



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

29/4/16
CASE NO: 60328/13

DELETE WHICHEVER IS NOT APPLICABLE

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

29/4/16

DATE

[Signature]
SIGNATURE

In the matter between:

MATODZI PHILLIMON MUFAMADI

PLAINTIFF

and

MINISTER OF POLICE

DEFENDANT

JUDGMENT

RANCHOD J:

Introduction

[1] The plaintiff sues the defendant for his arrest and subsequent detention on 18 April 2012 at or near Woodbush Plantation, Tzaneen.

[2] It is alleged that he was arrested by 'Investigator Mkhawane, Investigator Ngamuni and other officers whose particulars and ranks are unknown to the plaintiff.'

[3] It is further stated in the particulars of claim that the plaintiff was arrested 'on suspicion of theft, despite his denial of having committed the said charge.'

[4] Plaintiff says he was thereafter 'detained... for 20 (twenty) days at the instance of the aforesaid Policeman (*sic*) and other members of the South African Police Service ...' (SAPS).

[5] Plaintiff says further that he was released on 8th May 2013 and the charges were withdrawn. It is common cause between the parties that the year should be 2012 and not 2013.

[6] It is also to be noted that no allegation has been made that the arrest and detention was unlawful. However, the defendant pleaded (in an amended plea) as if the plaintiff alleged unlawfulness. This is apparent from para 3.3 of the amended plea where it is stated that:

'3.3 In the event that the ... Court finds that the arrest of the Plaintiff by members of the Defendant was unlawful, which is still being denied....'

[7] The defendant could have excepted to the particulars of claim on the basis the particulars did not disclose a cause of action, but did not do so. The trial proceeded on the basis that the defendant had to prove that the arrest and detention was unlawful. In this regard the defendant relies on section 40(1)(b) of the Criminal Procedure Act 51 of 1977, which provides:

'40 Arrest by peace officer without warrant

(1) A peace officer may without a warrant arrest any person -

(a) ...

(b) whom he reasonably suspects of having committed an offence referred to in Schedule 1, other than the offence of escaping from lawful custody;'

[8] It should be noted that both defendant's and plaintiff's witness referred to certain statements in the police docket which were made by persons other than the witnesses. In the minutes of the second pre-trial conference held on 15 September 2015 the parties agreed inter alia, that 'a document will be what it purports to be, without the correctness of the contents thereof being admitted.' However, the next paragraph, which provides that 'A party wishing to rely on the correctness of the content of a document, still has to proof (*sic*) same' was deleted – lines having been drawn through it. Both counsel for the plaintiff and for the defendant informed me that it had been agreed that reference to the content of the statements may be made without the necessity of having to call the authors of the documents, which is why it was deleted although, as a consequence of the deletion the last words of the previous paragraph 'without the correctness thereof being admitted' should also have been deleted.

[9] The plaintiff was arrested on 18 April 2012 on suspicion of theft (which falls within Schedule 1) of a motor vehicle. The facts leading up to the arrest of the plaintiff may briefly be set out as follows. On 1 April 2012 Mr Magazi Bethuel Vukeya, a truck driver in the employ of Woodbush Plantation (Woodbush) in Tzaneen reported to the police that his employer's vehicle, a Toyota Dyna Truck with registration letters and numbers 250 KLF MP had been stolen from his employer's premises at about 03:00 that same morning. On 8 April 2012 at about 04:00 Mr Albert Maile Ramalatswi a former employee of Woodbush spotted the truck travelling on a road in the plantation whilst he was travelling in another vehicle. He flicked his lights to indicate to the other driver that he should stop but the driver of the truck did not do so. Mr Ramalatswi followed the truck for about 7km before it finally stopped. Upon enquiring, the truck driver told him his name was Mongwe, that he was an employee of Woodbush recently transferred from Venda and that he had the manager's permission to use the truck to convey his wife (somewhere).

[10] The only witness for the defendant was Warrant Officer Andrew Ngamuni who has 21 years' experience in the SAPS. He testified that he was with other police officers when the plaintiff was arrested on 18 April 2012. He

said he arrested and detained the plaintiff after investigation of the matter on the basis of information provided by an informer and Mr Albert Ramalatswi who was previously employed at Woodbush, the company where plaintiff was employed. A written statement was taken later from Ramalatswi on 20 April 2012 by the investigating officer, Warrant Officer Khoza. He testified further that an identification parade was also held at which Mr Ramalatswi identified the plaintiff. The motor vehicle which belonged to Woodbush, had not been recovered.

[11] Warrant Officer Ngamuni testified that he had sufficient information to form a reasonable suspicion to suspect that the plaintiff had committed the offence of theft, hence he proceeded to arrest him. He testified, both in evidence-in-chief and in cross-examination, that the reasonable suspicion that the plaintiff had committed an offence was based not only on the information provided by an informer and that of Ramalatswi but also because the latter had identified the plaintiff at an identification parade. However, the identity parade was held only on 6 May 2012 which was long after the arrest so that cannot be correct. But the value of the identification parade, where Ramalatswi identified the plaintiff, such as it is, is that it, with hindsight confirmed that the police had arrested the very person mentioned by their informer and Ramalatswi.

[12] In cross-examination, Ngamuni was referred to Ramalatswi's statement in which he said when he asked the driver of the truck who he was, he said his name was Mongwe, in other words that Ramalatswi did not mention plaintiff's name. Hence, so the line of cross-examination went, he could not have formed a reasonable suspicion on which to arrest plaintiff who has a different name. However, what Ramalatswi says in his statement is that that is what the truck driver told him – not that he knew the driver and that his name was Mongwe. Ramalatswi had told the police that he would be able to identify the person if he saw him again. He did so at the identification parade when he identified the plaintiff as the person he saw driving the truck – albeit that the parade was held after the plaintiff's arrest.

