

REPUBLIC OF SOUTH AFRICA



SOUTH GAUTENG HIGH COURT
JOHANNESBURG

CASE NO: 14842/2011

- (1) REPORTABLE: Yes
(2) OF INTEREST TO OTHER JUDGES: Yes.
(3) REVISED.

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DATE

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SIGNATURE

In the matter between

THABO SONDLLO

PLAINTIFF

and

MINISTER OF POLICE

DEFENDANT

J U D G M E N T

Summary

Unlawful arrest and detention – damages. Each case to be considered on own facts – awards from State coffers should be approached with restraint.

WEPENER J:

[1] This is an action for damages arising from an unlawful arrest and detention of the Plaintiff. The plaintiff, a 34 year old family man, with a wife and three children, works as a paint mixer. He assists at a social club where

children are encouraged to, *inter alia*, participate in sporting activities. The purpose of the social club is to prevent children from committing crimes. Plaintiff is also a member of a church.

[2] On the day in question in 2009 at just after 17h00, the plaintiff was on his way home from work where he was admittedly, unlawfully arrested on a train. He was handcuffed and eventually detained at New Canada railway station, in a overcrowded cell. He was later taken to the Orlando Police Station and again held in an overcrowded cell. Later, he was taken back to New Canada but not detained there. Members of the defendant took the plaintiff and others to the Booyens Police Station where his fingerprints were taken. Thereafter he was taken to the John Voster Police Station and detained from about midnight in unhygienic conditions. At about 12h00 the next day, plaintiff received some bread and tea and at about 15h00 he was released without further ado.

[3] There can be no doubt that the plaintiff suffered humiliation and trauma as a result of his unlawful arrest and detention. The plaintiff also added that his arrest and detention did not '*sit well*' with the members of his family, church and social club.

[4] There is no evidence before me of any injuries suffered by the plaintiff or any long term effects following upon the arrest and detention.

[5] The only question which I am required to determine is the quantum of damages to be awarded to the plaintiff. Counsel referred me to a number of decided cases where damages were awarded in similar matters. Ms Adam relied on four cases to contend that an amount of R125,000.00 would be an appropriate award of damages. These are *Louw v Minister of Safety and Security* 2006 (2) SACR (T) where an amount of R75,000.00 was awarded; *Van Rensburg v City of Johannesburg* 2009 (1) SACR 32 (W) where an amount of R75,000.00 was awarded; *Murrel and Another v Minister of Safety and Security* (24152/2008) (2010) ZAGPPHC 16 (22 February 2010)) where an amount of R90,000.00 was awarded; and *Olivier v Minister of Safety and*

Security and Another 2009 (3) SA 434 (W) where an amount of R50,000.00 was awarded.

[6] I also take into account that in an unreported matter *Muraor V Ekurhuleni Metropolitan Council* (2009/24023) delivered on 6 December 2010, where this court awarded an amount of R50,000.00 as damages for the unlawful arrest and detention of a plaintiff where the plaintiff was manhandled and left incarcerated overnight.

[7] ‘*The awards by any courts in other similar matters provide a useful basis for comparison in determining a fair and just award. At the same time one must be mindful of the caution expressed by Innes CJ in Hulley v Cox 1923 AD at 236 that such a comparison “while instructive, could never be decisive” – per Kollapen AJ as he then was) in Murrell and Another v Minister of Safety and Security (24152/2008 [2010] ZAGPPHC 16 (22 February 2010) at para 29.*

[8] Ms Adam argued that s 12 of the Constitution guarantees every person the right to freedom and no person is to be deprived thereof arbitrarily and without just cause. She relied on what R Du Plessis, AJ said in *Coetzee v National Commissioner of Police and Others* (70259/09) [2010] ZAGPPHC 155 said at para 94 and 95 as follows:

‘[94] *It is the right of citizens and free men to insist upon the courts creating a deterrent, and providing within the confines of the law the necessary and appropriate relief in instances such as the foregoing, to enforce our progressive, admired and wonderful Constitution, that has brought freedom and human rights to millions of previously disenfranchised, and disregarded citizens. The rights created in the Constitution must be safeguarded and protected and any infringement thereof should be deterred through whatever lawful mechanisms possible, including appropriate relief which could and should function as a deterrent for public officials who infringe the principles enshrined in the Constitution, who act outside the scope of their constitutional duties, and who infringe upon the rights of normal, free and law abiding citizens.*

[95] *Unlawful detention has had an infamous history in our law. It was utilised during the apartheid era to force persons into submission, where they were locked up in solitary confinement for days on end, and it was utilised in a brutal and unacceptable fashion. Its utilisation for political reasons was criticised worldwide, it was not justified, and have caused severe human*

rights infringements and violations. This should not be allowed to happen again in a free democratic society such as the one created by our Constitution. It should not be tolerated by any law abiding citizen, and it cannot be justified on any basis whatsoever.'

