



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

DATE: 12 AUGUST 2009

CASE NO: 4291/2007

In the matter between:

CRAIG RIDGARD

PLAINTIFF

VS

THE MINISTER OF SAFETY AND SECURITY

FIRST DEFENDANT

CONSTABLE NDABA

SECOND DEFENDANT

JUDGMENT

BOTHA J

In this case the plaintiff claims an amount of R233 566.16 from the two defendants, the Minister of Safety and Security and Constable Ndaba on account of unlawful arrest.

The defendants accepted the duty to begin and called one witness, Constable Ndaba. The plaintiff gave evidence himself called his attorney, Mr Levitz.

Most of the facts are common cause. I do not intend to summarize the evidence in detail. I shall confine myself to giving a brief background. The plaintiff lives in an apartment in a complex that also houses office buildings. He works from his home. The complainant or complainants in the criminal case that gave rise to the arrest of the plaintiff worked in an office block in the complex. On 7 February 2006 there was an incident apparently caused by the fact that somebody parked his car in the plaintiff's parking space. On that day a police docket on charges of malicious injury to property and intimidation was opened against the plaintiff. See A34. On 15 February 2006 at about 11H00 the plaintiff was arrested in his apartment by Constable Ndaba, who was accompanied by two colleagues. They were in civilian clothes and were using an unmarked police car. The plaintiff was taken to Hillbrow police station. He managed to phone his girlfriend who obtained the services of an attorney, Mr Levitz, who eventually obtained his release on bail. In the mean time the plaintiff was locked into a cell with eight other men. Constable Ndaba excused himself and only returned by about 18h00. The plaintiff was handcuffed and taken to court where, after negotiations with a prosecutor, he was released on bail.

Where there are disputes of fact I accept the version of the plaintiff and Mr Levitz. The plaintiff was a fair and honest witness. Mr Levitz kept notes of the telephone calls to which he testified. Advocate Mthimunya, who appeared for the defendants, wisely refrained from asking him to produce his notes. What is important about Mr Levitz'

evidence is that he testified that Constable Ndaba told him over the telephone that he was in Pretoria, which was not true, and that Constable Ndaba opposed the granting of bail to the plaintiff until the Senior Public Prosecutor decided that bail should be granted.

In respect of the evidence of Constable Ndaba the most serious criticism against him is that he testified that he had already obtained the statement of a complainant before he arrested the plaintiff on 15 February 2006. He explained this discrepancy by saying that he did not have a stamp available on 15 February 2006. This evidence is significant in the context of the instruction Constable Ndaba had received from his captain, namely to conduct further investigation and then to trace and arrest the suspect. See A57. It is obvious that if the statement was obtained on 16 February 2006, as the stamp indicates, that the arrest of the plaintiff was effected without any further investigation.

Constable Ndaba also suggested that the plaintiff tried to escape after he had stopped at the Hillbrow Police Station. I accept the plaintiff's evidence that he opened the door of the police vehicle after two of the other police men had alighted. The suggestion that the plaintiff tried to escape is preposterous. He suffers from CMT (Charcot Marie Tooth disease)' a hereditary neurological disorder which causes him to limp, something that Constable Ndaba also observed. In my view Constable Ndaba, by giving this evidence tried to provide added justification for his decision to arrest the plaintiff.

On a conspectus of all the evidence I am satisfied that there was no justification for the arrest of the plaintiff. I say that for the following reasons:

- (a) he had a fixed address and he was working from his home;
- (b) there was no reason why his attendance at court could not have been procured by means of a summons;
- (c) Constable Ndaba tried to justify his arrest with reference to the charge of intimidation. There was no proper evidence of intimidation, as found by the Public Prosecutor (see A59), and there had been no threats since the incident on 7 February 2006 and the day of the arrest.

(d) The probabilities are that Constable Ndaba merely arrested the plaintiff because he had an instruction to trace and arrest him;.

(e) Constable Ndaba himself said that it was the practice to . arrest all suspects and then to release them on police bail unless intimidation was involved.

(f) Intimidation is not a schedule crime justifying an arrest without a warrant.

The defendants have simply not proved that the arrest of the plaintiff was the only and least invasive means of securing his attendance at court. See **Louw and Another v Minister of Safety and Security and Others 2006(3) SACR 178T at 185 b-e and 187 d-e.**

What remains is the issue of the quantum. The amount of legal expenses, R33 566.16, was proved through the evidence of Mr Levitz. The real issue is what amount should be awarded by way of general damages.

The plaintiff was in custody for some eight hours. He is a sensitive man and experienced his arrest and incarceration as degrading. He was exposed to embarrassment in the complex where he lived and in front of his girlfriend and brother-in-law who attended court. He was locked up in a cell with eight other men. He was handcuffed on the way to court. On the other hand his treatment was by no means as bad as it could have been. He himself described the conduct of the police as benign, meaning unemotional.

It is always difficult to place a monetary value on treatment of this kind. Some useful evidence can be derived from the cases cited in **Minister of Safety and Security v Seymour 2006(6) SA 320 SCA**. I can also refer to **Olivier v Minister of Safety and Security and Another 2008(2) SACR 387W**.

Having considered all the circumstances I am of the view that an award of R50 000.00 would be fair in the circumstances.

Even though the amount I intend to award falls within the jurisdiction of the Magistrate's Court, I am of the view that the case concerns a matter of public interest that justifies costs on a High Court scale.

The plaintiff at the pre-trial conference recorded his problems in getting the defendants to attend a conference and the fact that he would ask the court to justify a punitive award of costs. I do not think that this remissness of the defendants justify an award of punitive costs covering all the proceedings. I shall make an order for costs on a punitive scale only in regard to the pre-trial conference.

In the result the following order is made:

1. The defendants are ordered, jointly and severally, to pay damages to the plaintiff in an amount of R83 566.16.
2. The defendants must, jointly and severally, pay the plaintiffs costs on a scale as between party and party except for the costs relating to the convening and holding of a pre-trial conference, which, including the costs of counsel, shall be paid on a scale as between attorney and client.

C BOTHA

JUDGE OF THE HIGH COURT