

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

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / NO.	
(2) OF INTEREST TO OTHER JUDGES: YES / NO.	
(3) REVISED.	
DATE 3/07/2015	SIGNATURE 

CASE NO: 6578/2012

DATE: 4/8/15

IN THE MATTER BETWEEN:

JOHANNES MATLALA

PLAINTIFF

AND

MINISTER OF POLICE

DEFENDANT

JUDGMENT

KOLLAPEN J:

1. The plaintiff has instituted action in which he seeks the payment of damages for his alleged unlawful arrest and detention on the 10th of March 2011 by members of the South African Police Services. In addition the plaintiff seeks damages for various incidents of assault perpetrated upon him on the 10th of March 2011 by members of the South African Police Services.

2. At the commencement of the trial there was a separation of the merits and quantum of the dispute, the Court being satisfied that it would lead to the expeditious resolution of the dispute between the parties. The trial proceeded on the merits only.

3. The plaintiff testified in his own case and called as witnesses Dr Matea of the Philadelphia Hospital and a Ms Mabogwane, while Constable Ratlogo testified on behalf of the defendant.

BACKGROUND FACTS

4. On the 10th of March 2011 there was an attempted armed robbery that occurred at Prince Supermarket at Nagageng in Moutse region, Limpopo Province. The police were summoned and Constable Ratlogo and his colleague Constable Matlawa went to the scene. Following reports they received they made their way to Ga-Matlala village in search of a blue Toyota Corolla which they believed may have been used to transport the robbers.
5. At Mzala's tavern they came across a blue Toyota Corolla and identified the plaintiff as owner and driver of the vehicle. The plaintiff alleges that he was punched and kicked at this point by various policemen who were on the scene while the evidence of Constable Ratlogo was that the plaintiff was uncooperative and that minimal force was used in order to secure his co-operation, namely to return to the scene of the attempted robbery.
6. The police, the plaintiff and the other suspects then went to the supermarket and it appears that none of the suspects could be identified while the complainant in addition intimated to the police that he was no longer interested in pursuing the charge of attempted robbery. The plaintiff testified that before being taken to the supermarket, he was taken to the Dennilton police station where he was assaulted for a second time.
7. Following the visit to the supermarket, the police once again took the plaintiff to the Dennilton police station for further questioning – it is not clear why this was necessary given the failure to identify the plaintiff or any other suspect as

well as the complainant's intimation that he was no longer interested in pursuing the charges.

8. The plaintiff alleges that he was assaulted at the police station and that during the course of the assault he admitted to his involvement in the purchase and sale of stolen diesel. He took the police to the person to whom he had sold the diesel and at some stage he also accompanied the police to the home of the bus driver from whose bus the diesel was allegedly stolen. He was then taken back to the police station, charged, and taken to Court on the 14th of March 2011.
9. The plaintiff alleges that he was assaulted again after the visit to the bus driver's home as well as when he finally got back to the police station. He stated that there were four separate instances of him being assaulted on the day in question.
10. It is common cause that the plaintiff was never charged with attempted robbery. It is also common cause that the plaintiff pleaded guilty to a charge of being in possession of stolen diesel.
11. Dr Matea's evidence was to the effect that the plaintiff was treated at the Philadelphia hospital on the 15th of March 2011 where he was admitted and he was thereafter discharged on the 16th of March 2011. The J88 which was completed by Dr Madhi indicated the existence of various abrasions on the plaintiff's face, chest and back. In addition he was struggling to urinate and a provisional diagnosis of 'crush syndrome' was made.
12. The report also states that on a follow-up visit, presumably in April 2011, a fracture of the left fibula was diagnosed and treated. In this regard the examination of the 15th of March 2011 did reveal a swollen and tender left knee which in Dr Matea's opinion was consistent with the later diagnosis of a

fracture. The J88 concluded that the injuries observed on the plaintiff were consistent with blunt force trauma with a stick-like object.

13. Ms Mabogwane testified that on the evening of the 10th of March 2011 she heard screaming and upon investigation had come across a policeman assaulting the plaintiff. She said that the plaintiff was on the ground and was being kicked by the policeman. She was unable to identify the policeman but saw the plaintiff whom she knew as being a member of the community. Given that the time was 9PM and there were no lights in the street, it is not clear how she could be so certain that it was the plaintiff she saw being assaulted and the reliability of her evidence of identification must be called into question.
14. Constable Ratlogo was adamant that the plaintiff was never assaulted during the course of the 10th of March 2011, either by him or any other police officers that he was aware of. He stated however that when he arrested the plaintiff during the course of the day he appeared normal and there were no marks or wounds that were visible. His further evidence was that the plaintiff's constitutional rights were read to him when he was finally detained at the end of the day, and not during the course of the day when the plaintiff was being questioned.

