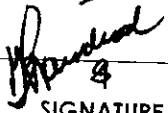




IN THE HIGH OF SOUTH AFRICA  
(NORTH GAUTENG HIGH COURT, PRETORIA)

CASE No: A478/11

DATE: 29/11/12

|            |                                                                                   |
|------------|-----------------------------------------------------------------------------------|
| (1)        | REPORTABLE: YES / NO                                                              |
| (2)        | OF INTEREST TO OTHER JUDGES: YES/NO                                               |
| (3)        | REVISED.                                                                          |
| 29/11/2012 |  |
| DATE       | SIGNATURE                                                                         |

In the matter between:

THE MINISTER OF SAFETY & SECURITY

APPELLANT

AND

HUMBULANI THOMAS SAVHASA

FIRST RESPONDENT

EDWARD RUDZANI RAKHUNWANA

SECOND RESPONDENT

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JUDGMENT

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RANCHOD J

[1] This is an appeal against the quantum of damages awarded to the second respondent for his unlawful arrest and detention for almost 4 days. The appeal is with the leave of the court *a quo* (Claassen J ). A similar claim by the first respondent had been dismissed.

[2] It appeared that the appellant did not dispute liability to pay damages, but only the quantum thereof in that the award of R300 000 was said to be excessive in the circumstances of the case. However, during the hearing Appellant's counsel submitted that in fact the respondent was not entitled to any damages at all. I will revert to this presently.

[3] The facts giving rise to the claim for unlawful arrest and detention have been set out in the judgement of the court *a quo*. The two respondents, although having different surnames, are apparently brothers. They were arrested by a member of the South African Police Services, one Captain Shabangu, on 21 January 2007 at the Brixton police station, allegedly for being in possession of a suspected stolen motor vehicle, and bribery. They were detained at the Brixton police station from about 21h00 on Thursday night, 25 January 2007 until Monday morning 29 January 2007 when they were released after the prosecutor declined to prosecute them. The car that was involved had been impounded and released only about one month later.

[4] The first respondent says he bought a grey Mercedes Benz motor car a few months earlier but could not register it in his own name. Hence, he registered it in the name of the second respondent. It is common cause that the first respondent was sitting in the car, which was parked on a street in Hillbrow, Johannesburg. The police arrived and inspected the vehicle. Captain Shabangu found that the chassis number of the vehicle had been tampered with by scratching out one numeral and another one inserted in its place. A tag which apparently contained certain vehicle identification codes such as the chassis number and engine number had also been replaced. First respondent telephoned the second respondent who arrived on the scene shortly thereafter. He showed Shabangu some invoices for the car as well as its registration papers. Captain Shabangu's enquiries by radio with the relative authorities regarding the status of the vehicle elicited the response that the vehicle had not been reported stolen. The police were still not convinced and took both the respondents to the specialist vehicle identification section at the Brixton police station where a Warrant Officer Denenga confirmed Shabangu's suspicion that something was wrong with the status of the vehicle and required further investigation. The vehicle was impounded and taken to the police pound.

[5] First respondent had testified that whilst they were in Hillbrow on the Sunday, Shabangu had solicited a bribe of R2 500 to 'make the problem go away' or else, said Shabangu, the vehicle would be impounded. He alleged that he gave Shabangu R1 400, which is all he had at the time, with the balance to be given later. On the following Tuesday he went to, it appears, the police vehicle pound, with the person from whom first respondent had bought the vehicle and it was established that everything was in order as far as the car was concerned.

[6] First respondent further testified that on the following Thursday, he phoned Shabangu and asked that the R1 400 be refunded to him as the vehicle registration was in order. They arranged to meet at Brixton police station where he expected to get his money back. However, he was arrested when he went there, at about 9 o'clock on the Thursday night.

[7] Shabangu denied that there was any bribery or attempted bribery on the Sunday. He said that first respondent had offered him money on the Thursday evening at Brixton and in fact gave it to him, whereupon he, Shabangu, arrested both first and second respondents for being in possession of a suspected stolen motor vehicle and what he termed "extortion" - an apparent reference to the bribe.

[8] Claassen J dismissed first respondent's claim on the grounds that his arrest was not unlawful as he was a participant in a corrupt activity in terms of the Prevention and Combating of Corrupt Activities Act 12 of 2004 and was accordingly lawfully arrested, it being immaterial whether Shabangu had solicited the bribe or first respondent had offered it. The learned judge found that the second defendant was not a party to the bribery. Furthermore, second respondent was not in possession of the motor vehicle at the relevant time as first respondent was using it as a taxi, although it was registered in second respondent's name. The court held that possession of a suspected stolen vehicle is not one of the offences listed in Schedule 1 to the Criminal Procedure Act 51 of 1977 for which a suspect could be arrested without a warrant. Therefore, second respondent's arrest without a warrant and subsequent detention was unlawful. The learned Judge awarded him a globular sum of R300 000.00 in damages, which is the subject of the appeal before us.

[9] As I understood appellant's counsel's Heads of Argument, the second respondent's damages should have been limited to a claim for emotional shock only. However, Mr Bofilatos stated at the commencement of the hearing before us that that was not what was intended and he accepted that second respondent's damages were general damages in the broad sense (excluding special damages for loss of income).

