




IN THE NORTH GAUTENG HIGH COURT, PRETORIA

(REPUBLIC OF SOUTH AFRICA)

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
<u>10 / 03 / 2016</u>	
DATE	SIGNATURE

CASE NO: 19542/12

In the matter between:

10/3/2016

BIKWAPI BETTY SHABANGU

PLAINTIFF

AND

MINISTER OF POLICE

1ST DEFENDANT

PHILLIP NKOSI

2ND DEFENDANT

JUDGMENT

MAVUNDLA. J.

- [1] The plaintiff is a 73 years old adult female is claiming from the defendants payment of an amount of R3080, 000, 00 in respect of damages she suffered as the result of the wrongful and unlawful arrest, detention , assault and injuries she suffered at the hands of the members of the police on the 23 July 2010. The claim as per the amended particulars of claim is in respect of:

1.1	general damages for pain, suffering and <i>contumelia</i> , defamation of character, impairment of dignity invasion of the right to privacy	R300 000. 00
1.2	Future medical expenses	R 8 000. 00
	Total	R308 000. 00

- [2] It is common cause that the defendant's plea was on the 6 November 2015 struck out due to their failure to deliver their replying to the plaintiff's notice in terms of rule 35(1) within 10 days of service of the order dated 18 August 2015 directing them to do so. The plaintiff was granted default judgment on the merits and it was ordered that the first and second defendants are liable, jointly and severally, the one to pay the other to be absolved to be, for 100% of the applicant's proven damages. The matter is therefore before this Court only on quantum.
- [3] The plaintiff testified as well as one Ms Betty. The plaintiff was called to the stand. Mrs Bikwapi Betty Shabangu testified that she does not know her age and unemployed. She was born 1943 72 years old. On the 23 July 2010 on a Thursday she heard loud bangs at the children's rooms. While the doors were banged a computer fell to the ground. The people then came to the side she was in and banged the window which fell and broke. She was with her husband and two of her grandchildren. She opened the door unknown people in civilian clothes came into her house. When she asked these people who they are they told her not to ask them and they are looking for JJ. The latter is her son. The intruders went into her grandchild's room who they assaulted. They then came back with her grandchild where she was. They did not say anything nor show her any warrant. They assaulted her and placed a black plastic bag over her head and assaulted her as well as her grandchild. She could not see as they continued to beat her while she was in the kitchen. She could not breathe because of the plastic over her head. After assaulting her they took off the plastic and placed her and her grandchild in a kombi. The assault in the kitchen was with fists on her chest and waist; thereafter she and her grandchild were placed in the kombi they were driving. Along the street they picked up another lady by the name of Sonto from her place. They drove off and stopped at another house where they picked up another lady who was placed in a different vehicle. They drove to another house where they picked up another person. They drove off up to the tarred road where they stopped and dragged her out of the kombi and placed a plastic bag over her head and again assaulted her. She injured her knees as they were assaulting her. They continued assaulting her and saying that they are looking for JJ, her son. She told them that JJ does not stay with her but at his own place. They said that they were from his place and could not find him. As they were assaulting her she fell and wet herself as she was lying on the ground. When they took her from her place she only had a blanket over her shoulders but did not have her shoes on. She had a short pinnacle. On realising that she was weak they put her back in the kombi. They told her not to sit on the

seats but on the floor of the vehicle because she had wet herself. She estimated the arrival of the police at her place to have been in the early hours at about 4 in the morning. She was not taken to the police station but to her place where they handed her cell phone they took at her place. After the people left she went to the police station together with her grandchild. She was a cleaner at a doctor's [lace but because of her injuries on the knees she is no longer able to work. She went to a doctor for treatment. She reported the incident to the; police. She has not been to school. She was afraid to go the court as she was afraid of seeing the police. She was traumatised to an extent that she did not want to go to the court for fear of seeing the police; She was assaulted in front of her grandchild. At court when she had gone there she met a police man by the name of Phillip Nkosi who said to her son JJ that he is showing him his mother, who knows him very well because he got onto her house and assaulted her to an extent that she wet herself. This he said in full view and hearing of the public.

