

In the matter between:

AFRICA KWEYAMA

Plaintiff

and

MINISTER OF POLICE

1st Defendant

NATIONAL DIRECTOR OF PUBLIC PROSECUTION

2nd Defendant

JUDGMENT

NHLANGULELA DJP

[1] On 23 August 2016 the plaintiff instituted action proceedings against the defendants claiming:

- (a) As against the Minister: R750 000,00 for unlawful arrest and detention.
- (b) As against the NDPP: R250 000,00 for malicious prosecution.

[2] Both defendants filed notices to defend the claims.

[3] The particulars of claim in support of the plaintiff's claims can be summarised in the following terms:

- 3.1 Two members of the police effected arrest of the plaintiff on 07 April 2015 without a warrant of arrest;
- 3.2 The plaintiff was detained in a police cell on the same day;

- 3.3 The detention lasted until 28 May 2015;
- 3.4 On 09 April 2015 the public prosecutor in the office of the NDPP, Mthatha preferred a charge of rape against the plaintiff;
- 3.5 The arrest was unlawful; and the prosecution was malicious in that the plaintiff was released from detention and court appearances by reason of a decision not to prosecute the plaintiff;
- 3.6 In and as a result of the foregoing events, plaintiff suffered certain delictual damages.

[4] In defence, the Minister pleaded that the arrest and detention were authorised in terms of s 40 (1)(b) of the CPA.

[5] When the matter served before me for trial purposes, I was informed that the plaintiff had withdrawn the action against the NDPP. The trial proceeded against the Minister only.

[6] Mr P. Ntabende, the Detection Constable testified on behalf of the Minister. The plaintiff also testified.

[7] The facts stated by the two witnesses in the witness box are common cause, and more particularly constitute proof on a balance of probabilities that:

- 7.1 Mr Ntabende was the arresting officer. He was accompanied by another member of the police force when he effected the arrest;
- 7.2 The arresting officer was justified in arresting the plaintiff in that:
 - (a) He was called by the community members of Ngobozi Location, the place of residence of the plaintiff, to respond to the allegation that the plaintiff had raped a minor girl child during the night of 07 April 2015;

- 7.3 The officer responded to the call by driving on a police vehicle to Ngobozi Location where further briefing was given to him concerning the accusation that the plaintiff was a rapist. The mother of the child confirmed the report. The child was in the custody of her mother at that time;
- 7.4 At all times material to the commission of rape the child and the plaintiff resided in one and the same house;
- 7.5 The plaintiff and the victim were present in the homestead when the Officer arrived at their place of residence.
- 7.6 Due to the seriousness of the offence of rape, the Officer decided to interview the plaintiff, who merely stated that he did not know anything about the allegation of rape. Acting on the information received from the community members and mother of the child, which implicated the plaintiff in the commission of rape, the Officer proceeded to arrest the plaintiff by taking him into the police vehicle, to the Police Station and into the prison cell. The allegation of the Officer that he had a reasonable cause to believe the correctness of the information he had received from the members of the community is not disputed;
- 7.7 At the time of arrest, and at the Police Station, the plaintiff was advised of his constitutional rights, but he declined to give his own version of events in answer to the allegation of rape. The plaintiff informed the Officer that he would give his version in court through his legal representative;
- 7.8 The plaintiff appeared before the Magistrate for the first time on 09 April 2015. Bail hearing was commenced with on this occasion.

That hearing was thereafter run over numerous appearances until bail was declined.

And on 28 May 2015 the public prosecutor declined to prosecute due to insufficient evidence.

[8] Based on the evidence as recounted in the preceding paragraphs, I come to the conclusion that:

- 8.1 The arrest was in accordance with the provisions of sections 39 and 50 of the CPA;
- 8.2 the decision of the arresting Officer to arrest and detain the plaintiff was predicated on reasonable grounds; as is envisaged in s 40 (1)(b) of the CPA.
- 8.3 The refusal of bail has not been shown to have been motivated by unreasonable and obstructive conduct on the part of the Arresting Officer. That is, the police detention and that which was ordered by the court were lawful.

[9] Under the circumstances, the plaintiff failed to prove that his arrest and detention were unlawful. That being my finding, the Minister is not liable to compensate the plaintiff for the damages claimed.

[10] Therefore, I make the following order:

The plaintiff's claim against the first defendant (the Minister of Police) is dismissed with costs.

Z.M. NHLANGULELA

DEPUTY JUDGE PRESIDENT OF THE HIGH COURT

MTHATHA

Counsel for the plaintiff : Adv. T.H. Melane
Instructed by : MK Majavu & Ass
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Counsel for the defendant : Adv. L.L. Sambudla
Instructed by : State Attorneys
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Heard on: 05 and 06 October 2021

Delivered on: 07 October 2021