

IN THE NORTH GAUTENG HIGH COURT, PRETORIA
~~DELETE WHICHEVER IS NOT APPLICABLE~~
(REPUBLIC OF SOUTH AFRICA)
(1) REPORTABLE : ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES : ~~YES~~/NO
(3) REVISED
DATE 20-2-12 SIGNATURE *BL [Signature]*

Date: 2012-02-21

Case Number: 22072/06

In the matter between:

STEVEN WEINBERG

Plaintiff

and

THE NATIONAL COMMISSIONER OF SAFETY
& SECURITY

First Defendant

VICTOR BOOYENS

Second Defendant

ESIAS JOHANNES ROUX

Third Defendant

JUDGMENT

SOUTHWOOD J

- [1] This is an action for damages for unlawful arrest and detention in which the plaintiff claims payment of the sum of R247 942,15. The plaintiff claims this amount because of his unlawful arrest and detention on the 27th of May 2005. The plaintiff seeks relief against the first and third defendants only. The plaintiff is not persisting in his claim against the second defendant.

[2] When the matter was called the first and third defendant's counsel applied for a postponement and tendered the wasted costs. After argument the application for postponement was dismissed and the trial proceeded. Before evidence was led, the first and third defendant's counsel formally admitted that they are liable for all the damages which the plaintiff can prove. The matter therefore proceeded on the question of quantum of damage only.

[3] The plaintiff testified and called his attorney, Jerome Levitz, to give evidence. Their evidence was not seriously disputed and there is no reason not to accept it. The defendants did not tender any evidence.

[4] The plaintiff's evidence can be summarised as follows: On 27 May 2005 he was 38 years old. He was employed as an IT consultant. He married in 1992 and he and his wife have four children who were aged 10, 8, 7 and 5 at the time. At about 16h30 on Friday 27 May 2005 two members of the SAPS (one of them the third defendant) accompanied by the second defendant, Victor Booyens, came to the house which he rented from Clive Best in Norwood, Johannesburg. The previous day the plaintiff had been involved in an altercation with Clive Best's father, Ivan Best, and before the second defendant and the two policemen arrived Clive Best had telephoned the plaintiff to find out whether he was at home. He gave no indication to the plaintiff that the police would be coming to arrest him. The police arrived in an official SAPS van and the second defendant in his own vehicle. Clive Best was also

present. The four men entered the house where they found the plaintiff together with his wife and four children. The plaintiff was taken aback when he saw the policemen and asked what was happening. The second defendant took charge and instructed the policemen what to do. The policemen told the plaintiff that he was under arrest. The plaintiff offered to accompany them voluntarily and asked that the matter be postponed to Sunday as the Jewish Sabbath was about to commence. The policemen ignored the plaintiff's pleas and grabbed him and turned him around and handcuffed his hands. They then pulled the plaintiff out of the house to the van. The plaintiff climbed into the back of the van. The policemen then took him to Norwood police station. When they took him out of the house to the van this took place in full view of passers-by. There were 20-30 members of the Jewish community on their way to the synagogue who witnessed the plaintiff being taken to the police van by the police. He experienced this as very degrading and distressing for a number of reasons. One was that he had recently returned from Australia and was struggling to re-establish himself in Johannesburg. He considered this to reflect adversely on his character.

- [5] The police took the plaintiff to Norwood police station and the plaintiff's wife and children followed in their car. At the police station the policemen took the plaintiff to an office and it seems that they questioned him there. The plaintiff asked for something to drink and they gave him water in a dirty glass. He was not allowed to speak to

his wife and children. The plaintiff was then taken to a general holding cell where there were two other men present. They appeared to be common labourers. The police told the plaintiff that they would oppose an application for bail. There was no toilet in the cell and there were a couple of blankets lying on the floor. The plaintiff was not able to go to the toilet. The police took him back to the office after a couple of hours. The plaintiff needed to pass water and the policemen told him to urinate in a drain about 30 metres away. No attempt was made to show him to a toilet.

[6] The plaintiff's wife made contact with the plaintiff's attorney, Jerome Levitz, and instructed him to apply for bail. A bail hearing was arranged at the Johannesburg magistrates' court. After handcuffing the plaintiff, the policemen put him into their van and drove him to court. The hearing took place at about 11 pm that night. The court granted bail but the plaintiff was not immediately released. Instead the police again handcuffed him and took him back to Norwood police station. There the plaintiff was required to sign a document - he does not know what it was - and only then was he released. One of the bail conditions was that he was not allowed to return to his rental accommodation. The plaintiff left the police station some time between midnight and 1 am in the morning.

