

NOT REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA

(NORTH GAUTENG DIVISION) (HELD AT PRETORIA)

CASE NO.: 30024/05

DATE:30/04/2012

In the matter between

MOTAU, LUCAS

PLAINTIFF

vs

MINISTER OF SAFETY AND SECURITY

FIRST DEFENDANT

LEPHALALA BENFORD MAMOLOKO

SECOND DEFENDANT

MAMASHEGO MADIMETSA RONNY

THIRD DEFENDANT

CORAM: PZ EBERSOHN AJ

DATE JUDGMENT HANDED DOWN 30th APRIL 2012

JUDGMENT

EBERSOHN AJ:

[1] The plaintiff, Lucas Motau, sued the Minister and the other two defendants for damages.

[2] The plaintiff alleged that he was on or about the 27th March 2005 at Seshego assaulted by the second and third defendants who hit him with fists, kicked him with booted feet and struck

him with a pistol on his head, in his face and on his eye.

[3] As a consequence of the said assault the plaintiff alleged that he sustained serious injuries and became blind in the injured eye.

[4] The plaintiff applied for condonation for not addressing his letter of notification in terms of section 3 to the Minister but instead to the Provincial Office of the Minister. The application was not opposed by the defendants and the Court granted condonation and that dispensed with the special plea of the defendants in this regard.

[5] The second and third defendants noted an "objection" apparently intending to mean a "special plea" to the effect that they were not served with copies of the summons in the matter. Proof was, however, adduced that both were in fact served.

[6] Paragraph 12.2 of the amended plea of the defendants read as Page 2 of 11 follows:

"12.2 The defendants specifically aver that:

12.2.1 The plaintiff was found committing an offence of public drinking;

12.2.2 The plaintiff refused to heed the warning to desist from the aforesaid unlawful conduct and resisted the resultant arrest;

12.2.3 The second and third defendants had to use minimum force which became required and necessary in order for them to effect the arrest of the plaintiff."

[7] It was agreed that the merits and quantum of the matter be separated.

[8] The plaintiff was the first witness. He testified that he was 28 years old and passed Grade 10 at school. He testified that he was not blind in his eye before the assault on him by the police.

[9] The evidence disclosed that the plaintiff and a group of his friends returned from an all-night party early in the morning, when it was still scarcely light, with a taxi which dropped them off at a corner in Seshego. They had with them a cooler box and the plaintiff and other members of the party had unopened bottles of beer in their hands.

[10] They noticed the police vehicle approaching the corner where they were and the third defendant, who was driving the car shouted at them and gesticulated with his hand and the members of the party fled in all directions of foot.

[11] The plaintiff denied that he was drinking from the bottle and stated that both bottles he carried were still sealed.

[12] He was chased and caught by the second and third defendants and was then brutally assaulted with fists and kicked with booted feet, the third defendant struck him on his head, face and eye with his pistol. His eye was bleeding thereafter.

[13] The assault lasted a long while and he was thereafter handcuffed and taken to the police station.

[14] At the police station, when the station commander noticed the injuries to his head and the blood flowing from his eye, he ordered that the plaintiff be taken to hospital by two other

police officers. The plaintiff remained in hospital for several months.

[15] As was already stated in paragraph [6] supra it was the case of the police that they used minimum force to arrest the plaintiff, it was not pleaded that the plaintiff tried to kick the third defendant, that the plaintiff broke the beer bottle and tried to stab the police officers with the broken bottle, which the third defendant, apparently as an afterthought testified about.

[16] The third defendant gave the strangest of versions as to how the plaintiff tried to attack the police officers and how they had to apply force to subdue him and to handcuff and arrest him. The third defendant testified that he was driving a police vehicle just after six in the morning and that he saw the plaintiff standing next to the road with some other people and that the plaintiff was drinking from a Castle Light dumpy bottle. He also noticed the cooler box next to the group of people. He drove up to the group with the intention to arrest the one who was drinking from the bottle. He stated that the person stepped back. He stated that he informed the plaintiff that it was illegal to drink in public to which the plaintiff replied "to hell". All of these allegations were never put to the plaintiff in cross-examination. He then tried to catch the plaintiff with his hands. The plaintiff then stepped back again and this time smashed the bottle and tried to kick the third defendant. The third defendant then jumped on him and caught the plaintiff. The third defendant testified that the plaintiff then butted him with his head and he lost one tooth as a result thereof and that the plaintiff thereafter bit him. The second defendant then assisted and the plaintiff was handcuffed.

[17] He then took the plaintiff to the police station where he ordered that the plaintiff be charged with three charges namely drinking in public, resisting arrest and assaulting a police officer. He then went to the hospital to have his own injuries attended to. The third defendant

stated that he did not go back later to the police station to check on the plaintiff.

