2023
For

the Plaintiff: Adv G V Maree
For

the Defendant: Adv O Molefe
Delivered
: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses.
The date for the hand-down is deemed to be 8 March 2023.
ORDER
Consequently,

the following order is made:

(i)
The plaintiff's claim 1, assault, is dismissed, costs to be costs in the cause;

(ii)
The plaintiff's claim 2, unlawful arrest and detention is granted with costs;

(iii)
The defendant is ordered to pay R10 000.00 to the plaintiff's claim of unlawful arrest and detention;

(iv)
The above amount is to be paid with interest at the prescribed rate from date of the judgement till the date of final payment.

(v)
The defendant is ordered to pay the expenses of the plaintiff's expert witness;

(vi)
The defendant is ordered to pay costs of suit on a Magistrate's court scale including costs of the Counsel.

JUDGMENT

MAHLANGU AJ

INTRODUCTION

- [1] On 17 November 2018 the plaintiff was arrested on charges of assault and for interfering with the police duties.
- [2] Subsequent to her arrest plaintiff instituted an action against the defendant for assault and unlawful arrest and detention.

- [3] In his plea the defendant admitted arrest but denied any wrongfulness nor unlawfulness as alleged by plaintiff in her claim and denied any indebtedness to the plaintiff. The defendant further denied that its officer have assaulted the plaintiff.

EVIDENCE LED

Plaintiff's evidence

- [4] The plaintiff testified that on the day of the incident, she was with her boyfriend, Mr M[...], at his place of residence when they noticed a group of people coming to their direction. It later came to their attention that that group of people were looking for an alleged stolen television set (TV). The plaintiff went into the kitchen of the house for safety. Through the kitchen window, she saw a kombi-vehicle with the SAPS markings stopping at the house. 7-8 police officers alighted from the kombi, approached and handcuffed Mr M[...]. They told Mr M[...] that they want to check his room for a stolen TV.
- [5] The plaintiff testified that Mr M[...] and several police officers went into his room. She later heard Mr M[...] screaming and she went into his room to check on him. Inside the room, she found Mr M[...] lying on his stomach, handcuffed behind his back and with his hands pulled down to his knees. Mr M[...] was screaming telling her

that they are assaulting him. The plaintiff testified that she asked the police officer what is going on, and she was removed from the room.

- [6] The plaintiff testified that, Mr Diale, a police officer that was on the scene, grabbed her and shoved her out of the room. Mr Diale continued shoving her with an open hand down the corridor of the house. The plaintiff further testified that, Mr Diale assaulted her with an open hand on her cheek, the plaintiff retaliated by shoving Mr Diale away. Mr Diale retaliated by swearing at the plaintiff and even informed her that he was going to arrest her. The plaintiff testified that, Diale used a pepper spray on her but she managed to avoid it by turning her back. She testified that, at that moment, they were the only people at the corridor of the house.
- [7] The plaintiff testified that, she then went to the kitchen where she was followed by Mr Diale and Mr Ratsoma, one of the police officers who were at the scene. Mr Ratsoma arrested plaintiff. Plaintiff testified that, she was taken to the kombi where she was insulted by another police officer Mr Jacobs. The kombi drove to Vryburg police station. She testified that, on the way to the police station, she was further insulted by other police officers that she found

inside the kombi.

- [8] The plaintiff testified that, at Vryburg police station, she was left inside the kombi. After some time, the police officers came back with Mr M[...] and they were taken to Huhudi Police station. On their way to Huhudi police station, the plaintiff testified that she was further insulted and threatened by the police officers. The threats made her to be afraid of police officers.
- [9] The plaintiff testified that, at Huhudi police station, he was not allowed to speak to Mr M[...]. After Mr M[...] was charged, plaintiff was returned to Vryburg police station where she was also charge and released. On the following day, she went back to Vryburg police station to open an assault case against Mr Diale. Mr Diale also opened the case of assault against the plaintiff for allegedly scratching her on the face.. They later mediated and both parties withdrew the cases opened against each other.
- [10] The plaintiff testified that, the incident negatively affected her and was diagnosed with a Post Traumatic Disorder. She had consulted with a Clinical Psychologist, Ms Tsambos.
- [11] During cross examination, plaintiff testified that, she did not receive medical attention after she was assaulted by Mr Diale. She testified that she was released late in the afternoon and she was hungry. She did not also go to the doctor the following day. She testified that she was pushed during the assault and she did not have any visible injuries. She testified that, she did not ask for a J88 form from the police station as she did not have any visible injuries. She testified that Mr Diale had a long fire-arm known as an R5 riffle which he used to shove her with. She testified that she was afraid Mr Diale would shoot her with the fire-arm.
- [12] During cross examination, plaintiff stated that, she was arrested by Mr Ratsoma. The plaintiff further testified that, she consulted with the Clinical Psychologist a year after the incident as per her legal representative's advice. The plaintiff closed her case.

