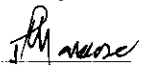




IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED
2012.08.03	
DATE	SIGNATURE

CASE NUMBER: 69479/09
DATE: 3 August 2012

WANDILE PROMISE MOHLALA

APPLICANT

V

MINISTER OF SAFETY AND SECURITY

RESPONDENT

JUDGMENT

MABUSE J:

1. This is one of the three matters that were heard simultaneously because of their unique situations. They all arose from the same set of facts. In this case, the plaintiff is Wandile Promise Mohlala, the nephew of the plaintiff in case no. 69480/09. He claims from the defendant, who is cited in this matter in his official capacity, payment of R250,000.00 plus ancillary relief.

2. In his particulars of claim, he sets forth the cause of action as follows. On 29 January 2009 and at Kanyamazane one Mthombeni, who at the time was accompanied by some members of the South African Police Service and whose identity were to him unknown, arrested him without a warrant and detained him for more or less three hours.
3. Following his arrest, the second defendant and the said members assaulted him and tortured him the following manner:
 - 3.1 He was slapped or clapped in the face;
 - 3.2 He was hit several times with a book, according to his own evidence a dictionary at the back of his head;
 - 3.3 He was hit with open hands on his head;
 - 3.4 He was covered with a plastic bag over his whole head, face and mouth, up to his neck and smothered;
 - 3.5 He was electrocuted with an electric belt which was remotely operated with a portable device.
4. According to his testimony, the assault commenced at house no. 3432 Kanyamazane on 29 January 2009 during the police investigations of the assassination of his uncle. On this particular day, although he was a student during paralegal studies he did not, at the instructions of the police, whose instructions were given the previous day, go to school. The police had arrived at his home between 7 o'clock and 8 o'clock in the morning. They came in large numbers and in several motor vehicles. All those policemen had come to assist Mthombeni to investigate the case. The police were of a mixed vase.
5. While he was in the house he was assaulted in the following manner. One policeman slapped him in the face. In order to avoid any injury to his face he covered his face with his hands. The same policeman started punching him. One of the policemen covered his head with a plastic bag and smothered him. He managed with his tongue to puncture a hole in the plastic bag and that made it possible for him to breath.

6. They asked him questions about the assassination of his uncle and each time he response was met with further assault. He was slammed with a dictionary three times on his head.
7. They took him to the dining room where the questioning continued. He was slammed at the back of his head.
8. Later he was put in a Kombi and taken to a neighbouring bush where the assault endured. On his arrival in the bush he was removed from the Kombi and placed in a Jeep motor vehicle. In the Jeep motor vehicle he and his aunt were instructed, firstly, to sit on the floor of the motor vehicle and, secondly, not to speak to each other. Later they removed him from the Jeep and took him to the BMW motor vehicle. They asked him to tell the truth and who had killed his uncle. He told them that he did not know. They took him to the Kombi where they put an electric belt around his waistline and his clothes. Here they continued asking him questions and he was electrocuted five times. When they were satisfied, the belt was removed from him and he was taken back to the Jeep motor vehicle. As a consequence of the assault upon him he sustained some injuries. These injuries have aptly been captured in exhibit “B”. The photographs in exhibit “B” were taken on 30 January 2009.
9. As a consequence of the assault upon him the plaintiff sustained some injuries. As already indicated somewhere above, the said injuries were aptly captured in Exhibit “B”. The photographs were taken on 30 January 2009. According to his particulars of claim, the plaintiff sustained the following injuries:
 - 9.1 He was swollen;
 - 9.2 Burns, caused through contact with electricity charged belt.
10. Dr. Reinette du Plessis (“Dr. du Plessis”) was called as an expert witness to testify about her finding of a biopsy. She testified that her examination of a piece of human skin that had been submitted to her for medical analysis disclosed that the wound or injury from which the said skin had been extracted had been caused by the application of electricity.