- [4] On cross examination she said that she did see the doctor completing the form but did not know what he was writing. The sketch marks were made by the doctor after he had examined her and saw the injuries on the knees where she was bleeding. Due to the fact that they assaulted her on her chest it is still soar at night she has to take water. Her chest was swollen and one could see this. The doctor saw that she was injured and informed her that she no longer can work because she is injured. She went to the doctor shortly after she was dropped at home. It was pointed out to her that according to the J88 form she consulted the doctor on the 27 while the police assaulted her on the 23rd. When she went to the doctor her knees were no longer bleeding but visible injured. The swelling had subsided when she went to the doctor.
- [5] The plaintiff under cross examination re-iterated that she was assaulted on the chest as well as on the back. She sustained injuries on her knees as the result of falling during the assault. She further said that she sustained injury on her lips as the result of being kicked. She was kicked on the chest, waist and knees. She said that because of long time of the incident she cannot recall everything that occurred. She informed her attorneys that she was injured. It was pointed out that according to her particulars of claim she was injured all over the body. She said that they assaulted her lot that is why her body is still soar. In respect of the J88 she said that the doctor she consulted was not conversant with her language IsiZulu. She conceded that her husband instituted a claim which was settled and he has already been compensated for the window.
- [6] Ms Martha Sonto Sithole was called as the next witness. She confirmed that she knows Mrs Shabangu. On the 23 July 2010 police came to her place and took her out of the house and she heard her grandmother screaming. She saw about 12 kombi's and the police told her to get in one of the kombi where she found her grandmother who was crying. When she asked why she was crying someone swore at her Voetsek. They drove off and at the tarred road they took her

grandmother out of the vehicle and placed a plastic bag over her head and assaulted her with open hands, kicked her as she fell on the ground. She was dragged back into the kombi and told her not to sit on the seats but on the floor of the vehicle because she had wet herself. When they assaulted her she could see because the vehicle was next to her as she was outside. The witness emotionally said that the incident hurt her because she was an elderly person and was assaulted in her presence. The police came to her place in the early hours about 3 in the morning. It would have been about 7 am when they dropped the plaintiff. They assaulted the plaintiff all over her body, kicking her and throwing her on the ground.

- [7] The evidence of the plaintiff is corroborated by the evidence of Ms Martha Sonto Sithole.
- [8] Both the plaintiff and her witness, in my view, were impressive witnesses, whose evidence I have no hesitation to accept. Besides, the plea of the defendant having been struck out, the unlawfulness on the conduct of the police as described by both witnesses, is no longer in issue, and accordingly the defendants are liable to the plaintiff's proven damages. Indeed, from the evidence of plaintiff, as corroborated by her witness, it is clear that there was no justification on the part of the police to have conducted themselves in the barbaric manner they did. They went to the plaintiff's place looking for her son JJ. She told them that he does not stay there but at his own place. They instead assaulted her in full view of her grandchildren, dragged her into a Kombi, assaulted her smothered her with a plastic bag, knocked her to the ground, kicked her, made her sit on the floor of the kombi because she wet herself. They released her without taking her to the police station or charging her. The duration of her ordeal was approximately from about 4 in the morning until 7 in the morning, 3 hours. The very fact that she was released without being taken to the police station is indicative of the fact that there was absolutely no justification for her being deprived of her precious commodity, liberty. The defendant is undoubtedly liable for the damages suffered by the plaintiff.
- [9] I now turn to the assessment of her damages. Assessment and award of damages is a matter of value judgment, guided however by looking at previous awards, and dictated upon by the unique circumstances of the particular case. There is no mathematical accurate method of determining the amount to be awarded. As held in *Minister of Safety and Security v Seymour* 2006 (6) SA p326 at para [20]: Monetary "award can never be more than a crude solatium for the deprivation of what, in truth, can never be restored and there is no empirical measure for the loss." I might add: of deprivation of liberty, reversal of the pain, humiliation endured.

[10] In the matter of *Areff v Minister van Polisie* 1977 2 SA 900 (A) the court awarded a 41 year-old businessman who was arrested and detained for about two hours R1 000 which in present value is R39000.00 (R19500 per hour x 3hrs=R58500.00.)

