REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)

CASE NO.: 15/27028

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

03/03/2017 .....

In the matter between

GRIFFITHS, QUINTON MARK **PLAINTIFF**

and

MINISTER OF POLICE **DEFENDANT**

JUDGMENT

VAN DER WESTHUIZEN, A J

[1] The manner in which this matter was presented to court leaves much to be desired. Suffice to say that the parties underestimated the issues and the evidence required in that regard. This matter should never have progressed to court.

[2] This matter concerns an incident that occurred on 8 February 2015 at a nightclub known as *After Hours* in Turffontein, Johannesburg. The

plaintiff visited the nightclub with his friends on the evening of 7 February 2015 until the early hours of 8 February 2015.

[3] Around 3 am on the morning of 8 February 2015, members of the South African Police Services unit tasked with enforcing control relating to Fire Arms, Liquor Licences and Second Hand Goods (FLASH) arrived at the premises of the nightclub to enforce the terms of the liquor permit issued in respect of the said premises. The trading hours in terms of the relevant liquor permit only extended to 2 am. The music was shout down, the patrons requested to exit the club building, and the club was closed. The owner of the club was arrested for contravention of the relevant liquor permit. He was to be taken to Booysens Police Station for processing. Prior to the owner of the club being transported to Booysens Police Station, the plaintiff was arrested on a charge of alleged interference with the duties of a police officer at the club premises. The plaintiff was thereafter detained.

[4] The plaintiff alleges that his arrest and subsequent detention was unlawful. He instituted an action against the defendant for unlawful arrest and unlawful detention. The plaintiff further alleges that the members of the South African Police Services, who made the arrest and caused the detention, acted in the course and scope of their employment with the defendant. The plaintiff caused the required notice of the intention to institute legal proceedings to be given to the defendant.

[5] An action was subsequently instituted wherein the plaintiff alleges that the aforesaid arrest and detention were unlawful and further alleges that as result of the unlawful arrest and detention, he suffered damages in the amount of R500 000.00

[6] The defendant filed a Special Plea relating to the alleged non-compliance with s 3 of the Legal Proceedings Against Certain Organs

of State Act, No. 40 of 2002. The Special Plea was not persisted in and requires no further consideration.

[7] At a pre-trial conference held by the parties, the defendant admitted the arrest and detention of the plaintiff, but denied that the arrest and subsequent detention was unlawful. Those admissions attracted the onus of establishing that the arrest and detention was lawful.[1]

[8] An honest belief in the legality of an arrest and detention is no defence.[2]

[8] It is common cause that the arrest of the plaintiff was made without a warrant. The initial plea over constituted a bare denial. The defendant amended its plea over to include a reference to s 40(1)(b), read with s 50 of the Criminal Procedure Act, No 77 of 1978 (the Act).

[9] During argument, further reliance was placed upon s 40(1)(j) of the Act, i.e. a wilful obstruction of a police officer in the execution of his duties. An oblique reference to s 40(1)(a) of the Act is contained in the defendant's written heads of argument handed up during argument. The period of the plaintiff's detention is also in dispute.

[10] It bears noting that the defendant did not respond to the notices in terms of s 35 of the Uniform Rules of Court and consequently made no discovery. However, a copy of the docket prepared subsequent to the arrest of the plaintiff found its way into the court file. It was not discovered by either of the parties. In addition, certain pages, apparently of a register, were also placed in the court file. Neither counsel explained who had prepared copies of the aforesaid documents and placed same in the court file. What the status of those documents is, is not clear, yet both parties made reference thereto

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[1] *Minister of Safety and Security v Sekhoto et al* 2011(1) SACR 315 (SCA) [7]
[2] See *Ramsay v Minister van Polisie* 1981(4) SA 802 (A) at 818

when examining the witness for the defendant. I shall return to those documents in due course.

[11] Counsel for the defendant contends that the plaintiff was obliged to compel the defendant to discover further discovery and in failing to do so, the plaintiff has only himself to blame. Counsel for the defendant further contends that an order compelling further and better discovery would have assisted the plaintiff in support of his case. Those contentions smack of lack of an understanding of the purpose of discovery.

[12] On behalf of the defendant the arresting officer, Warrant Officer Gert Cornelius Jacobus Johannes Strydom, testified. The plaintiff testified on his own behalf. Neither of the parties called any further witness and closed their respective cases after leading the evidence of their respective single witnesses.

