REPUBLIC OF SOUTH AFRICA

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

CASE NO: 36536/2011

REPORTABLE: NO/YES
OF INTEREST TO OTHER JUDGES: NO/YES
REVISED

In the matter between:

DANIEL SCHEEPERS	**PLAINTIFF**
And	
THE MINISTER OF POLICE	**1ST DEFENDANT**
CAPTAIN CLAASENS	**2ND DEFENDANT**
JANINE SOEKOE	**3RD DEFENDANT**
ANETTE SOEKOE	**4TH DEFENDANT**

This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on Caselines by the Judge or his/her secretary. The date of this judgment is deemed to be_____.

JUDGMENT

MAUBANE AJ

1. INTRODUCTION

1.1 The plaintiff, an adult male person who was 55 years of age at the time of his arrest, and is currently 68 years, issued summons against the defendant for unlawful arrest and detention.

1.2 The court must determine whether the arrest was lawful in terms of the provisions of Section 40(1)(e) and if not, what the award for such arrest should be.

2. Common cause issues

2.1. the plaintiff 's *locus standi*,

2.2. the 1st defendant *locus standi*,

2.3. the jurisdiction of the above honourable court,

2.4. the identity of the plaintiff,

2.4. the identity of the 1st defendant,

2.5. the arrest of the plaintiff by a member of the 1st defendant who was acting within course and scope with the 1st defendant,

2.6. the arrest took place without a warrant of arrest, and,

2.7. the charges against the plaintiff were withdrawn on the 6th January 2010

3. It is not in dispute that the arrest was effected without a warrant and it was so effected in terms of Section 40(1)(b) of *the Criminal Procedure Act 51 of 1977* as amended.

4. BACKGROUND

4.1. The plaintiff was arrested without a warrant of arrest on the 14th December 2009 at or near his permanent place of residence. It is not in dispute that the plaintiff was arrested without a warrant. He was then detained and kept at Roodepoort Police Station from the 14th December 2009 until the 17th December 2009, whereon he was subsequently transferred to John Vorster Police Station, and was detained there until the 20th December 2009.

4.2. The plaintiff was transferred to Diepkloof Prison (Sun City Prison) on the 20th December 2009 whereon he was kept and detained until 6th January 2010 whereat the charges against him were withdrawn.

5. EVIDENCE

5.1. The matter came be before court on the 11th April 2022.The second and the 3rd defendants were not before court and were not represented. Both parties agree that first and second defendants should be disregarded. It was agreed by the parties that the onus of proof of lawful arrest rests with the 1st defendant and the onus to proof quantum rests with the plaintiff. At the start of trial, Counsel for the 1st defendant informed the court that Captain Claassen had passed on. Due to the demise of Captain Claassen, the defendant did not have a witness and as such, no one was called to testify on his behalf. The counsel for the defendant then chose to close his case.

5.2. The Counsel for the Plaintiff called the Plaintiff, who was the only witness to testify.

5.3. The plaintiff testified that he was arrested by Captain Claassen, on the 14th December 2009, whilst he was on the way to Sasol to do odd jobs. He was taken to Roodepoort Police station. He told the court that Captain Classen did not explain reasons for his arrest. He was then put and locked in a cell. The plaintiff further testified that he was kept in a filthy cell, was not provided with food nor water. He further told the court that at the time of his arrest Captain Claassen told him to shut up and he would lock him up for a very long time. He did not know the name of the first Police Station he was taken to, but it later came to his knowledge that it was Roodepoort Police Station. There were human faeces all over the place. The place was dirty and horrible as explained by the plaintiff.

5.4. The plaintiff further told the court that no Constitutional rights were explained to him at the time of his arrest nor at any time and was not allowed to contact any person. He was placed in solitary confinement in a room about 3mx3m, without blanket nor food. He was transferred to John Vorster Police Station on the 19th

December 2009 and was kept and detained there until the 20th December 2009. He said that the treatment was better compared to Roodepoort Police station. He was kept with robbers.

5.5. He was then transferred to Diepkloof Prison (Sun City) on the 20th December 2009. He told the court that there were no enough beds, and he was not given food at Diepkloof Prison (Sun City). The place was horrible. He was sleeping on the ground. His artificial leg was taken from him by unknown people, and he could not walk. The artificial leg was brought back to him by the warder after 3 days. He was then taken by Captain Claasen to Court on the 6th January 2010 whereon the charges were withdrawn against him.

5.6 After giving evidence in chief, the plaintiff was extensively cross examined by the 1st defendant's counsel. It was put to him that he was informed by Captain Claassen about the charges preferred against him and he vehemently denied that. It was further put to him that according to the copy of the crime unit docket, which was submitted at Court, he was arrested on the 14th December 2009 and appeared at court on the 17th December 2009 and he refuted that. He said the only time he appeared at court was on the 6th January 2010 whereon the charges were withdrawn against him.

