

IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH)

Case No. 1299/2014

Date Heard: 6,7 September 2016,

Date Delivered: 4 October 2016

In the matter between:

Freddie Meyer

Plaintiff

and

The Minster of Correctional Services

Defendant

JUDGMENT

MALUSI AJ:

[1] The plaintiff instituted an action for damages against the defendant arising from his assault by one Lubabalo Singqotho in St Albans prison.

The action is defended.

[2] During the trial both parties applied for a separation of merits and quantum. I granted the order.

[3] Both plaintiff and Singqotho were sentenced prisoners serving terms of imprisonment. Singqotho gave evidence that he had overheard a cellmate relate where the latter had concealed a piece of metal after a fight. He picked up the metal at the prison courtyard. Singqotho wrapped the metal and secreted it in his anus. He concealed the metal alternately in a locker in his cell or in his anus. He later sharpened the metal.

[4] On 30 November 2013 Singqotho's cell was opened by a warder for the prisoners to go to the dining hall to have breakfast. Shortly after his arrival at the dining hall he went back to his cell due to loss of appetite. He retrieved the metal from his locker and left the cell.

[5] The plaintiff was milling in the passage next to his cell waiting for a warder to open the cell. Singqotho pounced on him and stabbed him several times. The plaintiff suffered multiple lacerations on his left hand and his head. There were no warders in the passage area where the plaintiff was stabbed.

[6] The plaintiff corroborated Singqotho's evidence with regard to how he was stabbed and the absence of warders. He further confirmed that when prisoners came back from the dining hall they walked about on their own without any warder escorting them.

[7] Horrace Jordaan is a warder with almost 37 years in the employ of the defendant. He gave evidence about procedures warders follow in conducting searches of the cells and the prisoners. He further outlined the procedure followed when prisoners leave cells for the dining hall and back to cells. He testified that it was impossible for a prisoner to leave the dining hall alone to the cells. At the time of the attack on plaintiff he was in an office assisting another prisoner.

[8] The plaintiff alleged the defendant was under a statutory legal duty to protect him from the harm he suffered; the harm was foreseeable; the defendant breached the aforesaid duty by failing to take reasonable steps to prevent such harm from occurring. Alternatively, the defendant acted unlawfully and negligently by failing to prevent a prisoner's possession of a knife.

[9] The plaintiff asserted as a result of the defendant's statutory breach, alternatively negligent conduct he suffered general damages in the sum of R500 000,00.

[10] In its plea, the defendant admitted the assault but disputed the extent of the injuries. The defendant denied any employee had breached any statutory duty or had acted negligently in the respects alleged or at all.

[11] Section 4 (2) (a) of the Correctional Services Act 11 of 1998 ("the Act") provides that:

"The department must take steps as are necessary to ensure the safe custody of every inmate and to maintain security and good order in any every correctional centre".

[12] Section 26 of the Act makes provision for safe custody and states:

"(1) The right of every inmate to personal integrity and privacy is subject to the limitations reasonably necessary to ensure the security of the community, the safety of correctional officials and the safe custody of all inmates.

(2) In order to achieve these objectives referred to in subsection (1) and subject to the limitations outlined in sections 27 to 35 a correctional official may-

(a) search the person of an inmate, his or her property and the place where he or she is in custody and seize any object or substance which may pose a threat to the security of the correctional centre or any person, or which could be used as evidence in a criminal trial or disciplinary proceedings.”

[13] The defendant is empowered by section 134 of the Act to make regulations as to the safe custody of inmates and the maintenance of good order, discipline and security in correctional centres. The regulations were published in the Regulations Gazette on 30 July 2004. Regulations 15 and 16 deal with safe custody and searches respectively.

[14] Mr Beyleveld, who appeared for the defendant, put it to Singqotho that the inmates sharpen all sorts of things. Once sharpened “most inmates” secrete these objects in their anuses.

14] Jordan later testified on procedure adopted in conducting searches in cells. He alleged two members would be in possession of metal detectors. Both Singqotho and the plaintiff disputed the use of metal detectors.

[15] I have to agree with Mr Oswarld, who appeared on behalf of the plaintiff, that Jordaan testified about what procedure entailed and not what practically transpired in the prison. It appears the warders are overstretched. They are unable to search every cell daily due to manpower constraints, according to Jordaan. It is foreseeable that this failure to conduct daily or frequent searches will result in prisoners being harmed.

[16] This conduct by the warders is contrary to standing orders issued in accordance with regulation 16. The reason for searches is to curtail attacks by prisoners. If the searches are not conducted daily by sufficient numbers of warders then it is wrongful that other prisoners will be harmed, due to a lack of sufficient warders.

[17] Both Singqotho and plaintiff testified that prisoners leave the dining hall and walk on their own towards the cells. Jordaan testified that it was

“impossible” for this to happen. Again Jordaan gave evidence of an obviously safe procedure that he alleged was followed in the prison.

[18] It bears repeating that Jordaan has no personal knowledge of how both Singqotho and the plaintiff left the dining hall on the morning of the incident. There is no evidence from any warder who was in the vicinity of the passage when the attack took place and witnessed the assault. If a warder always escorts the prisoners back to the cell, then the escort warder would have seen the attack and testified in the trial. The irresistible inference from absence of such a witness is that the prisoners were on their own.

[19] The conduct of allowing prisoners “most” of whom are in possession of sharp instruments to mingle without escort in the vicinity is, in my view, negligent. It is foreseeable, preventable and the defendant failed to take the reasonable steps to guard against it.

[20] I am satisfied that causation has been established. The attack on the plaintiff would probably not have occurred “but-for” the inaction of the

defendant. If Singqotho had been more thoroughly, regularly searched the knife may well have been covered.

[21] The plaintiff was a satisfactory witness. I accept his evidence as truthful. Where he corroborates Singqotho I accept their evidence. Singqotho was a poor witness. Some aspects of his testimony appear untruthful.

[22] Jordaan as a long standing employee of defendant is expected to have some bias. The difficulty is that his bias is so blatant. This affects his credibility as a witness. I do not accept his evidence as far as it is intended to explain the morning of the assault. The probabilities heavily favour the plaintiff's version.

[23] In the circumstances and for the above reasons it is ordered that:

i. **The defendant is liable to compensate the plaintiff for such damages as the plaintiff may prove he had suffered resulting from the assault that occurred on 30 November 2013.**

ii. **The defendant is to pay the plaintiff's costs of suit.**

T. MALUSI

ACTING JUDGE OF THE HIGH COURT

On behalf of the plaintiff:

Mr Oswald
Egon Oswald Attorneys
Port Elizabeth

On behalf of the first and defendant:

Adv A Beyleveld SC

Instructed by:

State Attorney
Port Elizabeth