[13] The evidence of W/O Strydom, a member of the FLASH-unit, with 14 years service, was cryptic and rather non-specific. W/O Strydom explained the purpose of the FLASH-unit. He gave a cryptic description of the events at the premises of the nightclub in the early hours of 8 February 2015. A summary of his evidence in chief is as follows:

(a) At 3 am the FLASH-unit arrived at the aforesaid nightclub premises to enforce the terms of the liquor permit for that premises;

(b) The permitted trading hours extend until 2 am. There was an obvious transgression of the terms relating to the trading hours;

(c) The unit stopped the music, instructed the patrons to exit the building, locked it and arrested the owner;

(d) While waiting for the patrons to leave, an incident occurred. The plaintiff, highly intoxicated, approached W/O Strydom outside the club building and allegedly said that they could not do what they had done. The plaintiff had a bottle of beer in his hand. W/O Strydom thereupon informed the plaintiff that it was none of plaintiff's concern. He stated that he had said that a few times to plaintiff;

(e) In view of the plaintiff's continued complaining, W/O Strydom considered it an interference with the duties of a police officer that constitutes a crime, and accordingly arrested the plaintiff. W/O Strydom testified that plaintiff resisted arrest and he used minimum force to make the arrest and handcuff the plaintiff. No detail relating to the interference or the resisting arrest was proffered;

(f) W/O Strydom was adamant that no physical interference was caused by the plaintiff, only verbal;

(g) After arresting the plaintiff, W/O Strydom and a colleague, one W/O Grobler, transported the plaintiff and the owner of the nightclub to Booysens Police Station. There the owner was processed and handed a J534. That document contained details of the transgression of the liquor permit and the applicable fine that had to be paid that amount to approximately R1 500.00. The owner paid the fine and left. The plaintiff remained behind;

(h) At about 4:45 am at Booysens Police Station, the plaintiff was handed a document relating to his rights under the Constitution. The plaintiff was asked if he understood it and was requested to sign the document. I interpose to record that no evidence was led that the plaintiff was told the reason for his arrest, when being arrested;

(i) Thereafter the plaintiff was transported to Johannesburg Central for further detention, as apparently there was no cell accommodation at Booysens Police Station. At Johannesburg Central, W/O Strydom handed the plaintiff over and left. He does not know what happened thereafter;

(j) Counsel for defendant referred W/O Strydom to certain documents contained in the bundle in the court file. Some of those documents presumably formed part of the docket. A document titled, "*NOTICE OF RIGHTS IN TERMS OF THE CONSTITUTION*", was referred to. That apparently is the document that the plaintiff was asked to sign as recorded above;

(k) W/O Strydom was further referred to a document that consisted of two pages and apparently contains excerpts from a register. He was asked to explain some of the entries appearing thereon. W/O Strydom testified that in respect of the entries appearing opposite number 71, those are in respect of one Quinton Griffiths. The entry appearing in the column recording the CR/CAS number was said to be incorrect. The first three figures should be 179 instead of 178, the latter relating to the transgression of the liquor permit. I interpose to record that no evidence was led as to who had made the relevant entries. It is fair to infer that it was not made by W/O Strydom as it is clearly in a different handwriting to that of W/O Strydom;

(l) Counsel further referred W/O Strydom to a second page. That page presumably is a continuation of the register appearing on the first page referred to above. W/O Strydom was asked by counsel for defendant to consider the time of release that appeared in column 14.3 on that page opposite the entry commencing with 460. The time recorded in column 14.3 is recorded as 05:51 on 08/02/2015. W/O Strydom then testified

that the time recorded therein reflected the time when the plaintiff was released from Johannesburg Central. I interpose to record that in column 12.2, on the same page and opposite the entry commencing with 460, the time recorded when the person was charged, as 05:51.

[14] That concluded the defendant's evidence in respect of the issue of the lawfulness of the arrest and subsequent detention.

