

IN THE KWAZULU-NATAL HIGH COURT, PIETERMARITZBURG
REPUBLIC OF SOUTH AFRICA

Case No : AR 335/10

In the matter between :

Geoffrey Bruce Glass

Appellant

and

The Minister of Safety and Security
Captain R Moodley
Inspector T W G Lourens
Constable C T van Rooyen

1st Respondent
2nd Respondent
3rd Respondent
4th Respondent

Judgment

Lopes J

[1] This matter comes before us by way of leave to appeal which was granted by Naidoo AJ on the 18th August, 2009. The learned Judge had dismissed the appellant's claim with costs.

[2] The appellant's claim was for damages in the sum of R120 000, for wrongful and unlawful arrest without a warrant by one or more of the second, third or fourth respondents, who, at the time of his arrest, were members of the South African Police Service and employed by the first respondent. The

appellant also alleges that the arrest was made in the presence of members of the public.

[3] The appellant's case was based on his own evidence and that of a Mrs M Boucher. It is common cause that :-

- a) the appellant and his wife had for a long time endured a volatile matrimonial relationship; and
- b) both the appellant and his wife had obtained orders against each other in terms of the Domestic Violence Act, 1998 ("the Act");
- c) the appellant's wife had deposed to an affidavit in terms of sub-s 8(4) (a) of the Act;
- d) on the 11th March, 2000, the third respondent, who at the time was accompanied by the fourth respondent, effected the arrest of the appellant at the home of Mr and Mrs Boucher; and
- e) the liberty of the appellant was effectively curtailed at the Newcastle police station for approximately six hours from approximately 3pm until 9pm that evening when the appellant was returned to the home of Mr and Mrs Boucher by police officials.

[4] Ultimately the decision in this matter rests upon a finding that the third and fourth respondents had complied with the provisions of sub-s 8(4)(b) of the Act in arresting the appellant. The learned Acting Judge set out the evidence which had been given on behalf of the appellant by himself and Mrs Boucher. It was

common cause that Mr Boucher is in fact deceased.

[5] The evidence of the appellant can best be described as a long rambling diatribe. Most of his answers to questions put to him by both his counsel and counsel for the respondents were answered indirectly or, initially, not at all. In addition, during the giving of his evidence the appellant was often emotional, and on occasions burst into tears. There can be no criticism of the learned Acting Judge's conclusion that the appellant was not a satisfactory witness, that he often evaded direct answers and was unable to give simple explanations to questions asked of him.

[6] The evidence of Mrs Boucher does not materially assist the appellant in helping the Court to decide on the disputed issues of fact. This was because it is common cause that when the police officials visited the home of Mr and Mrs Boucher in order to arrest the appellant, Mrs Boucher remained inside the house. She was therefore unable to comment on whether the appellant was shown a warrant by the third respondent, and whether the appellant went to the Newcastle police station in a police vehicle or in a vehicle driven by Mr Boucher. The best she could offer was that she did not believe Mr Boucher would have been capable of driving the appellant to the Newcastle police station because of his medical condition. He was allegedly frail because of an operation he had recently undergone.

[7] It is clear from the evidence of the third respondent that he acted on the instruction of his superior officer, the second respondent, Captain Moodley in initially considering whether he should execute the warrant of arrest. However, it is clear from the evidence that he did not rely solely on that instruction and made his own independent assessment of whether or not he was entitled to arrest the appellant. It was necessary for the third respondent to have made his own independent decision to arrest the appellant because of the provisions of sub-s (8)(4)(b) of the Act. The enquiry which he had to address was whether he had reasonable grounds to suspect that appellant's wife and children might suffer imminent harm as a result of the appellant's breach of the protection order.

[8] The test for whether his belief that the appellant had committed an offence, and the possibility of imminent harm to the appellant's wife, are to be judged on the basis of the reasonable belief of the third respondent. In my view the evidence amply bears out the findings of the learned Acting Judge that the third respondent gave serious consideration to these questions and correctly decided that he could and should arrest the appellant.

[9] The evidence of the third respondent and that of the other police officials who testified reads well, and the learned Acting Judge's finding that they were good witnesses whose evidence was credible and satisfactory cannot be faulted. The evidence of the third and fourth respondents was that they were in possession of a warrant at the time when they arrested the appellant. There was

indeed no challenge to the third respondent's evidence that he had endorsed the warrant after he had arrested the appellant. It is extremely unlikely that he could have done so on the day of the arrest of the appellant if he was not in possession of the warrant at the time.

[10] Both the third and fourth respondents gave evidence as to the fact that the appellant was transported to the Newcastle police station in a private vehicle which followed their vehicle. This is something about which the third and fourth respondents had no motive to be untruthful. How the appellant arrived at the Newcastle police station was really neither here nor there in the overall scheme of deciding whether or not the arrest of the appellant was lawful. What a finding on that issue does do is create considerable doubt as to the credibility of the appellant as a witness.

[11] Mr White who appeared for the appellant submitted that the evidence of the third respondent does not demonstrate why he regarded it as being reasonable to arrest the appellant. In this regard Mr White referred to the evidence of the third respondent, drawing attention to the fact that the third respondent had been asked in cross-examination what the reasonable grounds were upon which he relied in order to justify the arrest of the appellant. The third respondent replied that he had reached the conclusion that the complainant may suffer imminent harm after reading her statement, and then visiting the Glass residence where he had found Mrs Glass and her children traumatized and

crying. He expressed the view that if Mr Glass had been present at the residence he would have arrested him then and there.

[12] Despite the lack of particularity in the sub-s 4(a) statement made by Mrs Glass, there is sufficient in the statement for the third respondent to have concluded that Mrs Glass and her children had, during the period between the 25th February, 2000 and until the 11th March 2000 undergone emotional and psychological abuse at the hands of the appellant. The imminent harm was clearly that that situation would persist.

[13] Mrs Stretch who appeared for the respondents submitted that there were three stages which contributed to the state of mind of the third respondent and led to him concluding that it was reasonable to arrest the appellant. Those stages were :-

- a) the third respondent's reading of the statement by Mrs Glass;
- b) the condition in which the third respondent found Mrs Glass and her two sons; and
- c) the behaviour of the appellant at the Boucher home.

[14] Whatever views the third respondent had reached by the time he arrived at the Boucher home, his decision to arrest the appellant could only have been confirmed by the abusive behaviour of the appellant.

[15] In all the circumstances the learned Acting Judge correctly assessed the evidence of the witnesses and found in favour of the version given by the second, third and fourth respondents. In those circumstances the finding that the plaintiff's claim was dismissed with costs was correct.

[16] I accordingly make an order dismissing the appeal with costs.

Patel DJP : I agree.

D Pillay J : I agree.

It is so ordered.

Date of hearing : 2nd February 2011

Date of judgment : 11th February 2011

Counsel for the Appellant : J M White (instructed by Jon White Attorneys)

Counsel for the Respondent : I T Stretch (instructed by the State Attorney)