


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)

23/5/16

CASE NO: 57737/2012

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
23/05/2016	
DATE	SIGNATURE

In the matter between:

**SOLOMON RANAMANI**

Plaintiff

and

**THE MINISTER OF POLICE**

Defendant

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**J U D G M E N T**

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**NONYANE, AJ:**

[1] This is an action for damages arising out of the unlawful arrest, detention and assault of the plaintiff, Mr Solomon Ranamani.

- [2] The first claim arises out of the unlawful arrest of the plaintiff at Zebediela on the 30 January 2011 and the subsequent unlawful detention of the plaintiff in the police cell until 1 February 2011.
- [3] The plaintiff's second claim arises out of damages he sustained as a result of being assaulted by members of the South African Police Service during his period of detention.
- [4] The events giving rise to the claim as set out in Dr Leon Fine's expert report are that the plaintiff went to Zebediela, Limpopo Province, to attend his sister's lobola function. He then decided to go with a friend to have a beer at a nearby tavern. He was then arrested by police officers who searched his car looking for weapons. They did not find any weapons. They then took him to the police station and detained him.
- [5] He slept in the police cells and the next morning other police officers came and questioned him. They assaulted him with a stick on his buttocks and legs. The plaintiff was thereafter taken to two shops owned by some Indian men for identification purposes. Both shop-owners told the police that the plaintiff is not the person who robbed them.
- [6] The plaintiff was taken back to the tavern with his legs tied and his car was searched again. He was then taken to the police station and put in a room where he was further assaulted by the police officers. They hit

him with a baton on his back, buttocks, legs and banged his head against the floor. He was thereafter taken back to the police cells and kept there until he was released.

[7] According to the J88 medical report the plaintiff sustained multiple bruises, abrasion and cuts of different length and depth on his head, back, hand and legs.

[8] The merits of the plaintiff's case have become settled. The defendant conceded the merits in full and the plaintiff is entitled to 100% of his proven damages.

[9] At the commencement of the trial, the plaintiff brought an application to amend the quantum which was opposed and after having heard both counsel and considered the matter, the application was granted.

[10] I have to determine the issue of quantum based on the amended papers.

[11] The plaintiff claims an amount of R400 000.00 for unlawful arrest and detention and an amount of R700 000.00 for assault.

[12] To prove the nature of injuries sustained by the plaintiff as a result of the assault, its sequelae and the quantum to be awarded for both

special and general damages, Counsel for the plaintiff referred me to the reports of the following experts:

- Elton Bloye (clinical psychologist)
- Dr Leon Fine (psychiatrist)
- Wessel J. Wessels (industrial psychologist)
- Gretchen Basson (occupational therapist)
- Dr Frank M Peters (orthopaedic surgeon)
- Johan Potgieter (fellow of the Actuarial Society of South Africa).

[13] The abovementioned reports were admitted by the defendant and admitted into evidence without the need to call individual experts.

[14] In the clinical psychologist's report the plaintiff described in detail how he felt during the unlawful arrest, detention and assault. He told the clinical psychologist that he was very scared, confused and in pain whilst he was being beaten. He went on to say that the thought of how he was beaten made his heart heavy and embarrassed him. He found the whole event humiliating and he experiences nightmares on a weekly basis. He now avoids encounters with police officers and has negative emotions such as anger and sadness when he sees them.

[15] Gretchen Basson, the occupational therapist, was informed by the plaintiff that it was for the first time that he got beaten and has, as a result of being beaten and arrested for no apparent reason, suffered severe pain and emotional trauma. He further informed the

occupational therapist that the people in his community think that he was arrested as a result of having done something wrong and this does not sit well with him.

[16] The unlawful arrest and detention on its own infringed on the plaintiff's right to liberty and dignity. Stripping him naked was the worst humiliation that the plaintiff had to endure.

[17] He was also kept in custody for a further period of two nights notwithstanding the fact that the police officers were advised that the plaintiff is not the person who robbed them.

[18] It is clear from what the plaintiff reported to the clinical psychologist and the occupational therapist that his rights to personal liberty including his right not to be arbitrarily arrested without a lawful cause, the right to dignity and the right to his reputation and not to be defamed had been violated by the unlawful arrest and detention. Appropriate damages should be awarded. See *Takawira v Minister of Police* 2013 JOL 30 554 at par 36.

