

REPUBLIC OF SOUTH AFRICA



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

APPEAL NO: A2023-065445

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

11 March 2024

In the matter between:

ZENOBIA MC DONALD

Appellant

and

MINISTER OF POLICE

Respondent

JUDGMENT

Mdalana-Mayisela J

- [1] This is an appeal from the Regional Magistrate Court, Kliptown against the judgment of the Regional magistrate Mpofu delivered on 19 May 2023. The appeal is unopposed.

- [2] The background facts are as follow. The appellant sued the respondent for damages in the sum of R225,000.00 for unlawful arrest and detention. She was arrested without a warrant on 4 March 2019 for assault. She was detained from 13h00 in the afternoon until 20h30 in the evening. The charges were withdrawn on the basis that the complainant did not attend court.
- [3] The court *a quo* found in favour of the appellant on liability. It ordered the respondent to pay to the appellant damages in the amount of 12,000.00 plus interest at the rate of 10% per annum, from date of institution of the proceedings to date of payment; and costs of the action.
- [4] The grounds of appeal stated in the notice of appeal are as follow:
- [4.1] The court *a quo* erred in its assessing of quantum of damages when it awarded 12,000.00. The appropriate amount that should have been awarded is R100,000.00.
- [4.2] The court *a quo*, when assessing quantum of damages, failed to take into account the following factors:
- [4.2.1] The appellant was 40 years at the time of her arrest.
- [4.2.2] She was arrested at home in the presence of her four minor children, including a mentally challenged child. The children were crying hysterically when they saw their mother taken by the police. She was denied an opportunity to ask the neighbor to look after the minor children during her absence.
- [4.2.3] She was arrested in full view of the community.
- [4.2.4] The amount of R12 000.00 undermines the appellant's Constitutional right of liberty.

- [5] Appeals on fact are disposed of in accordance with the principles set out in *R v Dhlumayo and Another*,¹ where the Appellate Court held as follows:

"... 8 Where there has been no misdirection on fact by the trial Judge, the presumption is that his conclusion is correct; the appellate court will only reverse it where it is convinced that it is wrong.

9 In such a case, if the appellate court is merely left in doubt as to the correctness of the conclusion, then it will uphold it.

10 There may be a misdirection of fact by the trial judge where the reasons are either on their face unsatisfactory or where the record shows them to be such; there may be such a misdirection also where, though the reasons as far as they go are satisfactory, he is shown to have overlooked other facts or probabilities.

11 The appellate court is then at large to disregard his findings on fact, even though based on credibility, in whole or in part according to the nature of the misdirection and the circumstances of the particular case, and to come to its own conclusion on the matter."

- [6] The factors mentioned in paragraph [4.2] above were taken into account by the court *a quo* in its judgment. Therefore, it committed no misdirection of facts.
- [7] In assessing quantum of damages, it mentioned few previous awards in its judgment and the reasons for the order, of which I do not intend to repeat same herein. However, it appeared that it relied more on *Bentley and Another v McPherson*², where the court awarded R15, 000.00 in 1999 to a 45 - year - old woman, who spent nine and a half hours in detention.

¹ [1948] 2 ALL SA 566 (A); 1948 (2) SA 677 (A).

² 1999 (3) SA 854

- [8] The appellant in her heads of argument on appeal submitted that R80,000.00 was an appropriate amount for damages to be awarded for spending six and a half hours in detention. She referred to few previous awards in motivation for the said amount. In my view the personal circumstances of the claimants in those previous awards are not similar to her personal circumstances. Therefore, those previous awards are not comparable to the present appeal. The amount of R80,000.00 is not justified in the circumstances of this appeal.
- [9] The court *a quo* was correct in placing its reliance on Bentley *supra* because the duration of the time spent in detention is quite close to the time the appellant spent in detention. However, it overlooked the fact that the monetary value of the R15,000.00 awarded in Bentley *supra* has increased to R50,000.00 in 2023. It committed a misdirection in this regard, and therefore, this Court is entitled to interfere.
- [10] The inflation rate between 1999 and 2023 was 248,42%. If the award of R12,000.00 was made in 1999, its monetary value in 2023 would be R41,810.26. In my view, the court *a quo* should have awarded this amount for damages.

ORDER

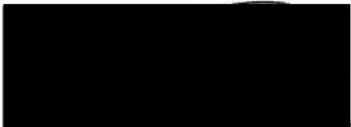
- [11] The following order is made:

1. The appeal is upheld.
2. The order of the court *a quo* is set aside and replaced with the following order:

"(a) The defendant shall pay R41,810.26 to the plaintiff for damages for unlawful arrest and detention.

(b) The defendant is ordered to pay the costs of the action, including counsel's costs."


MMP Mdalana-Mayisela J
Judge of the High Court
Gauteng Division


JJ Strijdom J
Judge of the High Court
Gauteng Division

(Digitally submitted by uploading on Caselines and emailing to the parties)

Date of delivery: 11 March 2024

Appearances:

On behalf of the Appellant: Adv A P Billings
Instructed by: Wits Law Clinic

On behalf of the Respondent: No appearance