


IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES / NO
(3) REVISED
21/9/2016 DATE
 SIGNATURE

CASE NUMBER: 56349/12

DATE: 2 September 2016

JOB PHILLIP NZIMANDE

Plaintiff

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MINISTER OF POLICE

First Defendant

WARRANT OFFICER MSIZA

Second Defendant

JUDGMENT

Makamu AJ

[1] This is an action for unlawful arrest by the police of the Plaintiff, and detention for twelve (12) days. The merits are not in dispute, only the quantum is contested by the Defendant.

- [2] The Plaintiff was arrested and detained for twelve (12) days at Bronkhorstspuit on the 8th day of October 2009, thereafter bail application was heard on the 20th day of October 2009 where bail was refused. It is not in dispute that the period of unlawful arrest and detention has been agreed by both parties. He was subsequently released, although, from the Court papers, it is not clear as to when he was released. The Plaintiff is not claiming an award for loss of income, hence it is futile to deal with the merits.
- [3] The Plaintiff claims an amount of R500,000.00 for damages and compensation. However, after recalculating the figure, came to the conclusion and made submissions that an amount of R480,000.00 calculated at a rate of R40,000.00 per day and the costs of suit. It is this amount of damages which is in dispute, the Defendant proposing about R125,000.00 calculated at a rate of R10,500.00 per day.
- [4] The approach in assessing damages in matters of this nature includes an evaluation of the Plaintiff's personal circumstances, the circumstances around the arrest, as well as the nature and duration of the detention. See **Ngcobo v Minister of police 1978 (4) SA 930 (D)**.

[5] The counsel for the Plaintiff referred me to several cases where various amounts were awarded, however, what was omitted was to mention the social status of the Plaintiff in this matter. One cannot treat everybody with the same scale, so to say, as people occupy different social and professional status within the community. The community have tendency to treat people differently depending on the social status hence many of the decided cases went on to mention the Plaintiff's standing in the society or profession.

[6] In the case of **Scott and another v Minister of safety and Security 2013 JOL 30254 GNP** where the Plaintiff was a Chief Executive Officer of a company. He was arrested and detained at Musina police cells. He was released from custody the following morning. He proved loss of income and for unlawful detention he was awarded R75,000.00.

[7] In *Tladi v Minister of Safety and Security* which judgment was delivered on the 24th of January 2013 by the South Gauteng High Court, Johannesburg, Ms Cynthia Tladi was a deputy school principal and she claimed damages for unlawful arrest and detention. The Court awarded her R25,000.00 for one day.

[8] In the present case, the defendant's Counsel also referred this Court to several decided cases and both parties endeavoured to make their own calculations as to how much could be a reasonable and proper amount for damages and compensation for the Plaintiff.

[9] In determining a proper amount for damages and compensation one should take into account factors that were articulated in paragraph 4 of this judgment in *Ngcobo v Minister of safety and security*. The Plaintiff in this present case was a truck driver, earning R4,500.00 per month.

[10] In **Minister of Safety and Security v Tyulu 2009 (1) All SA 38 (SCA)** is a classic case of claimants claiming exorbitant amounts which could not be justified. The Plaintiff claimed an amount of R500,000.00 for unlawful arrest and detention, and was awarded R280,000.00 by The High Court. He appealed to the full bench and was awarded R50,000.00. He further appealed to the Supreme Court of Appeal and the amount was reduced to R15,000.00. The claimant was a magistrate who was arrested when he walked from his house to a filling station. He was arrested and released the following day.

[11] The question that this Court asks is whether the amount of R480,000.00 be a fair and proper amount for damages and compensation. The Court had to take into account the Social standing of the plaintiff and his occupation.

[12] Each case should be treated on its merits, however, there is no harm in following precedents that have been created before this day. The Plaintiff did not prove to the Court the conditions in which he was detained and the food and privileges and amenities afforded or deprived whilst incarcerated.

[13] The Court cannot assume that whatever conditions other claimants suffered the Plaintiff also had the similar experience. Having given careful consideration to all relevant facts in determining the amount, including the age of the plaintiff who was 40 years, his social and professional standing, the facts that he was arrested for and awards made in comparative cases, I come to the conclusion that a fair and appropriate award for damages for the plaintiff's unlawful arrest and detention is an amount of R12,000.00 per day and the total amount is R144,000.00.

Consequently judgment is hereby granted as follows:

13.1 The Defendant is ordered to pay an amount of R144,000.00 together with interest at the rate of 15.5% from the time of action to the date of payment.

13.2 The Defendant is ordered to pay costs of the action.



M S MAKAMU AJ

ACTING JUDGE OF THE HIGH COURT

Appearances:*Counsel for the plaintiff:**Adv. S Meyer**Instructed by:**Letwaba Attorneys**c/o Motloba Attorneys**Counsel for the defendants:**Adv. F Baloyi**Instructed by:**Office of the State Attorneys**Date Heard:**31 August 2016**Date of Judgment:**2 September 2016*