

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

(NORTH GAUTENG, PRETORIA)

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| (1) | REPORTABLE: YES |
| (2) | OF INTEREST TO OTHER JUDGES: YES |
| (3) | REVISED. |

CASE NO: 11954/2011

DATE: 4 June 2015

In the matter between:

MAVELA MOSES MAKHUBU

PLAINTIFF

And

THE MINISTER OF POLICE

DEFENDANT

JUDGMENT

Wright J

[1] The plaintiff is a man who runs a restaurant-disco. He claims that he was assaulted by the police shortly after midnight on Saturday 21 November 2010. He instituted action claiming damages for past medical expenses, future medical costs, future loss of earnings and general damages. The claim for general damages included a claim for disfigurement. When the matter came before me it was agreed between the parties that the only issue was general damages and that disfigurement formed no part of the claim. The amount of R500 000 was claimed for general damages.

[2] The plaintiff alleged in the particulars of claim that he had been sjambokked, kicked and slapped. He also alleged that he had been forced to do push-ups in front of his customers. Bruises and abrasions of the right knee, a tender chest, fracture to the ribs and swelling to the interior chest wall were pleaded.

[3] Doctor Mpombwa testified. He examined the plaintiff on 24 November 2010. He does not know at what time this occurred. He noted, on a J88 form bruises/abrasions on the right knee, tender chest, two fractured ribs and swelling on the anterior chest wall. He said in evidence that the ribs might have been fractured. He said that the plaintiff was in unbearable pain. He said that the injuries were between two and five days old.

- (4) The plaintiff testified through an interpreter. The police arrived and ordered his customers to lie on the ground. They were assaulted and searched. The police then told him to do push-ups. He did. He was kicked all over his body. He pricked his knee on broken glass. He was sjambokked on his ribs and body. (This is not borne out by the J88). He went to the chemist on Monday 23 November 2010. He had tried home medication for two days which had not worked. The commander of the police, a cluster commander named Majola stood by during the assault. She told the plaintiff that he was a trouble- maker and that she would ensure that his place would be closed.
- (5) The plaintiff could not say where on his body he was sjambokked. He specifically said that he was not assaulted other than by being kicked or sjambokked. The particulars of claim allege slapping.
- (6) The plaintiff said that those customers who saw the police assaulting him said so to him the next day. The plaintiff then said that no customer came to him to say that they had witnessed an assasault on the plaintiff.
- (7) The plaintiff specifically said that had never made a statement to the police. In fact he had made one on 25 November 2010. In that statement he said that he had been hit by police using their open hands.

[8] Mr Ncongwane testified for the plaintiff. He was about [.....] years old at the time. He worked at the tavern as a waiter and cleaner. The police arrived and pushed the plaintiff and the employees out of the shop. There were at least sixty customers in the shop. Mr Ncongwane could not identify any of the police. The plaintiff was forced to do push-ups. While this was happening the plaintiff was assaulted by the police hitting him with a black rubber sjambok. When the plaintiff was being hit on the back with the sjambok he was wearing only a pair of shorts and a golf t-shirt. Mr Ncongwane was also assaulted with the sjambok. He was slapped. He said that the plaintiff cut his knee on a broken bottle while doing push-ups but that bleeding was minimal. Mr Ncongwane was standing about 2 meters from the plaintiff but did not see him being kicked. Mr Ncongwane said that the plaintiff was not assaulted when the plaintiff was alone.

[9] Mr Khumalo testified for the plaintiff through an interpreter. He worked for the plaintiff at the tavern. Mr Khumalo was not assaulted but the plaintiff was assaulted all over his body by police kicks. Mr Khumalo did not see any police officer with a baton or sjambok. Mr Khumalo said that he saw the plaintiff being kicked but that he could not see whether or not the plaintiff was hit with a sjambok because he, Mr Khumalo was too far away. Mr Khumalo could not explain why he was close enough to witness the kicks on the plaintiff but was too far to see if the plaintiff was sjambokked.

[10J Mr Vimbi, for the defendant sought to have admitted in evidence during cross-examination a statement made by Mr Khumalo to the police because the statement contained contradictions of Mr Khumalo's evidence in court. I excluded the statement as Mr Khumalo gave unchallenged evidence that his home language is Seswati while the statement is in English and the statement was not read to him or explained to him prior to signature. There was no evidence that Mr Khumalo's English was sufficient for him to have understood the written statement. It follows that any contradictions between the written statement and evidence in court are not before me.

[11] Ms Seboko closed the plaintiff's case and Mr Vimbi sought absolution. I dismissed the application, holding that a court might or could find for the plaintiff despite the significant contradictions in the plaintiff's evidence and between his evidence and those of his witnesses.

[12] Lt- Col Luhlanga and Warrant Officer Madonsela testified for the defendant. They said that they were not in a position to confirm or deny the alleged assault. It is not clear to me why they were called.

[13] The significant contradictions in the plaintiff's case are not necessarily fatal to it. The particulars of claim allege that commander Majola was on the scene. The plaintiff in evidence placed her on the scene. She was not called to testify and

her failure to testify was not explained in evidence. I would have expected that either commander Majola would have testified or that a basis for her failure to do so would have been laid in the evidence of the defendant. The assault on the plaintiff occurred in front of the plaintiff's staff and customers. The police, by forcing the plaintiff to do push-ups in front of his customers increased his humiliation. In my view R65 000 is appropriate compensation and is enough to attract High Court costs.

Order:

1. The defendant is ordered to pay the plaintiff R65 000 and costs on the High Court scale.