11. The plaintiff called no witness but because the evidence of all the three plaintiffs was tendered in one continuous swop, what the other plaintiffs told the court supported the current plaintiff.
12. At the close of Wandile's case, the defendant, in defence, led the evidence of two witnesses, one Mr. Mthombeni and a certain Mr. Aphane. Mr Mthombeni told the court in his testimony that he received instructions from his commanding officer, after the assassination of Jimmy Mohlala, the plaintiff's uncle, to go and investigate the case. On 5 January 2009, in the company of a colleague of his, one Mr. Mutubatse, he called at Wandile's home to go and speak to the people who were present when the incident took place. By reason of the fact that there were many people at that particular house on that particular day and at that particular time when he arrived he was unable to talk to the people, namely Cheazer Bonny Ndlazi, the plaintiff in case no. 69480/09 and the current plaintiff. So he took them to the police station where he took down their statements. As Tshepiso Michelle Mohlala, the plaintiff in case no. 69478/09, had at that stage been admitted at a local hospital after he had himself been shot during the assassination of Jimmy Mohlala, his father, he arranged for Mr. Aphane to go and consult with him there and to obtain his written statement, which Mr. Aphane did.
13. He could not remember if, on 29 January 2009, he was at the plaintiff's home but remember vividly that he used to visit the plaintiff's home 3-4 times a week in order to find out from the plaintiff, his aunt and Tshepiso if they did not have any information that could assist him to establish the identity of the killers. He denied specifically that he arrived on any day in a number of motor vehicles and with many of his colleagues. He denied furthermore not only that the plaintiff was assaulted but also that he was present when the assault took place. He in fact denied the whole events of 29 January 2009 as testified by the plaintiff and his witness. Mr. Aphane himself testified about the events of 5 January 2009.
14. Convinced that the plaintiff has proved his case, Mr. Brand argued that the court should grant judgment in the plaintiff's favour. He listed certain issues which according to him were common cause between the parties. He submitted that:

14.1 It was common cause that the plaintiff had been assaulted and that following such an assault he had suffered certain dire-bodily hurts.

14.2 The photographs of the plaintiff's injuries were taken on 30 January 2009;

14.3 A doctor took the plaintiff's skin for biopsy;

14.4 The results of the biopsy clearly indicated an unequivocally that the origin of the plaintiff's injuries is the application of electricity to the body of the plaintiff.

15. He submitted, and, in my view quite correctly so, that the only issue that the court was called upon to decide was the identity of the perpetrators. On the other hand, Mr. Mmusi submitted that the assault on the plaintiff never took place; that the police never arrived in a group in many motor vehicles at the plaintiff's home and finally that the police were never at the plaintiff's home on 29 January 2009.
16. Mr. Mthombeni, as he himself admitted, had been appointed as the investigating officer of the case involving Jimmy Mohlala. So in the execution of his duties, he visited the plaintiff's family on times without number. The plaintiff and his family came to know him and he came to know them. The plaintiff and his witnesses testified that they knew him and that he knew them. Their evidence was not disputed. In the premises, there is no reasonable possibility that they could have made any mistake about his identity. I therefore find that his identity had been positively established by the evidence.
17. As for the date, with their level of education and with the number of witnesses, it is highly unlikely that the plaintiff and his witnesses could have confused the date on which the incident took place with another date. The plaintiff's aunt is a school teacher. She is mature. She can read and write. The plaintiff himself was studying to be a paralegal or legal assistant. Tshepiso himself was at the university. It is on that basis unlikely that they had confused the date on which the incident took place.
18. Besides their testimony there is other evidence from which the date of the incident could be established. Firstly, a day after the events which constituted the subject of this claim he went to see an attorney who in turn arranged that the injuries that he had sustained be photographed. The frame of the photographs in Exhibit "B" clearly showed the date 30 January 2009. This was not disputed. The plaintiff and his

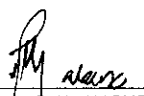
witnesses corroborated one another that the photographs were taken on 30 January 2009. This evidence could not be contradicted.