[7] The plaintiff experienced the arrest and detention as an egregious violation of his privacy and dignity. He was arrested in his own home in

front of his wife and children and he was then taken from his home to a police van in full view of 20-30 members of his community. He was placed in a holding cell with the general population and he was not treated with any respect or dignity. Water was given to him in an unwashed glass and he was not permitted to urinate in a toilet. The plaintiff considers that his good name suffered when he was taken away by the police in full view of the public.

[8] The plaintiff was traumatised by the experience and he has found that his personality has changed. Before the incident he was easygoing and genial with clients but afterwards he was not able to deal with them in the same way. He became more reserved and he consulted a psychologist for therapy. He attended 12-15 sessions but eventually felt that he had recovered enough and that the sessions were too disruptive so he stopped them. The plaintiff also experienced great concern for what his wife and children were going through. The school counsellor has had to counsel his children and his wife has not dealt with the incident very well.

[9] The plaintiff was charged in the Johannesburg magistrates' court with assault with intent to do grievous bodily harm and he was represented by an advocate instructed by Mr. Levitz. The trial lasted two days and the plaintiff was acquitted. According to the plaintiff the magistrate acquitted him because the state's evidence given by the second

defendant and the complainant, Ivan Best, was illogical and inconsistent. The total costs of the plaintiff's defence was R47 942,15.


[10] The plaintiff's counsel seeks an award of damages for the unlawful arrest and detention of the plaintiff of between R50 000 and R75 000. He relies on a number of cases which indicate that the range of awards for such cases is somewhere between R50 000 and R95 000. See e.g. *Olivier v Minister of Safety and Security* 2009 (3) SA 434 (W); *Van Rensburg v City of Johannesburg* 2009 (2) SA 101 (W); *PJ Cornelius v Minister of Safety and Security* SEP Case Number A3065/2010 22 September 2011; *Craig Ridgard v Minister of Safety and Security and Another* NGP Case Number 4291/2007 17 August 2009. The plaintiff's counsel contends that it is an aggravating feature of the case that the police arrested the plaintiff just before the commencement of the Sabbath after the plaintiff had indicated that he would accompany them voluntarily and undertook to report to the police on the Sunday. I agree.

[11] In view of the authorities relating to the awards of damages for unlawful arrest and detention I am of the view that the award in this case should be R75 000 which would properly compensate the plaintiff for the *iniuria*. In my view the circumstances of the arrest were insulting, degrading and demeaning. It is not in dispute that the plaintiff is entitled to the legal costs which he incurred. See *Ridgard's case* p6.

[12] The plaintiff's counsel seeks costs on the scale as between attorney and client because of the manner in which the defendants have conducted the litigation. The plaintiff's counsel contends that the defendants prolonged this case when they clearly had no defence. The failure of the defendants to have witnesses available on both occasions when the case came to court is worthy of note. In my view this conduct is properly characterised as vexatious within the meaning given to that term in *In re Alluvial Creek Ltd* 1929 CPD 532 at 535 and *Johannesburg City Council v Television and Electrical Distributors (Pty) Ltd and Another* 1997 (1) SA 157 (A) at 177D-F.

[13] I make the following order:

- I The first and third defendants, jointly and severally, the one paying the other to be absolved, are ordered to pay to the plaintiff the sum of R122 942,15 together with interest thereon from the date of this order calculated at the rate of 15,5 % per annum to date of payment;
- II The first and third defendants, jointly and severally, the one paying the other to be absolved, are ordered to pay to the plaintiff the costs of this action on the scale as between attorney and client.


B.R. SOUTHWOOD
JUDGE OF THE HIGH COURT

CASE NO: 22072/06

HEARD ON: 16 February 2012

FOR THE PLAINTIFF: ADV. G. BEYTEL

INSTRUCTED BY: Fluxmans Inc.

FOR THE DEFENDANT: ADV. M.M. ZONDI

INSTRUCTED BY: State Attorney, Johannesburg

DATE OF JUDGMENT: 21 February 2012