

Not Reportable

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE LOCAL DIVISION – PORT ELIZABETH**

Case No: 3509/2012
Date Heard: 15/08/2016
Date Delivered: 1/09/2016

In the matter between:

ANDILE SILATHA

Plaintiff

and

MINISTER OF CORRECTIONAL SERVICES

Defendant

JUDGMENT

ERASMUS AJ

Introduction

[1] In accordance to an agreement which was reached between the parties on the day of the hearing, a specific point in issue was argued for determination prior to the commencement of the trial.

Point in Issue

[2] Whether the fact that the decision in terms of which the plaintiff was placed in segregated detention in a single cell has not been set aside, is a bar to the plaintiff contending, in an action for damages, that his detention as such according to the implementation of the decision was

unlawful and wrongful and is as such a complete defence. The plaintiff denies this.

Background Facts

[3] On 29 November 2006 the plaintiff and two others commit the following offences in one day.

3.1 Eight robberies with aggravating circumstances (in four of the robberies the victims are South African Police Officers).

3.2 One murder (Police Officer)

3.3 Illegal possession of firearms and ammunition.

3. On 17 January 2008 the plaintiff escapes from custody and commits two robberies with aggravating circumstances.

On 14 March 2008 the plaintiff is found guilty of the offences in one above and sentenced as set out in the warrant (annexure A) to the particulars of claim.

4. On 14 March 2008 the plaintiff is incarcerated at St Albans Maximum Security Facility. A correctional Sentence Plan (annexure D1 – D11 to the defendant's plea) is completed and signed by the plaintiff. He is classed as an escape risk and housing in single cell accommodation is suggested.

5. On 15 March 2008 the Head of St Albans Security Facility approves the classification in terms of section 30(1)(e) of the Correctional Services Act 111 of 1998 (hereafter called the Act) and the plaintiff

is placed in segregated detention in a single cell until 24 March 2012.

[4] The plaintiff is suing the defendant for damages in the amount of R4 400 00.00 as per prayers (a) to (e) of the particulars of claim.

[5] The cause of action is set out in paragraphs 8 to 11 of the particulars of claim.

[6] On or about 14 March 2008, and at St Albans Correctional Facility, Port Elizabeth, the plaintiff was unlawfully and wrongfully placed, by various officials of the Department, whose names and further particulars are to the plaintiff unknown, in segregated detention in a single cell.

[7] The plaintiff was unlawfully kept in segregated detention and incarcerated in a single cell for the period 14 March 2008 until 24 March 2012.

[8] Furthermore, for the period 14 March 2008 until 24 March 2012, the plaintiff was unlawfully and wrongfully restricted from various amenities, which had previously been available to the plaintiff, by various officials of the Department whose names and further particulars are unknown to the plaintiff.

[9] The aforesaid treatment of the plaintiff, by the officials of the Department, constituted torture and/or cruel, and/or degrading treatment to the plaintiff.

[10] The defendant in support of his defence pleads in the further amended plea in paragraph 2.8 to paragraph 2.10 as set out:

“2.8 The decision of the Head of St Albans to house the plaintiff in single cell accommodation, constituted “administrative action” as defined in the Promotion of Administrative Justice Act, Act 53 of 2002 (PAJA).

2.9 The plaintiff was advised of the said decision on 14th March 2008.

2.10 The said decision has not been reviewed or set aside and consequently, the plaintiff is precluded from averring that housing him in single cell accommodation was wrongful and unlawful”.

Common Cause Facts

[11] The defendant detained the plaintiff, in either segregated and/or single cell detention, in terms of an application: “Accommodation in special care unit” annexed to the defendant’s heads of argument.

[12] The plaintiff conceded that the decision according to which the plaintiff was placed in segregated detention constitutes a decision in

terms of PAJA for purposes of the argument of the separate issue. (The plaintiff initially denied this).

