

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

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

31/01/18
DATE


SIGNATURE

31/1/18

CASE NO: 55701/2014, 54703/2014. 55571/2014, 54826/2014. 55569/2014

In the matter between:

AILWEI RONALD GETHE

FRANS TEBOGO LEGODI

LUDWICK MAKWENA SENYATSI

PERCY GIVEN SEKWANE

PITSO BERNARD MOJAPELO

1ST PLAINTIFF

2ND PLAINTIFF

3RD PLAINTIFF

4TH PLAINTIFF

5TH PLAINTIFF

AND

CITY OF TSWANE METROPOLITAN MUNICIPALITY
MINISTER OF SAFETY AND SECURITY

1ST DEFENDANT

2ND DEFENDANT

Coram:

Munzhelele AJ

Heard:

29 November 2017

JUDGEMENT

M.MUNZHELELE AJ

Introduction.

[1] This is an action for damages consequent upon an unlawful arrest of the five plaintiffs by (the 1st defendant) city of Tshwane Metropolitan Municipality and detention by (the 2nd defendant) Minister of Safety and Security at Pretoria central police station.

[2] On the 1st September 2015 the matter came before Honourable Judge Tlhapi where the 2nd defendant conceded the merits of this case 100%. The matter became settled on merits against the 2nd defendant. Quantum was thereafter postponed *sine die*.

[3] On 29 November 2017 the matter came before court for determination of quantum on general damages. The 2nd defendant agreed to settle damages for future medical expenses in the amount of R10 000-00 for each plaintiff.

Background of the incident

[4] These facts are common cause.

On 5 June 2014 five plaintiffs were arrested while on duty at the city of Tshwane metropolitan municipality. The arrest of all five plaintiffs occurred in full view of several journalists and co-workers. They were arrested for having allegedly committed corruption and fraud. It was alleged that they defrauded the city of Tshwane Metropolitan Municipality of hundreds of millions of rands. They were arrested without a warrant. They were all detained at the Pretoria central police station for 20 hours until they were released the following day.

[5] The 2nd defendant is only liable for damages in relation to unlawful detention of the plaintiffs in the police holding cells. The 1st to the 4th plaintiffs are claiming R300 000-00 each made up as follows:

1. General damages - R200 000-00
2. Future medical expenses - R100 000-00.

The 5th plaintiff is claiming an amount of R500 000-00 made up as follows:

1. General damages - R300 000-00
2. Future medical expenses - R200 000-00.

They all prayed for cost as well.

Quantum.

[6] No evidence was led for the determination of damages claimed. The parties addressed the court at length and also submitted their heads of arguments on the question of appropriate damages to be awarded. Several cases were referred to by both counsels. Relevant case law was submitted to court for consideration. Both the defendant and the plaintiffs' counsels requested the court to rely on the opinion given by Dr Amanda Peta, who is a clinical psychologist who assessed and compiled a psychological report on all the plaintiffs.

Legal principles

[7] In assessing appropriate damages to be awarded to the plaintiffs, the court may take into consideration all relevant factors in the circumstances.

[8] In *Mathe v Minister of Police* (33740/14) 2017 ZAGPJHC 133 Opperman J dealt with the circumstances to be taken into consideration when assessing damages. The Honourable Judge quoted with approval the *case of In Ntshingana v Minister of Safety And Security (unreported) 14 October 2003 Eastern Cape Division(2001/1636) and Phasha v Minister Of Police(unreported judgment by Epstein AJ dated 23 November 2012 South Gauteng High Court Case no 2011/25524 where it was held that:*

'Factors which can play a role are the circumstances under which the deprivation of liberty took place. The presence or absence of improper motive or malice on the part of the defendant; The harsh conduct of the defendants; The duration and nature (the solitary confinement or humiliating nature) of deprivation of liberty; The status, standing, age, health and disability of the plaintiff; The extent of the publicity given to the deprivation of the liberty; The presence or absence of an apology or satisfactory explanation of the events by the defendant; Awards in previous comparable cases; The fact that in addition to physical freedom, other personality interests such as honour and good name as well as constitutionally protected fundamental rights have been infringed; The high value of the right to physical liberty, the effects of inflation; The fact that the plaintiff contributed to his misfortune; The effect which an award may have on the public purse'

[9] Section 35(2) (e) of the constitution of South Africa provides as follows:

(2) Everyone who is detained including every sentenced prisoner has the right

.... (e) To conditions of detention that are consistent with human dignity, including at least exercises and the provision, at state expense of adequate accommodation, nutrition, reading material and medical treatment.

Circumstances of each plaintiff are outlined below.

[10] The 1st plaintiff (Ailwei Ronald Gethe) is an artisan employed by the 1st defendant. He suffered detention overnight and also during the day until 14:30. The conditions of the cell were filthy and cold. He was not adequately dressed for such temperature. He was incarcerated with violent criminals. Plaintiff suffered psychological trauma which affected his social relations. His emotional state is no longer the same. According to Dr Peta the plaintiff would benefit from individual psychotherapy to deal with his depression.

