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



Case number: 13165/2015

Date: 22/6/2016

DELETE WHICHEVER IS NOT APPLICABLE

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

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DATE SIGNATURE

In the matter between:

C D L

PLAINTIFF

And

THE MINISTER OF SAFETY AND SECURITY N.O

FIRST DEFENDANT

**THE COMMISSIONER OF THE SOUTH AFRICAN
POLICE SERVICES N.O**

SECOND RESPONDENT

JUDGMENT

PRETORIUS J.

- (1) The plaintiff is a 38 year old male, who resides at [...] B. Avenue, Lynnwood Ridge, in his brother's house. There is a separate flat on the property which his brother rented to a Mr and Ms Grey ("the tenants"). These tenants absconded at some stage during May 2014. This lead to the plaintiff's brother launching an application for the attachment of the tenants' property which was left in the house and a court order to that effect, was granted.
- (2) On 25 July 2014 at approximately 20h00 the plaintiff returned home and found a South African Police Services vehicle parked in front of the house and a SAPS diplomatic security vehicle parked in the driveway of the house. He immediately thought there was a break-in at the property. There were no occupants in the vehicles. There was nobody in the house and he then went to the separate flat. He met the two tenants on the way carrying towels, bedding and pillows to the bakkie.
- (3) The two tenants had previously absconded as they had not paid the rent due to Mr E D L, the plaintiff's brother and owner of the property. The plaintiff phoned his brother and enquired whether the tenants had permission to remove their property from the flat, but was told by his

brother that he had obtained a court order and the property of the tenants had been attached. The plaintiff requested the tenants to refrain from removing the property.

- (4) He entered the flat through the kitchen and stood in the bedroom door. In the flat were the two tenants, an unknown man and two police officers. The police officers were dressed in uniform. The one police officer was wearing a bulletproof vest. It was established during the trial that the officer wearing the vest was Constable Matjea. Mr D L, the plaintiff, was still on the phone to his brother and kept the phone open so that his brother could hear what was taking place in the flat.
- (5) The plaintiff requested the police officers' names, who refused to give their names, whilst the tenants and the third person were loading the bed and the mattress. The officers obscured their name tags, so that the plaintiff could not ascertain their names.
- (6) The SAPS then told the plaintiff repeatedly to "fuck off", while appearing to be very aggressive. Constable Matjea pushed the plaintiff out of the door of the bedroom with both hands on the plaintiff's chest. The plaintiff ended the phone call as the police officer was spitting in his face, whilst still continuously swearing at him. The plaintiff kept quiet as he did not want to aggravate the situation as he was scared of physical harm. He went to the vehicles and tried to take

photos of the vehicles, where Constable Matjea lunged at him and shook him by the left arm and threatened to arrest the plaintiff and to throw him into a cold police cell. The officer had his hand on his gun and told the plaintiff that he would shoot him in the head, whilst still spitting in the plaintiff's face. The security firm's members arrived, which caused the officer to back off.

- (7) The plaintiff's evidence was that he had feared for his life, due to the threats and aggression displayed by the police officers. The plaintiff went to the police charge office, where he spoke to the senior officer on duty, who was accompanied by a female officer. The two officers, who had been at the house, entered the police station and the plaintiff pointed them to the senior police member, who was not interested to assist him.
- (8) The evidence of the plaintiff was corroborated by Mr E D L, the plaintiff's brother, who gave evidence that he could hear the police swearing at the plaintiff on the phone by saying he must "fuck off". He heard this at least twice while the phone was open. He confirmed that the tenants had absconded and that he had obtained an order from the Magistrate's Court attaching the contents of the flat.
- (9) According to Constable Matjea, he and Constable Makhubela had been instructed by Colonel Solomons to assist the tenants to get their

property from the flat. Furthermore the officer, Constable Matjea, testified that he had called Colonel Solomons whilst the altercation with the plaintiff took place and requested his instructions. This evidence was denied by the plaintiff. Colonel Solomons was not called to give evidence. No reason was given for Colonel Solomons not confirming the evidence relating to him in respect to the instructions to Constable Matjea, Constable Makhubela and the phone-call from Constable Matjea.

- (10) Constable Matjea's evidence was that he and Constable Makhubela assisted the tenants to go to the house of Mr D L to fetch food and clothing on the instructions of Colonel Solomons. According to him the plaintiff was aggressive and abusive towards them which resulted in him calling Colonel Solomons. He admitted that he was wearing a bulletproof vest and had his service pistol in its holster. He further testified that the plaintiff had eventually, after an altercation between him and the police officers told the tenants to take everything. This evidence was vehemently denied by the plaintiff as he had instructions from his brother that there was a current court order attaching the contents of the flat. Constable Matjea testified that they did not see the plaintiff at the police station after the incident on the particular day.

