

NOT REPORTABLE

IN THE NORTH GAUTENG HIGH COURT,

PRETORIA (REPUBLIC OF SOUTH AFRICA)

CASE NO: 39599/2010

DATE:02/04/2012

In the matter between:

NIKIE STEENKAMP

AND

THE MINISTER OF SAFETY AND SECURITY

DEFENDANT

JUDGMENT

TLHAPI J

[1] The plaintiff instituted action for damages suffered as a result of his:

(a) Unlawful Arrest and Detention; he claimed an amount of R120 000.00;

(b) Assault on him; he claimed an amount of R253 000.00:

(c) Interest on the amounts in (a) and (b) a tempora mora at the rate of 15.5% per annum
from the date of demand alternatively date of summons

The defendant denied liability in both instances and pleaded that the defendant had been arrested in terms of Section 40 of the Criminal Procedure Act 51 of 1977, for crimen injuria committed against members of the police.

[2] The plaintiff testified that he had gone for dinner with his wife on the evening of the 19 February 2010. It was the first date after the birth of their child. On their return home at about 22h00, they stopped over at one of the popular viewing spots on John Rissik, known as Klapperkop, to watch the city below. He did not take any intoxicating liquor because he suffers of a Bipolar condition and was on medication.

A police vehicle stopped next to theirs and, two policemen got out. The one who came to his side opened the drivers door and put his foot in the door to prevent it from closing. None of the policemen present wore name tags. They wanted to search the vehicle and it offended him that they accused him of being with a prostitute. There was an exchange of words because the police refused to identify themselves. After the police left the plaintiff followed their vehicle and noted the call sign code on the vehicle. The plaintiff proceeded to the Sunnyside Police Client Service Centre where the said police men were stationed to report the incident.

[3] He approached one of the eight policemen in attendance at reception, reported the incident and availed the details of the police vehicle. He requested information on the identity of the said policemen alternatively, the register detailing particulars of the policemen who had

gone out on patrol and this was refused. He was denied permission to speak to the senior officer in charge because he now wanted to lay a charge against the said policemen. The Station Commander who was present responded by accusing him of being a 'F' drunk racist and told him to 'F' out of his police station. The plaintiff responded by saying "F you all, I will get the information myself". He testified that he was courteous at the beginning of his conversation with

the police and that he got angry, he became frustrated and was aggressive when all of them refused to give him the information he had requested.

[4] The assault on him began when he tried to call his attorney. Six to seven policemen assaulted him by kicking and punching him and while he was struggling with them he was carried by them to the holding cells. In the process they dropped him on the ground and handcuffed him. He was told that nobody spoke to the station commander in the manner that he did and he arrested without a warrant and was not advised of the charges against him nor of his rights. His personal belongings were given to his wife. In the holding cell he was again assaulted by four to five policemen. He was punched with fists, handcuffed and kicked while on the ground. This assault occurred at about 24h00.

[5] After two hours he was taken from the holding cell and assaulted again with a hard object. He suffered fractures on his shoulder and right scapula. He struggled with the police because he refused to be taken back to the cell. The plaintiff testified that one of the policemen he had met at Klapperkop came to the cells and showed him his identity and asked if that was the information he was looking for. Furthermore he told the plaintiff that he should have left them to do what they intended to do to his wife. He was angered by these utterances to such a

degree that he put his hand through the bars, pulled the policeman towards him and bashed his head on the barricades. The said policeman was injured on his left eye. After this incident four to five policemen took him out of the cells and assaulted him again.

Later that morning at about 9h00, he was formally charged with Crimen Injuria, and was released on his own cognizance at 13h00. The policeman he had assaulted did not lay a charge.

The plaintiff was advised by another police officer to lay charges against the police for the assault and he was given a J88 medical form to be completed by the doctor.

[6] After his release photographs his family took photographs of the injuries he had sustained and he received medical attention at a hospital in Pretoria West. Sixteen copies of enlarged coloured photographs dated the 20 February 2010 were handed in as exhibits. Photographs 4, 5, 6,7, 9,10, 11 were of a very poor quality. Photo 1 shows 2x bruises on his lower back; photo 2 has a mark 'x' which is a point where he testified he was injured on his right scapula; photo 3 had 2x mark 'x' on his left upper arm and lower arm , which according to him were bruises; photo 8 and 14 show the same bruises on the lower back as in photo 1; photo 12 and 13 are his left and right forearm which show striped bruises across the arms, probably caused by handcuffs; photo 15 shows a bruise on the left side of his torso; photo 16 bruises shows 3x bruises on his right side of his torso, the middle one being the same as in photo 2.

[7] Plaintiff testified that as a result of the injuries the use of his right arm had been

compromised. He cannot carry heavy objects any longer and his play of golf had been affected. He was treated at the Pretoria West Hospital but was not allowed to take the J88 medical report because the hospital staff informed him that it could only be released to the police. The plaintiff testified that he later consulted an orthopaedic surgeon and among the documents discovered was a report by Dr Hein Senske, on his examination of the plaintiff on the 6 June 2011. Although Dr Senske's report was relied upon he was not called as a witness.