DEFENDANT'S EVIDENCE

- [13] The defendant called two (2) witnesses to testify on his behalf.
- [14] Mr Diale was the first witness to be called by the defendant. He is in the employ of the defendant. He is a Sergeant by rank and was deployed to Vryburg police station at the time of the incident. He is attached to the Public Order Police Unit (POP).
- [15] Mr Diale testified that on 17 November 2018, he together with his colleagues and Mr Ratsoma were patrolling around Vryburg when the received a message from Mr Jacobs, a police officer from Vryburg Police Station. Mr Diale could not remember the names of other colleagues he was with. Mr Jacobs informed them to meet with him at an Engine garage which was around Vryburg. They met with Mr Jacobs and he requested them to accompany him at a certain house to go and collect a stolen TV. He testified that, on their arrival at the house, they found a group of people outside the house. Mr Jacobs approached Mr M[...] and he asked the police officers to go inside the house to search for the TV.

- [16] Mr Diale testified that, Mr M[...] gave them permission to search the room. He testified that Mr Jacobs and Mr Ratsoma got into the room with Mr M[...]. When Mr M[...] was about to give them a TV, plaintiff got into the room and told Mr M[...] not to give the police officers the TV. Mr Diale testified that, she told plaintiff to leave the room as she was intervening with the police duties.
- [17] Mr Diale testified that, he was always in possession of an R5 riffle and could not have been possible for him to assault plaintiff. He was holding the R5 riffle with both hands as it is heavy to can carry it with one hand. He denied that the fire-arm he carried was hanging from the belt, he testified that the fire-arms they are carrying do not have belts. He testified that the plaintiff took advantage of scratching him as he was holding a fire-arm with both hands. He testified that, he bled after he was scratched by the plaintiff, as he was bleeding Mr Ratsoma got out of the room. He denied to have ever assaulted the plaintiff nor to have pepper sprayed her.
- [18] Mr Diale testified that, he had indeed informed the plaintiff that he was going to arrest her for assaulting him. He testified that plaintiff was arrested by Mr Ratsoma and was transported to Vryburg police station with a kombi that they used. He denied that inside the kombi, plaintiff was insulted by any of the police officers. He further denied that, plaintiff was taken to Huhudi police station. He testified that, he could not tell what happened at Vryburg police station as he went to hospital to receive medical attention.
- [19] During cross examination, Mr Diale testified that, he was never inside the room of Mr M[...] and therefore did not know what was happening inside the room. Both Mr Ratsoma and Mr Jacobs did not tell him what happened inside the room. He testified that he never assaulted the plaintiff but the plaintiff is the one who assaulted him by scratching his face. Mr Diale further testified that, plaintiff interfered with the police duties because she told Mr M[...] not to give them the TV. Mr M[...] listened to her and did not give them the TV. The allegation that was disputed by the plaintiff.
- [20] Mr Diale further testified during cross examination that, it is not possible for him to could have pushed plaintiff with an R5 riffle as it is risky, what if she takes it. He was adamant that, he never used the fire arm to shove off the plaintiff and that he never assaulted the plaintiff.
- [21] Mr Ratsuma was the defendant's second witness. He is in the employ of the defendant. He is a Sergeant by rank and was deployed to Vryburg police station at the time of the incident. He is attached to the Public Order Police Unit (POP), Rustenburg.
- [22] Mr Ratsoma corroborated Mr Diale's evidence. He testified that he did arrest plaintiff for assaulting Mr Diale and also for hindering the police officers to do their duties. He testified that, at Vryburg police station, he assisted the plaintiff to complete relevant documentation and also the Notice of Rights document. He testified that both himself and the plaintiff signed the Notice of Rights but he mistakenly put the wrong date. The plaintiff refused to hand him an original document of Notice of Rights so that he can rectify it.

