

REPUBLIC OF SOUTH AFRICA



IN THE SOUTH GAUTENG HIGH COURT  
(JOHANNESBURG)

CASE NO 05081/2011

- (1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: YES  
(3) REVISED.

24 May 2012

  
FHD VAN OOSTEN

In the matter between

**RAYMOND NGEMA**

**PLAINTIFF**

and

**THE MINISTER OF POLICE**

**DEFENDANT**

*Delict - assault - wrongful arrest and detention – by members of the SAPS – evidence in respect of - crucial shortcoming in evidence of police witnesses - plaintiff's evidence accepted.*

*Quantum of damages - general damages - assault causing minor injuries - wrongful arrest and detention for less than 3 hours – global amount of R40 000 awarded.*

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**J U D G M E N T**

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**VAN OOSTEN J:**

[1] In this action the plaintiff claims damages in the sum of R250 000 from the defendant based on an alleged assault and wrongful arrest and detention by members of the

South African Police Service.

[2] The common cause facts arising from the evidence adduced before this court are the following. On 12 April 2010, at approximately 06h30, the plaintiff was arrested by constable Mooka, at the Chloorkop taxi rank, in Kempton Park. The plaintiff was taken to the Norkem Park police station where he was informed that a charge of interference with police duties was being investigated against him. A "Notice of rights in terms of Constitution" signed by him, was handed to him, his fingerprints were taken and he signed a "warning statement". He was detained in a police holding cell until approximately 09h15, when he was released and warned to appear in court the next morning. He did so but was informed, prior to an appearance, that the charge against him was not pursued. He immediately attended the consulting rooms of Dr Ramla, who examined him and recorded his findings on a J88 form. Thereafter he went home. He returned to his work the next day.

[3] A brief summary of the opposing versions of the parties is the following. The plaintiff testified that he was on his way to work which required him, first, to take a taxi to Chloorkop taxi rank, and, second, a taxi to his place of employment. Having completed the first leg of the journey he was waiting in a queue, at the Chloorkop taxi rank, to board the second taxi when a police vehicle arrived, which due to congested traffic, was blocked from driving through. The occupants of the police vehicle alighted and attempted to direct the taxis causing the blockage, away. This resulted in protests and ridicule from the waiting commuters. Arguments ensued and an attempt was made to apprehend one of the people in the crowd. Upon their return the plaintiff was apprehended. He was grabbed by the police and he tried to slip away. They pulled him, hit and kicked him and dragged him off to the police vehicle. In the process he fell down causing injuries to his hands and knees. He was bundled into the police vehicle and made to sit between the driver and the front passenger seat. His t-shirt was pulled over his head and the vehicle drove off. He was asked why he had interfered with the police in the performance of their duties. The vehicle stopped at a filling station, the shirt was removed from his head and he was told to go. He alighted and looked for a taxi when the police vehicle re-appeared. The police called him and he was ordered to get in. He did so and was taken to the Norkem Park police station. His fingerprints were taken, he

was told to sign documents and upon his request was informed that the charge against him was disturbing police officers. He was detained in a holding cell and released shortly afterwards, having been given a warning to appear in court the next morning. He first attended the Independent Complaints Directorate office in Johannesburg to lay a complaint against the police but was requested to first obtain more information concerning the identity of the policemen involved as well as the registration number of the police vehicle and thereafter consulted his legal representatives. The next morning he attended court but was informed that the case against him was not proceeding. He was thereafter medically examined by Dr Ramla, who was called to testify for the plaintiff. The examination of the plaintiff was conducted at approximately 10h00 that morning. The plaintiff informed him that he had been assaulted the previous day and on examination the following injuries were detected: small haemorrhages of both eyes, tenderness of the neck and right lower chest, two small lacerations of the left hand and bruising of the right knee and leg. The wounds were cleaned; a dressing was applied to the injuries on the hand, and an eye ointment and anti-inflammatory medication given to him. Dr Ramla was of the opinion that the injuries had recently been sustained and that they were consistent with an assault on the plaintiff.

[4] Two witnesses testified for the defendant: Cnst Mooka and Lt Sekgobela. They were part of a group of 8 police officials who were in a marked police vehicle, on their way to Tembisa, where they were to perform duties for the day. At the Chloorkop taxi rank the traffic had come to a standstill resulting from a number of taxis blocking the entrance. They stopped and alighted to investigate. The plaintiff got out of a taxi and started swearing at the police. Mooka testified that the plaintiff approached him while he was expressing his annoyance with the conduct of the police in holding them up. The plaintiff, he further testified, in passing behind him, pushed him. He almost lost balance but turned around and observed that it was the plaintiff who had pushed him. He called Sekgobela, who was a mere few metres away from him, to assist and told him that the plaintiff had pushed him. The plaintiff ran into the taxi rank with Mooka in pursuit. He arrested the plaintiff and holding him by the belt, started walking towards the police vehicle. Sekgobela joined them and he held the plaintiff by the belt on the other side. At the police vehicle the plaintiff refused to get in and started to fight in resisting the attempt to get him into the vehicle. Two other policemen joined in and a struggle

between them ensued. The plaintiff and one of the policemen fell to the ground. They however succeeded to subdue the plaintiff and he was placed in the police vehicle. They proceeded directly to the Norkem Park police station where the plaintiff was handed to the police officials on duty there.

[5] Sekgobela testified that he was controlling the traffic in an attempt to alleviate the traffic congestion. He observed the plaintiff and heard him swearing at the police. Mooka called on him to assist in taking the plaintiff to the police vehicle. He joined them on their way to the police vehicle, and held the plaintiff by the hand. At the vehicle the plaintiff, voluntarily, without resistance or interference, got into the vehicle and they proceeded to Norkem Park police station where the plaintiff was left in the care of police officials.

