

REPUBLIC OF SOUTH AFRICA



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

28/5/14

CASE NO: 31353/2007

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
28 May 2014	<i>ELM bush</i>
DATE	SIGNATURE

In the Matter between:-

BEN STRYDOM

PLAINTIFF

and

MINISTER OF SAFETY AND SECURITY

FIRST DEFENDANT

MINISTER OF JUSTICE

SECOND DEFENDANT

J U D G M E N T

KUBUSHI, J

[1] The plaintiff instituted action against the defendants for damages for unlawful arrest and detention and a claim of malicious prosecution. However, before me only the first claim of unlawful arrest and detention is being pursued.

[2] The parties had agreed to put the following stated case before court on the first claim. The stated facts were as follows:

- "1) Plaintiff was arrested pursuant to the warrant of arrest attached hereto as annexure "A".
- 2) He was held in detention at SAPS Pretoria Central for 4 hours.
- 3) Parties agree that if the said warrant was valid in terms of section 43 of the Criminal Procedure Act of 1977, then the arrest and detention was lawful. If the said warrant was however, invalid, then it is axiomatic that the arrest and detention were unlawful.
- 4) Parties will, after dealing with the stated case by way of this document and argument, proceed with quantum, if applicable."

However, on the date of the trial the defendants' counsel received instructions to concede the merits on the basis that the plaintiff was arrested wrongfully in terms of an invalid warrant. What then remained to be determined was *quantum*.

[3] The plaintiff was the only person who gave evidence at the trial on *quantum*. The defendants closed their case without calling any witnesses.

- [4] The factual background of the case is that on the 2 March 2006 the plaintiff was summoned by a member of the South African Police Service to attend to the offices of his (the plaintiff) attorney where he was arrested for murder. The plaintiff was arrested in terms of an invalid warrant of arrest issued by the magistrate. He was taken to the Pretoria Central police station where he was kept in the cells from 10h00 until 10h38. After the completion of the paper work he was removed from the police cells and taken to the Pretoria magistrate's court where he was further detained in the cells from 11h00 until at about 16h00 when he appeared before the magistrate. The plaintiff's estimation is that he was detained for four hours from the time he was arrested at his attorney's offices.
- [5] When he finally appeared before the magistrate it transpired that the docket in respect of his case had not been sent to the Director of Public Prosecution for his/her decision to prosecute the matter. The magistrate postponed the case for two months with instructions that the docket be send to the Director of Public Prosecution for his/her decision. The Director of Public Prosecution declined to prosecute and ordered the institution of an inquest. The plaintiff was also charged departmentally but was found not guilty.
- [6] The parties are agreed that the plaintiff should be paid the damages for the unlawful arrest and detention, what is in dispute is the amount that must be paid. The plaintiff is claiming an amount of R151 000 being R150 000 for the unlawful arrest and detention and R1 000 for legal fees however the defendants' counsel submits that an amount of R10 000 will be sufficient compensation because the plaintiff was kept in detention for a very short time.

[7] In respect of *quantum* the plaintiff tendered the following evidence: he was 37 years old at the time of arrest; the arrest and subsequent detention affected him emotionally; at work people regarded him as a criminal; there were rumours and stories of his perceived criminality doing the rounds; nothing like this has ever occurred to him before. The incident had a mood changing effect on him and was as a result aggressive towards members of his family – his wife and child of 5 years they were as a result emotionally affected. He went for psychological treatment for about three months. The visits were covered by medical aid. He was not provided with a report because he stopped attending the sessions on his own. He incurred legal fees. He paid his attorney R1 000 for his first and second appearance in court but did not keep the receipts. The fees charged were low because he knew the attorney personally; he (the attorney) was an ex- policeman. He previously worked with the attorney's younger brother.

[8] The parties' counsel made an issue about the time spent in detention. The issue being whether the period should be divided into two periods, namely, the time spent in the police cells and the time spent in the magistrate court cells. According to the defendants' counsel the period of detention attributable to the first defendant is the time of 38 minutes which the plaintiff spent in the police cells. I do not agree. In my opinion the whole period which the plaintiff is claiming should be attributed to the first defendant under whose responsibility the plaintiff was all that time.