[11] In the unreported judgment of *Vuyisa Mgele v Minister of Police and two others*, Case No 1257/2011 Eastern Cape Division Mthatha, Stretch J cited the following:

"[15] In *Minister of Safety and Security v M Tjulu* 2009 (5) SA 85 (SCA) at 93 Bosiello JA said the following at paragraph [26] of the judgment:

'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 the damages awarded are commensurate with the injury inflicted. However our courts should be astute to ensure that the awards they make for such infractions reflect the importance of the right to personal liberty and the seriousness with which any arbitrary deprivation of personal liberty is viewed in our law. I readily concede that it is impossible to determine an award of damages for this kind of injuria with any kind of mathematical accuracy. Although it is always helpful to have regard to awards made in previous cases to serve as a guide, such an approach if slavishly 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) *Minister of Safety and Security v Seymour* (6)SA 320 (SCA) 325 para 17; *Rudolph & others v Minister of Safety and Security & others* [2009] (2008/380) ZASCA 39 (31 March 2009) (paras 26-29.'

[16] In *Masisi v Minister of Security and Another* 2011 (2) SACR 92) 262 (GNP) at paragraph

[18] Makgoka J held that:

'The right to liberty is an individual's most cherished right, and one of the foundational values giving inspiration to an ethos premised on freedom, dignity, honour and security. Its unlawful invasion therefore strikes at the very fundament of such ethos. Those with authority to curtail that right must do so with the greatest of circumspection, and sparingly. In *Solomon v Visser and Another* 1972 (2) SA 327 (C) at 345A it was remarked that where members of the police transgress in that regard, the victim of abuse is entitled to be compensated in full measure for any humiliation and indignity which result. To this I add that where an arrest is malicious, the plaintiff is entitled to a higher amount of damages than would be awarded, absent malice.'

[12] In my view, the deportment of the police, is reminiscent of the apartheid error, when the police were the law unto themselves, terrorised mostly the disenfranchised communities, rudely knocked and kicked at their doors in ungodly hours, had scant regard to their dignity, assaulted them for no good reason. In a democratic Constitutional epoch, with enshrined wide range of personal rights, in terms of s35, police conduct such as meted to the plaintiff, warrants sever censor. In my view, it is necessary to consider visiting the wrath of the Court to those members of the police who still abuse their authority, maltreat people with disdain and

disregard to the ethos of the Constitution, by mulcting such deviant characters personally with cost orders. I am tempted to do exactly that against the second defendant; order him to pay the costs of this action in his personal capacity. However, such approach would require that a notice be issued and served on a deviant member/ s of the police, warning him/ her/them that a costs order will be sought against him in his personal capacity.

- [13] The plaintiff was rudely woken up in the early morning hours, assaulted repeatedly in front of her grandchildren and husband; removed from the sanctuary of her home, not afforded an opportunity to dress properly. She was subjected to the indignity of wetting herself; At her age, she must have been petrified, not knowing what else would become of her in the hands of these rogue police. There was no respect for her age and gender; all these with her rights to dignity were trampled upon with disdain. age, the plaintiff certainly deserve to be fairly compensated. She certainly deserves to be adequately compensated. I do however, bear in mind th at the caution by Holmes J in *Pitt v Economic Insurance Co Ltd* 1957 (3) SA 284 (D) at 287E-F cited with approval in the matter of *De Jongh v Du Pisanie NO* 2005 (5) SA 457 (SCA) at page 582 that: " The court must take care to see that its award is fair to both sides—it must give just compensation to the plaintiff, but it must not pour out largesse from the horn of plenty at the defendant's expense".
- [14] In the result, I am of the view that the amounts I intend to award herein bellow are fair, reasonable and adequate to be a balsam for the pain, indignity and humiliation suffered by the plaintiff. I do bear in mind that compensation awards are like a mirage, never to be reached; neither would any amount be enough.
- [15] In the result I make the following order:
1. That the defendants are jointly, and severally, the one paying the other to be absolved, ordered to compensate the plaintiff damages in an amount of
 - (a) R58500.00 in respect of unlawful arrest, detention;
 - (b) R100, 000. 00 in respect assaults.
 - (c) Interest on the amount of R158 500. 00 at the legal rate from a date 14 days after the date on which this judgment is handed down to the date of payment; and
 - (d) Costs of suit, to be taxed or agreed upon at the High Court scale.



N.M. MAVUNDLA

JUDGE OF THE HIGH COURT

HEARD ON THE : 09 / 03 / 2016

DATE OF JUDGMENT: 10 / 03 / 2016

PLAINTIFF'S ADV : ADV J.J. GERBER

INSTRUCTED BY : ROETS & VAN RENSBURG INC

DEFENDANT'S ADV : ADV N. P. YINA

INSTRUCTED BY : STATE ATTORNEYS MAFIKENG