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**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

CASE NO.: 730/2015
Date heard: 09-09-2020
Date delivered: 30-07-2021

In the matter between:

Faniki William Mothibi

Plaintiff

and

Minister of Police

Defendant

CORAM: WILLIAMS J:

JUDGMENT

WILLIAMS J:

1. On 29 March 2019 I gave judgment in favour of the plaintiff in respect of the trial on the merits of this action and ordered that the defendant pay the plaintiff's proven or agreed damages as a result of his unlawful arrest and detention on 1 February 2015 until his release on bail on 6 February 2015.
2. This judgment relates to the trial on quantum.

3. In his particulars of claim the plaintiffs Mr Faniki Mothibi, claimed damages in the amount of R1 million made up as follows:
General damages in the sum of R750 000, 00; and
Future damages in the sum of R250 000, 00.
4. At the quantum trial the plaintiff, who throughout appeared in person, informed that he intended to pursue only the claim for general damages in an amount of between R400 000, 00 and R750 000, 00 and that he did not intend to call any witnesses other than giving evidence himself.
5. The plaintiff testified that he was 55 years old and an auto electrician by trade. At the time of his arrest for car theft he was self-employed and operated his business from his workshop premises in Galeshewe, Kimberley.
6. He testified that he had been imprisoned for some three years 20 years ago but had thereafter mended his ways and had started his business with only a tool-box. Eventually he had built himself up to where he had established a healthy client base consisting of local businesses and the general public.
7. The plaintiff testified that on the day of his arrest he was first kept in a "friendly" room at the Barkly-West police station for about 3 hours before he was formally arrested. Thereafter he was taken to the Galeshewe holding cells where he was detained overnight before his first appearance in the magistrates court. He was thereafter detained at the Bougroep Prison where he spent four

days and nights before being released on bail on 6 February 2015. He thereafter appeared in court on a few occasions for postponements before the charge was withdrawn on 9 March 2015.

8. During his time in detention he felt humiliated and stressed. The cell was overcrowded and he had to sleep on the floor on a filthy blanket. The cell smelled foul and the food was sub-standard. He was also not given his medication.
9. The plaintiff stated that he was under psychiatric treatment before his arrest for a mood disorder. After his arrest and detention he could not sleep at night as a result of the humiliation of his arrest. What aggravated the situation for him was that he was arrested for the theft of a customer's vehicle. The news of his arrest had spread quickly through the community and had a negative effect on his business.
10. He felt a lot of anger and found himself engaged in unnecessary disputes and conflict with other persons which further affected his business, which he describes as then having a knock-on effect on his personal life.
11. The plaintiff testified that he consulted his psychiatrist who informed him that it was not advisable to increase his medication. As a result he had to deal with his anger issues by himself. He could not handle the pressure and realized that he had to distance himself from conflict situations. His business had also

deteriorated as a result of the stigma attached to his arrest. The business had now become dormant and he only occasionally attends to auto-electrical work when requested to do so. He now earns an income of between R5000, 00 and R6000, 00 per month with which he has to provide for nine children between the ages of 8 years and 31 years.

12. The plaintiff further testified that this previous relationship also deteriorated after his arrest and detention – mainly due to his frustration regarding his business – as a result whereof he and Ms Lerato Moduo, who testified for the plaintiff in the merits trial, decided to part ways during 2018. He is currently in another relationship.
13. Quite astoundingly, the plaintiff testified that he was arrested again during 2017 for suspicion of theft of a motor vehicle. On that occasion members of the South African Police Service entered his business premises with a search and seizure warrant and seized a vehicle on his premises. The Director of Public Prosecutions however declined to prosecute the matter. The plaintiff states that he felt victimized by the SAPS as a result of the matter *in casu*, which further contributed negatively to his mental well-being and his business. He states that he lost interest in the motor vehicle industry.
14. During cross-examination by Ms Stanton, who appeared on behalf of the defendant, it transpired that the plaintiff only closed his business during 2018, although he states that the business

had been dwindling since after his arrest and detention during 2015.

