



15/12/2010
SAC ROBERT HOGUE

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

CASE NO: 44055/2009

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: NO / YES
(3)	REVISED: <u>2010.12.15</u>

In the matter between:

MORAMANG SIMON MASISI

Plaintiff

and

MINISTER OF SAFETY AND SECURITY

Defendant

J U D G M E N T

MAKGOKA, J:

[1] The plaintiff instituted action against the defendant following his arrest and detention by members of the South African Police Service (SAPS), acting in their course and scope of their employment with the defendant. The merits of the action have been settled, in terms of which the defendant conceded the wrongfulness of the arrest and the unlawfulness of the detention. All what remains is for me to determine an appropriate amount of damages for the plaintiff.

[2] The facts are simple. On 21 December 2007 the plaintiff received a message that his cousin had been arrested for driving under the influence of alcohol and was detained at a police station in Kanana, a village in the Northwest Province. He proceeded to the police station and arrived there at approximately 19H30. He made enquiries with a police officer, (later identified as Inspector Motabogi) to establish the circumstances of his cousin's arrest, and requested to see him. Motabogi, who was arrogant and unhelpful, refused the plaintiff's request to see his cousin.

[3] The plaintiff persisted and explained to Motabogi that as a relative of a detained person, he had a right to see him. Motabogi told him that he, the plaintiff, could not teach him how to do his job. The plaintiff further explained that part of his request to see his cousin was to consult with him to make a determination whether the services of any attorney would be needed. He also enquired from Motabogi whether any blood had been drawn from his cousin.

[4] Motabogi became belligerent, and wagging a finger at him, told the plaintiff that he, the plaintiff, thought he knew too much and that the police will take his cousin for a blood test at their own time. The plaintiff explained to Motabogi that what he was raising was to assist the justice process as the results of the blood test could be necessary in a subsequent court case.

[5] Ultimately Motabogi relented and allowed the plaintiff to see his cousin. He further informed the plaintiff that bail had been fixed in an amount of R500 for the plaintiff's

cousin, which could be paid at the Klerksdorp Police Station. The plaintiff consulted with his cousin and confirmed that he had the money to post bail. The plaintiff thanked the police officer, exited the police station and proceeded to his vehicle.

[6] Just as he was about to drive off, Motabogi and another officer, rushed to his vehicle, flung open the passenger and rear doors of the vehicle, pulled him out and dragged him towards the police station. Perplexed and embarrassed, the plaintiff asked why he was being pulled like a criminal. Motabogi informed the plaintiff that he was being arrested for driving under the influence of alcohol. He told them that he was sober and as an officer of the court, he was intelligent enough to know better. The two officers laughed at him and told him that that did not matter, what was important to them was that he was going to spend the night in the cells because he thought he knew better.

[7] Despite his protestation in being pulled and dragged, the officers persisted. They took away his cellphone, vehicle keys and left the vehicle open. He pleaded with them to lock the vehicle, but his request was simply ignored. It was approximately 20h25 when he was locked up in the same cell where his cousin was held. The cell, measuring 3x3 meters, was overcrowded with about 10 people. The number kept on rising as police made more arrests. The cell was dirty, smelly and slippery. There was pushing and shoving. Some detainees were screaming. One of them was bleeding, which exacerbated the already slippery floor.

[8] He was only charged at 22h20 with "drunkenness". At approximately 01h45 during a routine inspection, the station commissioner recognised the plaintiff and enquired from him the reason for his detention. After explaining his ordeal to station commissioner, the latter profusely apologised and released him without any warning or bail. He was exhausted, dirty and humiliated. He drove off. His family itinerary for the day was thrown into disarray.

[9] It is against this background that I have to assess the amount of damages. 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. 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.

[10] 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) remarked 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).

[11] Counsel for the plaintiff, Mr *Dredge*, submitted that damages should be awarded in an amount exceeding of R70 000, pointing out that the arrest was malicious. In support of his argument, counsel referred me to three cases: *Minister of Safety and Security v Seymour* 2006 (6) SA 320 (SCA); *Van Rensburg v City of Johannesburg* 2009 (2) SA 101 (GSJ) and *Olivier v Minister of Safety and Security* 2009(3) SA 434 (GSJ).

[12] In *Seymour*, a 63 year old small scale farmer who suffered from high-blood pressure was detained for five days. He fell ill the morning following the arrest, experiencing chest pains. On appeal, the Supreme Court of Appeal reduced the amount of R500 000 awarded by the High Court to R90 000. 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. In *Tyulu*, a magistrate was awarded R15 000 for a 15 minutes detention. The appeal to the SCA was brought by the Minister after the Full Court had awarded him R50 000. The SCA into account the relatively short duration of the detention, the appellant's standing in the community and the manner in which he was arrested.

[13] In *Van Rensburg*, a 74 year old retired accountant was detained for approximately 7 hours by the members of the Johannesburg Metro Police Division (JMPD) for unpaid traffic fines. The Court found that the arrest was wrongful as there was no proof that the

summonses for various traffic fines had been served on the plaintiff. He was awarded R75 000 after the Court found the conduct of the metro police officers unreasonable and reprehensible in refusing to explain to the plaintiff the reason for his arrest and in not affording him an opportunity to explain and not verifying the facts before detaining him. In *Olivier*, a superintendent in the SAPS was wrongfully arrested for theft. The arrest took place in full view of his colleagues. His office and home were searched, the latter in the presence of his wife and children. The arrest caused him embarrassment and distress. The detention comprised of some five or six hours in all. He further suffered the indignity of having to appear in court on three occasions as an accused. The plaintiff was not placed in a cell or handcuffed. R50 000 was awarded as damages.

