



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

CASE NO: 46923/2010

(1)	REPORTABLE: <del>YES</del> / NO
(2)	OF INTEREST TO OTHER JUDGES: <del>YES</del> / NO
(3)	REVISED.
	2012 04 19 .
	DATE
	SIGNATURE

19/4/2012

In the matter between:

**WAGNER PIETER JOHANNES**

Plaintiff

and

**THE MINISTER OF DEFENCE**

Defendant

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

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**MAKGOKA, J:**

[1] The plaintiff initially issued summons containing three claims against the defendant. The first for malicious prosecution, alternatively wrongful arrest and detention, the second for wrongful arrest and detention and the third being *rei vindicatio* for the return of digital camera and its accessories. At the commencement of the hearing, the parties informed me that the third claim of the action was not being proceeded with. Apparently the camera and its accessories had been returned to the plaintiff.

[2] As a result, the action proceeded on the first and second claims. The claims arise from two different incidents namely 26 June 2009 and 16 July 2009 during which the plaintiff was arrested at the premises of the National Air force base in Waterkloof, Pretoria and detained. The plaintiff was employed by Denel as an engineer. Denel has its offices at the premises of the National Air Force base. The merits of these two claims have been conceded by the defendant, i.e the defendant has admitted the wrongfulness of the arrest and the unlawfulness of the detention in both claims. The only issue remaining is to determine an appropriate amount of damages to be awarded to the plaintiff.

[3] No evidence was led with regard to the amount of damages. Counsel for the plaintiff merely placed the following on record from the Bar. The plaintiff is 47 years old, married, with three children. He is a mechanical engineer who was employed by Denel. It was also confirmed that R25 000 had been agreed upon in respect of legal fees incurred by the plaintiff in defending himself pursuant to his arrest in the first claim. A bundle of documents containing statements made by various military police officials and the plaintiff, pursuant to the two incidents, was handed up by agreement. I will endeavour to extract the objective and non-contentious facts from the bundle.

#### The first incident

[4] On 26 June 2009 at the premises of the National Air Force base, at approximately 7H45, the plaintiff was involved in a motor vehicle accident during which he reversed into and drove over a leg of one of the military police officers. The incident happened when the officer was trying to clear the road for a morning

parade and requested the plaintiff to move out of the way of the parade. According to the officers who witnessed the incident, the plaintiff caused the accident intentionally, and was arrogant and dismissive, both before and after the incident. The plaintiff, on the other hand, states that the incident was purely accidental as he had no intention of injuring the officer. He was arrested later that day at a barber shop at approximately 12H00 and released on bail at approximately 19h35 the same day. After a few appearances in court, charges were ultimately withdrawn against him.

#### The second incident

[5] With regard to the second incident on 16 July 2009, it appears that the plaintiff was arrested for taking pictures of the military air force premises. Upon his arrest he was taken to the military police station, where an unknown warrant officer, in the presence of other individuals, used words to the effect that the plaintiff was a bad person and that he was previously arrested. An unknown warrant officer grabbed him around his neck, pushed him against a corner, throttled him and threatened to assault him. He was released without being charged later the afternoon of the same day.

[6] There is no indication on the pleadings or in the bundle of documents as to the duration of the second detention. Counsel for the plaintiff merely stated from the bar that the plaintiff had been detained for "5½ hours". This is a very unsatisfactory manner of placing important facts before the court. The duration of detention is a key consideration when *quantum* has to be assessed.

[7] There is no reason placed before court why the plaintiff did not have to testify. The end result is that I have scanty information from which I should make deductions as to the facts. This is an unacceptable practice which should be discouraged. During the hearing neither counsel referred me to any of the documents contained in the bundle. I was not informed what the status of those documents were: whether they merely were handed for what they purported to be, or whether their contents were admitted. I would, for this judgment, assume the latter, in favour of the plaintiff.

[8] The proper approach to assessment of damages in matters such as the present includes evaluation of the personal circumstances of the plaintiff, the circumstances around the arrest, as well as the nature and duration of the detention. See *Ngcobo v Minister of Police* 1978 (4) SA 930 (D) at 935B-F. To achieve that balanced assessment in the present case, one has to take into account, the plaintiff's experience while in detention, the state of the cell in which he was kept- whether it was clean or filthy; or overcrowded; whether there were basic ablution facilities etc. In the present case, all I have is very scant personal particulars of the plaintiff and the duration of the detention in the first incident.

[9] That fact, however, is no reason for the court to adopt "*a non possumus attitude*" and make no award. See *Hersman v Shapiro & Co* 1926 TPD 367 at 379 where Stratford J said:

"Monetary damage having been suffered, it is necessary for the Court to assess the amount and make the best use it can of the evidence before it. There are cases where the assessment by the Court is little more than an estimate; but even so, if it is certain that pecuniary damages has been suffered, the Court is bound to award damages."

See also *Southern Association v Bailey* 1984 (1) SA 98 (A) at 114A and *Anthony and Another v Cape Town Municipality* 1967 (4) SA 445 (A) at 451B-C.

[10] I will therefore endeavour to do the best for the plaintiff with the very limited information available. I will among others, derive guidance from past awards in comparable cases. While doing that, I will bear in mind that, the determination of an appropriate amount of damages is largely a matter of discretion, and that the process of comparison is not a meticulous examination of awards, and should not interfere upon the court's general discretion: *Protea Assurance v Lamb* 1971 (1) SA 530 (A) at 535B-536A and *Minister of Safety and Security v Seymour* 2006 (6) SA 320 (SCA) paras 17 and 18. The purpose is to compensate a claimant for deprivation of personal liberty and freedom and the attendant mental anguish and distress. In *Minister of Safety and Security v Tyulu* 2009 (5) SA 85 (SCA) para 26 it was emphasised that the primary purpose was "not to enrich the claimant but to offer him or her some much-needed solatium for his or her injured feelings".

