

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT, PRETORIA)**

Not reportable

Case no: A599/08

DATE: 17/08/2010

IN THE MATTER OF:

MINISTER OF SAFETY AND SECURITY

APPELLANT

AND

HERMANUS FREDERICK BEUKES

RESPONDENT

JUDGMENT

MNGQIBISA-THUSI, J

INTRODUCTION

1.1 This is an appeal from the Magistrates' Court, Pretoria.

1.2 The appeal is against the whole judgment and the order granted by the learned Magistrate Mr B Swart on 7th May 2008.

FACTUAL BACKGROUND

- 2.1 The respondent instituted an action against the appellant at the Magistrates Court, Pretoria for unlawful arrest and detention.
- 2.2 The facts upon which the claim is based are that on the 25th August 2006, at Deneysville, at the area of Vereeniging, the plaintiff was arrested without a warrant by members of the South African Police Service, one Inspector Mokhele and Mabuza who were working within the course and scope of employment with the appellant and detained at Vereeniging until 15h45 and released on bail of R1 500-00.
- 2.3 The respondent claimed a compensation of an amount of R76 000-00, and the costs of suit.
- 2.4 The matter was heard on 7 May 2008, and the learned Magistrate found the arrest to be unlawful and awarded the respondent compensation in the amount of R76 000-00, and costs on attorney and client scale.

2.5 The appellant appeals against the judgment and the order on the grounds as set out in the Notice of Appeal.

AD MERITS

4.1 The Magistrate erred in finding that the arrest was unlawful. Police officer is authorised to arrest any person who commits or attempted to commit any offence in his or her presence.

See: Section 40(1)(a) of the Criminal Procedure Act 51 of 1977.

See: Section 41(1) read with Subsection (2)

4.2 It is submitted with respect that the following offences were committed by the respondent:

- Failure to obey the traffic sign (traffic lights).
- Disregarding the rules of the road. (Stopped in the middle of the road.)
- Disobeying lawful instructions by a police officer.
- Refusal to furnish the identity and or drivers licence to the police.

See: Section 58 of the National Road Traffic Act no 93 of 1996.

See: Section 3J(1)(b) of the National Road Traffic Act, *supra*

Commentary on Minimal Procedure Act by Du Toit (Service 28, 2002) 5-15.

- 5.1 It is common cause that after the respondent and Inspector Mokhele and Mabuza met on Voortrekker Street after the respondent had skipped a red traffic light, the respondent fled.
- 5.2 The allegations by the respondent that he thought he was to be hijacked is highly improbable.
- 5.3 The respondent evaded justice by fleeing consequently continued to commit further offences.
- 5.4 The learned Magistrate judgment was based on an irrelevant consideration. (Affirmative action appointments).

See: page 75 lien 10.

There is no basis why the learned Magistrate rejected the testimony of Inspector Mokhele about the fact that he showed his appointment certificate card to the respondent and that he had a blue light on his vehicle.

AD QUANTUM

7.1 The respondent did not prove R76 000-00 or argue same, therefore the granting of the amount by the learned Magistrate was an error.

7.2 On comparable basis, this amount is inappropriate.

See: The Minister of Safety and Security v Seymour, Dennis Thomas heard on 2 May 2006, judgment hand down on 30 May 2006 SCA 67 (RSA).

See: The Minister of Safety and Security v M Tyulu, heard on 7 May 2009, delivered on 27 May 2009.

See: Liebenberg v Minister of Safety and Security hand down on 18 June 2009.

See: Liu Quin Ping v Akani Egoli (Pty) Ltd 2000 (4) SA 68 (W)

See: Seria v Minister of Safety and Security 2005 (5) SA 130 (C).

AD COSTS

Despite the fact that the plaintiff did not request costs on attorney and client scale, the learned Magistrate granted such costs.

See: page 4 pray 3.

See: page 76 line 10.

See: A.C. Cilliers: Law of costs issue 17 paragraphs 4.09-4.10

See: *Marsh v Odendaalrust Cold Storages Ltd* 1963 (2) SA 263 (W) 269

See: *Lombard v Minister van Verdediging* 2002 (3) SA 242 (T) 247G-H.

See: *Msiza v Director General, Department of Land Affairs* 2002 (3) SA 839 (LCC) 845 F-A.

See: *Nel v Waterberg Landhousers Ko-operasie Vereeniging* 1946 AD 597-607.

There is no justification for such order of costs. The reasons as set out by the learned Magistrate as grounds for awarding an order of costs are without a foundation.

It is submitted that party and party costs are justified under the circumstance. See: A.C. Cilliers: Law of Costs issue 20 4-22 paragraphs 4.14-4.15.

It is submitted with respect that the appeal should succeed with costs.

M S Phaswane
Counsel for Defendant