

REPUBLIC OF SOUTH AFRICA



IN THE NORTH GAUTENG HIGH COURT, PRETORIA

(REPUBLIC OF SOUTH AFRICA)

CASE NO: 20495/2013

12/11/2014

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: YES/~~NO~~
(2) OF INTEREST TO OTHERS JUDGES: YES/~~NO~~
(3) REVISED

12/11/2014

DATE

SIGNATURE

In the matter between:

MOTHA, PETROS CHIYASALO

PLAINTIFF

and

MINISTER OF POLICE

DEFENDANT

JUDGMENT

MALI AJ:

- [1] The plaintiff seeks damages against the defendant arising out of his unlawful arrest and detention. On 18 June 2011 the plaintiff was arrested by the members of the South African Police Services (SAPS). He was detained from approximately 23h30 on 18 June 2011 and was released without being charged at 20h00 on Monday, 20 June 2011.
- [2] The plaintiff first applied for the condonation of the late filing of notice in terms of section 3(4)(b) of the Institution of Legal Proceedings against certain Organs of State Act, No 40 of 2002. The defendant did not oppose the application and the application was granted accordingly. The applicant was ordered to pay the cost of the application on an unopposed scale.
- [3] The plaintiff testified that during the evening of 18 June 2011 two (2) uniformed policemen and one (1) plain clothed policeman arrived at his place whilst he was having dinner with his then fiancée.
- [4] The plain clothed police officer who was drunk, rude and aggressive instructed the plaintiff to accompany them to the Mamelodi Police station as there was someone in the police station who wanted to speak to him. He requested that he drove in his own vehicle to the police station but the officers refused. He was then transported by the police in their own vehicle.

- [5] On his arrival at the police station, he was informed to wait at the charge office for the person who wanted to speak to him. At approximately 23h30 he was told that the person who wanted to speak to him had not yet arrived and the policemen who brought him to the police station were supposed to go off duty. He was then formally detained in a cell measuring 7 by 4 square metres. Initially he was alone in the cell but, over the course of the weekend, the number of the arrestees in the cell increased up to thirty (30) detainees.
- [6] When he requested permission to contact his employer as, amongst other reasons, he had to return his employer's vehicle, he was not granted the permission. He was also not allowed to make any telephone calls and or receive visitors.
- [7] On the morning of 20 June 2011, he was called to the charge office and the investigating officer conducted an interview with the plaintiff, but he never appeared in court. On the same evening, at approximately 20h00, he was released unconditionally. Upon his release he was told that the police made a mistake. He was never charged with any offence afterwards.
- [8] The plaintiff further testified that he was very scared in the cell amongst the other detainees. At night he was supplied only with a blanket to sleep on. On Sunday evening, 19 June 2011, the cell was so overcrowded that there was not enough space on the floor to sleep. He had to squash himself amongst other detainees and as a result he could not sleep at all. He also feared for his life as he was among thirty

(30) detainees who could have interfered with him. The cell conditions were unbearable and he was provided with food twice a day.

[9] On Monday morning, 20 June 2011, he was again not allowed to telephone his employer and explain his absence from work. When he finally reported for work upon his release he had to inform his employer of the calamity which befell him. He testified that his employer warned him that he was working for one of the largest law firms in South Africa and an incident like the arrest of the firm's employee had a potential to bring the company into disrepute. He was humiliated and embarrassed by his arrest and detention.

[10] He further testified that at the time his fiancée was pregnant and that he was scared that he might lose his job and also concerned about what his fiancée thought of him. This impacted adversely on his self-esteem.

[11] The defendant did not lead evidence as it conceded that the plaintiff was unlawfully arrested and detained. The defendant only disputed the *quantum* of the plaintiff's damages but did not cross-examine the plaintiff on the claimed quantum.

[12] Plaintiff's counsel submitted that a just and equitable amount to be awarded to the plaintiff is R80 000.00

[13] The issue to be determined is the quantum.

QUANTUM

[14] The plaintiff was arrested for no apparent reason and was not a suspect to any crime. He was arrested whilst he was in the comfort of his home with his family. This senseless arrest was disguised as the questioning by someone who is yet to be identified. The plaintiff respectfully complied and did not resist the arrest.

[15] The arrest occurred in the presence of his pregnant partner. He was detained in police custody for two nights without being charged when it was apparent that he never committed any crime or was neither suspected of having committed a crime. He was forced to share a cell with 30 (thirty) other detainees and spend two nights in an uncomfortable sleeping environment. He was even refused to contact his employer or afforded the opportunity to have visitors. He was later released without being charged and had to explain his arrest and detention to his employer and fiancée, an undoubtedly traumatising and embarrassing situation.

[16] In **Thandani v Minister of Law and Order**¹ Van Rensburg J observed:

"In considering quantum; sight must not be lost of the fact that the liberty of the individual is one of the fundamental rights of a man in a free society which should be jealously guarded at all times and there is a duty on our Court to preserve this right against infringement. Unlawful arrest and detention constitute a serious inroad into the freedom and rights of an individual".