[23] During cross examination, Mr Ratsoma testified that, it is not possible for a police officer to hold an R5 riffle with one hand. He further testified that, he personally cannot push a person with an R5 riffle as he was not trained to do so. He testified that, he did not witness any assault on both plaintiff and Mr Diale. Mr Ratsoma did notice blood on Mr Diale's face. Mr Ratsoma further testified that he did not witness any interference of the police duties by the plaintiff.

Analysis

of facts and arguments raised

Claim 2: Assault

[24] The plaintiff alleges that she was assaulted by Mr Diale at the scene of the incident. The claim that was denied by the defendant.

[25] In the unreported case of M[...] and other v Minister of Police and others (9676/2013) [2021] ZAGPPHC 407 (8 June 2021) it was held that:

“Assault is a violation of a person's bodily integrity ... It is trite that every infringement of the bodily integrity of another is prima facie unlawful. In an assault claim, the onus to establish the assault, and damages related thereto, is on the plaintiff. An allegation of assault implies wrongfulness.

[26] It is trite that every infringement of the bodily integrity is prima facie unlawful. Once the infringement is proved, the onus rests on the defendant to prove grounds of justifying the assault.

[27] The plaintiff did not present any evidence to corroborate her being assaulted by Mr Diale. Mr Diale denied to have assaulted the plaintiff, he stated that he was in possession of an R5 riffle which he was holding with both hands. The explanation of Mr Diale was probable and he could not have assaulted the plaintiff whilst in possession of an R5 rifle. Both Mr Diale and Mr Ratsoma testified that, it is not possible to shove the person with an R5 as it might pose danger to a shoved person and the shove person might also grab the firearm and endanger the police officer.

[28] It is therefore my view that, it was not probable that Mr Diale could have assaulted the plaintiff whilst holding an R5 rifle. It is therefore my view that the plaintiff was not assaulted by Mr Diale on the day of the incident.

Claim 2 and Claim 4: Wrongful arrest and detention

[29] The first defendant did not take issue with the fact that the plaintiff was arrested without a warrant. It was pleaded on behalf of the first defendant that the arrest was lawful.

[30] In an action for wrongful arrest and detention, the plaintiff only bear the onus of proving arrest and detention. It is common cause between the parties that plaintiff was arrested and later released but the defendant denies unlawfulness.

[31] Section 39 of the CPA deals with the manner and effect of an arrest. It provides that an arrest shall be effected with or without a warrant, and unless the person to be arrested submits to custody, by actually touching his body or, if the circumstances so require, by forcibly confining his body. The person effecting the arrest shall, at the time of effecting arrest or immediately after effecting the arrest, inform the arrested person of the cause of the arrest or, in the case of an arrest effected by a warrant, upon demand of the person arrested hand him a copy of the warrant. The effect of an arrest shall be that the person arrested shall be in lawful custody and that he/she shall be detained in custody until he/she is lawfully

discharged or released from custody.

[32] Section 40 of the CPA deals with arrest by a peace officer without a warrant and provides that a peace officer may without a warrant arrest any person-who commits or attempts to commit any offence in his presence; whom he reasonably suspects of having committed an offence referred to in schedule 1, other than the offence of escaping from lawful custody. If a person may be arrested under any law without warrant and subject to conditions or the existence of circumstances set out in that law, any peace officer may without warrant arrest such person subject to such conditions or circumstances.

[33] The following are the essential jurisdictional facts which have to be present to justify an arrest without a warrant:

1.1 The arresting officer must be a peace officer;

1.2 The arresting officer must entertain a suspicion;

1.3 The suspicion must be that the suspect (the arrestee) committed an offence referred to in Schedule 1;

1.4 The suspicion must be based on reasonable grounds.

See *Minister of Safety & Security v Sekhotho and Another* 2011 (5) SA 367 (SCA).