5.7. The court only heard plaintiff 's evidence and no one from the defendant's side was called to rebut the plaintiff's evidence and as such his evidence stood unchallenged.

6. AMENDMENT OF PLEADINGS

6.1 During the trial the plaintiff requested the court for leave to amend paragraph 9.1 to be and read as follows "*as a result of the aforegoing, the plaintiff suffered loss in the amount of R750 000*." The plaintiff told the court that since the plaintiff was arrested and detained for 21 days, it would be fair, just, and reasonable to amend the amount claimed. The defendant opposed the proposed amendment and told the court that the plaintiff was opportunistic realising that Captain Claassen was deceased, and the evidence of the plaintiff could not be challenged by the defence.

After closing of the defendant ‘s case judgement was reserved.

6.2. In terms of Supreme Court Act, Uniform Rule of Court:

6.3. Any party desiring to amend a pleading or document other than a sworn statement, filed in connection with any proceedings, shall notify all other parties of his intention to amend and shall furnish particulars of the amendment,[1]

6.4. The court may, notwithstanding anything to the contrary in this rule, at any stage before judgement grant leave to amend any pleading or document on such other terms as to costs or other matters as it deems fit.[2]

6.5. In *Khunou & Others v Fihrer & Son,*[3] the court stated the following:

> *“the proper function of a court is to try disputes between litigants who have real grievances and to see to it that justice is done. The rules of civil procedure exist to enable courts to perform this duty with which, in turn, the orderly functioning, and indeed the very existence of society is inextricably interwoven. The Rules of court are in a sense merely a refinement of the general rule of civil procedure. They are designed not only to allow litigants to come to grips as expeditiously and inexpensively as possible with the real issues between them, but also to ensure that courts dispense justice uniformly and fairly, and that the true issues aforementioned are clarified and tried in a just manner”*

6.6. In *Trans-Drakensberg Bank Ltd (under Judicial Management) v Combined Engineering (Pty) Ltd and Another*[4] at 639B, the court said:

> *“The mere loss of the opportunity of gaining time is not in law prejudice or injustice. Where there is a real doubt whether or not injustice will be caused to the defendant if the amendment is allowed, it should be refused, but it should not be refused merely in order to punish the plaintiff for his neglect”*

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[1] Rule 28(1).
[2] Rule 28(1).
[3] 1982 (3) SA WLD.
[4] 1967 (3) SA(D) 632.

6.7. The court further said at 642H *"if a litigant had delayed in bringing forward his amendment, this in itself, there being no prejudice to his opponent not remediable in the manner I have indicated, is no ground for refusing the amendment."*

7. In *Caxton Ltd & others v Reeva Forman (Pty) Ltd & another,*[5] Corbett CJ stated at 565G:

> *"Although the decision whether to grant or refuse an application to amend a pleading rest in the discretion of the Court, this discretion must be exercised with due regard to certain basic principles".*

8. In *Rosenberg v Bitcom*[6] Groonberg J, stated that *"granting of the amendment is an indulgence to the party asking for it, it seems to me that at any rate the modern tendency of the Courts lies in favour of the amendment whenever such an amendment facilitates the proper ventilation of the disputes between the parties."*

9. In *Zarug V Parvathie NO*,[7] Henochsberg J held that:

> *"An amendment cannot however be heard for the mere asking. Some explanation must be offered as to why the amendment is not timeously made; some reasonably satisfactory account must be given for the delay".*

10. In *Moolman v Estate Moolman & another,*[8] the court stated that:

> "*the practical rule adopted seems to be that amendments will always be allowed unless the application to amend is mala fide or unless such amend would cause an injustice to the other side which cannot be compensated by costs, or in other words unless the parties cannot be put back for the purpose of justice in the same position as they were when the pleading which it is sought to amend was filed."*

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[5] 1990 (3) SA 547(A).
[6] 1935 WLD 115 at 117.
[7] 1962 (3) SA 872 (1) at 876C.
[8] 1927 CPD 27 at 29.

11. In my view, the proposed amendment does not introduce a separate cause of action or any new cause of action. It merely seeks to take into account the numbers of days the plaintiff was incarcerated at the instance of the 1st defendant and for an award the court should consider fair in that circumstances.

12. Both parties were then called upon by the court to submit heads of argument. The court is of the view that the defendant will not suffer any prejudice should the amendment be allowed, instead he will suffer prejudice if the amendment is not allowed. The court therefore allows the amendment to be effected.

QUANTUM

13. In determining the quantum of general damages in personal injury cases, the trial court essentially exercises a general discretion. It was stated in *De Jongh v Du Pisani N.O.*[9] *" that the award should be fair to both sides, it must give just compensation to the plaintiff, but not pour largesse from the horn of plenty at the defendants' expense".*

14. It is a trite law that in cases such as this one, the determining factors, amongst others, though not exhaustive, in making an award are:

14.1 The manner in which the arrest was effected,
14.2. The age of the plaintiff,
14.3. The conditions of the cell in which the plaintiff was kept, and,
14.4. The duration of detention.

