

REPUBLIC OF SOUTH AFRICA



5/11/2010

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

CASE NO: 33976/08

(1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO
(3) REVISED.
2010. 11. 05

In the matter between:

JOHANNES NTSHOTO MOKONYANE

Plaintiff

and

MINISTER OF SAFETY & SECURITY

First Defendant

and

INSPECTOR CHIDI

Second Defendant

J U D G M E N T

MAKGOKA, J:

[1] This judgment concerns the assessment of damages as a result of the wrongful arrest and the subsequent detention of the plaintiff by second defendant and other police officers, acting within their course and scope of their employment with the first defendant. The plaintiff was detained for approximately 47 hours.

[2] The merits of the action were settled before the commencement of the trial, in terms of which the defendants conceded the wrongfulness of the plaintiff's arrest and subsequent detention. Accordingly I am seized only with the determination of an appropriate amount of damages flowing from such arrest and detention.

[3] Only the plaintiff testified. His evidence is briefly as follows: on 16 January 2008 at approximately 09h00 he was arrested at his place of employment by the police on suspicion of theft of his employer's trucks. His arrest was witnessed by some of his co-workers, during which he was hand-cuffed and escorted to a marked police van.

[4] On their way to the police station, the police stopped at a nearby filling station where the second defendant told petrol attendants that he had arrested a thug – referring to the plaintiff, who was then in the rear of a police van. He was clearly visible to the public as the flaps of the police van were open.

[5] He was later detained at the Sinoville police station from approximately 11h00, where he was held in a 6x4 meters cell, with no chair, bench or blanket – just bare concrete floor. He was denied the right to contact his family. At approximately 16H00 he was taken to an office block by the police where he was interrogated, during which he was hand-cuffed. The interrogation lasted for about 1½ hours. Thereafter he was taken back to the same cell at Sinoville police station, where he was detained with four more other people.

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Later during the evening three more detainees were brought into the cell. They all spend the night in that bare cell. They were not offered food or accorded ablution facilities.

[6] In the early hours of 17 January 2008 at approximately 01h00, the eight of them were placed in a police van and transported to Kameeldrift police station. There was not enough space in the police van and they were crammed.

[7] They arrived at Kameeldrift police station at approximately 02h00 where he was kept in a cell with no lights. There was a thin floor sponge and scruffy blankets. The toilets were all stinking. For the rest of the early morning he could not sleep as he feared for his life. He did not have a shower that day as there was no hot water. They were served brown bread with jam and tea for breakfast. He was released on 18 January 2008 at 9h06, without being charged. The following day, 19 January 2008, he was dismissed from his employment.

[8] He was 30 years old at that time, and unmarried. He was however, in a steady relationship, from which a minor child was born. He resided at his parental house with his father and three siblings. He was employed as a driver and had been employed as such for a year.

[9] The proper approach to assessment of damages in matters such as the present includes evaluation of the personal circumstances of the plaintiff, the circumstances around the

arrest, as well as the nature and duration of the detention. See *Ngcobo v Minister of Police* 1978 (4) SA 930 (D) at 935B-F.

[10] Although the determination of an appropriate amount of damages is largely a matter of discretion, some guidance can be obtained by having regard to previous awards made in comparable cases, which afford a useful guide in this regard. The process of comparison is not a meticulous examination of awards, and should not interfere upon the court's general discretion: *Protea Assurance v Lamb* 1971 (1) SA 530 (A) at 535B-536A and *Minister of Safety and Security v Seymour* 2006 (6) SA 320 (SCA) at 325 B-F.

[11] The purpose of an award for general damages in the context of a matter such as the present, is to compensate a claimant for deprivation of personal liberty and freedom and the attendant mental anguish and distress. In *Minister of Safety and Security v Tyulu* 2009 (5) SA 85 (SCA) Bosielo AJA (as he then was) emphasised that the primary purpose is "not to enrich the claimant but to offer him or her some much-needed solatium for his or her injured feelings" (paragraph 26).

[12] Mr Seabi, attorney for the plaintiff, referred me to the following cases: *Gellman v Minister of Safety and Security* 2008 (1) SACR 466 (W); *Seymour and Tyulu* (supra), as well as an unreported judgment of this court in *Liebenberg v Minister of Safety and Security and Another* (GNP case no 18352/2008, 18 June 2009).

[13] In *Gellman*, an attorney, who was also a businessman, was unlawfully arrested and paraded in handcuffs in before his employees. He was later detained for over 48 hours, during which he was held in a police cell, where he was seen by a number of his fellow attorneys, and was also deprived of access to his heart medication. He was awarded R80 000 in damages.

[14] In *Seymour*, a 63 year old small scale farmer who suffered from high-blood pressure was unlawfully arrested and detained for five days. He fell ill the morning following the arrest, experiencing chest pains. The High Court awarded him general damages of R500 000. On appeal, the Supreme Court of Appeal reduced the amount to R90 000.

[15] In arriving at the amount of damages, the SCA restated the general principles applicable in assessment of general damages and considered past awards as well as the devaluation of currency. The court found that throughout his detention Seymour suffered no degradation beyond that that inherent in being arrested and detained.

[16] In *Tyulu*, a magistrate was awarded R280 000 in the High Court for unlawful arrest and detention which lasted 15 minutes. On appeal the Full Court overturned the High Court's finding on the merits of the second arrest and detention but confirmed the judgment on the merits of the first arrest, and reduced the amount of damages to R50 000. On further appeal, the SCA reduced the amount to R15 000, after taking into account the relatively short duration of the detention, the appellant's standing in the community and the manner in which he was arrested.