[9] Once an arrest has been effected, the peace officer must bring the arrestee before a court as soon as reasonably possible; and at least within 48 hours, depending on court hours. Once that has been done, the authority to detain, that is inherent in the power to arrest, is exhausted. The authority to detain further is then within the discretion of the court. See *Minister of Safety and Security v Sekhoto*¹.

[10] It is common cause in this instance that the plaintiff was arrested and initially detained in the police cells at Pretoria Central Police Station for 38 minutes. It is also not in dispute that the plaintiff was further detained in the Pretoria magistrate's court cells until 16h00 when he appeared before the magistrate. In my opinion, the submission by the defendants' counsel that no one is responsible for the plaintiff's detention from the time he was put in the magistrate's court cells until he appeared before the magistrate has no merit. As it has been stated in paragraph [9] of this judgment, the authority to detain that is inherent in the power to arrest is exhausted only when the accused is brought before a court. In my view the authority to detain is continuous: it starts from the time of arrest and ends only when the accused is before court. Similarly in this instance the authority to detain by the first defendant would have started when the police arrested the plaintiff and ended at 16h00 when the plaintiff appeared before the magistrate. To suggest that by taking the accused to court and place her/him in the cells is tantamount to bringing her or him before a court is untenable.

¹

2011 (1) SACR 315 para [42] at 331c

[11] Having concluded that the first defendant is liable to pay the damages claimed by the plaintiff I did not find it necessary to consider an issue raised by the defendants' counsel as to whether the second defendant has been correctly cited or not.

[12] In the assessment of damages for unlawful arrest and detention, it is important to bear in mind that the primary purpose is not to enrich the aggrieved party but to offer him or her some much needed *solatium* for his or her injured feelings. It is therefore crucial that serious attempts be made to ensure that the damages awarded are commensurate with the injury inflicted. However, our courts should be astute to ensure that the awards they make for such infractions reflect the importance of the right to personal liberty and the seriousness with which any arbitrary deprivation of personal liberty is viewed in our law. It is impossible to determine an award of damages for this kind of *injuria* with any kind of mathematical accuracy. Although it is always helpful to have regard to awards made in previous cases to serve as a guide, such an approach if slavishly followed can prove to be treacherous. The correct approach is to have regard to all the facts of the particular case and to determine *quantum* of damages on such facts. See Minister of safety and Security v Tyulu².

[13] The parties' counsel referred me to a number of judgments which I shall for purposes of this judgment only consider as a guide. I also considered the fact that the time spend in detention should not be the only factor to consider when awarding damages of this nature, all the circumstances must be considered. In this instance, although the plaintiff spent a relatively short time in detention I however

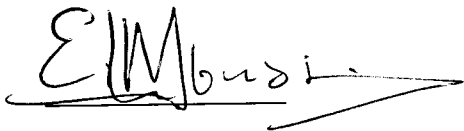
²

2009 (5) SA 85 para [26] at 93D – F

found it important to take into account that he was a police officer and was arrested by his own colleagues. He was humiliated by the rumours that were doing the rounds that he was a criminal and that his relationship with his family was strained by his mood swings. My view is that an amount of R10 000 as suggested by the defendants' counsel would not reflect the importance of the right to personal liberty and the seriousness with which any arbitrary deprivation of personal liberty is viewed in our law. I am thus of the view that a fair and appropriate award of damages in the circumstances of this case should be R80 000 for unlawful arrest and detention and R1 000 for legal fees.

[14] It is therefore ordered that the first defendant is to pay the plaintiff:

1. an amount of R80 000 in respect of damages in respect of claim 1 for his unlawful arrest and detention.
2. an amount of R1 000 in respect of damages in respect of claim 1 for his legal fees.
3. interest *a tempore morae* at the rate of 15.5% from the date of service of the summons to date of payment.
4. Costs of suit



KUBUSHI J

JUDGE OF THE HIGH COURT

APPEARANCES**HEARD ON THE****: 09 MAY 2014****DATE OF JUDGMENT****: 28 MAY 2014****PLAINTIFF'S COUNSEL****: ADV J R BAUWER****PLAINTIFF'S ATTORNEY****: PIET BREEDT ATTORNEYS****DEFENDANT'S COUNSEL****: ADV B MINNAAR****DEFENDANT'S ATTORNEY****: STATE ATTORNEY PRETORIA**