[11] The 2nd plaintiff (Frans Tebogo Legodi) is an artisan employed by the 1st defendant. He is a member of a church called Holly Bethel situated in Soshanguve. He is a bread winner. The detention conditions and time were the same as stated by the 1st plaintiff. The 2nd plaintiff suffered from severe symptoms of post traumatic anxiety disorder and major depression. According to Dr Peta the 2nd plaintiff requires psychiatric as well as psychological intervention.

[12] The 3rd plaintiff (Ludwick Makwena Senyatsi) is employed as a diesel mechanic by the 1st defendant. His incarceration circumstances are similar to those of the 1st and 2nd plaintiffs. According to Dr Peta the 3rd plaintiff suffered from mood disorder, depression, anger with a feeling of hopelessness and traumatic stress disorder because of this incident and his detention. He requires individual psychotherapy.

[13] The 4th plaintiff (Percy Given Sekwane) is an artisan mechanic employed by the 1st defendant. The plaintiff suffered from severe psychological deficits which are mostly caused by the trauma he experienced during this arrest and detention. Dr Peta opined that the plaintiff's severe psychological dysfunction and depression limits his chances of performing well at work and in his emotional social status. Dr Peta

further opined that plaintiff would benefit from individual psychotherapy and psychiatric evaluation.

[14] The 5th plaintiff (Pitso Bernad Mojapelo) is employed as a Public Transport Director by the 1st defendant. He was also detained under the same conditions and for an equal period of time as the rest of the plaintiffs.

He had a good name and was a well-respected person at his community. He is a member of the Zion Christian Church. Plaintiff was diagnosed by Dr Peta with severe chronic post-traumatic stress disorder. Dr Peta opined that the 5th plaintiff will benefit from psychotherapeutic intervention and adjunct psychiatric management.

Discussion

[15] Having recognised that all the plaintiffs had been incarcerated overnight in the cells and experienced humiliating circumstances the court would now consider an appropriate award of damages suitable as a *solatium*.

It is important to bear in mind that the primary purpose of compensation for damages is not to enrich the aggrieved parties but to offer them some much needed *solatium* for their injured feelings. [see *Minister of Safety and Security v Tlyulu* 2009(5) SA 85 SCA para 26 at 93D, *Minister of Safety and Security v Seymour* 2006(6) SA 320 SCA.]

[16] It is useful to have regard to the comparable matters in assessing damages; however it should be clear that the cases stated herein after are only meant to serve as a guide. [See *Minister of Safety and Security v Seymour* 2017 All SA 558 SCA para 17]

[17] I have been guided among others, by the general pattern used on previous awards for general damages arising out of detention cases such as:

Rudolph v minister of safety and security 2009(5) SA 94 SCA where an amount of R50 000 was awarded in respect of an unlawful arrest and detention under humiliating conditions of the cell.

In Olivier v Minister of Safety and Security and another 2009(3) SA 434(W) the plaintiff was a senior police officer who was arrested by the police in full view of his colleagues and detained at the same police station where he was working. He claimed R150 000 for spending six hours in custody. The court awarded him R50 000 as fair and reasonable damages.

In Gobuamang v Minister of Police (2011) ZAGPJHC 100; 2009/5959(26 August 2011) plaintiff was a professional teacher and was incarcerated for 16 hours. His good standing and his good name were

tarnished. He was traumatised. He claimed for R180 000 but the court awarded him R70 000 as reasonable and fair damages.

In Sithole v Minister of Police and another 2016 ZAGPPHC 393 (27 May 2016) the plaintiff an unemployed mother of two minor children was detained for 12 days. She was awarded damages in the amount of R50 000 as per settlement between the parties

In Matsietsi v Minister of Police (A3103/2015) 2017 ZAGPJHC 29(20 February 2017) the plaintiff was a trained geologist by profession. He was detained for 21 hours 45 minutes. He claimed damages in the amount of R300 000 and the court awarded him as fair and reasonable damages an amount of R40 000.

[18] The plaintiffs are all professional and educated people. They held good names in their communities. Some are church members. They have been incarcerated in filthy and humiliating conditions by the 2nd defendant. They were all detained for 20 hours. They have been traumatized by this incarceration. They all require psychotherapeutic intervention.

[19] Taking into consideration the background facts of the case, the plaintiffs circumstances and the previous awards on general damages, I found a fair and reasonable amount of damages to be R40 000 inclusive of the future medical expenses agreed upon.

[20] As a result I make the following order:

1. The 2nd defendant is ordered to pay each plaintiffs the sum of R40 000 made up as follows:
 - 1.1. general damages in the amount of R30 000
 - 1.2. future medical expenses in the amount of R10 000 as agreed with the 2nd defendant
2. Interest on the amount in 1 above at the rate of 15.5% per annum from the date the 2nd defendant was placed *in mora*.
3. The 2nd defendant is ordered to pay cost of suit on party and party scale including the cost of the counsel.



M.M. MUNZHELELE

ACTING JUDGE OF THE HIGH COURT

Counsel for plaintiffs:

Adv L. Perel

Instructed by:

Mario Coetzee Attorneys

Counsel for defendant:

Adv. H.O.R Modisa, Adv B.S.P Molosi

Instructed by:

The Office of the State Attorney