[19] The uniformed members of the SAPS who are supposed to, amongst others, uphold the law and individual human rights enshrined in the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as "the Constitution") after stripping the plaintiff naked proceeded to assault him.

[20] The plaintiff has, as a result of the assault, sustained injuries which impacted negatively on his health.

[21] According to the medico-legal reports, the plaintiff has, as a result of the assault, sustained injuries with, amongst others, the following sequelae:

- Major depressive episodes;
- Post traumatic stress disorder; and
- Back pain.

[22] Dr Frank M Peters, the orthopaedic surgeon, opined that the plaintiff suffered severe pain since the assault and has never been pain free. The report further states that the plaintiff will, as a result of the back pain, retire 5 years before his normal retirement age of 65 years.

[23] The occupational therapist during the physical assessment observed that static postures, rotation resistance in activities and working on a lower level elicited mid and lower back pain. He noted that the plaintiff presented with a marked spasm over the right side of his lower back.

[24] The occupational therapist opined that there is a probability that his pain may increase over time and he will eventually no longer have the physical ability to perform physical labour and deferred to the orthopaedic surgeon's report on the prognosis of his back symptoms and early retirement.

[25] The industrial psychologist recommended a pre accident retirement of 65 years. The actuarial calculation for loss of income as a result of early retirement is R98 057.00.

[26] The clinical psychologist diagnosed the plaintiff with major depressive episode and post traumatic stress disorder. Dr Fine, the psychiatrist, also diagnosed the plaintiff with post traumatic stress disorder but went on to say that some of the symptoms have resolved overtime. The clinical psychologist has noted that depression and post traumatic stress disorder is a treatable psychological condition and that the plaintiff had to undergo psychotherapy and receive psychotropic medication. The plaintiff also reported to the industrial psychologist that he lost his son in 2015 and he is still sad and depressed about the loss of his son. The actuarial calculation for future medical treatment is an amount of R159 510.00.

[27] The court has a wide discretion in awarding damages and as the task is not an easy one, previous awards in comparable cases should be taken into account but only as guidance in assisting the court in arriving at an award which is not substantially out of the general accord with previous award in broadly similar cases. Regard should also be had to all factors considered to be relevant in the assessment of damages. *"It may also be permissible, in an appropriate case, to test the assessment arrived at upon this basis by reference to the general*

*pattern of previous awards in cases where the injuries and their sequelae may have been either more serious or less than those in the case under consideration". See Protea Assurance v Lamb 1971 (1) SA 530 A.*

[28] Counsel for the plaintiff contended that the plaintiff was not only detained for no apparent reason, he was also stripped naked and assaulted by the Police officers. He contended that the Police officers continued to detain and assault the plaintiff even after they were informed by the shop-owners that he is not the person who robbed them. He further argued that the continued arrest and detention of the plaintiff by the police bordered on malice

[29] Counsel for the plaintiff referred me to the case of *Woji v Minister of Police* (92/2012) [2014] ZASCA 108 contending that the police officers breached their public duty not to violate the plaintiff's right to freedom and have to accordingly compensate the plaintiff.

[30] He contended that a reasonable compensation for a young men arrested and detained for no apparent reason for 3 days and not having been afforded an opportunity to get legal representation would be between R150 000.00 and R200 000.00 for unlawful arrest and detention.



- [31] He further contended that an amount between R375 000.00 to R400 000.00 would be a fair compensation for assault inclusive of future medical expenses and future loss of earning capacity.
- [32] Counsel for the defendant argued that the quantum that is sought by the plaintiff is excessive and unreasonable because no amount of money will be sufficient to cover the infringement of the plaintiff's rights caused by the defendant. He further argued that the plaintiff should not be compensated for early retirement as the age of 60 years is still considered a retirement age.
- [33] I do not agree with the defendant's counsel's argument as retirement at age 60 years is a matter of choice. Over and above that, the industrial psychologist recommended a pre-accident retirement age of 65 years and I do not have any expert report that points to the contrary.
- [34] Defendant's counsel referred the court to the unreported judgment of Kubushi J in *Mafa and Another v Minister of Police and Another* (21313/201, 26083/2011) ZAGPPHC 342 (13 December 2012). The plaintiffs in the aforementioned case claimed an amount of R3 510 000.00 in respect of unlawful arrest and detention. They were however awarded R200 000.00 each because the court did not have sufficient information required to enable it to consider and determine the damages they claimed.