[11] In *Olivier v Minister of Safety and Security and Another* 2009(3) SA 434 (W), a superintendent in the SAPS was wrongfully arrested for theft. The arrest took place in full view of his colleagues. His office and home were searched, the latter in the presence of his wife and children. The arrest caused him embarrassment and distress. The detention comprised of some five or six hours in all. He further suffered the indignity of having to appear in court on three occasions as an accused. The plaintiff was not placed in a cell or handcuffed. R50 000 was awarded as damages.

[12] In *Seymour*, a 63 year old small scale farmer who suffered from high-blood pressure was detained for five days. He fell ill the morning following the arrest, experiencing chest pains. On appeal, the Supreme Court of Appeal reduced the amount of R500 000 awarded by the High Court to R90 000. In arriving at the amount of damages, the SCA restated the general principles applicable in

assessment of general damages and considered past awards, as well as the devaluation of currency. The court found that throughout his detention Seymour suffered no degradation beyond that that inherent in being arrested and detained. In *Tyulu*, a magistrate was awarded R15 000 for a 15 minutes detention. The appeal to the SCA was brought by the Minister after the Full Court had awarded him R50 000. The SCA into account the relatively short duration of the detention, the appellant's standing in the community and the manner in which he was arrested.

[13] In *Liu Quin Ping v Akani Egoli (Pty) Ltd t/a Gold Reef City Casino* 2000 (4) SA 68 (W), a 45 year old businesswoman was detained for approximately four hours at a casino, on suspicion of contravening regulations promulgated under the Gauteng Gambling Act. She was awarded R12 000. I have also considered further two older cases: *Stapelberg v Afdelingsraad van die Kaap* 1988 (4) SA 875 (C), and *Areff v Minister van Polisie* 1977 (2) SA 900 (A). In *Stapelberg*, a young attorney on honeymoon in Cape Town, was assaulted by a traffic inspector and then detained for two hours. He was awarded R10 000. In *Areff* a businessman was detained for two hours, purportedly for contempt of court after he had torn up a summons. He was subjected to the humiliation of being fingerprinted. He was awarded R1 000 in 1977, translating into R31 000, according to RJ Koch *The Quantum Year Book* (2011).

[14] Whether the arrest was malicious or not, is an important consideration in the assessment of damages. In *Masisi v Minister of Safety and Security* 2011 (2) SACR 262 (GNP) this court held that where the arrest was malicious, the plaintiff would be entitled to a higher amount of damages than would be awarded, absent malice. The court awarded R65 000 to the plaintiff who had been detained for over 4 hours. See also *Van Rensburg v City of Johannesburg* 2009 (2) SA 101 (W), where a 74 year

old retired accountant was detained for approximately 7 hours by the members of the Johannesburg Metro Police Division (JMPD) for unpaid traffic fines. He was awarded R75 000 after the Court found the conduct of the metro police officers unreasonable and reprehensible in refusing to explain to the plaintiff the reason for his arrest, and in not affording him an opportunity to explain, and not verifying the facts before detaining him.


[15] It seems to me there was no malice on the part of the military police in having the plaintiff arrested, in both incidents. In the first incident he had, in their subjective view, deliberately drove over the leg of one of their colleagues. Apparently he did not even offer assistance to the injured officer - he simply drove off. In the second incident plaintiff was arrested for apparently taking pictures of the military air force premises. He says he was taking only a picture of a vehicle illegally parked on the premises, in order to report it to the traffic authorities. However, this is not borne out by the objective evidence. In the bundle of documents handed up there are 13 photos, depicting various areas of the premises from different angles. It appears therefore, that in both incidents, the plaintiff was not entirely an innocent party.

[16] Having regard to all the facts and circumstances of the present case, the relatively short duration of the detention in both incidents, lack of sufficient details on the conditions of the detentions, lack of malice on the part of the officers, I am of the view that amounts of R40 000 and R20 000 for claims 1 and 2 respectively, would suffice. The amounts to be awarded fall comfortably within the jurisdictional limit of the Magistrate Court. However, in the exercise of my discretion, I will allow costs on the High Court scale. It could not have been clear when summons was issued that the amounts to be awarded would be within the magistrate's court limit.

[17] With regard to the amount agreed upon for legal fees, I am not bound thereby. The fees appear to be excessive. We are dealing here with tax-payers' money and prudence is called for. I intend to refer the legal bill to the Law Society of the Northern Provinces' non-litigious committee for assessment.

[18] The following order is therefore made:

1. The defendant is ordered to pay the plaintiff as follows:
  - 1.1 In claim 1, an amount of R40 000;
  - 1.2 In claim 2, an amount of R20 000.
2. Interest on the above amounts at 15.5% *per annum* from date of this judgment until final payment;
3. The plaintiff is ordered to refer his attorney's account, pursuant to the criminal charges, to the non-litigious committee of the Law Society of the Northern Provinces for assessment, and the amount so assessed, shall become due and payable upon such assessment;
4. The defendant is ordered to pay the costs of the suit.

  
 T.M. MAKGOKA  
 JUDGE OF THE HIGH COURT

DATE HEARD	: 2 DECEMBER 2011
JUDGMENT DELIVERED	: 19 APRIL 2012
FOR THE PLAINTIFF	: ADV W J BOTHA
INSTRUCTED BY	: SAVAGE JOOSTE & ADAMS INC, PRETORIA
FOR THE DEFENDANT	: ADV L PILLAY
INSTRUCTED BY	: STATE ATTORNEY, PRETORIA