

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NUMBER: 47786/2013

In the matter between:

19/2/2016

JEROME DADDY LANGA

PLAINTIFF

and

(1) Reportable: No

(2) Of interest of other Judges:
No

[Signature]
19.02.2016

THE MINISTER OF POLICE

DEFENDANT

HEARD ON:

2/12/15

JUDGMENT:

STRIJDOM AJ

1. The Plaintiff has instituted a civil claim against the Minister of Police (hereinafter referred to as the "Defendant") claiming damages for wrongful arrest and detention.
2. The Defendant has defended the matter and denied all the essential allegations i.e. that Plaintiff was arrested and detained and as a result suffered damages. Two special pleas were also raised, but eventually abandoned.
3. Plaintiff bears the onus to prove his arrest and detention.

4. During the course of cross-examination of the Plaintiff, the Plaintiff sought to amend the plea by admitting Plaintiff's arrest and detention, and claim that the arrest and detention was lawful. The application to amend was dismissed.

ISSUES IN DISPUTE:

5. The issue in dispute is whether the Plaintiff was arrested and detained and if so, the damages Plaintiff is entitled to.

SUMMARY OF FACTS:

6. The evidence adduced by the Plaintiff can be succinctly summarised as follows:

- 6.1. Jerome Daddy Langa testified that he is the Plaintiff in this matter. On 20 August 2010 he was sent by his brother to buy some food for breakfast.

- 6.2. On his way to the Mall he saw a Toyota vehicle approach him from the opposite direction. He was driving his brother's car. The car that approached him flashed its lights to stop him. A person got out of the car and approached his car. The same person asked

him who's car is this. Mr Langa explained that it was his brother's car and his brother is at home.

- 6.3. Mr Langa saw a police officer that was seated in the front side of the Toyota vehicle. The passenger said to him they must go to where his brother is because they are looking for his brother.
- 6.4. Mr Langa was driving in front of the police and they followed him in their vehicle. The police vehicle was unmarked and the two police officers were in civil clothes.
- 6.5. At his premises he parked his car at the gate and the police entered the gate and met his brother's wife.
- 6.6. When the police exit the house his sister in law told him the police got a warrant at Kempton Park and he must take his brother's car to Kempton Park.
- 6.7. He then drove off to Kempton Park and the police followed him. On the way to Kempton Park, he was ordered to stop the car and to get out of the car and to enter into their car. He was then informed that there is a case where the car he is driving is involved. He said he know nothing about the case because the car belong to his brother. When they arrived at the Police Station, Midrand, he was locked up in the cells. The following Monday the police took him to the Wineberg Magistrate's Court where the case was postponed for seven days and for further investigation.

- 6.8. He was taken to Johannesburg (Diepkloof) prison. He subsequently appear in Court again on 30 August 2010 when he was released on bail.
- 6.9. From 20 August 2010 until 30 August 2010 he was not interviewed by the police about his involvement in the alleged robbery and was not asked to make any statement.
- 6.10. On 11 January 2011 the case was withdrawn against him. The case was postponed on several occasions where the police did not attend Court.
- 6.11. Mr Langa further testified about the condition in the Midrand Police cells and the cells at Diepkloof Prison.
- 6.12. After the case was withdrawn against him the car was returned to his brother by the police.
- 6.13. During cross-examination by counsel for the Defendant a notice in terms of Section 3 of Act 40 of 2002 was submitted as Exhibit "B".
7. The evidence of Plaintiff was not seriously contested in cross-examination. The Plaintiff did not contradict himself on any material facts and there are no inherent improbabilities in his evidence. No evidence was adduced by the Defendant to gainsay the evidence of the Plaintiff. In my view the Plaintiff was a reliable witness.

8. It is common cause that the Plaintiff was arrested and detained in the police cells and in Dieploof Prison from 20 August 2010 to 30 August 2010

THE BURDEN OF PROOF:

9. An arrest and/or detention are *prima facie* wrongful. It is for the arrestor to allege and prove the lawfulness of the arrest or detention.¹ The Defendant has the onus of establishing the lawfulness of the Plaintiff's arrest on a balance of probabilities.²
10. Once the jurisdictional facts for an arrest are present whether in terms of Section 40(1) or in terms of Section 43 of Act 51 of 1977 a discretion to arrest arises and the discretion must be properly exercised.
11. *In casu* the Defendant did not rely on Section 40 (1) or Section 43 of Act 51 of 1977 but denied all the essential allegations i.e. that Plaintiff was arrested and detained.
12. No evidence was adduced by the Defendant to prove that the arrest was lawful.
13. In my view the Defendant did not discharge the onus to prove on a balance of probabilities that the arrest was lawful.

