

IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE HIGH COURT: MTHATHA

CASE NO: 2408/10

Heard on: 27/05/13

Delivered on: 31/05/13

NOT REPORTABLE

In the matter between:

SANDISO THIRDMAN MATU

Plaintiff

and

MINISTER OF SAFETY & SECURITY

First Defendant

SERGEANT NYEZI

Second Defendant

JUDGMENT

NHLANGULELA J:

[1] The Court has been asked to determine the appropriate amount of damages to be awarded to the plaintiff.

[2] In the summons the plaintiff alleged that he is entitled to payment of R300 000,00 damages under the heads of general damages and *contumelia*. In Court it was submitted on his behalf that the cases of *Peterson v Minister Of Safety And Security* C/N 1173/2008 (ECG), *Corbett and Honey Vol VI* pp K6 1–9; *Fubesi v Minister of Safety And Security* C/N 680/2009 (ECG); *Corbett and Honey Vol VI* pp K6 28-33; and *Chaune Engelbrecht v The Minister of Police & 3 Others* C/N 1235/2009 (ECM) are comparable to the present matter and, thus, it would be proper if a sum of R180 000,000 is awarded in his favour.

[3] On the other hand a sum of R90 000,00 was submitted on behalf of the defendant as being the adequate amount of damages that may be fixed by the Court. In support of this submission the following cases were referred to the attention of the Court: *Minister of Safety And Security v Tyulu* 2009 (5) SA 85 (SCA); and *Mvu v Minister of Safety & Security* 2009 (6) SA 82 (GSJ).

[4] A brief summary of the cases referred to the Court by the parties is the following:

- (i) *Peterson* : A 33 years old male seasonal fruit picker sued for unlawful arrest and detention for 8 hours and the Court granted him R60 000,00 in general damages.
- (ii) *Fubesi* : An 18 years old male student sued for unlawful arrest and detention for 3 days and 18 hours. The Court granted him R80 000,00 in general damages.
- (iii) *Engelbrecht* : A housewife of 30 years of age was unlawfully arrested and detained for 4 hours the Court awarded her R90 000,00 in damages.
- (iv) *Tyulu* : A magistrate unlawfully arrested and detained for 15 minutes was awarded a sum of R15 000,00 in general damages.

(v) *Mvu* : A police Inspector wrongfully detained overnight was awarded R30 000,00 in general damages.

[5] In the case of *Tyulu, supra*, the Supreme Court of Appeal stated that the correct approach in cases of the present kind is to have regard to all the facts of the case and to determine the *quantum* of damages on such facts. Previously decided cases may only serve as a guide as no one case is similar on the facts with any other. The Court has to make an estimate of damages *ex aequo et bono* with an attempt being made to ensure that damages awarded are commensurate with the injury inflicted:

[6] In estimating damages in this case I have to exercise discretion taking into account the factors such as the circumstances of the delict, the status of the plaintiff, duration and nature of deprivation of freedom, the high value which our Constitution places on the right to physical liberty, the motive behind the arrest and detention; the awards in previous comparable cases and the rate of inflation – See: *J.J. Van Rensburg v The Minister of Safety And Security* C/N 2344/2009 (ECG), 17 March 2011.

[7] The plaintiff is the Warrant Officer in the South African Defence Force. He was born in Mqanduli, but he is now resident in Pretoria together with his wife and three minor children. He is a respected man at his place of employment. On Friday 30 January 2009 and at 13h00 he was wrongfully arrested and detained by the second defendant on a suspicion that he was stealing two of his own children whom he had removed from Mqanduli to take them back to school in Pretoria. The arrest took place whilst he was in a bus together with the children. The arrest and detention caused him humiliation and embarrassment in front of the passengers in the bus and his local Chief who got to know that he was in detention on a charge of child stealing. He was caused to sleep on a cement floor of the police cell for three nights until he was released on Monday 02 February 2009.

[8] In assessing damages in this case I have to take into account the fact that the arrest and detention of the plaintiff did not really have ramifications beyond deprivation of his liberty. The second defendant did not act in malice and high handedness in arresting and detaining the plaintiff. Humiliation suffered by the plaintiff in the bus, where he was completely unknown to passengers, and at Mqanduli Police Station, where only the local Chief saw him, would not amount to *injuria* of great proportions. The

incident did not impact on his honour and dignity at his workplace and Pretoria residence. The incident was a manifestation of domestic problems between him and his wife which was not new to the children.

[9] The decided cases referred to the Court, with the exception of *Fubesi* and *Mvu*, are not close comparatives to the present one because they involved a far more serious intrusion on the personality interests of the claimants such as honour and good name. In some of those cases the claimants were assaulted. The intrusion created by the unjustifiable arrest and detention upon the physical freedom of the plaintiff and the inconvenient experience in sleeping on the cement floor are the factors that the court must take into account. Consequently, I am persuaded that a sum of R130 000,00 would be an appropriate award of damages to be made in this case.

[10] In the result the order is hereby made against the defendant to pay plaintiff a sum of R130 000,00, legal interest on the aforesaid sum from the date of judgment to date of final payment and costs of suit at the High Court scale.

Z.M. NHLANGULELA

JUDGE OF THE HIGH COURT

Counsel for the plaintiff : Adv L. Sambudla
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Counsel for the defendant : Adv K.D. Qitsi
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