

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.: 55716/15

26/1/18

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
	
SIGNATURE	DATE

26/01/2018

In the matter between:

SUNDAY VICTOR ADEOYE

Plaintiff

versus

MINISTER OF POLICE

Defendant

JUDGMENT

MPHAHLELE J

[1] The plaintiff claims damages from the defendant arising out of his arrest and detention by the members of the South African Police Service.

[2] The defendant admitted the arrest and the subsequent detention of the plaintiff. The defendant pleaded, however, that the arrest and subsequent detention of the plaintiff was lawful in that the arresting officers were authorised in terms of section 40(1)(b) of the Criminal Procedure Act 51 of 1977 (the Act) to do so because they reasonably suspected the plaintiff of having committed the offence of fraud.

[3] The issue in dispute is whether the members of the South African Police Service had reasonable grounds for arresting the plaintiff or not. It is trite that the onus is on the defendant to justify the arrest.

[4] The defendant called 2 witnesses, namely Sibongile Moshoeshoe and Constable Mampuru Johannes Lekgothoane.

[5] Ms Sibongile Moshoeshoe confirmed that she knew the plaintiff. She testified that in or around September 2014, she searched for agencies who could lease out a restaurant. In the process, she came across the name of one Chris, who happened to be a friend of the plaintiff. She then met with Chris who showed her some premises. They agreed on the premises situate next to a Church. She then paid a deposit of R18 000-00 towards the leasing of those premises.

[6] Chris informed her that he would inform her as soon as the premises were ready for occupation. She later received keys to the premises although there were outstanding renovations to be completed. She made another payment of R16 000-00 towards the rental. On moving into the property, she made a further payment of R16 000-00 to Chris for the rental. Chris introduced her to the plaintiff who was also running the church from the same premises. The plaintiff was happy to meet her.

[7] Ms Moshoeshoe testified that the gentleman attending to the renovations on the premises advised her not to pay the rental to Chris as Chris was not authorised to receive it. He also informed her that Chris and the plaintiff were working together, and FPT leased out the premises and the plaintiff was a tenant of FPT.

[8] Ms Moshoeshoe subsequently attended at the offices of FPT. At FPT she was informed that the plaintiff rented the premises and used them as a church. FPT was not aware that there was a restaurant operating on the premises. They promised to contact the plaintiff regarding the restaurant as they never authorised any business to be operated on the premises. They also informed her that they did not know of any Chris being an agent collecting rental on their behalf. Upon further enquiry, FPT informed her that the plaintiff denied that there is

a restaurant on the premises but alleged that his wife was the one cooking for churchgoers. FPT informed her that they would not lay a charge against plaintiff, but would resolve the matter their own way.

[9] FPT advised her not to pay any rental to the plaintiff and Chris. Later another man also named Chris attended at the premises and enquired why they were not paying rental. He then promised to arrange a meeting between the first Chris and her (Ms Moshoeshe). Before the meeting could take place, she laid a charge against both the plaintiff and Chris at the police station, which led to their arrest.

[10] Upon the plaintiff's request, she went to see the plaintiff at the police cells. The plaintiff asked her to drop the charges. He undertook to repay the money paid as rental. He even offered her his car, an offer she turned down. In total she paid a sum of R50 000-00 towards the lease of the premises. She never received a refund of this amount.

[11] Constable Mampuru Johannes Lekgothoane was the investigating officer in this matter. He managed to arrest Chris in Bloed Street, Pretoria. During the interview at the police station, Chris indicated that he was working with the plaintiff and that he shared the money he received for rental with the plaintiff.

[12] Constable Mampuru testified that he and warrant officer Tihotse then approached FPT for further investigation about the ownership of the property. At the FPT offices Charmaine informed them that the plaintiff was renting the premises from FPT and he was not allowed to sublet. They then requested Charmaine to summon the plaintiff to their office to enable them to arrest him. The following day, on 19 December 2014 they received a call from Charmaine advising them that the plaintiff was at their offices. Upon arrival at FPT offices, they introduced themselves to the plaintiff as police officers, and then arrested him. He threw tantrums and they had to drag him from the office to the lift. Whilst walking in the street towards the police station, they held him by his belt.