[8] According to the plaintiff his employment suffered and he later was asked to resign. He was employed by Ralph Tech and a dispute was lodged with the CCMA in respect of his dismissal. He was not in a position to produce proof of such employment and information on his remuneration e.g. a salary advice. Furthermore he testified that before the incident his Bipolar condition had been managed and was under control but that after this incident he suffered lack of sleep, had developed a stammer and was short tempered and he lacked concentration. He was later diagnosed with post traumatic stress syndrome. The plaintiff testified that his shoulder was not given further medical attention because he had exhausted his medical aid.

[9] Lelanie Steenkamp, plaintiff's wife, corroborated the his evidence relating to the incident at Klapperkop. She testified that the plaintiff used the 'F' word against the police because they had used it against him first. Six to eight policemen carried the plaintiff away without explaining his rights and she remained seated in the service centre. She confirmed plaintiff's injuries and his bipolar condition. According to her the plaintiff was not a physically aggressive person because he had never assaulted her but he often used abusive language when he spoke and that on that day she had to clam him down because he spoke to the police in a

loud voice. At Pretoria West Hospital they were given the plaintiff's X-rays and not the J88.

[10] Constable Rasenyalo testified that he was on patrol in the vicinity of Klapperkop because hijackings and robberies were prevalent in the area. He was in police uniform. He saw a vehicle parked there between 22h30 and 23h00. When he approached the vehicle he lit his torch and the driver got out of the vehicle. An altercation ensued because the said driver denied him permission to search the vehicle saying he did not have a search warrant. The driver explained that he was with his wife. Mr Ralenyalo denied that he accused plaintiffs wife of being a prostitute or had tried to force the drivers door open with his foot. The driver drove off and he followed the vehicle with the intention of reporting the incident to his station but he was called to attend to another complaint and he never saw the said driver again. He testified that he volunteered information on his identity and had given the said driver the vehicle call sign number.

[11] Lieutenant Colonel Ntebuzeni Rasilingwana was the relief commander in the community service centre. He testified that when he enquired from the plaintiff the reason he required the identity of the policemen, the plaintiff responded in an arrogant manner. The plaintiff wagged a finger in his face and he reprimanded him. The plaintiff used the 'F' word against him and he felt insulted and degraded in that the word was uttered in the service centre while he performed his duties. According to him it was necessary to arrest the plaintiff because he was very disruptive and had insulted him. He informed plaintiff that he was charged with crimen iniuria. The plaintiff resisted arrest and because he was aggressive, three policemen were requested to assist in the arrest. He denied that the plaintiff was assaulted during arrest or that he had refused him his medication. He saw plaintiff again at

6h00 during cell inspections and no complaints were lodged by the plaintiff about the any assault and or that he had sustained injuries.

[12] Section 40 of the Criminal Procedure Act 51 of 1997 ('the Act') allows for the arrest without a warrant by a peace officer of a person who commits or attempts to commit an offence in his presence. The defendant therefore bore the onus of establishing the lawfulness of the plaintiff's arrest on a balance of probabilities *Minister of Safety and Security v Tyulu* 2009 (2) SACR 282 (SCA) 287 I-J.

[13] It is common cause that prior to his arrest the plaintiff (the driver) had an encounter with two policemen who were travelling in a police vehicle at the viewing spot at Klapperkop. An altercation ensued between the plaintiff and Constable Raselonya because according to the plaintiff the policemen had referred to his wife as a prostitute and they wanted to search his vehicle without a warrant. Constable Raselonya knew when they all departed from the scene that the plaintiff would proceed to their station in order to lodge a complaint against them. However I do not find that he was a reliable witness when he testified that he volunteered information on his identity to the plaintiff at Klapperkop and that he too wanted to report the incident to his station but was called to attend to another complaint. In the same vain he could have telephonically given a report on the incident and informed the station to expect a visit from the plaintiff

[14] It is also common cause that none of the police officers at the service centre at Sunnyside Police Station were willing to divulge any particulars of the policemen who were on

patrol. The said police vehicle was in the fleet of the station because it was identified as such by the plaintiff through its call sign number. The attitude of Lieutenant Rasilingwana was clear, and this is confirmed in his evidence, he was not going to give those particulars not even the vehicle register to the plaintiff and his wife unless they explained why they required the identities of the policemen.

[11] I also find Lt Rasilingwana to have been an evasive witness in as far as he failed to testify about his conduct and that of the police present at the service station to the plaintiff's enquiry. As I see it a heated argument ensued. The 'F' word was used by the policemen and, the plaintiff against each other This is borne out by the testimony of the plaintiff's wife who tried to calm him down because he spoke in a loud voice with the police. It is possible that the plaintiff wagged his finger in Lt Rasilingwana's face in the process.

