

IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE LOCAL DIVISION : MTHATHA

CASE NO. 244/2012

In the matter between:

SANGO QULU

Plaintiff

and

MINISTER OF SAFETY AND SECURITY

Defendant

JUDGMENT

NHLANGULELA, ADJP

[1] The plaintiff claims that he is entitled to payment of damages, estimated at approximately R500 000-00, arising out of an alleged unlawful arrest and detention on 04 November 2011 in Mthatha. The legal basis for the claim is stated to be that Ms Verster, the Colonel in the South African Police Service,

had no reasonable belief that the plaintiff had sought bribery from a suspect who had committed a road traffic offence.

[2] A police officer, Mr Deacon, other than Ms Verster who took the decision that the plaintiff be arrested, testified. On Mr Deacon's own showing in the witness-box, the arrest and detention of the plaintiff was not justified in law. As much was conceded by counsel who appeared on behalf of the defendant. The merits of the case being resolved I proceed to deal with the issue of quantum of damages to which the plaintiff is entitled.

[3] The plaintiff 's claim is based on the following heads of damages, namely:

- | | |
|--------------------------|---------------|
| (1) Unlawful arrest | = R250 000-00 |
| (2) Unlawful detention | = R150 000-00 |
| (3) Unlawful body search | = R100 000-00 |

[4] The evidence led shows that on 04 November 2011 the plaintiff, a municipal road traffic officer, was arrested whilst preparing to tow a suspect's motor vehicle from York Road to the municipal pound. Ms Verster told him that he was under arrest and searched his body for unknown exhibits which were not recovered and ordered the colleagues of the plaintiff to deliver him to her office. The plaintiff was transported in a private vehicle. Ms Verster received the plaintiff and caused him to be locked up in a prison cell without any charge having been preferred against him. He was locked up at 1pm and released on the third day at 1pm. The arrest and search took place in full view of the members of the public. Plaintiff's children were traumatised by the incident, and in particular that their father was associated with criminals. In prison, the plaintiff was caused to sleep on the cement floor and using dirty blankets. He was assaulted by the inmates for no apparent reason. This evidence is common cause.

[5] As already stated the arrest and detention are unlawful. But it is not quite clear from the evidence if the body search was consensual or not. Nevertheless I accept that the body search was consequent upon arrest without a warrant so do resulting, as it were, in an unjustified conduct on the part of Ms Verster. The circumstances under which unlawful acts were perpetrated has not been shown to be malicious. Verster responded to a call by the suspect that bribery was being committed. The actions taken by her did not exceed what an ordinary policeman would do in the circumstances. The inconvenience during incarceration and the alleged traumatic experience of the plaintiff and his children did not result in a detectable psychological injury capable of quantification by any legal standard. What seem to amount to a violation of plaintiff's personality is the arrest and detention. In my view, the unlawful searching of the plaintiff's body was pursuant upon arrest on a suspicion that a crime had been committed for which there must have been detention for the purposes of bringing the plaintiff to book. The search is not separable from arrest and it cannot ground a separate *injuria*. The plaintiff was ill advised to cite bodily search as an independent head of damage suffered. At most such an item qualifies for assessment under *contumelia*, itself not being inextricable from arrest and detention. For these reasons R250 000-00 asked for in respect of search and detention has no legal basis.

[6] Damages for arrest, detention and *contumelia* inherent in the heads of damages as aforesaid require a proper assessment based on precedent. Counsel for the plaintiff made reference to recognised authorities: **J J Van Rensburg v The Minister of Safety and Security: C/N 2344/2009 (ECG) dated 17/03/2011**, in which the case of **Minister of Safety and Security v Tyulu 2009(5) SA 85 (SCA)** was used. These cases, if properly applied to this case, support an amount of damages far less than R500 000-00. In **J.J. Van Rensburg** the court awarded damages in the sum of R120 000-00 for unlawful arrest and detention including *contumelia* where the plaintiff had been detained for two hours. The police were found to have acted maliciously in the manner in which they arrested the plaintiff, and they had caused plaintiff Post Traumatic Disorder. In this case the circumstances are not severe. In **Tyulu** the circumstances under which the plaintiff, being a magistrate, was arrested and detained for 15 minutes were heinous to say the least. However an award of R50 000-00 made by the magistrate was reduced to R15 000-00 on appeal; the

appeal court warning that the courts may not enrich the aggrieved party but to offer him/her some much needed *solatium*. In this case the plaintiff was not a highly placed individual in the municipal law enforcement organisation, he was not psychologically injured and the effects of publication of his name as a victim did not go beyond the day of arrest to warrant a response by a high measure of damages.

[7] In **Van der Merwe v Minister of Safety and Security 2011(6k6) QOD 32 (ECD)** the plaintiff was awarded R120 000-00 damages for arrest and detention over 3 days. In **Mbotya v Minister of Police (1122/10)(2012) Z AECPEHC 43 (10 July 2012)** the plaintiff was awarded R55 000-00 damages for arrest and detention over two days. The case of **Mbotya** compares favourably to this case because the plaintiff was kept in custody for two days effectively. In the case of **Minister of Safety and Security v Seymour 2006(6) SA 320 (SCA)** the court awarded the respondent a sum of R90 000-00 for arrest and detention committed under heinous circumstances upon a managing director of a well known farming co-operative for 24 hours. In this case counsel for the defendant submitted that a sum of R90 000-00 is an appropriate amount of damages to be awarded. I am persuaded by this submission due to the facts of this case.

[8] The present case is very simple if evaluated on the facts and law. If the magistrate could have made an award in the region of R90 000-00, which is still far below the jurisdictional amount of R300 000-00, the plaintiff should have been advised to present the matter in the magistrate's court. In that event costs at the scale of the High Court is exorbitant. For that reason the Court considers the scale of costs at the magistrate's level to be appropriate.

[9] In the event the following order shall issue:

1. **The defendant be and is hereby held liable to compensate the plaintiff for unlawful arrest and**

detention, including contumelia in the sum of R90 000-00.

2. The defendant to pay costs at the magistrate's court scale.

Z. M. NHLANGULELA

ACTING DEPUTY JUDGE PRESIDENT OF THE HIGH COURT

COUNSEL FOR PLAINTIFF : Mr Nabela

INSTRUCTED BY

COUNSEL FOR DEFENDANT : Mr Vaphi

INSTRUCTED BY : State Attorney

: MTHATHA

HEARD ON : 14 OCTOBER 2015

DELIVERED ON : 22 OCTOBER 2015