The invasion upon a person's liberty must be seen in perspective and it appears that R Du Plessis AJ was not aware of the decision of the Supreme Court of Appeal in which Nugent JA said in *Minister of Safety and Security v Seymour* 2006 (6) SA 320 (SCA) at para 14 as follows:

'I do not think that the courts in earlier cases placed less value on personal liberty than ought to be placed on it today. Indeed, what was said in May shows the contrary. Nor do I think there is any basis for concluding that awards that were made at that time reflect a more tolerant judicial view of incursions upon personal liberty. It was precisely because personal liberty has always been judicially valued that the incursions that were made upon it by the Legislature and the Executive at that time were so odious. The real import of the Constitution has not been to enhance the inherent value of liberty, which has been constant, albeit that it was systematically undermined, but rather to ensure that those incursions upon it will not recur. To the extent that the learned Judge placed a jurisprudential premium on personal liberty that was absent before now, in my view, it was misdirected.'

[9] Any infringement on this basic right is a serious inroad into an individual's liberty and will be open to censure. The censure in this matter is by way of *solatium* awarded to the plaintiff for his injury.

[10] The plaintiff's damages will ultimately be forthcoming from the State coffers to which the citizens of this country contribute. Some restraint is called for when awarding damages where the fiscus is source thereof.

[11] I am further of the view that amounts of damages to be awarded for relative short periods of wrongful detention should be approached with circumspection. There is no justification for awarding amounts which are out of proportion with the indignity suffered by an arrested person.

[12] Brandt JA, quoting Holmes J (as he then was) in *De Jongh v Du Pisanie* NO 2005 (5) SA 457 (SCA) at para 60, said:

'Dit betaam net so min die gemeenskap (of dan die Hof) om te gulhartig te wees met die verweerder se geld, al was hy of sy regtens aanspreeklik weens sy of haar nalatige gedrag. Die volgende uitspraak van Holmes R in Pitt v Economic Insurance Co Ltd 1957 (3) SA C 284 (D) op 287E - F vind dus eweneens toepassing in onderhawige verband:

“(T)he 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.”

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.’

and at para 64 – 65:

*[64] Die benadering wat van oudsher deur hierdie Hof gevolg word, is egter juis andersom (sien byvoorbeeld, *Hulley v Cox* (supra op 246), *Sigournay v Gillbanks* (supra op 556) en *Protea Assurance Co Ltd v Lamb* 1971 (1) SA 530 (A) op 535). Volgens hierdie benadering is die beginsel juis dat die vasstelling van nie-patrimoniële skade in die diskresie van die Hof is. By die uitoefening van die Hof se diskresie is vergelyking met toekennings in vorige sake 'n nuttige hulpmiddel omdat dit darem vir die Hof die breë parameters oftewel 'n patroon aandui waarbinne sy toekenning tuisgebring moet word. Dit is ook 'n nodige riglyn omdat konsekwentheid in toekennings 'n inherente vereiste van billikheid is. Nietemin bly dit steeds 'n riglyn. Dit vervang nie die Hof se diskresie met 'n letterknegtige gebondenheid aan die aangepaste waarde van vorige toekennings nie.*

[65] Die stygende tendens van toekennings in die onlangse verlede is, soos ek alreeds gesê het, duidelik waarneembaar. Die effek daarvan is egter weer eens nie met matematiese presiesheid bepaalbaar nie. Dit is nie seker presies wanneer die tendens begin het en wanneer dit sal eindig nie. Dit het bes moontlik reeds tot 'n einde gekom. 'n Bepaalde toekenning uit die verlede waarna verwys word kon dus reeds met inagneming van die tendens geskied het. As die vorige beslissing wat as maatstaf dien reeds met inagneming van die stygende tendens gemaak is, kan dit nouliks geregverdig word om op grond van dieselfde oorwegings sonder enige bykomstige rede, 'n verdere styging toe te laat. Daarbenewens verg die tendens klaarblyklik nie die vermenigvuldiging van vroeëre toekennings met 'n voorafbepaalde of bepaalbare faktor nie. Op die ou end is die tendens maar net nog 'n oorweging wat die Hof geregverdig is om in ag te neem wanneer hy, by die uitoefening van sy diskresie, na vorige toekennings, veral in ouer sake, as riglyn verwys.’

[13] I have considered the facts before me and I am of the view that an amount of R50,000.00 would adequately compensate the plaintiff. The defendant conceded that the costs should be paid on the High Court scale.

I consequently make the following order:

The defendant is liable to pay:

- 1) damages to the plaintiff in the sum of R50,000.00;
- 2) interest on the sum of R50,000.00 at 15.5% per annum from date of service of summons to date of payment;
- 3) costs of suit.

WEPENER J

JUDGE OF THE HIGH COURT

COUNSEL FOR THE PLAINTIFF:

N. Adam

PLAINTIFF'S ATTORNEYS:

Bessinger Attorneys

COUNSEL FOR THE DEFENDANT:

M.M Zondi

DEFENDANT'S ATTORNEYS:

The State Attorney

DATE/S OF HEARING: 17 August 2012

DATE OF JUDGMENT: 21 August 2012