[18] The captain was then cross-examined by Mr Kekana. He could not explain why it was put to the plaintiff that he had a bottle of Amstel Lager with him which contradicted the evidence of the third defendant that it was a Castle Light dumpy bottle.

[19] The captain then denied that he testified that the plaintiff stepped back and smashed the beer bottle.

[20] It was also put to the captain that it was not put to the plaintiff that he tried to kick the captain.

[21] The captain denied that there was blood on the head of the plaintiff and that the plaintiff's eye was bleeding.

[22] It was put to the captain that about 15 people alighted from the taxi and were standing on the corner. This the captain denied. He also denied that a taxi dropped them off there. It is strange that a party of about 15 people would stand early in the morning, just after six a.m., on a corner if they were not brought there by a vehicle.

[23] It was put to the captain that as the plaintiff was bleeding from his eye and head the station commander ordered that he be taken by two police officers to the hospital. To this the captain replied that he could not testify what happened. It is common cause that the plaintiff in fact was taken to the hospital as he alleged.

[24] There are several worrying factors in this case. The plaintiff in fact testified that the captain is known to be a person who without any valid reason and without even provocation would assault people. It is clear that in casu the captain also assaulted the plaintiff in a brutal and vicious fashion causing the plaintiff to lose his eye and suffer pain and the indignity of the assault.

[25] The matter of the two forged statements purported by the police to have been made to it by the plaintiff must receive urgent attention by the authorities. The trial was postponed on the first day to enable the Police to obtain the services of a handwriting expert to prove that the signatures to the two statements were those of the plaintiff. Not surprisingly, when bearing in mind the other despicable conduct of the police officers, the police did not even try to prove that they were the signatures of the plaintiff. It is clearly a prima facie case of forging and uttering on the part of police officers. No wonder the police refused access to the dockets to the private investigator employed by the attorneys of the plaintiff when he wanted to check the signatures on the statements.

[26] The captain was clearly committing perjury in this Court when he testified that the plaintiff was not injured when he delivered him to the police station to be charged. In this regard one merely has to look at the medical report by Dr Israel Mukwheto to see the plainly visible injury to the eye of the plaintiff. Even the Station Commander saw the injury and he caused the plaintiff to be taken to hospital.

[27] There is also the forging of the entries on the docket being page 6 in Bundle "B". The docket shows that the captain charged the plaintiff in his own handwriting with drinking in

public and not with resisting arrest and assaulting a police officer. The captain was committing perjury in this regard too. The matter against the plaintiff went to court and only the charge of drinking in public was dealt with by the magistrate and according to the note written by the prosecutor on the docket was to the effect that the accused was cautioned and discharged. In reply to questions put to the captain by the Court, the captain admitted that it was he who wrote on the docket. What he overlooked before falsifying the docket is that the extra charges were not raised in court and the prosecutor made no entry about them. The captain, to bolster his evidence and most likely to protect him against disciplinary action, made these entries in his own handwriting according to his admission in court.

[28] The plaintiff also lodged a complaint with the police under docket no 29/4/2005.

According to the front page this case was not yet dealt with in court nor was there a note that the prosecutor declined to prosecute the matter. This Court is perturbed to note that there was an apparent inactivity on the part of the Police to investigate the case against the captain. This requires looking into by the police.

[29] The general conduct of the police, the unprovoked and vicious assault on the person of the plaintiff, and the forging and uttering of documents and lack of prosecution of at least the captain is causing concern and it is prima facie dangerous to the public to be exposed to such conduct by such people and the Police must look into the matter and the Registrar of this Court will be requested to make a copy of the papers and to have the evidence transcribed and to refer the matter to the independent Investigating Body in the police force.

[30] The question of costs must be considered. The police in a vicious manner and being under no provocation assaulted the plaintiff. They lied in court. They forged documents and

uttered them. It is clear that a punitive cost order should be made.

[31] The following order is made:

1. The plaintiff succeeds 100% with the merits of the matter.
2. The respondents are to pay the costs of the plaintiff on the scale of attorney and own client such costs to include all reserved costs.
3. The plaintiff is declared to have been a necessary witness and his travelling and accommodation costs to attend the trial, are also allowed.
4. The matter is to be enrolled in consultation with the presiding judge to hear and adjudicate the quantum in the event of the parties failing to reach an agreement and settle it.
5. The Registrar of this Court is directed to cause the evidence led in the matter to be transcribed and the pleadings to be duplicated and to forward it, together with a copy of this judgment and order to the independent investigating Authority of the South African Police Services.

P.Z. EBERSOHN

ACTING JUDGE OF THE HIGH COURT

Plaintiff's counsel: Adv M Kekana

Plaintiff's attorneys: Legodi Phatudi Incorporated

Respondents' counsel: Adv. Babedi

Respondents' attorneys: State Attorney