

SOUTH AFRICA / JUDGMENT

Wigg v Minister of Police (2187/2019) [2022] ZAMPMHC 6 (27 May 2022)

[2022] ZAMPMHC 6

COURT

Middelburg High Court, Mpumalanga

BEFORE

Langa

CASE / FILE NUMBER

2187/2019

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IN

THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA

DIVISION (MIDDELBURG LOCAL SEAT)

CASE

NUMBER: 2187/2019

REPORTABLE:

NO

OF

INTEREST TO OTHER JUDGES: NO

REVISED

27/05/2022

In

the matter between:

JUANITA

WIGG

PLAINTIFF

And

MINISTER

OF POLICE

DEFENDANT

JUDGMENT

Langa J

- [1] In this action the Plaintiff, Ms. Juanita Wigg, is claiming damages against the Defendant, the Minister of Police, consequent to an unlawful arrest and brief detention of the Plaintiff by the members of the South African Police Service in Middelburg, Mpumalanga. The Minister of Police is cited in the official capacity as the Minister responsible for the conduct and affairs of the South African Police. The Plaintiff was 29 years of age when the incident took place and she is now 32.
- [2] The Plaintiff is claiming an amount of R1 000 000-00 (one million rand), with interest for, inter alia, the unlawful arrest, impairment of dignity, loss of freedom, deprivation of her freedom of movement, pain, suffering and psychological trauma and humiliation she suffered as a result of the arrest and detention.
- [3] It is common cause that on 30 April 2019 after she was pulled over, the Plaintiff was arrested in the street by on duty police officers, Grobler and Ramsaro, who were acting within the course and scope of their employment. It is not disputed that the arrest happened in full view of the members of the public in the early hours of the morning.

It is also common cause that she was thereafter taken to the police station where she was held for about 40 minutes before she was released after she was strip searched by a female police officer. Her allegations regarding how she was handcuffed and taunted by the police officers during the arrest and entire incident have not been disputed. In fact, although the unlawfulness of the arrest and detention was initially challenged by the Defendant, when the trial commenced the Defendant's counsel conceded the merits and submitted that the plaintiff's version is not disputed. He placed on record that the only issue in dispute is the quantum. The court therefore proceeded to hear the matter in respect of quantum only.

- [4] However, despite the Defendant's concessions, it is still necessary to briefly outline the Plaintiff's evidence in order to deal with the quantum in context. On the 30th of April 2019 around 08h00 the Plaintiff was arrested at Kogel Street, Mineralia, Middelburg by police officers Lucas Grobler and Vijan Ramasaro who were at all times acting within the course and scope of their employment as police officers employed by the South African Police Service. She was suspected of involvement in drugs as one of the officers told her that she came out of a property belonging to a drug dealer. Despite her denial of the accusations, the two policemen arrested and handcuffed her at the scene which was in the street where people were passing by and others looking on.
- [5] Her version is that she is a sales representative of G-Force Quality Parts in Middelburg. On the morning of the day in question she had gone to the house belonging to a client to drop off a quotation in respect of the vehicle of the owner of the house which quotation she handed over to the woman she found on the property, apparently the man's husband. The

Indian policeman then took her phone and looked through everything without her consent. He then, also without her consent searched her handbag and car. The plaintiff broke down and cried when the officers told her she is guilty and that she will

be arrested and will not get bail.

- [6] The Plaintiff said she was extremely scared and stressed as she feared that the two men could rape and kill her. She stated further that she felt completely vulnerable, helpless and embarrassed as there were people looking at her whilst all of this was happening until she was handcuffed and taken away and not even allowed to drive her vehicle. On arrival at the Middelburg Police Station the officers said she must be taken to the toughest one, apparently referring to a female police captain to whom she was taken. Her protests were ignored and the Indian officer taunted her and apparently told her if she thinks she is innocent after the body search, she must sue the law.
- [7] The female officer, Captain LA Arica was asked to search her and despite her protest of innocence the captain instructed her first to empty her pockets and thereafter to take off her jacket, shoes and socks. She complied and was instructed further to remove her shirt and pull down her pants which she did. Captain Africa body searched her in the bra, breasts and panty. Upon finding nothing, the captain informed the Plaintiff that she can dress herself. The Plaintiff was then released without being charged or detained in a cell. She said she spent about 40 minutes at the Middelburg Police Station.
- [8] The version of the policemen is that they saw the Plaintiff reversing out of the property of a person who is a drug dealer, and that Plaintiff was reasonably suspected of committing an offence listed in Schedule 1 of the Criminal Procedure Act and as such they were authorized in terms of Section 40(1)(b) of the criminal Procedure Act to arrest and detain the her. This version is, however, now academic as the version of the Plaintiff has been admitted in its entirety. The only issue denied by the Defendant is that the Plaintiff was harassed and mistreated by the members of the SAPS.
- [9] Liability having been conceded by the Defendant, I now proceed to deal with the quantum. As stated in the preceding paragraphs the Plaintiff is claiming one million rand (R 1 000 000.00) as compensation for, inter alia, the unlawful arrest, impairment of her dignity, deprivation of her freedom of movement, pain, suffering and psychological trauma as well as humiliation.
- [10] On quantum the Defendant's counsel Mr Mosoma submitted that it is trite that compensation should be just, fair and reasonable and not used by Court as a way of punishing the wrong doer. He submitted further that in the circumstances of this case a reasonable compensation would be an amount of twenty thousand (R20 000.00) and referred court to a number of cases, ostensibly in support of this amount, including the following:

- [11] *De Klerk v Minister of Police* (329) 2018 ZASCA – in which the Supreme Court of Appeal awarded the appellant in that matter an amount of thirty thousand rand (R 30 000.00) for unlawful arrest and detention for a period of about two hours. In coming to the decision, the SCA was of the view that the appellant was not detained in any police cells and he was also made to appear in court very quickly without any delay.
- [12] *Kwinda v Minister of Police* (21813/2015) Gauteng Division - The plaintiff in this case was awarded an amount of fifty thousand rand (R50 000.00) also for unlawful arrest and detention for about eight days. At the time of his arrest the plaintiff's wife was about to give birth and he missed the opportunity to be with his wife during that time. His other children visited him in the police cells and this saddened him a lot.
- [13] *Minister of Safety and Security v Seymour* 2006
- (6) SA 320 (SCA) – In this case the respondent who was a businessman at the time of his unlawful arrest, was awarded an amount of ninety thousand rand (R90 000.00) as compensation for the unlawful arrest and detention for a period of five (5) days.
- [14] *Van Der Merwe v Minister van Veiligheid en Sekuriteit, NCHC*, Case No: 716/2007 - the court awarded an amount of twenty-five thousand rand (R25 000.00) to the plaintiff who had suffered psychological trauma and had to undergo psychological and psychiatric treatment without positive results. The plaintiff had symptoms of depression and typical post-traumatic stress syndrome.
- [15] *Hoco v Mtekwana* 2011 (6K6) QOD 18 (ECP) - an award of eighty thousand rand (R80 000.00) was made for unlawful detention for a period of about 4 days. The plaintiff was detained alone in a cell which did not have a shower or any bathing facilities. He only washed himself prior to the incarceration. He slept on the floor but he was provided with a blanket.
- [16] *Fubesi v Minister of Safety and Security* 2011 (6K6) QOD 28 (ECG) - the plaintiff was awarded an amount of eighty thousand rand (R80 000.00) in circumstances where he was detained in a crowded cell, was denied medication and the arrest caused him a lot of embarrassment and humiliation to his school friends. The plaintiff was detained for a period of three days and eighteen hours.
- [17] *Rahim v The Minister of Home Affairs* (965/2013) (2015) ZASCA 92 (29 May 2015) - the foreign nationals were awarded different amounts ranging from three thousand rand (R3 000.00) to twenty

thousand rand (R20 000.00) for unlawful arrest and detention. The Court held that they had not adduced any evidence to show that beyond the arrest and detention, they experienced any other humiliation, malice on the side of the defendant and that they were detained in unbearable conditions.