15. According to Neethling Potgieter and Visser, "Law of Personality" at 130 it is stated that factors which play a role in the assessment of the amount of damages are the following : the circumstances under which the deprivation of presence of malice or an improper motive on the part of the defendant, duration of the deprivation of liberty, the social status of the plaintiff, the degree of publicity afforded the deprivation of liberty, social and whether the defendant apologises or provides a

[9] 2005 (5) SA 547 (SCA) at par 60.

reasonable explanation for what happened. In addition, awards in previous comparable judgments, allowing for inflation, may be taken into account. If in addition to the deprivation of liberty other personality interests such as honour and especially reputation are affected, the amount of satisfaction will obviously be increased.

16. General damages is the broad term given to non-pecuniary loss such as pain and suffering, loss of amenities, emotional harm, etc. As pointed out by the court in the case *of Hendricks v President Insurance*[10] it was stated that the nature of the damages which are awarded make quantifying the award very difficult.

17. The Appellate Division in *Sandler v Wholesale Coal Suppliers*[11] at 199 stated that:

> "*Though the law attempts to repair the wrong done to a sufferer who has received personal injuries in an accident by compensating him in money, yet there are no scales by which pain, and suffering can be measured and there is no relationship between pain and money which makes it possible to express the one in terms of the other with any approach to certainty."*

18. There is unfortunately no expert that can place an exact value to the abovementioned losses. It is not enough to compare the general nature of pains the plaintiff has suffered. All factors affecting the assessment of damages must be taken into account. Once it is established that the circumstances are sufficiently comparable, then only are comparable cases to be used as a general yardstick to assist the court in arriving at an award. Each case must be adjudicated on its own merits.

19. Van Heerden J in *Dikeni v Road Accident Fund*[12] the court stated that:

> "*Although these cases have been of assistance, it is trite law that each case must be adjudicated upon on its own merits and no one case is*

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[10] 1993 (3) SA 158 C.
[11] 1941 AD at 199.
[12] 2002(C& B) (VOL 5) at B4 171.

factually the same as another…… previous awards only offer guidance in the assessment of general damages."

20. Holmes, J (as then was) stated in *Pitt v Economic Insurance Co. Ltd*[13] 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 it must not pour out largesse from the horn of plenty at the defendant's expense".

21. In *Minister of Safety and Security* [14] the plaintiff was awarded R90 000 for being arrested and detained for 5 days. In *Minister of Safety and Security v Tyulu*[15] the court awarded the respondent an amount of R15 000 for unlawful arrest and detention for a period of 15 minutes. In that matter the court said that "*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. However, our courts should be astute to ensure that the awards they make for such infractions reflect the importance of the right to personal liberty and the seriousness with which any arbitrary deprivation of the personal liability is viewed in our law".*

22. In *Mvu v Minister of Safety and Security and Another*[16] the court awarded the plaintiff an amount of R30 000.00 for being arrested and detained for a day.

23. In *Olivier v Minister of Safety and Security and Another* [17]the plaintiff was awarded an amount of R50 000 for a period of 6 hours.

24. It is common cause that the plaintiff was arrested for a period of twenty-one days under extreme bad conditions and his artificial leg was taken from him which made his movement unbearable, constitutional rights were not explained to him and

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[13] 1957 (3) 284 (D) at 287E
[14] 2006 (6) SA 320 (SCA)
[15] (327/2008) [2009] ZA SCA 55, 2009 (5) SA SCA.
[16] *(07/20296(2009) ZAGPJHC 6,2009(2) SACR29(GSJ).*
[17] *2009 (3) SA 434 (w*).

was released without being charged. By its nature deprivation of someone's liberty is inhuman, unconstitutional, and unbearable given the fact that there was no justifiable cause to do so.

As a result of the conduct of the 1st defendant 's member I make the following order:

24.1. The plaintiff was unlawfully arrested and detained.
24.2. The defendant shall pay the plaintiff an amount of R525 000.00
24.3. Interest will run on the afore-said amount at the prescribed rate a tempore morae from the date of judgement to date of payment.
24.4. The defendant is ordered to pay the cost of suit.

MAUBANE AJ
JUDGE OF THE HIGH COURT

Appearances

Counsel for the Plaintiff	: Adv. C. Zeitsman
Attorney for the Plaintiff	: Loubser Van Wyk Inc
Counsel for the Defendants	: Adv S.J. Coetzee SC
Attorney for the Defendants	: Office of the State Attorneys : Pretoria
Date of Hearing	: 11 April 2022
Date of Judgment	: 10 May 2022

Judgment transmitted electronically