15. The plaintiff also conceded during cross-examination that he had a history of being unable to deal with conflict even before the arrest and detention *in casu* and which has resulted in him being convicted on several occasions on charges of *inter alia* iniuria, assault and malicious damage to property. He stated that that was the reason that he had sought and had been receiving psychiatric treatment since 1996. He denied however that the reason for his personal and business problems was as a result of his pre-existing psychiatric condition since he had been running a successful business before the incident, despite this condition.
16. No further witnesses were called by the plaintiff. The defendant thereafter closed its case without calling any witnesses. I requested the parties to provide me with written heads of argument.
17. In his heads of argument the plaintiff, despite having abandoned his claim for future damages during the trial, reintroduced the claim for future loss of income as a result of the unlawful arrest and detention. As no evidence was presented, expert or otherwise, to substantiate this claim in the amount of R250 000, 00 which was in any event abandoned, I do not intend to deal with it at all.

18. In the assessment of damages for unlawful arrest and detention, the Supreme Court of Appeal has stated in *Rahim and Others v Minister of Home Affairs* [2015] 3 ALL SA 425 (SCA), at paragraph 27 thereof that:

"[27] The deprivation of liberty is indeed a serious matter. In cases of non-patrimonial loss where damages are claimed the extent of damages cannot be assessed with mathematical precision. In such cases the exercise of a reasonable discretion by the court and broad general considerations play a decisive role in the process of quantification. This does not, of course, absolve a plaintiff of adducing evidence which will enable a court to make an appropriate and fair award. In cases involving deprivation of liberty the amount of satisfaction is calculated by the court *ex aequo et bono*. Inter alia, the following factors are relevant:

- (i) circumstances under which the deprivation of liberty took place;
- (ii) the conduct of the defendants; and
- (iii) the nature and duration of the deprivation."

19. In *Minister of Safety and Security v Tyulu* 2009 (5) SA 85 (SCA), Bosielo AJA (as he then was) commented at 93 d-f (paragraph 26) thereof as follows:

[26] In the assessment of damages for unlawful arrest and detention, it is important to bear in mind that the primary purpose is not to enrich the aggrieved party but to offer him or her some much-needed solatium for his or her injured feelings. It is therefore crucial that serious attempts be made to ensure that the damages awarded are commensurate with the injury inflicted. However our courts should be astute to ensure that the awards they make for such infractions reflect the importance of the right to personal liberty and the seriousness with which any arbitrary deprivation of personal liberty is viewed in our law. I readily concede that it is impossible to

determine an award of damages for this kind of injuria with any kind of mathematical accuracy. Although it is always helpful to have regard to awards made in previous cases to serve as a guide, such an approach if slavishly followed can prove to be treacherous. The correct approach is to have regard to all the facts of the particular case and to determine the quantum of damages on such facts (*Minister of Safety and Security v Seymour* 2006 (6) SA 320 (SCA) 325 para 17; *Rudolph & others v Minister of Safety and Security & others* (380/2008) [2009] ZASCA 39 (31 March 2009) (paras 26-29)."

20. The plaintiff in his heads of argument has urged me to take into account the circumstances of his arrest and detention (which I have dealt with fully in the judgment on the merits) and the inescapable inference that he could have been arrested for no other reason than that the complainant was a police officer.
21. The plaintiff also contended that I take into consideration, when assessing the quantum of his damages, that his mental condition declined to such an extent after the arrest and detention that it affected his productivity and business operations.
22. He also referred me to the matter of *Seria v Minister of safety and Security and Others* 2005 (5) SA 130 (C), where the plaintiff, an architect by profession, who was unlawfully arrested and deprived of his liberty for about 24 hours, was awarded R50 000, 00 in damages (current value according to the Consumer Price Index R116 000, 00).