- [18] Based on these decisions the Defendant contends that in the current matter, where the plaintiff was arrested detained for a period of only forty (40) minutes and was also never placed in any police cell, an amount of twenty thousand rand (R20 000.00) is reasonable and fair. It is contended that her situation is similar to that of the De Klerk matter above where the appellant also experienced psychological trauma but had a psychologist's report to back the claim. The Defendant argues that although her version is that she was arrested by police in view of the public, there was, however, no evidence that any of those people knew her.
- [19] Regarding costs, the Defendant's submission is that the costs should be awarded on the magistrate's court scale as the plaintiff could not have reasonably had any expectation that she would be awarded an amount of one million rand (R1 000 000.00) or an amount exceeding the jurisdiction of the magistrate's court.
- [20] On the other hand, it is submitted on behalf of the Plaintiff that she suffered an arbitrary deprivation of personal liberty and was humiliated and traumatized by her unlawful arrest and detention. It is further argued that the Plaintiff's Constitutional rights to human dignity, security of person and freedom of movement were infringed by the police conduct. Furthermore, it is submitted that her personal right to privacy as well as her reputation were infringed. Although no medical evidence was brought forth, it was argued that as a result of the incident the Plaintiff now suffers from anxiety, depression, sleepless nights, emotional shock, and has even lost her employment. The Plaintiff is said to no longer have the courage to go out anymore as she is living in constant fear. It was also pointed out that the Plaintiff is a petite female person and did not have the ability to withstand the abuse that she had to underwent at the hands of the police.
- [21] The Plaintiff's counsel also referred the court to a number of previous damages cases involving the police and submitted that these cases are helpful guide in the determination of quantum.
- [22] *Shabalala v Minister of Police and Another* (13/37982) [2018] ZAGPPHC 905 - the Plaintiff sought damages from the Minister of Police for an unlawful arrest and detention as well as damages for malicious prosecution. The court ordered the defendant to the plaintiff compensation in the sum of (nine hundred thousand (R900 000.00)).
- [23] *Sibeko v Minister of Police* (2554 of 2014) [2021] ZAGPJHC 142
- the Plaintiff claimed for wrongful arrest and detention by members of the South African Police. The Plaintiff, who was detained for approximately 27 days, was awarded a sum of five hundred and fifty thousand rand (R550 000.00) as compensation.
- [24] The Plaintiff further argued further that this case has an element of public interest and referred to *R and Others v The Minister of Police* (2016) ZAGPPHC 264 where the following was said at par

[34] in respect of the conduct of the police:

[34] “This matter dealt with the violation of important constitutional rights and rights of privacy and personal integrity of the appellants. This case also bears a public interest element as, inter alia, it relates to unlawful conduct by the SAPS and the protection of the rights of citizens. An attack on the rights of the individual is an attack on the community and the grinding down of individuals’ rights erodes the rights of the community as a whole. Therefore, in this type of case the impact is not limited to the individuals but extends to the community of which they form part. This underscores the importance of the matter.”

[25] On costs the Plaintiff is claiming costs on a punitive scale as between attorney and client. It seems to be contended in this regard that a punitive costs order is justified because this litigation arises out of a case of abuse of power by the two police officers and that the Plaintiff should not be left out of pocket because of the officer’s abuse of power.

[26] It is trite that the purpose of the actio iniuriarum is to compensate the party aggrieved or injured by the infringements. *Minister of Justice v Hofmeyr* [1993] ZASCA 40; 1993 (3) SA 131 (A) 145-146. It is trite that our law recognizes a claim for trauma and emotional shock which are founded on an actio iniuriarum.

[27] In *Minister of Safety and Security v Tyulu* 2009

(5) SA 85 (SCA) the Supreme Court of Appeal said the following regarding assessment of damages:

“In the assessment of damages for unlawful arrest and detention, it is important to bear in mind that the primary purpose is not to 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 make for such infractions reflect the importance of the right to 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 the facts of the particular case and to determine the quantum of damages on such facts (

Minister of Safety and Security v Seymour 2006

(6) SA 320 (SCA) at 325 para 17; *Rudolph and Others v Minister of Safety and Security and Another* 2009

(5) SA 94 (SCA) ([2009] ZASCA 39) paras 26-29.”

[28] In *Mathe v Minister of Police* 2017 (2) SACR 211 at par [32] the court stated the following with regard to the factors to be considered in the determination of the damages for deprivation of liberty.

“In deprivation of liberty the amount of satisfaction is in the discretion of the court and calculated ex aequo et bona.

Factors which can play a role are the circumstances under which the deprivation of liberty took place; 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 (e.g. solitary confinement or humiliating 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; the presence or absence of an apology or satisfactory explanation of the events by the defendant; awards in previous comparable cases; the fact that in addition to physical freedom, other personality interests such as honour and good name as well as constitutionally protected fundamental rights have been infringed; the high value of the right to physical liberty; the effects of inflation; the fact that the plaintiff contributed to his or her misfortune; the effect an award may have on the public purse; and, according to some, the view that the actio iniuriarum also has a punitive function.

[29] In an unreported judgment dated 24 April 2017 by Hellens AJ under case number 37539/14, the Johannesburg High Court in *Mandleni v Minister of Police* stated following in para [13]:

“In Masisi v Minister of Safety and Security 2011

- (2) SACR 262 Makgoka J very wisely in my view described the purpose of an award of general damages in the context of a matter such as the present as a process in which one seeks to compensate a claimant for deprivation of personal liberty and freedom and the attendant mental anguish and distress. The right to liberty is an individual's most cherished right, and one of the foundational values giving inspiration to an ethos premised on freedom, dignity, honour and security. Its unlawful invasion therefore struck at the very fundament of such ethos. Those with authority to curtail that right had to do so with the greatest of circumspection, and sparingly. Where members of the Police transgressed in that regard, the victim of the abuse was entitled to be compensated in full measure for any humiliation and dignity which resulted. To this may be added that where an arrest was malicious, the Plaintiff was entitled to a higher amount of damages than would be awarded, absent malice.”
- [30] While it was stated in Seymour above at paragraph 17 that the assessment of awards of general damages with reference to awards made in previous cases is fraught with difficulty, it is however undeniable, as the court also acknowledged, that they serve as a useful guide to what other courts have considered to be appropriate. However, each case must be determined on its merits.
- [31] In making a determination on the quantum, it has to be taken into account that the Plaintiff's liberty was unlawfully curtailed by the police, albeit for a short while and without detention in the cells. I find that although no evidence was adduced as to the extent of the publicity of the incident, there is however no denying that the arrest was effected in full view of the public and that it gravely embarrassed and humiliated the plaintiff. Whether she knew the people who witnessed the arrest or not does not detract from the fact that she suffered embarrassment and humiliation.

- [32] Although there is no evidence to conclude that the arrest and detention was malicious, I am, however, satisfied that the police officers were harsh in arresting the Plaintiff in the manner they did, including physically hurting her with the handcuffs. I also doubt the necessity of the handcuffs given the Plaintiff's petite stature and the fact that there is no evidence that she resisted arrest. Furthermore, despite the fact that they did not have enough evidence, save for the fact that she came from a house belonging to a drug dealer or suspected drug dealer, the police were not circumspect in the manner they arrested the Plaintiff in circumstances where they should have been. Instead they arrested her in a dramatic fashion despite her protest of innocence and her offer to follow them to the police station in her car. This type of unruly behaviour by the police should not be tolerated and must be discouraged at all costs. Moreover, the manner in which they mocked her with their sneering remarks during the arrest and the fact that no apology was offered to her also aggravates the aggressive nature of the arrest and consequent violation of her rights.
- [33] Lastly, although her consequent body search was conducted by a female officer in a manner that was not per se derisive, it nevertheless constituted an unwarranted and avoidable invasion of her right to dignity, privacy and bodily integrity which the court has to take into account in determining the compensation amount. The Plaintiff's dignity was certainly desecrated by the arresting police officers and she was deeply hurt by the incident as was evident from her condition and tearfulness in court when she testified.
- [34] All factors considered, I find that the Plaintiff is certainly entitled to more compensation than the meagre twenty thousand rand (R20 000.00) suggested by the Defendant. On the other hand, I also find that the compensation of one million rand (R1 000.000.00) claimed by the Plaintiff is also too high considering the circumstances of the case. There is nevertheless no doubt in my mind that the circumstances under which the arrest and detention took place call for the stern censure. I therefore agree with the sentiment by Makgoka J, as he then was, in *Masisi v Minister of Police*, above that "Where members of the Police transgressed in that regard (curtailing the individual's right to liberty), the victim of the abuse was entitled to be compensated in full measure for any humiliation and dignity which resulted." In the circumstances I am of the view that everything taken into account, an amount of five hundred and forty thousand rand (R540 000.00) would constitute sufficient solatium for the Plaintiff's injured feelings and this is the amount I intend awarding.
- [35] As far as costs are concerned the rule is that the costs follow the result. There is no reason in this matter to deviate from the rule and therefore the plaintiff, as the successful party, is entitled to costs. The Defendant should therefore bear the costs of the application. I however, find no merit in the submission by the Plaintiff's counsel that the costs should be on a punitive scale because this litigation arises out of a case of abuse of power by the two police officers and that the Plaintiff should not left not out of pocket. The compensation award in itself demonstrates the court's disapproval of the police officers' conduct and the normal party and party costs will be sufficient to ensure that as a successful litigant, the plaintiff does suffer pecuniary loss due to fault or conduct of the Defendant's servants while

she is asserting her rights and rightfully claiming compensation. I therefore intend to award the normal or party and party costs.

[36] In the result I make the following order:

1. The Defendant is found liable for the unlawful arrest and detention of the Plaintiff.
2. The defendant is ordered to pay five hundred and forty thousand rand (R540 000.00) to the Plaintiff as compensation for damages resulting from the unlawful arrest.
3. The Defendant is further ordered to pay the costs of the litigation on a party and party scale.

SIGNED at MIDDELBURG on the 18 DAY of May 2022.

MBG LANGA

JUDGE OF THE HIGH COURT

Appearances:

Attorney for plaintiff:

Mr D Van Wyk, D van Wyk & Associates Inc.

Counsel for the Defendant: Advocate D Mosoma, Pretoria

Instructed by:

State Attorney, Pretoria

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