[13] “Administrative action” in this Act, unless the context indicates otherwise means any decision taken, or any failure to take a decision by –

“(a) an organ of state, when –

- (i) exercising a power in terms of the Constitution or a provincial constitution; or
- (ii) exercising a public power or performing a public function in terms of any legislation, which conversely affects the rights of any person and which has a direct, external legal effect”

[14] It is for purposes of this argument also accepted that section 30(1)(e) of the Act was invoked by the Head of St Albans Correctional Facility when he decided to place the plaintiff in segregated and or single cell detention.

[15] When the plaintiff was admitted to St Albans Correctional Facility on 14 March 2008, a Correctional Sentence Plan (Annexure D1 to D11 to the Plea), was completed the plaintiff concurred in the plan and signed it. Plaintiff was classified as a security risk inmate on account of the fact that he previously escaped from detention. Single or segregated cell housing was recommended.

[16] On the same day application was made to the Head of St Albans Correctional Facility for approval of the said recommendation and it was approved by the Head on 15 March 2008. (See sections 7(2)(C), 26(3)).

[17] This decision being an administrative action as defined in PAJA, has not been reviewed or set aside and consequently stands and is valid.

Submissions

[18] Counsel for the defendant submitted that the only way to reverse a decision which constituted an administrative action is to have it reviewed and or set aside by a court of law. The decision maker cannot revoke same. This was decided in the matter of *MEC for Health, Eastern Cape and Another v Kirland Investments (Pty) Ltd t/a Eye and Lazer Institute*.¹ The respondent in the case (*Kirland*) applied for a Hospital Licence and the MEC decided to grant same. The decision was incorrectly taken by the authorised person and subsequently revoked. The Constitutional Court held that this could not be done and that the previous decision was valid until set aside by a court of law.

¹ 2014(3) SA 481 (CC)

[19] Counsel for the plaintiff contends that a valid administrative action does not exclude a plaintiff from claiming damages on the ground of segregated detention being unlawful and wrongful.

[20] The defendant further contends that the valid decision cannot be valid on the one hand and invalid on the other hand, acting lawfully and unlawfully at the same time.

[21] A valid and binding administrative decision to house the plaintiff in segregatory circumstances was made on grounds amongst others, that he was a security risk because he escaped from detention previously and committed further offences before being re-arrested. This was conveyed to the plaintiff.

[22] The plaintiff in the pleadings simply denies that he is an escape risk. No attempt was made to show any grounds which the plaintiff relies upon to show that the decision (to house the plaintiff in segregated circumstances) was invalid on the ground that he was not an escape risk.

[23] The decision being made was never challenged by means of an attempt to have it judicially reviewed or set aside because the detention following the decision was unlawful. That being the case, the decision and its implementation stand, according to the document.

[24] The question poses whether having the decision reviewed eight years later will be of any consequence.

[25] Should the decision not be adhered to by the defendant's subordinates disciplinary consequences are sure to follow.

[26] Counsel for the plaintiff submits that because the plaintiff was roomed in segregated circumstances his Constitutional rights were severely being infringed upon as per paragraph 12 of the particulars of claim.

[27] Counsel for the plaintiff contends that he is entitled to claim delictual damages even if the decision to house him in the aforementioned fashion was not set aside.

Conclusion

[28] It is evident that the "administrative action" was capable of being set aside by a court of law.

[29] The decision was not set aside and therefore stands as such and remains valid until further direction. The said detention in terms of the decision is thus not unlawful or wrongful until further determination.

[30] For purposes of this judgment I have not dealt with the variety of other issues mentioned by counsel for the plaintiff as it is their prerogative to continue or deal with the remainder of the claim as they see fit.

[31] For purposes of this judgment I have not dealt with the time periods and the submission made in this regard either as it either do not form part of the point in dispute that had to be determined.

[32] In the result the plaintiff's claim is dismissed with costs.

R ERASMUS
Acting Judge of the High Court

*Counsel for the plaintiff Adv AC Moorhouse, instructed by Egon A Oswald
Attorneys c/o Brown Braude & Vlok*

*Counsel for the respondent Adv RP van Rooyen (SC) & Adv RB Laher
instructed by State Attorneys Port Elizabeth*

Date Heard: 15 August 2016

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