[13] The first plaintiff, Sunday Victor Adeoye, testified that he is a Pastor at the Mercy Place International. He is renting the premises from FPT in his personal capacity for the church. He agreed with FPT that he could subdivide the premises and sublet. With the permission of FPT, he rented the shop to Chris. Chris then rented the shop to one lady to operate a canteen. Chris pays him rental of R9 000-00 per month. He only met the complainant after his arrest. Whilst at the FPT offices, he was confronted by two police officers who then arrested him. They both grabbed him by his trouser and dragged him out of Charmaine's office. They proceeded to drag him in Esselen Street on their way to the police

station. The complainant came to the police station at his request, and that is the only time he ever had a conversation with her. He requested her to tell the police about the person she was dealing with.

[14] The plaintiff contended that the arresting police officers knew of the premises allegedly rented out to Ms Moshoeshoe, and ought to have visited the premises as part of their investigation. He submitted that the police officers ought to have considered other forms of procuring his attendance for purposes of the investigation other than through his arrest.

[15] In his evidence, the plaintiff raised new issues, which he never put to the defendant's witnesses. He was very evasive during his testimony. The plaintiff only mentioned for the first time under cross-examination that there are 2 people named Charmaine at FPT offices and the complainant might have spoken to a wrong person. The plaintiff never disputed that he offered to compensate the complainant. The probabilities are that he would not have offered refund the plaintiff he believed the rental of the premises to Ms Moshoeshoe to be genuine.

[16] The two witnesses for the defence were candid and answered questions satisfactorily. The accepted evidence before this court is that Chris did introduce the complainant to the plaintiff. Chris informed the police that he was working together with the plaintiff in soliciting funds they were not authorised to receive.

[17] The defendant contended that, under the circumstances, the police officers concerned had reasonable grounds to believe that the plaintiff committed an offence of fraud. The definition of fraud is 'the unlawful and intentional making of a misrepresentation which causes actual or potential prejudice'.

[18] The undisputed evidence in this matter is that FPT informed the complainant that Chris had no authority to receive rental for the leased premises. Upon his arrest, Chris informed the police that he and the plaintiff worked in cahoots and shared the money received from the complainant. FPT informed the police that it had not given permission to the plaintiff to sublet the leased premises.

[19] Section 40(1)(b) of the Criminal Procedure Act 51 of 1977 provides that A peace officer may without warrant arrest any person whom he reasonably suspects of having committed an offence referred to in Schedule 1 to the Act, other than the offence of escaping from lawful custody.

[20] The jurisdictional facts for a section 40 (1) (b) of the criminal procedure act 51 of 1977 defence are that the arrestor must be a peace officer; the arrestor must entertain a suspicion; the suspicion must be that the suspect committed an offence referred to in schedule 1; and the suspicion must rest on reasonable grounds.

[21] The only issue to be determined regarding the cause of action between the parties is whether the peace officers had reasonable grounds for the arrest. The defendant bears the onus of establishing the lawfulness of the plaintiff's arrest on a balance of probabilities.

[22] Charmaine told Constable Mampuru and warrant officer Tihotse that the plaintiff rented the premises from FPT and did not have permission to sublet. He also informed them that Chris was unknown to FPT. I am mindful that Charmaine did not testify at the trial. However, the information that Charmaine, Ms Moshoeshoe and Chris gave to the police during the investigation of the crime, objectively viewed, is of sufficient weight to induce any reasonable police officer to form a considered opinion that the plaintiff has committed an offence justifying an arrest without a warrant.

[23] It is not a requirement of the Act that the arresting officer must base his opinion on undisputable evidence, it suffices that the arrestor, on reasonable grounds, entertains a suspicion that the suspect committed an offence referred to in schedule 1 of the Act.

[24] I am satisfied that the defendant has established the four jurisdictional facts required for a defence under section 40(1)(b) of the Criminal Procedure Act. Consequently, I find that the arrest of the plaintiff was lawful and his claim must fail.

ORDER

The plaintiff's claim is dismissed with costs.



S S MPHAHLELE

JUDGE OF THE
HIGH COURT, PRETORIA