- (11) Although the plaintiff is a single witness, his evidence was corroborated by his brother, who testified that he had heard the police

officers swearing at the plaintiff on the phone. It was never denied that the plaintiff had to go to the police station on four subsequent days to open a case, as the senior officer at the station was reluctant to assist him.

- (12) The plaintiff is a slightly built man, who appeared to be nervous and emotional whilst giving evidence. His evidence was coherent, honest and he answered all questions in a straightforward manner. I have no doubt, from listening to his evidence and observing his demeanour whilst giving evidence that he was a truthful witness on whose evidence the court can rely.
- (13) Constable Matjea on behalf of the defendant, on the other hand, did not create the same impression. He is a sturdy man who was accompanied by Constable Makhubela and was an officer of the law. Constable Makhubela, who was at court, was not called to give evidence as counsel for the defendant informed the court that he did not regard it "prudent" to call Constable Makhubela. The court will draw a negative inference where witnesses who are available, are not called to testify on material aspects in a case.
- (14) Similarly Colonel Solomons was not called to testify. Constable Matjea did not create the impression of an honest witness who answered questions clearly and concisely. His evidence that the plaintiff

assaulted him by poking him with his finger was only elicited during cross examination. This evidence is, in any event, contrary to the plea of the defendants, where it is stated that the plaintiff *"pushed the defendants' employees"*. He hesitated under cross examination and his evidence that they were not told of the court order, attaching the contents of the flat, cannot be true if the D L brothers' evidence is accepted. I cannot find that the defendants' witness testified truthfully and with integrity. The problem with his evidence is that it was not submitted in an open and honest manner. The evidence of both Colonel Solomons and Constable Makhubela could have confirmed his evidence.

- (15) If I consider the probabilities and improbabilities of what had transpired at the plaintiff's brother's house, I find the evidence of the defendants so improbable that it can safely be disregarded.
- (16) I find that the plaintiff was humiliated, defamed and degraded by the defendants' employees when Constable Matjea spat in his face, pushed him out of the way, shook him by the arm whilst constantly swearing at him. I further find that the police officers threatened to shoot the plaintiff in the head and to throw him into a cold cell at the police station.
- (17) Dr Brits, a psychologist, gave expert evidence on behalf of the plaintiff.

His expertise was admitted by the defendants. His report was submitted to court and admitted as evidence by agreement between the parties. The defendants did not call any expert to counter Dr Brits' evidence. He further testified in court and started his report by saying that he *"is of the opinion that Mr D L is in desperate need of psychological intervention"*. In his opinion this was due to post-traumatic stress caused by the incident on 25 July 2014.

- (18) Dr Brits has 30 years' experience. He did certain psychometric tests and psychological interviews. He consulted with the plaintiff seven to eight days after the incident and found: *"He appeared totally devastated after the aggressive uncalled for intimidation incident"*.
- (19) The plaintiff's evidence, confirmed by his brother, was that he was a sociable, outgoing person before the incident, who was highly motivated and enjoyed his work. After the incident he had changed employment three times as he could not concentrate and was no longer motivated to finish his studies as an accountant. According to the post-traumatic stress trauma symptom check list the plaintiff showed typical post-traumatic stress syndrome, as well as anxiety and major depression. The plaintiff scored below average re forward concentration, which explains the impact the incident has had on his work capacity and his capacity to concentrate and perform as can be expected from an accountant.

(20) Dr Brits was of the opinion that the plaintiff needed 20 sessions of psychotherapy immediately and that a further 30 sessions will most probably be required in future. Counsel for the defendants conceded that should the court hold the defendants liable, that an amount of R50 000 should be awarded for psychotherapy. Dr Brits found: *“He is presently suffering from extreme stress and depression”*.

(21) The plaintiff’s own evidence was that he was virtually a recluse after the incident, who stayed at home when not working. He did not partake of any social activities, was extremely anxious and depressed. He was scared of the police after the manner in which he had been treated as he felt humiliated and vulnerable. His demeanour in court was that of an emotional, terrified young man who could not cope with the trials and tribulations of life. He was severely traumatized.

QUANTUM OF GENERAL DAMAGES:

(22) The only injuries in this matter are psychological injuries as a result of the shock and trauma suffered by the plaintiff. Dr Brits’ evidence stands uncontested that the clinical syndromes, which includes post-traumatic stress disorder and severe depression, was caused by the incident.

