IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ / NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO

(3) REVISED

DATE 12/3/16 SIGNATURE

Case Number 14209/2014

In the matter:

THE MINISTER OF SAFETY & SECURITY	Applicant
and	
GUGULETHU TIMOTHY ZWANE	Respondent
In re:	
GUGULETHU TIMOTHY ZWANE	Plaintiff
and	
THE MINISTER OF SAFETY & SECURITY	First Defendant
THE NATIONAL DIRECTOR OF PUBLIC	

PROSECUTION Second Defendant

JUDGMENT

Canca AJ

[1] The applicant seeks leave to appeal to the Full Bench of this Division against the whole of my judgment and order handed down on 27 May 2016. The respondent opposes the application.

[2] The judgment was in respect of an action instituted by the respondent against the applicant and The National Director of Prosecution. In that action the respondent sought, *inter alia*, the payment of damages in the sum of R600 000.00 for unlawful arrest and a similar amount for unlawful detention. That action was opposed by both defendants.

[3] The judgment and order handed down on 27 May 2016 reads as follows:

> "1. Judgment is granted in favour of the plaintiff against the first defendant for payment of damages in respect of his unlawful arrest in the sum of R180 000.00, together with interest thereon at the statutory rate as from the date of judgment, and costs.
>
> 2. The plaintiff's claim against the second defendant is dismissed. No order as to costs."

[4] This application for leave to appeal is based on some 15 grounds. I do not intend dealing with all of these grounds as most of them transverse issues in respect of which reasoned findings are made in the judgment. I will limit myself to some of the grounds which deal with quantum.

[5] In paragraph 12 of his grounds for leave to appeal, the applicant states that the Court *"...having found that there was no evidence before the court of the circumstances and conditions of the Plaintiff's detention to enable the Honourable [Court] to determine a fair and reasonable compensation, the Honourable Court nevertheless awarded a compensation on (sic) the amount of R180 000.00 (One Hundred and Eighty Thousand Rand) without laying a basis of how it arrived at this amount."*

[6] It is not immediately apparent to me how the applicant as arrived at the above proposition. In paragraph 45 of my judgment, I discuss the conditions under which Mr Seymour, in *Minister of Safety and Security v Seymour* [2007] 1 ALL SA 558 (SCA), was detained. He was detained for 5 days but only spent 24 hours in a police cell. The rest of his detention was spent in a hospital bed in a clinic. He also had access to his family and a doctor. It was these factors that the Supreme Court of Appeal took into account in reducing an award of R500 000.00 to R90 000.00.

[7] Although there was no evidence that the respondent in this matter had similar privileges or that the conditions in the police cell were poor, I assumed that the respondent was subjected to the normal conditions of a police cell during his detention. It was not so much the conditions under which the respondent was detained that informed the quantum in this matter but rather the infringement of his right to liberty and loss of dignity as I have set out in the first sentence of paragraph [44] of the judgment. See *Minister of Safety and Security v Van Der Westhuizen* 2015 JDR 0713 (GJ) para [30]. See also the dictum of Claasen J in *Liu Quin Ping v Akani Egoli (Pty) Ltd t/a Gold Reef City Casino* 2000 (4) SA 68 (W) at 86D where the learned Judge states that *"Deprivation of one's liberty is always a serious matter."*

[8] It is probably important that I clarify the relevance of the rest of the contents of paragraph [44] of my judgment where I comment on the effect the detention had on the respondent. The respondent struck me as still being traumatised by his experience. Although I recognised that the respondent's incarceration beyond his first appearance at Court, which I found to have been lawful, probably exacerbated his trauma, the three days he was unlawfully detained must have been traumatic and distressing on its own. I stress, yet again, that the respondent should seek help from an appropriate healthcare professional. His legal representatives certainly did him a disservice by not presenting medical evidence as to his mental state from a healthcare professional. Such evidence would, to my mind, have had a not insignificant impact on the quantum.

[9] The applicant also argued that the award was grossly excessive and that a sum of between R90 000.00 and R120 000.00 in the circumstances of this case would have been fair and reasonable. Interference by a superior Court is consequently warranted so the argument continued.

[10] It is well established law that for the Court of appeal to interfere, it must, *inter alia*, be shown that the disparity between the award of the lower Court and that which a superior Court will grant is striking. And, indeed, as is shown in *Seymour* and *Van Der Westhuizen supra* (where the award was reduced from R400 000.00 to R200 000.00) Courts of appeal have dramatically reduced some of the awards made by a court *a quo*.

[11] Mavundla J in *City of Tswane Metropolitan Municipality v Moses* 2012 JDR 1233 (GNP) at para [16] states that the R90 000.00 awarded in *Seymour supra* in 2006 had a value of approximately R150 000.00 in 2012. It is also instructive that, as stated in paragraph[45] of my judgment, counsel for the applicant

during the trial argued that, in the event that I found for the respondent, an amount of R120 000.00 would be appropriate without stating how he arrived at that amount. In *Rudolph and Others v Minister of Safety and Security and Another* 2009 (5) SA 94 (SCA) the Court awarded the appellants, who were unlawfully detained for three days, R100 000.00 in 2009. In *Rudolph*, the Court took into account the fact that the appellants were detained under extremely unhygienic conditions in arriving at the quantum. Although there was no evidence that the respondent was detained under similar conditions at the Morgenson Police Station, a Court is entitled, as stated at paragraph [17] in *Seymour supra*, to look at the facts of a particular case as a whole in assessing general damages.

[12] It is trite law that the assessment of damages is a matter that lies within the discretion of the trial Court and that a superior Court only interferes when that discretion was exercised incorrectly or wrongly. See the dictum of Theron JA in *Minister of Safety and Security v Scott* 2014 (6) SA 1 at 15G-H.

[13] I have not been persuaded that, given the constant depreciation in the value of money, the applicant's own suggested award of R120 000.00, the fact that R90 000.00 was valued at approximately R150 000.00 in 2012 and the R100 000.00 awarded in *Rudolph supra* in 2009, the award of R180 000.00 was excessive in the circumstances. I do not believe that the award is such that it warrants interference by a Court of appeal. Nor do I believe that my discretion was exercised wrongly.

[14] Having carefully considered the submissions of both counsel and the authorities referred to, I do not think that the applicant's submissions are sound. I am of the view that another Court will not come to a finding different from mine.

[15] In the light of the above, the appeal, to my mind, does not have reasonable prospects of success.

[16] In the result, I order as follows:

1. The application for leave to appeal is dismissed with costs, including the costs of two counsel.

MP Canca

Acting Judge of the High Court South Africa,

Gauteng Division, Pretoria.

APPEARANCES:

For the Applicant: Messrs MS Phaswane & DM Kekana

Instructed by: Ms NA Qongqo, State Attorney, Pretoria.

For the Respondent: Messrs ZZ Matebese & L Mgwetyana

Instructed by: **Mjali & Zimema Attorneys, Volksrust.**

Heard on: 6 July 2016

Judgment on: 12 July 2016