EVALUATION

15. Section 40(1)(b) of the Criminal Procedure Act 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 .

It is common cause that both the offence of attempted armed robbery as well as theft / receiving stolen property are schedule one offences.

16. In ***DUNCAN V MINISTER OF LAW OF ORDER 1986 (2) SA 805 (A)*** the Court listed the jurisdictional facts in terms of Section 40(1)(b) as follows (at 818G-H):
- i. The arresting officer must be a peace officer;
 - ii. The arresting officer must entertain a suspicion;
 - iii. It must be a suspicion that the arrestee committed a Schedule 1 offence (other than escaping); and
 - iv. That the suspicion must rest on reasonable grounds.
17. Clearly on the information received after the robbery that the three suspects were picked up by a blue Toyota Corolla, and the later discovery of a Toyota with the same number of suspects, it could hardly be said that there was not a reasonable suspicion of the involvement of the plaintiff and the other occupants in the offence. Of course once the complainant refused to proceed with charges and there was non-identification of the suspects, the situation may have changed. In this regard however one must be careful because there was no withdrawal statement filed by the complainant. He is alleged to have said that he does not want trouble which may have placed into question his motive for not proceeding further, and the non-identification of any of the suspects.
18. Ordinarily the plaintiff should then have been released but the question is whether his further detention and questioning became unlawful. I am not convinced that it was, because the police can never be said to become *functus officio* as it were, once the complainant declines to co-operate. However not much turns on this in my view as subsequent events may well have justified the further detention of the plaintiff.
19. It is not in dispute that the plaintiff disclosed his involvement in the unlawful possession of diesel. The issue raised in argument is that the disclosure was made as a result of an unlawful assault and this should not be considered as forming the basis for the plaintiff's further detention. In this regard it appears

that when the plaintiff was being questioned, there was no report or a complaint of diesel having being stolen and thus it was highly unlikely that the police would seek information from the plaintiff regarding a crime they were unaware of. Once the plaintiff made the disclosure and offered to point out the diesel, the police were in my view obliged to follow up the matter and to the extent that the plaintiff continued to remain in custody during that time and until his court appearance, this was justified by the objective facts.

20. Under these circumstances and for the reasons given I would conclude that the arrest and detention of the plaintiff was not unlawful save possibly for the brief period between when he was taken to the supermarket and his later disclosure of involvement in the theft of diesel. However, given the lack of evidence of how long that time span was, I would be hesitant in concluding that his detention during that period was unlawful as it may well have been for a minimal period.

THE UNLAWFUL ASSAULT

21. While the version of the plaintiff and that of Constable Ratlogo stand in contrast to each other, the medical evidence strongly supports the conclusion that an assault was perpetrated upon the plaintiff. If indeed he was physically and otherwise normal at the time of his arrest, then it is inexplicable how he sustained the injuries he did except for an assault either by the police or by fellow prisoners. If it was the latter, one would have expected the police to have picked it up and recorded it in the police station's occurrence book. All the circumstances point strongly in the direction of the plaintiff having been assaulted by the police.
22. The question arises as to whether he was assaulted on a single or on a number of occasions. According to the plaintiff he was assaulted in the tavern in the presence of many other people including his friends yet none of these people

were called as witnesses. In addition it is difficult to conceive of a reason why he would be assaulted after he disclosed his involvement in the stolen diesel and co-operated with the police. There would be nothing to be gained by assaulting him nor could it be said that there was further information that was being sought.

23. Another factor which warrants consideration is that if regard is had to the plaintiff's testimony that the assault was so severe that his eyes were closed as a result, then Dr Matea was of the view that the evidence of such injuries would have been visible at the time of the examination on the 15th of March 2011. That there were no visible eye injuries must raise questions whether the plaintiff has exaggerated the incidents and the nature of the assault.
24. In conclusion I have no doubt that the plaintiff was assaulted by members of the police on the 10th of March 2011, but for the reasons already given, I doubt that this happened on four separate occasions.

ORDER

25. In the circumstances I make the following order.
 - i. The plaintiff's claim for unlawful arrest and detention is dismissed;
 - ii. The plaintiff's claim in respect of an unlawful assault on the 10th of March 2011 is upheld;
 - iii. The quantum of the unlawful assault claim is postponed *sine die*;
 - iv. The defendant is ordered to pay the costs of the action.

N KOLLAPEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA

6578/2012

HEARD ON: 02 & 03 FEBRUARY 2015

FOR THE PLAINTIFF: ADV P W SPRINGVELDT

INSTRUCTED BY: MALULEKE MSIMANG & ASSOCIATES (ref:
Matlala/RJ/CIV.5077)

FOR THE DEFENDANT: ADV E M BALOYI-MERE

INSTRUCTED BY: THE STATE ATTORNEY (ref: 1654/2012/Z47/MC)