[14] Counsel for the defendant, Mr *Moosa*, urged me quite forcefully, to award damages not in excess of R30 000, emphasising the relatively short duration of the detention. To buttress his argument, he referred me to a number of decided cases. I have found most of them not comparable to the present case with regard to the duration of the detention. I found two helpful. In *Ochse v King William's Town Municipality* 1990 (2) SA 855 (E) a journalist was detained for approximately 2 hours on a charge of malicious damage to speed testing cables. He was awarded R7500. He had suffered a high degree of humiliation by being handcuffed and dragged around by the handcuffs in the presence of other traffic officers and a magistrate. He suffered further indignity at the charge office of having his fingerprints taken. In *Liu Quin Ping v Akani Egoli (Pty) Ltd t/a Gold Reef City Casino* 2000 (4) SA 68 (W), a 45 year old businesswoman was detained for approximately four hours at a

casino on suspicion of contravening regulations promulgated under the Gauteng Gambling Act. She was awarded R12 000.

[15] I have also considered further two cases: *Stapelberg v Afdelingsraad van die Kaap* 1988 (4) SA 875 (C) and *Areff v Minister van Polisie* 1977 (2) SA 900 (A). In *Stapelberg*, a young attorney on honeymoon in Cape Town, was assaulted by a traffic inspector and detained for two hours. He was awarded R10 000. In *Areff* a businessman was detained for two hours, purportedly for contempt of court after he had torn up a summons. He was subjected to the humiliation of being fingerprinted. He was awarded R1 000 in 1977, translating into R30 000 today, according to *The Quantum Year Book* (2010) by Robert J Koch.

[16] In the present matter the plaintiff was 37 years old at the time of the arrest. He is married. He is a B. Proc graduate and is currently studying towards an LLM degree in corporate Law with University of South Africa. As stated in the introduction, the plaintiff is the Court Manager at the Mafikeng High Court since 2002. He rose through the ranks from taxing master to Registrar, before he was appointed to his current position. His duties as a Court Manager include overall management of human resources. All registrars, senior registrars, legal researchers and judges' clerks report to him. He is also responsible for case flow management. As a manager of the High Court in the province, he is the Head of the Secretariat of the North West Case Flow Management Forum. He reports directly to the Judge President, who is the Chairperson of the Forum. His position entails regular communication and consultation with various role players in the integrated criminal justice

system, like SAPS, Director of Public Prosecutions, correctional services and social development.

[17] I had occasion to observe the plaintiff when he testified. He is suave, sophisticated and articulate. He was lucid and coherent in his evidence, and came across intelligently. From his demeanour and tone, it is clear that the arrest and detention had caused him extreme humiliation and mental anguish, considering that there was no cause for him to be arrested. Motabogi was irked by the plaintiff's assertion of his right to see and consult with his cousin. He felt inferior and his ego was bruised. He was fully aware of the fact that the arrest of the plaintiff was wrongful and malicious. One wonders how many of those detained on that day had been arrested wrongfully at the whim of this officer.

[18] The right to liberty is an individual's most cherished right, and one of the foundational values giving inspiration to an ethos premised on freedom, dignity, honour and security. Its unlawful invasion therefore strikes at the very fundament of such ethos. Those with authority to curtail that right must do so with the greatest of circumspection, and sparingly. In *Solomon v Visser and Another* 1972 (2) SA 327 (C) at 345A it was remarked that where members of the police transgress in that regard, the victim of abuse is entitled to be compensated in full measure for any humiliation and indignity which result. To this I add that where an arrest is malicious, the plaintiff is entitled to a higher amount of damages than would be awarded, absent malice.

[19] In the present case, the arrest in itself was undoubtedly and decidedly malicious, the execution thereof despicable and humiliating. Having said that, I take into account the short duration of the detention – just over 4 hours; the fact that the plaintiff did not suffer any further indignity of being handcuffed or fingerprinted, and that the publicity of the arrest was very limited. Having regard to the above factors, the complementary personal circumstances of the plaintiff, the awards made in previous comparable cases, as well the deterioration in the value of the currency over the years, I deem R65 000 to be an appropriate amount.

[20] Finally, the issue of costs. Mr *Dredge* argued for a punitive costs order, given the malicious nature of the arrest. I am not disposed thereto. Mr *Moosa*, on the other hand, argued that costs should be ordered on the magistrate court scale, based on the common cause fact that the amount of damages would fall within the jurisdictional limit of the magistrate court. There is merit in that submission. The plaintiff could not reasonably have expected to be awarded anything in excess of R100 000 (magistrate court jurisdictional limit). I therefore incline to award costs on the magistrate court scale, with a suitable provision for counsel's fees.

[21] As a result I make the following order:

1. The defendant is ordered to pay the plaintiff the sum of R65 000, plus interest thereon at the rate of 15.5% p.a from date of judgment until final payment.