[6] A convenient point of departure is to consider the lawfulness of the plaintiff's arrest and detention. It is trite that the *onus* rests on the arresting officer, and therefore the defendant, to prove justification for the arrest and detention (see *Zealand v Minister of Justice and Constitutional Development and another* 2008 (4) SA 458 (CC) para [24] and [25]). The determination of this issue requires me to assess the credibility of the witnesses. In this regard the shortcoming in the evidence of the police witnesses concerning the contradiction regarding the events at the police vehicle, after the plaintiff had been apprehended, is of crucial importance. Sekgobela directly contradicted his colleague on this aspect. It is clear that Sekgobela's evidence on this aspect was not merely an oversight or, perhaps, due to a lapse of memory: in his police statement, made on the day of the incident, there is no reference to the events at the police vehicle as described by Mooka. This brings me to the police statement of Mooka: he likewise in the statement made on the day of the incident, mentioned nothing of the plaintiff's recalcitrance on their arrival at the police vehicle. On Mooka's version that was the only time that an altercation had occurred, which might have explained the injuries the plaintiff had sustained. One would accordingly have expected both the police witnesses to have dealt with it in their police statements, had it in fact occurred. I am accordingly unable to reconcile the contradiction in the evidence of the police witnesses, which impacts on their credibility. As against this, the evidence of the plaintiff accords with the probabilities in all material respects. The medical evidence corroborates his version.

The only criticism that can validly be made is that the plaintiff inflated the nature and duration of the assaults. Apart from this, nothing has been advanced which in any material way, negatively impacts on his credibility. I accordingly accept the plaintiff's version and it follows that the plaintiff's claims must be upheld.

[7] As regards the assessment of the award in respect of the plaintiff's general damages, I propose to adopt the approach as summarised by Erasmus J, in *Ntshinga v Minister of Safety and Security and another*, and cited with approval by Plasket J, in *Peterson v Minister of Safety and Security* 2011 (6K6) QOD 1 (ECG). The plaintiff is 29 years old, single, the father of a minor daughter, and in fixed employment, as a truck driver, at Super Rent. The humiliation and impairment of the plaintiff's dignity due of the unlawful deprivation of personal freedom deserves due recognition. The plaintiff was moreover assaulted in a degrading manner. He was slapped, punched and kicked. On the other hand the injuries he sustained were of a minor nature. Ad hoc treatment and medication sufficiently cured the injuries. There are no permanent sequelae. The plaintiff was in custody for less than three hours. He was locked up being alone in the police holding cell. Although the incident resulted in two days absence from work, no disciplinary steps were taken against the plaintiff nor did he suffer any loss of income.

[8] I have had regard to awards in the following comparable cases, alive to the rider that they merely provide a guideline as to what courts consider to be appropriate (see *Minister of Safety and Security v Seymour* 2006 (6) SA 320 (SCA)). In *Seymour* an award of R500 000 for an unlawful detention for 5 days was, on appeal, reduced to R90 000. In *Kwenda v Minister of Safety and Security* 2011 (6K6) QOD 10 (GNP), Murphy J, with reference to awards in a number of comparable previous cases, awarded R70 000 as general damages for an unlawful arrest and detention for approximately 44 hours. In *Hoco v Mtekwana* 2011 (6K6) QOD 18 (ECP) an award of R80 000 was made for unlawful detention for a period of about four days. This was also the amount awarded in *Fubesi v Minister of Safety and Security* 2011 (6K6) QOD 28 (ECG), where the period of detention was some 18 hours. More in point are the following cases: *Rowan v Minister of Safety and Security* 2011 (6K6) QOD 44 (GSJ): general damages of R50 000 awarded for unlawful detention of 5 hours and finally, *Gobuamang v Minister of Police* 2011 (6K6) QOD 85 (ZAGPJHC), where R70 000 was

awarded for an unlawful arrest and detention of 16 hours. The length of time a person is detained after arrest is not the only factor to be considered when determining damages: all the relevant circumstances deserve consideration (see *Minister of Safety and Security v Tyulu* 2009 (5) SA 85 (SCA)). In *Tyulu* an award of R15 000 was made in respect of general damages the wrongful arrest and detention of a magistrate, of some 15 minutes duration.

[9] I have come to the conclusion that one globular amount should be awarded in regard to the incident as a whole. Having considered all the facts of this matter and in the exercise of my discretion, an amount of R40 000, as general damages, in regard to the assault and the wrongful arrest and detention, in my view, constitutes a *solatium* commensurate with the injury inflicted.

[10] It remains to deal with costs. The circumstances of this case did not warrant optimism of an award being made in excess of R100 000. The awards in recent comparable cases demonstrate amounts awarded, even in more serious cases, far below the maximum jurisdictional threshold of the magistrate's court. This action did not involve complex issues of fact or law. I am accordingly of the view that costs should be awarded on the appropriate magistrate's court scale.

[11] In the result judgment is granted in favour of the plaintiff against the defendant for:

1. Payment of the sum of R40 000.
2. Interest on the amount in paragraph 1 above at the rate of 15,5 % per annum from 14 days after the date of judgment to date of payment.
3. Costs of suit on the appropriate magistrates' court scale.



**FHD VAN OOSTEN**  
**JUDGE OF THE HIGH COURT**

**COUNSEL FOR PLAINTIFF**

**PLAINTIFF' ATTORNEYS**

**ADV A BESSINGER**

**BESSINGER ATTORNEYS**

**COUNSEL FOR DEFENDANT**

**ADV M TONYELA**

**DEFENDANT'S ATTORNEYS**

**THE STATE ATTORNEY**

**DATES OF HEARING**  
**DATE OF JUDGMENT**

**21, 22 & 23 MAY 2012**  
**24 MAY 2012**