23. With reference to the remarks by the SCA in the two cases quoted above in paragraphs 18 and 19, Ms Stanton has contended in her written heads of argument, that although the plaintiff should be compensated for the deprivation of his freedom and unlawful incarceration, he should not be enriched. She argued that:

- 23.1 The plaintiff failed to prove that his arrest and detention had an impact on his personal life, in that his relationship with Ms Moduo only ended in 2018, three years after the incident. He is also currently in a new relationship;
- 23.2 The plaintiff failed to prove that the unlawful arrest and detention during 2015 had a negative effect on his business. That on his own version the business was still operating until 2018. In addition the plaintiff was arrested again during 2017 for theft of a motor vehicle;
- 23.3 The plaintiff has been a known psychiatric patient since 1996 and had experienced sleeplessness, agitation and anger management issues prior to his arrest and detention; and
- 23.4 The plaintiff failed to prove, save for the deprivation of freedom, that the conditions in prison were poor or that he suffered discomfort and pain and a loss of amenities of life.

24. Ms Stanton consequently contends, with reference to the case of *Minister of Safety and Security v Scott and Another* [2014] 3 All SA 306 (SCA), where an award for damages for the unlawful arrest and detention overnight in a police cell of a professional hunter, of R75 000, 00 was substituted on appeal with an award of R30 000, 00, that an award for damages suffered by the plaintiff in an amount of less than R100 000, 00 would be appropriate.
25. I have myself had recourse to comparable cases. In *Foster v Minister of Safety and Security* 2013 (6K6) QOD 166 (GSJ), a scrapyard owner, 60 years old at time of trial, was arrested in the presence of his employees at his place of business on suspicion of robbery of a motor vehicle. During his interrogation at the police station he was tortured by the police officers until he lost control of his bladder and wet himself. He was humiliated, denied access to a telephone, his family and legal representation. He had spent 4 days in custody when he was taken to court and the charge was withdrawn. He was awarded general damages in the amount of R200 000, 00 (current value R305 000,00),
26. In *Gobamang v Minister of Police* 2011 (6K6) QOD 85 (ZAGPJHC), an adult male school teacher was arrested in full view of the public on the false accusation that he was drunk in public. He was detained for 16 hours. His incarceration caused him embarrassment and humiliation and tarnished his reputation

amongst the learners at his school. He was awarded R70 000, 00 in damages (current value R112 000, 00).

27. Whilst amounts previously awarded in comparable cases provide a general indication of what is fair and appropriate compensation it can never be decisive. No two cases are the same and each case must be considered on its own facts and circumstances.
28. *In casu*, the plaintiff has no doubt suffered embarrassment and humiliation due to his unlawful arrest and detention. It is also not hard to imagine that his reputation, as a businessperson, dealing with motor vehicles, being arrested and detained for motor vehicle theft, had been tarnished. On the other hand the plaintiff is not unfamiliar with conflict with the law and the fact of his previous incarceration for three years would have rendered the circumstances encountered in prison less shocking and humiliating than to a person who had never experienced such circumstances. A further difficulty I experience, in the absence of any expert evidence, is the extent of the psychological impact of the arrest and detention *in casu* on the plaintiff's wellbeing, his personal relationships and his business. The plaintiff has himself testified that the incident during 2017 has additionally contributed negatively to his wellbeing. Those circumstances must however be disregarded for purposes of a fair award in this matter.

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29. Be that as it may I am constrained to make a fair determination on the evidence before me. In this regard the humiliation, impairment of the plaintiff's dignity and reputation and the unlawful deprivation of his freedom deserves recognition. Regard being had to all the circumstances of this case I am of the view that a fair and proper award for the damages suffered by the plaintiff occasioned by his unlawful arrest and detention, would be R250 000, 00.

In the event the following order is made.

- a) The defendant is ordered to pay the plaintiff the sum of R250 000, 00 together with interest thereon calculated at the prescribed legal rate from date of this order to date of payment.
- b) The defendant is ordered to pay the costs of the action.



CC WILLIAMS

JUDGE

For Plaintiff: Mr F Mothibi (In Person)

For Defendant: Adv. A Stanton
The State Attorney