Zealand v Minister of Justice and Constitutional Development [2008] ZACC 3; 2008 (4) SA 458 (CC).

[34] Further, a claim under the *actio iniuria* for unlawful arrest and detention has specific requirements:

(a) The plaintiff must establish that her liberty has been interfered with;

(b) The plaintiff must establish that this interference occurred intentionally. In claims for unlawful arrest, a plaintiff need only to show that the defendant acted intentionally in depriving her liberty and not that the defendant knew that it was wrongful to do so;

(c) The deprivation of liberty must be wrongful, with the onus falling on the defendant to show why it is not; and

- (d) The plaintiff must establish that the conduct of the defendant must have caused, both legally and factually, the harm for which compensation is sought.

In this regard see *De Klerk v Minister of Police* 2020 (1) SACR (1) CC (De Klerk).

[35] It is my view that Mr Ratsoma did not satisfy all the above named jurisdictional facts before arresting the plaintiff. According to Mr Ratsoma, the plaintiff was arrested for assaulting Mr Diale and also with interfering with the police duties. Mr Ratsoma was not present when this offences were committed by the plaintiff, he was informed by Mr Diale. Mr Ratsoma testified that he did see Mr Diale bleeding from his face, Mr Diale's assault was not pleaded by the first defendant.

[36] It is trite that the onus rests on the police officer to prove the lawfulness of the arrest. The reasonableness of the suspicion of any arresting officer acting under section 40(1)(a) of the Criminal Procedure Act 51 of 1977 (CPA), must be approached objectively. The question therefore is whether any reasonable person,

confronted with the same set of facts that the arresting officer Mr Ratsoma was confronted with, would form a suspicion that the

plaintiff had committed a Schedule 1 offence and whether the suspicion was reasonable.

[37] In other words, would a reasonable person in Mr Ratsoma's position, arrest plaintiff for assault and interfering with the police duties. The plaintiff testified that, she went into Mr M[...]s room as she heard him screaming. She was taken out by Mr Diale. It is my view that, the plaintiff was not part of the discussions held inside Mr M[...]s room, she can therefore not be said she interefered with the police duties by informing Mr M[...] not to hand in the TV. Mr Ratsoma arrested plaintiff based on what he was informed by Mr Diale.

[38] In *Minister of Law and Order v Hurley* 1986 (3) SA 568 (A) (Hurley), the Court stated the following:

"An arrest constitutes an interference with the liberty of the individual concerned, and it therefore seems to be fair and just to require that the person who arrested or caused the arrest of another person should bear the onus of proving that his action was justified in law".

[39] In the matter of *Relyant Trading (Pty) Ltd v Shongwe and another*

[2007] 1 All SA 375 (SCA) at paragraph 6 it was held that:

"To succeed in an action based on wrongful arrest the plaintiff must show that the defendant himself or someone acting as his agent of employee deprived him of his liberty."

[40] In *Ralekwa v Minister of Safety and Security* 2004 (1) SACR 131 (T) it was held at paragraph 7 and 9 it was held that where the sergeant did not form his own suspicion but relied on the opinion of another, no reliance could be placed on section 40 of CPA.

[41] Once the jurisdictional facts for an arrest whether in terms of section 40 or section 43 of the Act are present, a discretion to arrest arises. It should be emphasized that the officer is not obliged to effect the arrest.

[42] Mention has been made in *Duncan v Minister of Law and Order* 1986

(2) SA 805 (A) that

‘if the jurisdictional requirements are satisfied, the peace officer may invoke the power conferred by the subsection i.e he may arrest the suspect. In other words, he then has a discretion as to whether or not to exercise that power.... No doubt the discretion must be properly exercised. But the grounds on which the exercise of such a discretion can be questioned are narrowly circumscribed. Whether every improper application of a discretion conferred by the subsection will not render an arrest unlawful, need not be considered because it does not arise in this case’

[43] The proper discretion that could have been applied by the arresting officer in this matter was not to arrest the plaintiff. The plaintiff could have just been warned to appear in court.

