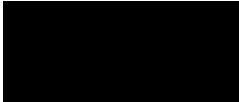




**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: A3010/2022

COURT A QUO CASE NO: 14746/2018

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED.
15 January 2024	
.....	
DATE	SIGNATURE

In the matter between:

MINISTER OF POLICE

Appellant
(First Defendant in the Court *a quo*)

and

GODFREY NTOBEKO GAMEDE

Respondent
(Plaintiff in the Court *a quo*)

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 15 January 2024.

JUDGMENT

MALINDI J:

Introduction

[1] On 10 December 2021 the Learned Magistrate, HR Viana, delivered judgment in this matter and ordered the Minister of Police to pay R150 000.00 with interest at the rate of 10.25% per annum from 17 May 2018 to date of payment, to the first plaintiff, Mr Godfrey Ntobeko Gamede. A costs order was awarded against the Minister. The Minister appeals against the whole judgment and order. The parties shall be referred to as in the appeal.

[2] The respondent, together with the second plaintiff in the court below were arrested on 31 January 2016 by members of the SAPS at about 18h00 in the city centre of Johannesburg on the charge of assault with the intention to do grievous bodily harm. Only the respondent pursued the claim.

[3] The respondent was in police custody from 31 January 2016 to 9 February 2017, when he was granted bail, totalling 10 days in custody.

[4] The Minister noted an appeal against the judgment and order on the grounds that:

4.1 on the merits the court below:

4.1.1 erred by concluding that the Minister produced no evidence to rebut the claim;

4.1.2 ignored relevant and admitted documentary evidence.

4.2 on assessing damages, the court below:

4.2.1 erred in awarding R150 000.00 in general damages as just and equitable in that:

4.2.1.1. the respondent's claim did not include detention subsequent to being remanded in custody by the court;

4.2.1.2. by accepting the respondent's oral evidence as to his past arrest and detention period in custody;

4.2.1.3. the post first appearance in Court period was a claim against the second defendant, the National Prosecution Authority ("NPA"), which was withdrawn;

4.2.1.4. alternatively, that the court below erred in not regarding the further detention after the first court appearance as a *novus actus interveniens*.

4.3 Lastly, that the court below erred in awarding interest from date of demand instead of date of judgment, the claim not being of a liquidated nature.

Irregularity of the Appeal

[5] The respondent submitted that the appeal be struck from the roll for the reason that, *inter alia*, the Minister failed to request reasons for judgment from the Magistrate as required by Rule 51 of the Magistrate's Court Rules, Rule 50 of the Uniform Rules of Court and section 84 of the Magistrate's Court, Act 32 of 1944. The court need not entertain much time on this point. Counsel for the appellant disposed of this point quickly

by pointing out that the respondent did not raise this irregularity as would be required by Rule 30 of the Uniform Rules of Court. He acquiesced to these proceedings from when a notice of appeal was served on him and to all other procedural steps taken thereafter. It is too late in the day to now raise such a point. In any event, a full judgment was delivered by the Magistrate. The reasons for the order are contained therein.

The Pleadings

[6] The combined summons was issued on 13 July 2018.

[7] Claim A is against the Minister for R50 000.00 for unlawful arrest and subsequent detention.

[8] Claim B is against the NPA for pursuing a prosecution that the respondent claims was flawed. He claims R150 000.00 for the unlawful, unjustifiable and malicious prosecution.

[9] The claims distinguish between the police conduct of arrest and the prosecution of the charges beyond the arrest which lasts until the first appearance in court.

[10] At the commencement of the trial the respondent amended his particulars of claim to include loss of income in the amount of R106 000.00. This claim was dismissed.

[11] The Minister contends that the amendment of quantum to R150 000.00 was to accommodate the loss of earnings. Having found in favour of the respondent, the award should have been R50 000.00 at most.

[12] The Minister's contention in this regard is not correct. The amended particulars of claim¹ make a claim for R150 000.00 being for deprivation of liberty, loss of dignity, humiliation, emotional shock, discomfort and contumelia. A further amendment at the hearing was made in order to add a claim for loss of earnings to the globular amount of R150 000. The additional amount for loss of earnings is R106 185.00 as calculated by an actuary.²

[13] The amendment was moved in terms of Section 111 of the Magistrate's Court Act, 32 of 1944, and a ruling allowing the amendment was granted by the Magistrate.³

[14] Regarding the portion for loss of earnings the Magistrate found that the respondent has not proved any loss of earnings.⁴

[15] In the circumstances the amount that the respondent sought to prove as loss of earnings does not have to be subtracted from the globular amount of R150 000. It was a separate additional claim which was dismissed.

[16] Counsel for the respondent, Mr Mabilo, correctly submitted that even if the amount of R106 185.00 is disregarded, the court must still award an amount commensurate to the length of plaintiff's detention. He submitted that that is what the Magistrate had done. I agree.

Quantum of Damages

¹ CaseLines: 0003-15, paras 10 and 12.

² Judgment: CaseLines 0001 – 3; Record: CaseLines 0003-177 /20 ff

³ Record: CaseLines 0003-182 to 0003-184

⁴ Judgment: CaseLines 0001-8, para 22

[17] Counsel for the Minister, Mr Mohlala, submitted that the amount of R50 000.00 be awarded if the Minister fails on the defence that no compensation be awarded on the ground that the respondent contributed to his or her misfortune. This was not pleaded. The Minister conceded that the arrest was unlawful. I say no more.

[18] In the circumstances, an award is made of R150 000.00 (one hundred and fifty thousand rand only).

[19] A debt lies after it has been quantified unless it is a liquid debt. I agree with Mr Mohlala that interest should only have been ordered from the date of judgment not from the issue of demand in terms of section 3 of October 40 of 2002. The case of *Mabaso v National Commissioner of Police and others*⁵ has held that a notice of demand in terms of the Act does not quantify or make liquid the amount claimed thereunder. The interest is therefore ordered from date of the judgment in the court below.

Conclusion

[20] In the circumstances the appeal fails in respect of the quantum awarded but succeeds in respect of the date from which interest should run. The respondent is the more substantially successful party. However, the cost order should reflect the appellants partial success.

[21] Therefore, the following order is made:

1. The appeal is dismissed with costs.

⁵ 2020 (2) SA 375 (SCA)

2. Interest on the amount referred to in paragraph 1 above shall be at the rate of 10.25% per annum from the date of Judgment in the court below.
3. The appellant is to pay 80% of the appeal costs.

G MALINDI
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION
JOHANNESBURG

L FLATELA
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION
JOHANNESBURG

FOR THE APPELLANT:

Adv N Mohlala

INSTRUCTED BY:

State Attorney, Johannesburg

COUNSEL FOR RESPONDENT:

Adv P A Mabilo

INSTRUCTED BY:

Marokane Attorneys

DATE OF THE HEARING:

18 October 2022

DATE OF JUDGMENT:

15 January 2024

DATE OF REVISED JUDGMENT:

15 February 2024