19. Secondly, the objective evidence of Dr. du Plessis, the specialist who had performed a biopsy supported the evidence of the plaintiff and its witnesses that when a piece of skin of the plaintiff was obtained for the test the injuries or wounds from which the skin had been obtained were not older than 48 hours. The Court must therefore find that it is more probable that the plaintiff's injuries were inflicted on 29 January 2009 than on 5 January 2009.
20. As I indicated earlier, Mr. Mmusi submitted at the commencement of his argument that the defendant's case was that the assault on the plaintiff never took place. He made this submission notwithstanding the evidence of the plaintiff that he had been assaulted; and, of crucial importance, notwithstanding the existence of the injuries on the plaintiff and furthermore notwithstanding the objective evidence of Dr. du Plessis. Apart from denying that the assault took place, Mr. Mmusi never proffered any explanation why the plaintiff would come to court and mislead it, or why in his own submission the assault did not take place. This court has no valid reason to refuse to rely on the evidence before it that the plaintiff was assaulted on 29 January 2009 by the members of the police services in the presence of Mr. Mthombeni who, while he was a police officer, condoned the assault and failed to protect the plaintiff or to stop the assault or even to arrest the perpetrators.
21. It is important, in my view, that this Court should take into account the manner in which the assault on the plaintiff was executed; the nature of the injuries that the plaintiff sustained as a result of the assault; the pain that he had to endure; the kind of medical treatment he received following the assault; whether he could have done something about his situation and; the last impressions, the assault on him by the member of the police.
22. The assault on the plaintiff was exacerbated by the fact that it was carried out by members of the police services who have been passed with the duty conditionally to protect private citizens. Even then it was not executed by one person but many. The assault had been planned by the police and it is for this reason that the police used shocking devices in the bush. The plaintiff was helpless. He was handcuffed from

behind and while in that position was shocked with an electric belt. What else could he do to protect himself?

23. It needs to be mentioned that the assault upon the plaintiff took place despite the fact that he was prepared to co-operate with the police. He did not refuse to answer their questions.
24. The assault on him commenced in the house where he was slapped and also hit with a book. He felt humiliated. He lost confidence in the South African Police Services. He even bemoaned the fact that he had been assaulted by the people who had been tasked to protect him. The assault took place from 09h00 in the morning up to 16h00. The plaintiff was, in that during that period deprived of his liberty. He was traumatised.
25. There is, in my view, no grounds upon which I can impeach his evidence. He made a very good witness. He answered all the questions properly and without any hesitation. He was confident in answering the questions. His credibility cannot be challenged. Mr. Mthombeni was, in my view, not an impressive witness. His evidence is unreliable. He conveniently, and in my view quite deliberately so, forgot the events of 29 January 2009 but was amazingly able to remember the events of 5 January 2009. He could not explain why it was not denied that he drove an Almeida motor vehicle on 29 January 2009 nor why it was never put to the witnesses that the police came in large numbers. Mr. Brand had to struggle to get him to answer simple questions like for instance whether he also took Jimmy Mohlala's cellphone. He was evasive when he was asked whether or not he recorded every event relating to his work in his pocket book. He was unable to furnish any valid reason why he could not remember the events of 29 January 2009. His credibility as a witness left much to be desired and one can simply infer that he was not an honest witness.
26. In my view, there is no reason why the plaintiff's claim should not succeed. Accordingly I make the following order:
 1. Judgment is granted against the first defendant in favour of the plaintiff.

2. The first defendant is hereby ordered to pay the plaintiff R150,000.00 plus interest at 15.5% on the said amount of R150,000.00 reckoned from 3 August 2012 until date of payment.
3. The first defendant is ordered to pay the plaintiff's costs of the action which costs shall include:
 - 3.1 The cost of two counsel; and
 - 3.2 The qualifying fees of Dr. Reinette du Plessis.


R.M. MABUSE
JUDGE OF THE HIGH COURT

Appearances:

<i>Plaintiff's Attorneys:</i>	<i>Frey & Slabber Attorneys</i>
<i>Plaintiff's Counsel:</i>	<i>Adv. CFJ Brand</i> <i>Adv. I Kruger</i>
<i>Defendant's Attorneys:</i>	<i>State Attorney</i>
<i>Defendant's Counsel:</i>	<i>Adv. LA Mmusi</i>
<i>Date Heard:</i>	<i>30 July 2012 - 1 August 2012</i>
<i>Date of Judgment:</i>	<i>3 August 2012</i>