

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION – GRAHAMSTOWN**

CASE NO: CA 93/2017

In the matter between:

MINISTER OF POLICE

Appellant

and

ANTON MICHAEL JONKER

Respondent

JUDGMENT

MALUSI J

[1] This is an appeal against the judgment on quantum by the additional magistrate, Port Elizabeth. For the sake of convenience I will refer to the parties as they were cited in the court *a quo*.

[2] On 7 March 2012 at approximately 01h00 the plaintiff was arrested without a warrant, in Sidwell, Port Elizabeth by Captain Zanto. He was

thereafter detained at Algoa Park police station. He was released at approximately 02h45 on the same day after being warned to appear at court on 9 March 2012.

[3] Aggrieved at his wrongful arrest and detention, the plaintiff initiated an action for damages on 22 July 2013. At the trial in the court a quo the defendant conceded liability and the matter proceeded only in respect of the quantum of damages allegedly suffered by the plaintiff.

[4] The magistrate ordered the defendant to make payment to the plaintiff in the amount of R20 000.00. Interest on the aforesaid amount was ordered at 15.5% per annum from the date of service of summons to date of payment. The defendant was also ordered to pay the plaintiff's costs of suit.

[5] The appeal is against the quantum awarded and the order relating to the interest. The defendant contends that the magistrate misdirected herself in that the amount of damages awarded was not '*commensurate with the injury inflicted.*' It was submitted that interest on the damages should run from the date of judgment since damages are assessed from

that date. It was stated that the magistrate erred in setting the rate of interest at 15.5% whereas the set legal rate at the time was 10.25% per annum.

[6] In her reasons for judgment the magistrate took the following factors into consideration.

“Plaintiff was held at the Algoa Park Police Station until his release at 17h00 on 7 March 2012. . . The court after taking the particular facts, circumstances leading to the arrest and detention, condition of the cell, extent and nature of the violation, duration of the detention, applicant’s standard of education [and] his income, awards in the previous comparable cases. . .”

[7] As correctly submitted by Ms van der Merwe, who appeared for the defendant, the magistrate has seriously misdirected herself. The duration of the plaintiff’s detention was 1 hour and 35 minutes as apparent from the times stated in paragraph 2 above and not 15 hours and 50 minutes as apparent the erroneous release times stated by the magistrate. The time of the plaintiff’s release from detention was common cause in the court a quo after the trial had been postponed to allow the defendant an opportunity to procure witnesses on that aspect.

[8] The plaintiff gave evidence that for the entire duration of his detention he was seated behind the counter at the police station. There were neither facts pleaded nor any evidence tendered regarding ‘*condition of the cell*’ as it would have been irrelevant. Likewise there was no evidence relating to the plaintiff’s income.

[9] In the circumstances the appeal court is at large to consider the relevant facts and determine the appropriate damages. I turn to consider what amount should be awarded to the plaintiff as damages for wrongful arrest and detention.

[10] Mr O’Brien, who appeared for the plaintiff, correctly emphasised that the deprivation of liberty has always been regarded as a particularly serious infringement of a person’s rights. In *Thandani v Minister of Law and Order*¹ it was stated in respect to quantum that:

“Sight must not be lost of the fact that the liberty of the individual is one of the fundamental rights a man in a free society which should be jealously guarded at all times and there is a duty on our Courts to preserve this right against

¹ 1991 (1) SA 702 (E)

infringement. Unlawful arrest and detention constitutes a serious inroad into the freedom and the rights of an individual.”

[11] The need for prudence in assessing damages for unlawful arrest and detention was stated as follows by Jones J:

“In modern South Africa a just award for wrongful arrest and detention should express the importance of the constitutional right to individual freedom, and it should properly take into account the facts of the case, the personal circumstances of the victim, and the nature, extent and degree of the affront to his dignity and his sense of personal worth. These considerations should be tempered with restraint and a proper regard to the value of money, to avoid the notion of an extravagant distribution of wealth from what Holmes J called the ‘horn of plenty’, at the expense of the defendant.”²

[12] The plaintiff was arrested at home where he resided with his sickly aunt. Arrangements were made for another person to look after his aunt in the plaintiff's absence. He was transported in a police car to the police station where, as previously stated, he was seated behind the counter. Either one or two private citizens, plaintiff is uncertain, witnessed his

² *Olgar v Minister of Safety & Security, ECD Case No 608/07, unreported.*

detention at the police station. During his detention, a friend of the plaintiff was refused permission to talk to him or sit with him behind the counter.

[13] At the relevant time the plaintiff was 48 years old and single. He was self-employed as a carpenter. He was a member of the board of trustees of the complex where he resided and his portfolio was responsible for the cleaners. He had obtained matric at school and had completed courses as a switchboard operator and two grades as a security officer.

[14] In my view, in all the circumstances an award for damages of R10 000.00 would be appropriate.

[15] The magistrate set the rate of interest at 15.5% in her judgment. Ms van der Merwe submitted that the correct rate of interest was 10.25% at the time as published in Government Gazette 37831 dated 18 July 2014. Mr O'Brien correctly conceded the issue. I agree with the submission.

[16] The magistrate further ordered that interest should run from date of service of summons. She did not give reasons for such an order.

[17] Ms van der Merwe submitted that interest on the damages should run from date of judgment since damages were assessed from that date. The point was conceded, correctly in my view, by Mr O'Brien.

[18] The damages awarded in this matter is a non-monetary loss valued at the time judgment was handed down. The valuation was made in currency values at the time judgment was delivered not an earlier time.³ Thus the plaintiff had suffered no loss of value as he was paid in current values and not depreciated currency. It is inequitable for the defendant to be ordered to pay interest from date of service of summons.⁴

[19] Accordingly the following order will issue:

19.1 The appeal is upheld with the defendant awarded 50% of the costs;

³ *SA Eagle Insurance Co Ltd v Harley* 1990 (4) SA 833(A) at 841E-F.

⁴ *Smit v Minister of Safety & Security* [2016] ZAEC PE HC 73; *Klaas v Minister of Safety & Security* Case No 1895/2014, PE HC, unreported.

19.2 The order of the court *a quo* is set aside and substituted with the following:

- (a) The defendant is ordered to pay the plaintiff damages in the amount of R10 000.00;**
- (b) Interest is payable on the aforesaid amount, calculated at then prevailing prescribed rate of 10.25% per annum from date of judgment to date of final payment;**
- (c) The defendant is ordered to pay the plaintiff's costs of suit.**

T MALUSI
Judge of the High Court

Revelas J: I agree and it is so ordered.

E REVELAS
Judge of the High Court

Counsel for the appellant, Ms van der Merwe instructed by Enzo Meyers Attorneys, 100 High Street, Grahamstown.

*Counsel for the respondent, Mr O'Brien instructed by O'Brien Incorporated
Attorneys, 7 Bird Street, Central, Port Elizabeth.*

Date Heard: 9 March 2018

Date Delivered: 10 April 2018