[15] The plaintiff's evidence can be summarised as follows:

(a) On the evening of 7 February 2017, the plaintiff, 22 years of age at the time, visited the nightclub *"After Hours"* with some of his friends and met other friends there. They remained there until the wee hours of 8 February 2015. Around 3 am on 8 February 2015, the music stopped and the patrons were asked to leave the building;

(b) On exiting the building, he noticed the presence of the police. He still had a drink in his hand and approached one of the police officers. It was W/O Strydom. He enquired from W/O Strydom why the club was being closed down. W/O Strydom told him to spill his drink and leave. The plaintiff refused to spill his drink;

(c) The plaintiff testified that he merely enquired what was happening and was told that he was interfering with the duties of the police and again to spill the drink which he refused to do;

(d) W/O Strydom arrested him and in the process his T-shirt was torn. He complained that the handcuffs were too tight as he felt his blood circulation being cut off. W/O Strydom ignored his complaint and shut the door of the police vehicle in his face;

(e) He was taken together with the owner of the nightclub to Booysens Police Station. There he was given a document relating to his Constitutional Rights and asked to sign it. He testified that he understood his rights and signed the document. Thereafter he was taken by W/O Strydom and W/O Grobler to Johannesburg Central where he was further detained;

(f) The plaintiff testified that he was not processed at Johannesburg Central, but merely taken to the cells. He further testified that W/O Strydom informed his colleagues at Johannesburg Central that "this one is for you for the weekend";

(g) Around 6 am on 08/02/2015 the plaintiff was placed in a cell with more than 25 inmates. The cell was dirty and infected. He felt threatened and R12.00 was robbed off him. He had to hide his cell phone as no guard came when called to keep the cell phone in safe care;

(h) On Monday morning, 10 February 2015, the plaintiff was taken to the Magistrate's Court and placed in a holding cell. After about 2 ½ hours his name and that of an elderly gentleman were called and they were taken from the holding cell;

(i) The plaintiff was then told that he was free to go. He enquired what else further he was to do, and when he should attend court. He was merely told that he was free to go;

(j) He testified that his mother was at court and that he was picked up by a person from the firm of his legal representatives;

(k) At his legal representatives' offices he explained what had happened and the process in respect of lodging this claim was thereafter initiated.

[16] During cross-examination, the plaintiff was asked whether he had any witnesses that would corroborate his version with particular reference to the period of detention and when he was released. The plaintiff responded that his mother could testify, but that she had returned from a long journey the day before and had to return to work. She was thus not able to testify on his behalf.

[17] That concluded the evidence of the plaintiff.

[18] The evidence of W/O Strydom clearly lacks particularity. He refrains from explaining the alleged interference with his duties, other than a verbal interference. How that verbal interference impacted on his duties was not explained, particularly where on his own evidence he had already completed his duties and was to transport the owner to Booysens Police Station.

[19] A further concerning factor of the evidence of W/O Strydom relates to the lack of particularity of the resisting of the arrest. Why, and in what manner he had to use minimum force, is not explained.

[20] The only evidence that is before the court to consider whether there was an interference with the duties of a police officer and the alleged resisting of arrest are the mere statements to that effect by W/O Strydom that it did occur, without any elaboration.

[21] Considering the respective versions in respect of the facts of the incident, the following is of importance.

(a) At the stage that the plaintiff approached W/O Strydom, the purpose of the intervention of the police at the nightclub had been completed. The nightclub had been closed and the owner arrested;

(b) The content of the exchange between W/O Strydom and the plaintiff on both versions is similar: on the one hand it was phrased as a statement, whilst on the other it was posed as a question. The gist being the same;

[22] In my view, on either version and in the particular circumstances, neither can be said to constitute an interference with police duties. On the evidence of W/O Strydom he had already completed his duties. There was no obligation upon him to remain at the scene. There were other police officers and security guards from a security firm. His next task was to transport the owner of the nightclub to Booysens Police Station. The plaintiff in no way prevented, or hampered, W/O Strydom in that regard. On the probabilities, the plaintiff merely made a nuisance of himself. That in itself cannot constitute an interference with police duties that would translate into the committing of a crime.

[23] It was not explained whether an interference with the duties of a police officer is an offence within the categories of offences listed in Schedule 1 of the Act.

[24] Further in my view, for the foregoing reasons, the incident falls outside the ambit of either s 40(1)(a) or (b) of the Act. The evidence does not support reliance upon s 40(1)(j) of the Act.

[25] In view of the lack of particularity in respect of the allegation that the plaintiff resisted arrest, it cannot be found to have happened. Accordingly, the charge of alleged resisting arrest has no substance. Further in this regard, the entry on the pages of the register does not record a charge of resisting arrest.

[26] It is common cause that the plaintiff was never charged before court. W/O Strydom testified that a *nolle prosequi* was issued, although his understanding of that term is not clear. It is however irrelevant for purposes of this judgment.