[17] In *Liebenberg*, Legodi J awarded R20 000 for the wrongful arrest and detention which lasted approximately 3¼ hours. Unfortunately the learned Judge did not consider any previous comparable cases or personal circumstances of the plaintiff, nor state which factors weighed most heavily with him in arriving at the amount of general damages.

[18] Mr *Mohlamonyane*, on the other hand, referred me to two unreported cases decided in the Eastern Cape and Free State, respectively. In *Minister of Safety and Security v Du Plessis* (ECD case no CA 28/09, 2 July 2009), the High Court on appeal from a magistrate court confirmed an award of R15 000 for a period of 16¼ hours detention.

[19] In *Minister of Safety and Security v Moloi*, (FSB case no A262/2005, 28 February 2008) the magistrate court had awarded the respondent damages of R100 000 for unlawful arrest and detention which lasted approximately 24 hours. On appeal, the High Court reduced the award to R15 000. The High Court noted, among others, that the respondent gave no evidence as to how he experienced the unlawful arrest and detention, other than saying he felt very sad.

[20] I find the award in *Du Plessis* very conservative in light of the views expressed in *Seymour*. In *Moloi*, the court noted that the respondent gave no evidence as to how he experienced the unlawful arrest and detention, which the court considered among other factors in reducing the amount of damages to R15 000. For these reasons I do not find

these cases particularly helpful. Mr *Mohlamonyane*, correctly in my view, did not seriously contend that I should consider an amount in the region of those awarded in these two cases.

[21] Although the duration of the detention in the present case was relatively short, I find the circumstances of the plaintiff's arrest and the conditions under which he was detained most unacceptable. The arrest appears to have been based on the flimsiest of reasons. The continued detention, especially after the interrogation could not link the plaintiff to the crime, points to a total disregard by the police for the right to personal liberty.

[22] I come to this conclusion for the reason that the plaintiff was arrested on the basis of an affidavit deposed to by an employee or manager of the plaintiff's then employer. In that affidavit, there was no reference whatsoever to the plaintiff or his possible involvement in the theft of his employer's trucks. He was interrogated on the same day and despite that he was not linked with any crime, he was not released forthwith.

[23] The publicity around his arrest must have caused the plaintiff considerable embarrassment and anguish as he was arrested and paraded in handcuffs before his co-workers. He was thereafter detained in a crowded and bare cell. He was denied the right to contact his family; he was deprived of food for approximately 24 hours; he was transported in a cramped police van during ungodly hours; at the Kameeldrift police station he was kept in a filthy and dark cell. In the end, it is clear that the plaintiff suffered

considerable indignity and deprivation during his detention. He said that much in his evidence.

[24] He later lost his job as a direct result of the arrest. No evidence was led as to whether his dismissal was challenged or whether the plaintiff found new employment. However, the very fact of an individual losing employment as a result of wrongful arrest and detention, must weigh heavily in consideration of damages.

[25] Mr Seabi strongly urged me to award R80 000, a similar amount to that in *Gellman*, contending that the facts of the two cases are similar. Mr *Mohlamonyane*, on the other hand, submitted that taking all factors into account, an amount of R60 000 should be awarded.

[26] Of all the cases mentioned, I find the facts in *Gellman* to be, in broadest terms, closely similar to the present case. Having said that, there are important distinguishing factors between the two cases. First, Gellman is a practising attorney and businessman. It is trite that one's social standing is a factor to be considered as part of the personal circumstances in assessing damages in matters of this nature. The plaintiff in the present matter was a driver.

[27] Second, and flowing from the first, Gellman was arrested in the presence of his employees, whereas the plaintiff was arrested in the presence of his co-workers. Third, Gellman was seen by some of his fellow attorneys while held in a police cell. i, whereas there is no evidence that beyond his arrest, the plaintiff was seen by anyone known to him. On the above considerations I agree with Mr *Mohlamonyane* that *Gellman* is distinguishable on the facts, from the present case.

[28] Having regard to the circumstances of the arrest, the duration of the detention, the personal circumstances of the plaintiff, the awards made in previous comparable cases, I deem R70 000 to be a just and fair amount of damages for the plaintiff. Costs should follow the cause. With regard to *mora* interest, the proper date from which same should commence, is the date on which the defendants received the plaintiff's notice in terms of Act 40 of 2002. That date is not clear from the papers - only the date of acknowledgment is reflected, which is 8 April 2008. I would therefore order interest from the latter date.

[29] The following order is therefore made:

1. The defendants are ordered, jointly and severally, the one paying the other to be absolved, to pay the plaintiff in the following terms:
 - 1.1 the amount of R70 000;
 - 1.2 interest on the amount at 15.5% *p.a* from 8 April 2008 to date of payment;
 - 1.3 costs of the suit.



T M MAKGOKA
JUDGE OF THE HIGH COURT

DATE HEARD	: 5 OCTOBER 2010
JUDGMENT DELIVERED	: 5 NOVEMBER 2010
FOR THE PLAINTIFF	: MR KP SEABI (ATTORNEY)
INSTRUCTED BY	: KB SEABI ATTORNEYS, PRETORIA
FOR THE DEFENDANTS	: ADV MD MOHLAMONYANE.
INSTRUCTED BY	: STATE ATTORNEY, PRETORIA