

~~DELETE WHICHEVER IS NOT APPLICABLE~~

(1) REPORTABLE ~~YES~~/NO

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

(3) REVISED

IN THE NORTH GAUTENG HIGH COURT, PRETORIA

SIGNATURE

(REPUBLIC OF SOUTH AFRICA)

Case Number: 32494/2009

In the matter between:

15/4/2010

JACOBUS COENRAAD LOUW

First Plaintiff

BARRY PIETER GRIFFIN

Second Plaintiff

and

THE MINISTER OF SAFETY AND SECURITY

Defendant

JUDGMENT

M M RIP AJ

1.

In the present matter, the First and Second Plaintiffs whom appeared to share a residence have instituted action against the Minister of Safety and Security for damages of R200 000,00 each as a result of certain unlawful actions taken by members of the South African Police Services.

2.

I was not satisfied at the time of hearing the matter that the Plaintiffs should be entitled to the sum of R200 000,00 in damages and wished to consider this aspect further. Unfortunately, the exigencies of practice have overtaken me and I apologise for the delay in delivering this judgment.

3.

The facts are as follows:-

- 3.1 The Plaintiffs were at their residence on 19 December 2006, the one apparently working on the computer and the other one reading a book. It was approximately 9 o'clock in the morning.
- 3.2 The next moment they noticed that two individuals had entered the house and were walking in the house. Such individuals later turned out to be one De Jager, a member of the South African Police Service Dog Unit and a certain Alta, apparently a Police Reservist. It is unclear how they gained access to the house, but I assume that they simply walked in through one of the open doors.

- 3.3 Both of the Plaintiffs state they were shocked and traumatised by the sudden appearance of people in their home, since at first they thought they may be the subject of a robbery. In fact it appears that De Jager was armed. Neither De Jager nor the aforementioned Alta were in police uniform and appear to have been dressed in civilian clothes.
- 3.4 When confronted De Jager indicated that he was a member of the South African Police Services Dog Unit and that he was busy investigating allegations that the Plaintiffs were in possession of drugs. The type of drug has not been identified. After a search of the premises, which included requiring the Plaintiffs to empty their pockets, no drugs were apparently found and no further steps were taken by the South African Police Services, De Jager or the aforementioned Alta. No prosecution followed and no charges were ever laid.
- 3.5 It appears furthermore that there must have been a police vehicle at the premises, since the Plaintiffs mentioned that there was a police dog in a vehicle, but that the dog was not used as part of the search. I must say that I find it strange that if there is a search for drugs on a premises and a police dog is available to assist in such search that the dog would not have been used.

- 3.6 What is clear is that when De Jager was asked to identify himself, he refused to do so and simply stated that he is a member of the South African Police Services Dog Unit. He indicated, in response to a question, that he did not have a search warrant. When De Jager was asked by the Plaintiffs to be allowed to call their lawyer, he apparently raised his voice and shouted at the Plaintiffs that it would not assist them. It is clear that the Plaintiffs appeared intimidated and helpless in the face of the sudden appearance of this armed man in their house whom clearly adopted an aggressive and intimidating attitude towards them. It appears that rather than have a confrontation they simply acceded to the wishes of De Jager and his assistant, the aforementioned Alta.
- 3.7 What is clear is that the actions of the aforementioned De Jager as assisted by Alta are clearly unlawful and constitute a serious breach of the constitutional rights of the Plaintiffs in a number of material respects. The Plaintiffs are clearly entitled to their right to privacy, dignity and fair and proper administrative process. All of these rights are enshrined in the Constitution of the Republic of South Africa. What this means is that should the South African Police Services or any of its members require to perform their duties that such duties must be performed lawfully and in accordance with the laws of the Republic of

South Africa. To simply walk unannounced, armed and in private clothes into a persons home does not constitute such a lawful action.

4.

I accordingly have no hesitation in finding that the actions of the aforementioned De Jager and Alta are unlawful, negate the Plaintiffs rights to the constitutional issues I have mentioned above and on that basis the Defendant, namely the Minister of Safety and Security, on the basis of vicarious liability is liable for the actions of his servants.

5.

The issue that I have some difficulty with is to quantify what the damages in the present circumstances should constitute. Counsel who appeared before me could not refer me to a precedent similar to the facts that are presently before me.

6.

In the matter of Fose v Minister of Safety and Security 1997 (3) SA 786 (CC) the Constitutional Court found that there is no impediment for the granting of damages on the basis of the breach of a constitutional right.

7.

In the matter of Ramakulukusha v Commander, Venda National Force 1989 (2) SA 813 VSC the Plaintiff in that matter was unlawfully detained for eight days. In respect of the arrest and unlawful detention of the Plaintiff in that matter, the Court in 1989 awarded an amount of R20 000,00, apparently equal to approximately R80 000,00 today.

8.

In the matter of Minister of Safety and Security v Seymour 2006 (6) SA 320 (SCA), the Appeal Court reduced an order of the High Court from R500 000,00 to R90 000,00 for the unlawful arrest and detention of the Plaintiff for a period of five days. I was referred to a number of other matters that do not appear to be directly relevant.

9.

On the basis of the authorities referred to above and trying to be analogous and due to the fact that it is clear that:-

9.1 The Plaintiffs:-

- 9.1.1 received a tremendous shock at the unlawful and unannounced invasion of their home;
- 9.1.2 were intimidated by the Police Officers involved;
- 9.1.3 experienced feelings of shock and trauma at what had occurred;
- 9.1.4 had their dignity injured and impacted upon as a result of the manner in which they were treated and the unlawful invasion of their home.

I find that an amount of R40 000,00 each would be a suitable amount in the circumstances.

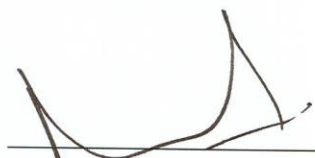
10.

As a result, I make the following order:-

11.1 The Defendant is ordered to pay each of the Plaintiffs R40 000,00;

11.2 Interest on the aforementioned amount shall run at the rate of 15.5%
per annum from date of this judgment to payment;

11.3 Costs of suit.

A handwritten signature in dark ink, appearing to read 'Mervyn M. Rip', is written over a horizontal line.

MERVYN M RIP AJ
ACTING JUDGE OF THE HIGH COURT
PRETORIA

13 APRIL 2010