IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

19/5/14

CASE NO: 25041/2011

In the matter between:

PERPETUA KELEBOGILE MORORO Plaintiff

(1) REPORTABLE: ~~YES~~ / NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO

19/05/14
DATE

SIGNATURE

and

MINISTER OF POLICE Defendant

JUDGMENT

Tuchten J:

1 The plaintiff was arrested on 9 March 2011 on a charge of housebreaking and theft. She was detained overnight in a cell in Kuruman and released the next day. The charge was withdrawn. The parties agree that the arrest was unlawful The issue before me is the quantum of her damages.

2 The background to this is that the plaintiff was at the time suffering great matrimonial difficulties. But she and her former husband still shared a house. The division of their joint estate was contentious.[1] It seems that she took away some household goods, upon which the plaintiff's former husband laid the charge. On both the legal and the factual level, the charge was entirely baseless.

3 The plaintiff is a teacher at the Mathibestad Primary School, in the village of Mathibestad, some 30km from Kuruman. The school had some 465 pupils and 13 teachers. There are disputes around the precise details of the plaintiff's arrest and ultimate detention in the cell in Kuruman. With one exception, I think that these disputes must be decided on onus, because the defendant's version on these issues cannot be rejected. So what I proceed to recount is essentially the defendant's version.

4 The plaintiff was called from her classroom to the office of the principal. There she was arrested on the charge I have described. The plaintiff says that there were a considerable number of police officers present while the defendant's version is that there were only three officers. In support of her version, plaintiff's counsel relied on an entry in the school's attendance register. No evidence was led on this

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[1] Much later, the joint estate was divided: the plaintiff got the house and its contents and her former husband got the business and a fleet of taxis.

document by the plaintiff but it was the subject of a notice in terms of rule 35(9). The defendant was called upon to admit or deny its veracity but did not respond. The document therefore became admissible as being what it purported to be.

5 The attendance register reflects that on 10 March 2011 (which is the day *after* the plaintiff was arrested) a police officer established in evidence to be W/O KS Moalahi entered the school premises "to arrest Mrs Mororo") I am satisfied that the date was wrong and that the entry was made on the date of the arrest. This is because there would have been no purpose in trying to arrest the plaintiff on 10 March 2011 because she had already been arrested. W/O Moalahi was proved to be available but was not called by the defendant.

6 W/O Moalahi was not one of the three officers who on the defendant's version came to arrest the plaintiff. I am therefore satisfied on probabilities that the police arrived at the school in considerable numbers and with three vehicles, as testified to by the plaintiff. I do not however think this takes the matter much further because it was common cause that the plaintiff was allowed to drive her own vehicle to Mathibestad police station.

7 After the paperwork was completed there, the plaintiff was transported to Kuruman and, as I have said, detained overnight in a cell in the police station in Kuruman.

8 The cell was not up to the standard to which the plaintiff is accustomed. She struck me as a refined lady who suffered greatly as a consequence of her ordeal. She had to share the cell's probably rather basic ablution facilities. I must accept that those facilities included a flush toilet which was working. The plaintiff had to sleep on a thin length of sponge which functioned as a mattress and had some police issue blankets, all of which were far below the standard by which the plaintiff lived.

9 On 17 March 2011, the plaintiff saw a clinical psychologist, Ms Katlego Fandie, in Kimberley. Ms Fandie diagnosed her as suffering from depression, recording that the symptoms had been present for three weeks. Strictly arithmetically, these "three weeks" would take the onset of the depression symptoms to before the arrest. But Ms Fandie did not give evidence and I do not think it would be right to approach the evidence on so narrow a basis. The plaintiff testified that her matrimonial difficulties caused her to feel depressed and that the arrest, which she realised had been engineered by the father of her

children, had aggravated her feeling of depression. I accept this evidence as probable.

10 There have been a number of reported cases dealing with the damages to be awarded for a relatively short period of unlawful detention. This kind of case is regrettably very prevalent in this Division. Such cases can only serve as guidelines because each case must be decided on its own facts.

11 Counsel for the defendant rightly pointed to the absence of any proof of a malicious motive on the part of the police and that the police treated the plaintiff, on the evidence, in a manner that did not further diminish the sense of self worth that any arrest and detention must diminish in the subject. Against that, I bear in mind that any unlawful arrest and detention is a serious invasion of the rights of a person to privacy and dignity.

12 The plaintiff testified that she is a well known person in her community and that when she returned to her duties as an educator, she found that she was treated as a criminal by members of her community. Her evidence established that there is a low incidence of crime in that area. I believe the plaintiff on these issues.

13 Taking all the circumstances into account, I hold that the plaintiff is entitled to the sum of R75 000 as damages.

14 In her summons, the plaintiff claimed R100 000 as damages. The plaintiff ought to have brought her claim in the magistrate's court. As between party and party, she must therefore get costs on the appropriate magistrate's court scale. I hold that the employment of counsel was a necessary expense which should be allowed by the taxing master in accordance with the tariff applicable in the magistrate's courts. The costs of a postponement on 16 August 2013 were reserved. The postponement came about because no pre-trial conference had been held. I think that these costs should follow the result.

15 The plaintiff employed two sets of attorneys of attorneys, in Kuruman and in Pretoria. Consistent with the principle that she ought to have brought her case in the magistrate's court having jurisdiction, in this case the court in Kuruman, I hold that as between party and party the costs of only one set of attorneys should be allowed.

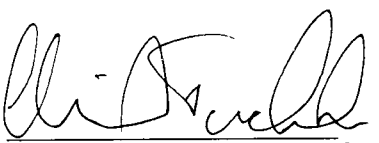
16 I think that the plaintiff's liability towards her own lawyers should also be limited. Counsel for the plaintiff forthrightly told me that the decision to litigate in the High Court was the lawyers' decision, not the plaintiffs. I shall make an appropriate order in that regard.

17 I make the following order:

1 The defendant is ordered to pay the plaintiff damages in the sum of R75 000;

2 The defendant must pay the plaintiff's costs of suit, taxed on the appropriate magistrate's court scale, including the costs of counsel but on the basis that the costs of one set of attorneys only will be allowed and including the costs which were reserved on 16 August 2013;

3 The plaintiff's attorneys will only be entitled to recover from the plaintiff as between attorney and client those fees and disbursements which the plaintiff would reasonably have incurred had the case been conducted in the Kuruman magistrate's court.



NB Tuchten
Judge of the High Court
19 May 2014