[35] In the present case the plaintiff has, through his experts' reports, placed before me sufficient information to enable me to assess and determine the damages sustained and the quantum to be awarded.

[36] I was also referred by the defendant's counsel to *Greenberg v De Beer & Another* (22261/02) [2011] ZAGPJ. The plaintiff, in the aforementioned case, claimed R450 000.00 for unlawful arrest and detention for a period of 6 days and was awarded R90 000.00.

[37] Counsel for the defendant further argued that in *Rudolph v The Minister of Safety and Security* 2009 (5) SA 94 SCA an amount of R50 000.00 was awarded in respect of the unlawful arrest and detention under humiliating conditions.

[38] Counsel for defendant conveniently omitted to mention to this court that the amount awarded was in respect of the first plaintiff's third claim arising from his second unlawful arrest and detention which the court found was for a shorter period and under conditions which, although unsatisfactory, were not as bad as in respect of his first claim arising from his first unlawful arrest and detention.

[39] The claim that is almost similar to the present case is the first plaintiff's first claim, where the court awarded an amount of R100 000.00 on the basis that the detention was under humiliating conditions and for a period of about 4 days.

[40] In the present case, the plaintiff was arrested and detained under humiliating conditions. He was not allowed to call his attorney and was stripped naked during the assault. He was kept in custody notwithstanding the fact that the shop-owners advised the police officers that the plaintiff is not the one who robbed them.

[41] Although the plaintiff in this case spent 3 nights in custody, the humiliation he sustained was more than the one sustained by the plaintiff's in *Rudolph*, supra, as they were not subjected to assault, embarrassment and humiliation of having to be stripped naked.

[42] I have also considered the case of *Mofokeng and Another v Minister of Police* (2014/A3084) [2015] ZAGPJHC 30 (17 February 2015) and the case of *Brian Hendricks v Minister of Safety and Security* (CA&R51/2015) [2015] ZAECGHC 61 (4 June 2015) wherein the appellant was detained for 3 days and on appeal was awarded R100 000.00.

[44] In quantifying special damages for future medical expenses and loss of income, I have taken the following into consideration:

[44.1] The actuarial calculation placed before me allowed psychotherapy fees for both the psychologist and the psychiatrist. This to me looks like a duplication of the same treatment and has to be accordingly adjusted.

[47] I have also taken into account the death of the plaintiff's son which might have exacerbated his condition and the fact that some of the post traumatic stress disorder symptoms have resolved overtime.

[48] I am, as a result of the above allowing a contingency deduction of 15% on future medical expenses.

[49] Having heard arguments from both counsels for the plaintiff and the defendant, considered the guidelines of the cases cited above and taking all relevant factors in assessing the quantum of both special and general damages, I deem the following amount as adequate compensation:

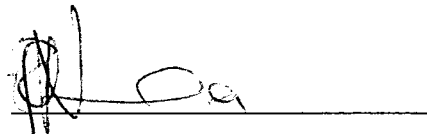
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|----|-------------------------------|--------------|
| a. | Unlawful arrest and detention | R 120 000.00 |
| b. | Assault                       | R 333 358.50 |

[50] It is trite that costs should follow the cause. In this case the costs of suit are awarded to the plaintiff including the costs of counsel and costs of attending to the examination and obtaining experts reports.

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

1. Judgment is granted in favour of the plaintiff for payment of the sum of R453 358.50 within 30 days from the date of this order.

2. The defendant is ordered to pay interest on the sum of R453 358.50 at the rate of 9% from 31 days after the date of this order to date of payment.
3. The defendant is ordered to pay the plaintiff's costs of suit including the cost of determination of merits and the quantum and attending on the examination and obtaining medico legal reports.



**NONYANE AJ  
ACTING JUDGE OF THE  
HIGH COURT OF SOUTH  
AFRICA, GAUTENG  
DIVISION, PRETORIA**

Counsel for the Plaintiff : Adv. D Mtsweni  
Instructed by : Gildenhuys Malatji Inc  
Counsel for the Defendant : Adv. M Malowa  
Instructed by : The State Attorney  
Date of trial : 19 October 2015  
Date of Judgement : 23 May 2016