- (23) It is difficult for any court to assess general damages in these cases, even more so when psychological injuries are to be considered, as is particular to this case and the court has to consider the circumstances of each case. See **Sadler v Wholesale Coal**¹; **Klopper: The Law of Third Party Compensation**².
- (24) Courts use previous awards as a useful aid to assist a court in determining a fair and reasonable award, but the comparison is not a meticulous examination of awards and the court has the ultimate discretion to decide what is fair and reasonable in the circumstances of each particular case.
- (25) In **Minister of Safety and Security v Tyulu**³ Bosielo AJA set out:
- “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.”* (Court emphasis)
- (26) In **De Jongh v Du Pisanie NO**⁴ Brandt JA declared at paragraph 60:

¹ 1941 AD 194 at 199

² 2nd Ed page 152 to 158

³ 2009(5) SA 85 (SCA) at paragraph 26

“Konserwatisme by die toekenning van algemene skadevergoeding het sy oorsprong in 'n behoefte dat daar ook teenoor die verweerder billikheid moet geskied en nie in die suinigheid van die gemeenskap teenoor die eiser nie.”

- (27) In **Road Accident Fund v Marunga**⁵ Navsa JA referred to **Wright v Multilateral Motor Vehicle Accident Fund (NPD) – Corbett and Honey, The Quantum of Damages in Bodily and Fatal Injury Cases**⁶ as follows:

“[27] In the Wright case (Corbett and Honey vol 4 E3-36) Broome DJP stated:

*'I consider that when having regard to previous awards one must recognise that **there is a tendency for awards now to be higher than they were in the past.** I believe this to be a natural reflection of the changes in society, the recognition of greater individual freedom and opportunity, rising standards of living and the recognition that our awards in the past have been significantly lower than those in most other countries.’”* (Court emphasis)

- (28) Awards made by the High Court are routinely and significantly reduced

⁴ 2005(5) SA 457 (SCA)

⁵ 2003(5) SA 164 (SCA) at paragraphs 27

⁶ Volume 4 at E3 – 36

on appeal by the Supreme Court of Appeal. In the **Marunga case**⁷ it was reduced from R375 000 to R175 000; in **Minister of Safety and Security v Tyulu**⁸ it was reduced from R50 000 to R15 000; in **Minister of Safety and Security v Kruger**⁹ from R300 000 to R20 000 and in **Minister of Police v Dlwathi**¹⁰ from R675 000 to R200 000.

- (29) In **Pitt v Economic Insurance Company Limited**¹¹ Holmes J proclaimed:

“I have only to add 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 must not pour our largesse from the horn of plenty at the defendant's expense.”

- (30) This conservative approach was followed in **De Jongh**¹² and the other matters mentioned above.

- (31) In the **Dlwathi case**¹³ a globular amount was awarded in the amount of R200 000 for severe assault which resulted in, among others, post-traumatic stress and permanent psychological damage. In the present

⁷ *Supra*

⁸ *Supra*

⁹ 2011(1) SACR 529 (SCA)

¹⁰ *Supra*

¹¹ 1957(3) SA 284 (N) at 287

¹² *Supra*

¹³ *Supra*

case there was no assault and that should be reflected in the compensation the plaintiff receives.

(32) The court was referred to **Van der Merwe v Minister of Safety and Security**¹⁴. The plaintiff in that matter was unlawfully arrested and detained in police custody for two and a half hours. He was severely traumatised to such an extent that he had to receive psychiatric treatment. He was awarded R25 000, which amounts to R36 000 in present terms.

(33) In **Barker v Road Accident Fund**¹⁵ the plaintiff claimed damages as a result of the death of her son who was killed by a motor vehicle whilst cycling. She suffered severe trauma and had on-going psychological difficulties following her son's death. An award of R40 000 was granted by the court, which amounts to R52 000 presently.

(34) I have considered all the arguments, evidence and submissions. I further take cognisance that the defendant's counsel suggested that an amount of general damages of R60 000 would be fair to both parties. It was also conceded that the plaintiff was entitled to future medical expenses for 50 sessions of psychiatric treatment. As the amount

¹⁴ Quantum of Damages Year Book Volume 6, K2-1 from the Northern Cape High Court, Kimberly under case number 716/2007, delivered on 27 November 2009

¹⁵ Quantum of Damages Year Book Volume 6, K3 from the Gauteng Division of the High Court, Pretoria, under case number 26292/2009, delivered on 6 May 2011

includes 30 sessions for future treatment, if necessary, I will apply a 20% contingency deduction on the R30 000 should such treatment not be necessary.

(35) I find that the post-traumatic stress disorder and major depression were caused by the conduct of the defendants' employees and therefor the defendants are liable.

(36) In the result the defendants are ordered to pay the plaintiff:

1. The sum of R60 000 as general damages;
2. The sum of R40 000 as future medical costs;
3. Costs, including the costs of the expert witness, Dr Brits.

Judge C Pretorius

Case number : 13165/2015

Matter heard on : 2 & 3 June 2016

For the Plaintiff : Adv M Coetsee

Instructed by : E D L Attorneys

For the Respondent : Adv M Vimbi

Instructed by : The State Attorney

Date of Judgment : 22 June 2016