[17] Visser and Potgieter, *Law of Damages* 2nd edition at page 475 outline some of the factors to be taken into account in the awarding of damages to include:

¹ 1991 (1) SA 702 (E) at 707B

"The circumstances under which the deprivation of liberty took place; the presence or absence of improper motive or 'malice' on the part of the defendant; the harsh conduct of the defendants, the duration and the nature (e.g. solitary confinement) of the deprivation of liberty; the status, age and health of the plaintiff; the extent of publicity given to the deprivation of liberty; the presence or absence of an apology or satisfactory explanation of the events by the defendant; awards in previous comparable cases; the fact that in addition to physical freedom, other personality interests such as honour and good name have been infringed; the high value of the right to physical liberty; the effect of inflation; and the fact that the actio iniuriarum also has a punitive function".

[18] In **Minister of Safety and Security v Tyulu**,² Bosielo AJA (as he then was) commented:

"In the assessment of damages for unlawful arrest and detention it is important to bear in mind that the primary purpose is not to enrich the aggrieved party but to offer him or her some much-needed solatium for his or her injured feelings. It is therefore crucial that serious attempts be made to ensure that damages awarded are commensurate with the injury inflicted. However, our courts should be astute to ensure that the award they make for such infractions reflect the importance of the right to personal liberty and the seriousness with which any arbitrary deprivation is viewed in our law.....Although it is always helpful to have regard to awards made in previous cases to serve as a guide such an approach if slavishly

² 209(5) SA 85 (SCA) AT 93 d-f

followed can prove to be treacherous. The correct approach is to have regard to all the facts of the particular case and to determine the quantum of damages on such facts."

[19] It is fair to consider all relevant factors in the circumstances of this case. The plaintiff was 30 years old when he was arrested. He was a security guard and worked for Ubuntu Security Company from 2005 until 2009, where after he was employed by a law firm, MacRobert De Villiers, as a driver. At the time of his arrest, he was still in the employ of the said law firm. He was unlawfully deprived of his liberty for two days and two nights. He described the indignity of his detention and disappearance without explanation to his employer and fiancée as humiliating.

[20] In **Seria v Minister of Safety and Security and others**,³ Meer J stated:

"there is no fixed formula for the assessment of damages for non-patrimonial loss. It is recognised that a court has the power to estimate an amount ex aequo et bono and consequently enjoys a wide discretion with, fairness as the dominant norm"

He then awarded the plaintiff the sum of R50 000 for approximately twenty (20) hours detention.

[21] In **Mbotya v Minister of Police**,⁴ Mageza AJ awarded the plaintiff the sum of R55.000.00 for unlawful arrest and detention for a period of two days.

³ 9165/2004 [2004]

[22] In **Mvu v Minister of Safety and Security and another**,⁵ Willis J, following the caution in the Supreme Court of Appeal matter of **The Minister of Safety and Security vs Seymour**⁶ acknowledged the conservative approach of our Courts and awarded damages in the sum of R30 000.00 for a day's detention.

[23] In *casu* the plaintiff was detained for 2 (two) days. It is common cause that the value of the abovementioned amounts has increased. It is trite law that all awards are influenced in the final determination by the specific facts of each case.

[24] In the recent decision of **Minister of Safety and Security v Scott and another**,⁷ the Supreme Court of Appeal ("the SCA") turned down the judgment of the court *a quo* which awarded an amount of R75 000.00 damages for one night's unlawful arrest and detention. The SCA, amongst other considerations, had regard to the fact that the plaintiff in the matter was an aggressor of sorts but, due to technicalities in how the arresting officers handled the matter rendering his arrest and detention unlawful, the award was decreased to a sum of R30 000.00

[25] Having regard to the circumstances of the arrest, the duration of the detention, the personal circumstances of the plaintiff and the awards made in previous comparable cases, I deem R70 000,00 to be a just and fair amount of damages.

[26] In the premises I therefore make the following order:

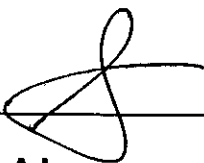
⁴ (1122/10)[2012] ZAECPHC 43

⁵ 2009(6) 82

⁶ (2006) ZASCA 71

⁷ [2014] 3 ALL SA 306

1. The defendant is ordered to pay the plaintiff the sum of R70 000.00 for damages;
2. Interest on the aforesaid amount, at a rate of 9.0% from date of this order to date of payment;
3. The defendant is ordered to pay the plaintiff's costs of suit.


A horizontal line is drawn across the page, and a handwritten signature is written over it.

MALI AJ

ACTING JUDGE OF THE HIGH COURT

Date of Hearing:	16 September 2014
Counsel for Plaintiff:	Adv. JH vd B Lubbe
Instructing Attorney for Plaintiff:	De Klerk & Marais Incorporated
Counsel for Defendant:	Adv. DM Kekana
Instructing Attorney for Defendant:	State Attorney Pretoria