[44] In *Duncan supra*, the court formulated three questions for determining the legality of an arrest without a warrant; (a) did the arresting officer suspect that the person arrested was guilty of an offence; (b) were there reasonable grounds for that suspicion; (c) did the officer exercise his discretion to make the arrest. Relevant to the present matter is whether the discretion to arrest the plaintiff was exercised properly. My humble view is that the discretion to arrest the plaintiff was not properly exercised.

[45] There was no need to arrest the plaintiff as the plaintiff was not a danger to the society, she could not have absconded, she could not have harmed herself nor any other person around her. Therefore I still repeat that, it was not necessary for the police officers to could have arrested her.

[46] In the *Minister of Safety and Security v Sekhotho* 2011 (1) SACR 315 at 330 para 39 it was held that

‘this would mean that peace officers are entitled to exercise their discretion as they see fit, provided that they stay within the bounds of rationality. The standard is not breached because an officer exercise the discretion in a manner other than that deemed optimal by the courts. A number of choices may be open to him all of which may fall within the range of rationality’.

[47] The police officers should naturally exercise their discretionary powers which should be within the limits of the authorising statute.

[48] The defendant submits that the plaintiff was not detained after her arrest. The plaintiff did not object to the submission. It is my view that, keeping plaintiff at the police station to charge her is tantamount to detention. It is therefore my view that plaintiff was unlawfully arrested and detained by Mr Ratsoma.

CREDIBILITY OF THE WITNESSES

[49] In the matter of Stellenbosch Farmers' Winery Group LTD and another v Martell et cie and others 2003 (1) SA 11 (SCA) at paragraph D held that;

"The technique generally employed by courts in resolving factual disputes of this nature may conveniently be summarised as follows; to come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses

(b) particular witness will depend on it's impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors not necessarily in order of importance, such as (i) the witness candour and demeanour in the witness box (ii) the bias latent and blatant (iii) internal contradictions in his evidence (iv) external contradictions with what was pleaded or put on his behalf or with established fact or with his own extracural statements or actions (v) the probability of particular aspects of his version (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events"

[50] It is my view that all the defendant's witnesses came across as reliable witnesses on the assault claim but the same could not said with the unlawful arrest and detention claim.

[51] The defendant's witnesses testified that they did not know plaintiff and therefore there was no reason of being malice in doing their job.

[52] The plaintiff, on the assault claim, with respect came across as an untrustworthy witness. Her mannerism under cross examination showed that she was not reliable witness. She did not testify on how Mr Diale assaulted her with an open hand whilst he was holding an R5 rifle. She did not answer the questions posed to her during cross examination with confidence.

[53] The plaintiff's testimony regarding the unlawful arrest and detention claim was very convincing. I am of a view that Mr Ratsoma took a drastic step in arresting the plaintiff. The plaintiff did not pose any danger to the police or the society. She could have been warned to come to the police station rather than be place into the police vehicle and taken to Vryburg police station.

CONCLUSION

[54] It is my view that the arrest and detention of the plaintiff were unlawful. That the plaintiff was not assaulted by police officer on the day of the incident and therefore the assault claim is deemed to be dismissed.

COSTS

[55] It is my view that the costs relating to the assault claim should be costs in the cause. The defendant should be liable for the costs of the unlawful arrest and detention claim and the costs incurred by the plaintiff's expert witness.

[56] Consequently, the following order is made:

NORTH WEST HIGH COURT DIVISION,

APPEARANCES

DATE OF HEARING: 7 FEBRUARY 2023 DATE OF JUDGMENT 8 MARCH 2023 ATTORNEYS FOR THE PLAINTIFF: Nienaber & Wissing Attorneys 10 TILLARD STREET MAHIKENG Tel: 018 381 2923 Fax: 018 381 2568 Ref: BN7249 COUNSEL ATTORNEYS THE DEFENDANT : the state attorney, mahikeng 1st floor east gallery mega city complex mmabatho tel: 018 384 0269 fax: 086 508 2765 ref: 1173/19/p4

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZANWHC/2023/24.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/vf-v-minister-unknown-topic-anwhc-2023>

Prepared on 14 October 2026 · Esheria