

11/12/2009
NOT REPORTABLE

**IN THE HIGH COURT OF SOUTH AFRICA
NORTH GAUTENG-PRETORIA**

Appeal No: 21/08

JOHAN PHILLIP VAN STADEN

Appellant

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/NO.

and

(2) OF INTEREST TO OTHER JUDGES: YES/NO.

(3) REVISED.

ELSABE MAGDELENA CILLIERS

Respondent

10/2/09

DATE

SIGNATURE

Civil Appeal from judgment of Magistrates' Court
Coram Victor J. Sapire AJ

JUDGMENT

SAPIRE, A J:

The respondent sued the appellant in the Magistrate Court, Pretoria claiming

R100 000, 00 for damages allegedly sustained by her as a result of an assault perpetrated on her by the appellant.. She laid great stress on the fact that this assault took place in public where a number of people witnessed the event.

She claims to have been hit by the appellant with a fist on her chest. No other assault is mentioned in their Particulars of Claim. The Particulars of Claim contains little mention of any injuries suffered by her other than emotional trauma. Even this is sparsely described.

In response to her Request for Further Particulars she attached a "doctor's certificate" from Drs Lampbrecht, Greeff and Partners. The report which was not substantiated by evidence is unhelpful in establishing any physical damage resulting from the alleged assault.

The Appellant pleaded to the claim and denied the assault in the alternative alleged that should it be found that he did assault the Respondent that such assault was justified because the Respondent attacked him. The Appellant says that he had a reasonable fear that the Respondent placed him in danger to which he responded with a minimum of force. He says that anything he did was necessary to avoid the Respondent's attack.

Both the Appellant and the Respondent gave evidence at the trial and the Appellant was supported by Moses Ngende. The evidence was, as could be expected, contradictory and it would be difficult to reach a conclusion as to whether the Appellant's or the Respondent's version is correct.

The fracas took place in the following circumstances. On the day in question the Respondent who then had a bar and restaurant adjoining premises of the Appellant was expecting a delivery of beer. When the delivery truck arrived the driver parked the truck in the driveway of the Appellant's premises. Whether or not this caused an obstruction is irrelevant but the uninvited intrusion onto the premises caused the Appellant to become angry. He remonstrated with the driver of the truck. The driver of the truck in turn called upon the Respondent to settle the matter with the Appellant and she came out of her shop so to do.

It seems that when she emerged she was calm enough but the Appellant soon angered her and he in turn tried to stop the delivery of the beer. He pushed or kicked the stack of crates and some of the beer intended for the Respondent was lost when some were broken and the contents spilt. What is clear however is that the Respondent was the first to become physical and she on her own version advanced on the Appellant in order to physically push him away from the stack of beer crates. The Appellant reacted to this and whilst the Respondent made no mention in evidence of being struck with a balled fist, the Appellant he may well have pushed or poked her on her chest. The whole unseemly incident was soon over and the belligerents were separated.

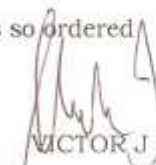
The matter should have ended there and some inoffensive way of delivery beer to the Respondent should and could have been found in reasoned discussions. This did not happen and the Respondent sued in the action and was successful in being awarded the full amount of R100 000,00 claimed by her together with interest and costs. Against this judgment, the Appellant has appealed.

The whole incident in my view should never have become a matter for litigation and I am strongly of the view that this is a case where *de minimis non curat lex*. The assault if any was minimal, and in response to the Plaintiff's unseemly initial resort to the physical. No significant damages are claimable in respect thereof. This is specially so in that whatever force was used by the Appellant was in answer to an undoubted initial assault by the Respondent.

In my view the appeal should succeed with costs. The order of the court *a quo* be set aside to be substituted by "plaintiff's claim is dismissed with costs"


SAPIRE, AJ

I agree and it is so ordered


VICTOR J