

IN THE NORTHERN GAUTENG HIGH COURT

(HELD AT PRETORIA)

14/9/12
CASE NO.:5430 / 11

In the matter between:

BASIL OLIVIER

Plaintiff

and

MINISTER OF POLICE

Defendant

JUDGMENT

Introduction:

1. The Plaintiff issued Summons against the Defendant claiming damages for unlawful arrest, detention and deprivation of freedom and contemelia and discomfort. The total amount claimed is R260 000.00.
 2. The parties agreed at the beginning of the hearing that:
 - 2.1 the arrest and detention was not in dispute;
 - 2.2 the only dispute was quantum.
 3. Adv. Dredge for the Plaintiff called the Plaintiff to testify in support of his claim.
 4. He briefly stated that:
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4.1 he is 31 years old. Currently unemployed. He was a security Guard when he was arrested on 06th March 2008 at about 19h00 and he was released the following day at about 10h00;

4.2 that the cell he was kept in was not big enough and they were many. The floor was wet, water ran on the floor. The blankets were dirty. He said he sat there and said nothing lest he offended other prisoners who were in the cell, who he said were gang members;

4.3 he said the experience was bad;

5. He felt he needed to be paid damages as he had claimed;

6. Adv. Dredge referred me to a number of decided cases in support of the claim the Plaintiff made, so too did Adv. Nonyane who in distinction argued that the claim by the Plaintiff is far out of the trend of similar cases.

7. Both parties in the case agreed that I do not have to determine the lawfulness or otherwise of the arrest and detention, the only issue I have to deal with is:

7.1 what is the appropriate award in terms of damages as a lump sum in the circumstances of this case;

8. Both Mr. Dredge and Mr. Nonyane seem to have assumed that the arrest and detention of Mr. Olivier was unlawful. In terms of this assumption, both seems to have accepted that the exercise of a discretion by the arrest officials was wrong.

I do not share this assumption but I do not have to decide on this point as it is not an issue here.

9. Mr. Olivier was not just stopped and arrested. One would have expected more from the Defendant since it had decided to oppose the claim.
10. In the present case, Mr. Olivier was arrested and detained for a period of about fifteen (15) hours. Mr. Olivier was a Security Guard at the time of his arrest. There was no evidence that he suffered any specific degradation beyond what is inherent in being arrested and detained.
11. In fact his previous arrest served to help him somewhat in that he said he kept quite lest he offended other prisoners in the cell.
12. I have been invited by both Mr. Dredge and Mr. Nonyane to look at previous decisions in deciding how much I should award to Mr. Olivier.

I have indeed looked at the authorities they both provided me with and I am very grateful to both as I found them very useful.

13. As Nugent JA remarked in the case of **The Minister of Safety and Security v Seymour**, at para 17.

*"the assessment of awards of general damages with reference to awards made in previous case is fraught with difficulty. The facts of a particular case need to be looked at as a whole and few cases are directly comparable. They are a useful guide to what other Courts have considered to be appropriate but they have no **higher value than that**".*

14. Deprivation of liberty can never be restored by an award of compensation. There is no empirical measure for such deprivation, one has to make a judgmental call.

Is it not true that reasonable people can reasonably differ on matters calling for value judgment without either losing their reasonableness?

15. I am called to make a value judgment here. I am supposed to determine how much a fifteen (15) hours detention of Mr. Olivier is worth in monetary value.

It is ~~R260 000.00~~ or ~~R15 000.00~~ as I heard arguments in this case.

16. Adv. Dredge argued that I should not over-emphasise the social standing of Mr. Olivier in this case. He argued that Mr. Olivier should be treated on the basis that the law says all are equal before the courts.
17. Adv. Dredge's argument is not very sound, equality before the law does not refer to standing but treatment by law enforcers or justice system.

The law does distinguish between individuals. The law recognises children as different from adults, eg, without regarding one group as less human.

One's standing in the community does influence an award of damages as Seymour case above indicates.

18. In the case of **Rowan v Minister of Safety and Security** the Court referred to for example, circumstances of the Plaintiff's detention, its nature and duration, his social and professional status, in determining the appropriate award.
19. In his own argument Adv. Dredge referred to the following cases to establish a trend in awarding damages:

19.1 Minister of Safety and Security v Sekhoto;

19.2 Rowan v Minister of Safety and Security;

19.3 Minister of Safety and Security v Tyutu;

19.4 Minister of Safety and Security v Seymour;

19.5 Louw and Another v Minister of Safety and Security;

19.6 Killian v Minister of Safety and Security;

19.7 Swammers and Another v Minister of Safety and Security;

19.8 Murrell and Another v Minister of Safety and Security.

20. None of the above cases holds that standing or status in the community is a factor to be ignored in determining an appropriate award for a claim of damages.

Why should I ignore Mr. Olivier's status and his occupation in this case.

21. Mr. Nonyane referred to cases cited by Applicant's Counsel and distinguished them from the present case but emphasised that in all the cited cases the social standing and the profession of the arrested person were issues considered in award damages.

22. He then specifically referred to the following cases to establish a trend:

22.1 Minister of Safety and Security v Bhengu;

22.2 Greenberg v De Beer and Another;

22.3 Pretorius v Minister of Safety and Security;

22.4 Hoco v Mtekwana.

23. I have earlier indicated that arrest and detention deprives one of his / her liberty but this deprivation cannot mechanically be computed, one tries to sooth or restore something that cannot be restored, one may just try to satisfy injured feeling.
24. This arrest and detention took place in 2008 March, this is a factor I have to include in the mix.
25. There is another little question of why the claim was not lodged at the Magistrate Court. This of course is a consideration in awarding costs.

ORDER

26. The following order is made:
- (i) The Defendant is ordered to pay the Plaintiff the sum of thirty thousand (R30 000.00) rand as damages;
 - (ii) The Defendant is ordered to pay Plaintiff costs of suit on the appropriate Magistrates Court's scale including Counsel's fees on the scale of High Court.


J.P. TLALE

Case No: 5430 / 11

Heard on 30 August 2012

For the Plaintiff : Adv. C. M. Dredge

Instructed by : J.B. Grimbeek Van Zyl Le Roux Inc.

For the Defendant : Adv. P. Nonyane

Instructed by : State Attorey's Office, Pretoria

Date of Judgment : 2012. 09. 06