¹ *Minister of Law and Order v Hurley* 1986 (3) SA 568 (A) 587-589 E-F

² *Zealand v Minister of Justice and Constitutional Development* 2008 (2) SACR (CC)

WRONGFUL AND UNLAWFUL DETENTION:

14. Counsel for the Defendant submitted that the Defendant can only be held liable for his further detention if the Plaintiff adduced evidence of misrepresentation on the part of the police and that no such evidence has been tendered.
15. If the arrest of the Plaintiff was unlawful it would follow that his subsequent detention was also unlawful.
16. The Plaintiff submitted that the Defendant "had a constitutional obligation not to perform any act which infringes upon the fundamental rights protecting Plaintiff's and which are entrenched in the Constitution."
17. The Plaintiff's detention does not cease when the magistrate remanded him in custody for a bail application.³
18. It was not pleaded by the Defendant that the unlawful detention have ceased when the Magistrate ordered the Plaintiff's further detention.
19. It was stated in Elwyn Damile Botha 2012 (1) SACR 302 (BCDP) at 31:

"That our Constitutional provisions make it obligatory for police officers to first establish the legal justification of the

³ Elwyn Daniel Botha v The Minister of Safety and Security n.o. and Others 2012 (1) SACR 302 (ECP) at 13

further detention of a person so as to relate such information to the public prosecutor and the latter would then, after applying his mind to the matter, be in an informed position whether or not to apply for the further detention of the person in custody in my view, and in practice it is the police official investigating the case who should be in a position to and must inform the prosecutor about the strength or otherwise of his or her case. Failure by the police officer to apply his mind in the manner suggested supra could result in the further detention being contrary to the Constitutional provisions and liable to be declared to be unlawful."

20. The onus rest on the Defendant to prove on a balance of probabilities that the further detention of the Plaintiff was unlawful.
21. Plaintiff testified that the police concerned in the criminal case against him did not attend Court on numerous occasions when the case was postponed in the Magistrate's Court and subsequently the case was withdrawn against him. The inference can be drawn that after the arrest of the Plaintiff the police failed to give proper, if any, attention to the fact whether it was necessary to keep the Plaintiff in custody.
22. In my view the Defendant bore the burden to justify the deprivation of liberty whatever from it may have taken. The onus of justifying the detention rests on the Defendant.

23. I am of the view that the Defendant did not discharge the onus to prove on a balance of probabilities that the detention of the Plaintiff was lawful.

QUANTUM:

24. This Court has a discretion to award fair and adequate compensation.⁴
25. The assessment of award of general damages with previous cases are useful guidelines.
26. *In casu* the Plaintiff was wrongfully arrested and detained from 20 August 2010 to 30 August 2010.
27. In **Minister of Safety and Security v Scott & Another** 2014 (7K6) QOD 22 (SCA) the Plaintiff was wrongfully arrested and detained for 9 hours. The Court awarded damages of R30,000.00.
28. In **Greenberg v De Beer and Another** 2011 (6K6) QOD 81 (ZAGPJHO) the Court awarded general damages in the amount of R90,000.00 for unlawful arrest and detention for six days.
29. In **W v Minister of Police** 2014 (ZASCA) 108 an amount of R500,000.00 was awarded for 13 months unlawful detention.
30. In **Minister of Safety and Security & another v Never Ndlovu** 2013 (1) SACR 339 (SCA) an amount of R230,000.00 was awarded for 9 days.

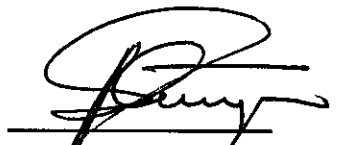
⁴ **Minister of Safety and Security v Seymour** 2006 (6) SA 320 (SCA)

31. Having considered the facts of this case and the principles and factors outlined in the aforesaid case, I am of the view that an award of damages in the amount of R120,000.00 would be appropriate in the circumstances.

ORDER:

32. The following Order is granted:

- 32.1. Judgment is granted in favour of the Plaintiff for payment of the sum of R120,000.00 (one hundred and twenty thousand rand only;
- 32.2. Interest on the amount of R120,000.00 (one hundred and twenty thousand rand only) at the prescribed rate of 15,5 per annum *a tempore morae*;
- 32.3. Costs of suit.



JJ STRIJDOM
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON:

DELIVERED ON: 19 | 2 | 16

APPEARANCES:

On behalf of the Plaintiff:

Instructed by:

Adv JH vd B Lubbe

Le Grange Attorneys

On behalf of Defendant:

Adv S Malatji

State Attorney