[12] The question to be asked is whether Lt Rasilingwana exercised his discretion to arrest properly; could one say that an offence of crimen iniuria was indeed committed and whether it plaintiff's intention to insult and degrade the Lieutenant in his person? It is my view that the discretion to arrest was not properly exercised and that the arrest and detention of the plaintiff from about 24h00 on the 19 February 2010 to 13h00 on the 20 February 2010 was unjustified and was therefore unlawful. The fact that the plaintiff refused to divulge his reasons for seeking the policemen's identities and that his behaviour was aggressive seems to have been the reason for the arrest.

Lt Rasilingwana failed to appreciate the circumstances under which the words were uttered.

The plaintiff came to the service centre because he had a complaint against certain policemen. There had already been an altercation at Klapperkop so plaintiff could not have been in a good mood when he arrived. The plaintiff was frustrated and angered by the conduct of all the policemen at the service centre (including the Lieutenant) who refused to assist him by giving information on the policemen who had gone out on patrol in a vehicle the plaintiff had identified as belonging to that station.

Lt Rasilingwana was the relief commander that night. A complaint against any of the members under his charge was a serious matter. He should have given the matter priority, and summoned the policemen on patrol to the station. He could have taken the plaintiff and his wife to an office to properly interview them on the conduct of his members and among other things given them the names of the policemen. He could have tried to calm plaintiff down and compile a report or probably even opened a docket if it related to a criminal complaint. If the plaintiff was still in foul mood he could have obtained their particulars and caused their complaint to be registered in an occurrence book and given them the assurance that their complaint would be investigated.

[13] The plaintiff bore the onus to prove on a balance of probabilities the assault and that it was unlawful. In this regard I turn to the pleadings and his testimony. There was no expert evidence to prove that his bipolar condition had worsened as a result of the arrest and assault or that he now also suffered of a post traumatic stress disorder.

[14] Although I do find that the plaintiff was assaulted during his arrest and that he sustained

certain injuries as is evident from the photographs handed in, I am not satisfied that he sustained serious injuries or that he was brutally assaulted by the police on four different occasions as testified to by him. I am of the view that he had the tendency to exaggerate the facts and effects of the assault.

In respect of the assault, it was stated in the particulars of claim state that he was assaulted at about 4h00 when he was taken from his cell. In his testimony he stated that he was assaulted immediately upon his arrest which was at about 12h00 and then again in the cells when he was locked up. After two hours of being locked up (at about 2h00) he was taken from the cells and assaulted again. A further assault by the police occurred after he had injured a policeman by bashing his head against the barricades. I am of the view that much more serious injuries could have been visible from the photographs.

[15] In the particulars of claim it is stated that his shoulder had to be put back into position by using anaesthetics. It is not clear if this was done by being placed under general anaesthesia or by some other method of anaesthesia. His wife testified that X-rays were taken and these were handed over to them to keep, it is further not clear to me as to when the photographs were taken; were they taken before going to hospital or afterwards. For example, in the photographs 1, though not clear it seems plaintiff had raised his right arm, photograph 2 he is holding a glass in his right hand, photograph 15 his right arm is raised above his head and it does not look like his shoulder joint is out of place. In my view if photograph 15 was taken before going to hospital and his shoulder had to be reset under anaesthetics he would not have been able to raise his arm that high above his shoulder; alternatively if the photographs were taken after his visit to hospital he could have been taken one of his right arm in a sling.

[15] The reason for my questioning the serious nature of the assault and injuries is the absence of any medical record in the form of a J88(medical report), any hospital record and X-rays with explanations regarding the plaintiffs injuries upon his examination at hospital on the 20 February 2010, or that of any subsequent treatment. I further do not understand why the medical records were not called for by the plaintiff when preparing for trial in view of the substantial amount he had claimed. It does not seem that any such records were availed to the Orthopaedic Surgeon (Dr Senske), when he examined and consulted plaintiff on the 6 June 2011. in part A of his report it would seem that the information is from the plaintiff and no mention is made by him of having viewed previous medical reports as support for information given to him by the plaintiff as mentioned under "BEHANDELING" in particular (a) and (c) and for his findings and recommendations.

[16] In the result the following order is made:

Judgment is granted in favour of the plaintiff as follows:

1. Against the defendant for the payment of damages in the sum of R75 000.00 for unlawful arrest and detention;
2. Against the defendant for the payment of damages in the sum of R20,000.00 for pain and suffering;
3. Interest on each of the above amounts will run at the prescribed rate of 15.5% per annum a tempore morae from the date of judgment;
4. The defendant is ordered to pay costs of suit.

VV TLHAPI

(JUDGE OF THE HIGH COURT)

HEARD ON RESERVED ON DELIVERED ON
ATTORNEYS FOR THE APPLICANT COUNSEL
FOR THE APPLICANT ATTORNEYS
FOR THE RESPONDENT COUNSEL
FOR THE RESPONDENT

02 NOVEMBER 2011

04 NOVEMBER 2011

02 APRIL 2012

MARIO COETZEE ATT. R.F DE VILLERS

THE STATE ATTORNEY M.O.R MODISA