[10] In his judgement the learned judge says:

"The plaintiffs now claim that the arrest and the attachment of the vehicle was unlawful and are claiming damages from the defendant, being the Minister of Safety and Security, for the wrongful arrest, detention, prosecution and confiscation, and detention of the vehicle and also for pain and suffering, emotional shock, the deprivation of liberty, invasion of privacy, intimidation, loss of income, impairment of dignity, deprivation of freedom of movement and invasion of the right not to be deprived of freedom of movement and without just cause."

[11] It is in my view clear from the record that the claim for damages was not limited to emotional shock only and appellant's counsel's concession was well made.

[12] It was further submitted by appellant's counsel that it was agreed between the parties that the conduct of the first respondent was to be imputed to the second respondent for purposes of assessing the latter's quantum of damages. Hence, said appellant's counsel during the hearing of the appeal, that as the first respondent had participated in an illegal activity, namely, transporting passengers without the requisite permit to do so and having accepted a solicitation for a bribe from a policeman, that the award by the court *a quo* to the second respondent should be set aside *in toto*, alternatively reduced to nothing more than a *solatium*.

[13] Respondents' counsel argued that the agreement between the parties was simply that the personal circumstances of the first respondent, for example, his position in society, family circumstances, employment and so forth would be imputed to the second respondent and used for assessing the amount of compensation for the latter's unlawful arrest and detention. It was never contemplated that if first respondent's claim was dismissed because he was engaged in an illegal activity, that that illegal activity would be imputed to the second respondent. From the record it does not appear that an agreement had been made as contended for by appellant's counsel. In any event it would be a travesty of justice if the illegal activities of the first respondent were to be visited upon the second

respondent. Appellants' counsel submitted that the second respondent was involved in the bribery. That is an aspect of the merits of the case. The court *a quo* dismissed first respondent's claim because it was found that he was involved in the bribery. Not so in the case of the second respondent. The appellant has not appealed against the finding of the court *a quo* on this aspect on the merits. For all these reasons I am of the view that appellant's submissions in this regard cannot be sustained.

[14] The learned judge in the court *a quo* considered the cases of *Seymour v Minister of Safety and Security* 2006 (5) 495 (W) where an amount of R750,000 was awarded and also the case of *Louw and Another versus Minister of Safety and Security* 2006 (2) SACR 178 (SEC) where, he said, R70,000 was awarded for a single day's incarceration. Claassen J also mentioned that he had, a week earlier, awarded R90,000 to a claimant for 7 ½ hours detention to a "very responsible executive businessman, [who was arrested] in front of clients, and personnel. There was also medical aggravation present." However, it must be noted that in the *Seymour* matter the Supreme Court of Appeal had subsequently drastically reduced the award to R90,000. In that case, the claimant had been detained for five days and there were "certain medical complications and aggravating circumstances present." The *Louw* case was also decided before the appeal court judgment in *Seymour*.

[15] Claassen J awarded the second respondent in this matter before us an amount of R300,000. The following personal circumstances of the second respondent were taken into account: The fact that the respondent had a wife and children he had to support, that he was middle-aged, that he was a respectable, proper citizen, or 'does not look like a criminal' and has a fair standing in life, that his freedom was taken away from Thursday night until Monday morning and that the incarceration was in itself humiliating and degrading to a person. Furthermore, the fact that the arrest spanned a weekend when the second respondent did not have normal access to courts.

[16] It is so that previous awards merely serve as guidelines and any award made in a particular case will be dependent on its own facts. I have considered the submissions of both the appellant and respondent's counsel and in particular have had regard to *Seymour* and the several cases cited therein with regard to quantum. I am of the view that if one

takes all factors into account, including the erosion in the value of money an amount of R70,000 would be adequate compensation in the circumstances of this case.

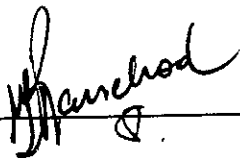
[17] The appellant has accordingly substantially succeeded in the appeal and should be entitled to the costs of the appeal.

[18] In the circumstances I would make the following order:

1. The appeal is upheld in respect of the quantum of damages awarded to the second respondent by the court *a quo*.
2. The award of R300,000 in damages to the second respondent is set aside and in its place is substituted the following:

‘The defendant is ordered to pay the second respondent an amount of R70,000 together with interest at the statutory rate as from the date of judgment and costs.’

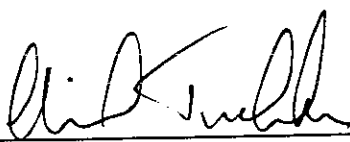
3. The costs of the appeal are to be paid by the second respondent.
4. The dismissal of the first respondent’s claim with costs is confirmed.

  
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N RANCHOD

JUDGE OF THE HIGH COURT

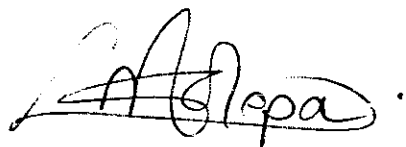
I agree:

  
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N B TUCHTEN

JUDGE OF THE HIGH COURT

I agree:

A handwritten signature in black ink, appearing to read 'L M Molopa-Sethosa', is written above a horizontal line.

L M MOLOPA-SETHOSA

JUDGE OF THE HIGH COURT