[13] In any event, even if one disregarded the evidence about the identification parade, in my view, the police and in particular, Ngamuni had sufficient information to reasonably suspect the plaintiff of having committed an offence and the arrest without a warrant was in the circumstances lawful. The jurisdictional requirements for a lawful arrest without a warrant have been established by the defendant.

[14] As I said, the plaintiff was arrested on Wednesday the 18th April 2012. It is not in dispute – in fact the defendant concedes – that the plaintiff should have been brought before Court within 48 hours unless the period of 48 hours expires outside ordinary court hours or on a day which is not an ordinary court day.

[15] During his testimony the plaintiff testified that according to him he was arrested when the police arrived at his place of employment at about 9am and asked him to accompany them. They took him in an unmarked police vehicle in which he sat in the cabin, to a corner of the plantation where they questioned him for about 10 minutes. Thereafter they took him to a filling station near Magoebaskloof where they bought food. Plaintiff said they then handcuffed him and placed him in the back of the vehicle where the handcuffs were locked to a pole and he was told that he was now under arrest.

[16] Further in his evidence-in-chief the plaintiff said Ngamuni was lying when he said it was he who had arrested the plaintiff. However, in plaintiff's particulars of claim he says that Ngamuni was one of the policemen who arrested him. In the Arrest Report it is stated the arresting officer was Sgt Ramakgopa. There is no dispute that plaintiff was arrested by police officers in their capacity as such. It therefore is not material to the issue before me whether it was the one or the other police officer.

[17] In the Arrest Report by Ramakgopa it is stated that the date of arrest is 19 April 2012 which it is common cause is incorrect. The correct date is 18 April 2012. The time of arrest is not stated in the Report. All this indicates

some degree of sloppiness on the part of the policemen involved – something that unfortunately occurs all too frequently.

[18] It seems to me that the plaintiff was arrested when he was handcuffed and put in the back of the van, and by plaintiff's own admission, that is when he was told he was under arrest, notwithstanding his testimony that he is of the view that he was arrested at 9am. The time of his arrest was in all probability sometime after he was taken from his place of employment and when he was detained at the police station – according to the police investigation diary notes under Serial Number 959 – at 13:10 on the 18th by Ngamuni. The 48 hours therefore expired some time before 13:10 on Friday 20th April.

[19] Mr Baloyi, who appeared for the defendant stated, erroneously it turns out, that 20th April 2012 was Good Friday and the following Monday was Easter Monday. He said since plaintiff was arrested on the preceding Wednesday at 13:10 the earliest he could be brought to court was on Monday the 23rd April. Firstly, if it was indeed Good Friday (a public holiday) then the following Monday would also have been a public holiday. However, the plaintiff was brought before court on Monday, 23rd April. Hence, it could not have been Easter Weekend. Secondly, I think I can take judicial notice of the fact that a perusal of the 2012 calendar reveals that Easter Weekend in 2012 was from Friday 6 April to Monday 9 April.

[20] Plaintiff should have been brought before court by Friday, 20 April 2012 before 13:10. To that extent his detention from Friday at the very least from 13:10 until his appearance in Court on the following Monday was unlawful.

[21] On 23rd April when plaintiff appeared before court he was remanded in custody until his release on 8 May 2012. Mr Baloyi submitted that the plaintiff's detention after his first appearance in court was a 'judicial' detention, hence the defendant cannot be held liable for that period.

[22] Mr De Klerk, who appeared for the plaintiff, argued to the contrary and referred the Court to *Minister of Safety and Security and Another v Ndlovu* (788/11) [2012] ZASCA 189 (30 November 2012). In my view, that case can be distinguished from the facts of this case. There it was held, firstly, that the arrest itself was unlawful. The unlawfulness did not cease when the accused was brought before a 'reception court' which remanded him in custody without enquiry whether it is in the interests of justice to detain him further.

[23] In this matter before me no evidence was led – the onus being on the plaintiff to do so – as to the circumstances under which the court before which the plaintiff was brought on 23rd April, 2012 decided to remand him in custody. In the circumstances, I cannot determine whether the plaintiff's continued detention after his first appearance in court was unlawful.

[24] I find, therefore, that the plaintiff's detention after the expiry of 48 hours until he was brought before court on the 23rd April 2012 was unlawful, which would equate to just under 3 days of unlawful detention for which he should be compensated in damages.

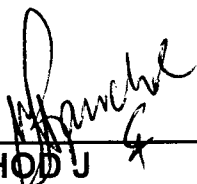
[25] The plaintiff testified on the question of the quantum of damages. He said it was not a pleasant experience in that the detainees were incarcerated in a small cell. He had to sleep on the floor with one blanket. There was only one toilet to be shared between them.

[26] This court was referred to a number of cases on the issue of quantum of damages. The cases are a useful guide but no two cases are exactly alike; ultimately the court has to make a determination on the facts before it.

[27] Having considered a number of the decided cases, and the submissions of both parties, I am of the view that although the conditions under which the plaintiff was kept in detention were not ideal, they can be distinguished from cases where they were worse. In my view an amount of R85 000.00 would be adequate compensation in the circumstances of this case.

[28] I make the following order:

1. Defendant is ordered to pay plaintiff an amount of R85 000.00 together with costs of suit.



RANCHOD J
JUDGE OF THE HIGH COURT

Appearances:

Counsel on behalf of Plaintiff	: Adv C.D De Klerk
Instructed by	: S.O Ravele Attorneys
Counsel on behalf of Respondent	: Adv F Baloyi
Instructed by	: State Attorney
Date heard	: 3 November 2015
Date delivered	: 29/4/16