[27] I find that the jurisdictional facts for an arrest, whether in terms of s 40(1)(a) or (b) of the Act, are and were not present.[3]

[28] It follows that the arrest of the plaintiff is unlawful. Having found that the arrest of plaintiff is unlawful, the subsequent detention of the plaintiff is also unlawful. Consequently, the defendant has thus not discharged the onus of proving its defence of a lawful arrest and subsequent detention of the plaintiff.

[29] The lack of evidence on the part of the defendant relating to the detention of the plaintiff and the duration thereof is glaring and of some concern. The status of the documents referred to and relied upon by the defendant was not clarified. No evidence was proffered relating to the author of the entries on the two pages of the register mentioned above. The submission on behalf of defendant that those pages of the register relate to Johannesburg Central is without merit for what follows.

(a) The two pages referred to are clearly related. From the headings it is apparent that the columns follow sequentially;

(b) The entries appear to be on the same level or line and hence a continuance of the earlier entry;

(c) On the second page of the register, in column 12.3 opposite number 460, which relates to monthly serial number 71 on the previous page, the time of charging of the suspect, is recorded as 05:51. In column 14.2 on the second page opposite entry 460, which relates to monthly serial number 71, the time of release of the suspect is recorded as 05:51. In column 14.3 on

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[3] *Minister of Safety and Security v Sekhoto, supra*

the second page, still opposite entry 460, the reason for release is recorded as "JHB Central";

(d) The entries opposite monthly serial number 70 relates to the arrest of the owner of the nightclub. That person was processed at Booysens Police Station after which he left. He was not taken to Johannesburg Central;

(e) In the same column, i.e. 14.3 and opposite entry 459 relating to the owner of the said nightclub, the reason for release is recorded as J534;

[30] It follows that the pages of the register cannot be that of Johannesburg Central. The only inference to be drawn is that the register is that of Booysens Police Station.

[31] It is common cause that the plaintiff was not detained at Booysens Police Station and that he was transported to Johannesburg Central for further detention.

[32] The evidence of W/O Strydom relating to the date and time when the plaintiff was released from detention cannot be accepted.

[33] Following on from the entries on the pages of the register, the plaintiff could not have been released from Johannesburg Central at the recorded time of 05:51 on 08/02/2015.

[34] In the absence of any gainsaying evidence in respect of that of the plaintiff regarding his detention and the duration thereof, the plaintiff's evidence is uncontroverted and is to be accepted.

[35] There remains the issue of *quantum*. Counsel for the defendant submitted that in the event it is found that the arrest and subsequent

detention was unlawful, the duration of the detention equates to two days. Counsel for the plaintiff accepted that proposition.

[36] The evidence tendered on behalf of the plaintiff relating to the *quantum* of the damages suffered is sparce, to say the least. The only personal circumstances put forward was the age of the plaintiff. Nothing else.

[37] Both counsel referred to authorities dealing with the *quantum* of damages to be awarded. None of those find application in the present matter, in view of the sparcity of evidence in respect of the factors to be considered.

[38] The plaintiff claims R500 000.00 in damages. That amount does not warrant consideration in the present matter for want of facts justifying that amount. Counsel for the plaintiff submitted that an amount of R120 000.00 would be fair. However, counsel for the defendant submitted that a fair and reasonable amount for damages would be R50 000.00.

[39] In my view, the amount of R50 000.00 would be reasonable in the circumstances.

[40] The issue of costs require some consideration. It would have been clear to the plaintiff that an amount R500 000.00 in respect of damages in the circumstances of this matter was unduly excessive. The only probable reason to have claimed such amount was to bring the matter within the jurisdiction of the High Court. The matter is simple and uncomplicated. It could have been dealt with in a lower court with appropriate jurisdiction. The matter certainly did not warrant the attention of the High Court. It follows that the plaintiff is only entitled to costs on the appropriate Magistrate's Court scale.

[41] It follows that the action is to succeed.

I grant the following order:

(a) The defendant is ordered to pay to the plaintiff the sum of R50 000.00 (fifty thousand rand);

(b) The defendant is ordered to pay interest on the said amount at 15.5% per annum from date of judgment to date of payment;

(c) The defendant is ordered to pay the costs of suit on the appropriate Magistrate's scale.

C J VAN DER WESTHUIZEN
ACTING JUDGE OF THE HIGH COURT

On behalf of Plaintiff:	B Z Neshavi
Instructed by:	Mzambo Attorneys
On behalf of Defendant:	M M Zondi
Instructed by:	The State Attorney

Date of Hearing: 21 February 2017 and 22 February 2017

Date of Judgment: 03 March 2017