



**IN THE HIGH COURT OF SOUTH AFRICA
KWA ZULU NATAL LOCAL DIVISION, DURBAN**

Case No: 3771/2007

In the matter between:

MINISTER OF SAFETY AND SECURITY

APPLICANT

and

JULIAN CLAUDE AUGUSTINE

RESPONDENT

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

S.SINGH AJ

[1] The application before this Court was for leave to appeal against the trial Judgment and Orders granted against the defendant, who is the applicant herein, for the plaintiff, who is the respondent herein.

[2] The application for leave to appeal was opposed by the respondent, represented by his trial attorney N.G. Pillay, and the applicant was represented by a new counsel on M. Govindasamy SC on 25 June 2024 on which date the hearing of this application took place and judgment was delivered with reasons which forms of the records of the hearing on the said date.

- [3] The application for leave to appeal, after arguments for both parties, was refused and not granted by this court.

REASONS FOR REFUSAL OF APPLICATION FOR LEAVE TO APPEAL

- [4] The award of damages as determined and granted by this court is based on the court's wide discretion in determining the fair and reasonable compensation for the respondent which was also commensurate with his injuries inflicted, sustained with long term suffering upon and after the incidents which gave rise to his quantum claims before this court, and also regard was had for all the factual evidence including the pleadings before the court. Previous court decisions with regard to awards made were also considered as a guide only, as this court considered the individual direct factual evidence of the expert witnesses for the respondent in the totality of the evidence which is solely applicable to the quantum case before this court. See *Minister of Safety v Seymour* 2006 (6) SA 320 (SCA) 325 para 17. In awarding the quantum damages, consideration by this court went beyond a day of incarceration which validated the general damages amount for the wrongful arrest, detention and malicious prosecution claims, which is approved by the SCA. See *Motladile v Minister of Police* (414/2022) [2023] ZASCA 274 (SCA) (12 June 2023) para 17, which this court followed in assessing the quantum damages. The SCA in an unreported judgment of *Mandleni v Minister of Police* dated 24 April 2017 case number 37539/14 also confirms that where an arrest was malicious a higher award of damages would be granted which this trial court considered and applied in assessing the quantum damages also.

- [5] There were no reasonable prospects of success to grant the application for leave to appeal. The trial issues raised by the applicant were without any evidence to counteract or rebut the evidence presented for the respondent at the trial, nor did the applicant comply with a prior order of court to lead expert witnesses. Only the respondent led several expert witnesses who verified and confirmed his quantum claims sufficiently in their versions and expert reports. There is confirmation from the several expert reports and expert evidence for the respondent of the work place of the respondent and the job he had prior to the incidents by the applicant which caused the respondent's damages claims. Further his prior education levels were also supported with documentary information, as well as the incidents relevant to his merits and quantum claims, which caused his severe long term damages issues and injuries. There was no abandonment of loss of earnings by the respondent at the trial, which is also an incorrect argument by the applicant's counsel. Further there was no Rule 23 exception by the applicant prior to the quantum trial or the agreed merits, therefore the applicant's argument which raises the point that the respondent's pleadings lack averments to support his claim is also incorrect. Further there was and is no joint expert report in terms Rule 36 of the Uniform Rules of Court, so the applicant's argument for same is incorrect.
- [6] As such, all the issues raised by the applicant's counsel were not corroborated with any supportive evidence at all, and accordingly were of such a nature that the decision sought by the applicant herein has no practical effect or result, which entitled this application to be dismissed by this court and which was done.

The decision sought by applicant herein accordingly falls within the ambit of Section 16 (2) (a) of the Superior Courts Act 10 of 2013.

- [7] The trial only proceeded in respect of quantum which required expert witnesses to be provided by both parties to provide insights and analyses to assist this court in understanding the intricate scientific, medical and specialised information. No expert oral evidence or expert reports were led or presented as evidence by the applicant in this case or at the trial. There was thus no rebuttal of the respondent's several expert evidence at the trial, nor was there corroboration, justification or confirmation of the opposition allegations for the applicant at the trial.
- [8] The mentally, emotionally and physically injured and unfit respondent, as confirmed by his expert witnesses and expert reports, did not testify at the quantum trial. This respondent has previously given direct evidence to all his expert witnesses who observed him directly during consultations with him, saw his severe injured and unfit state and obtained direct information required in respect of his quantum claims and said injured unfit state which was also recorded in the relevant expert reports and the quantum trial expert testimonies. Accordingly the oral evidences of the respondent's expert witnesses and expert reports is and was acceptable to corroborate and justify the quantum trial evidence on his behalf. There was no need, therefore for the respondent to testify at the trial, accordingly and even after all the merits of the respondents claims had been conceded to and agreed to by the applicant on the 18 May 2018 in respect of the unlawful arrest, detention and malicious

prosecution of the respondent. The applicant's previous counsel was given sufficient time and was never interfered with during cross examination of any of the expert witnesses for the respondent at the quantum trial.

- [9] The applicant's argument that the expert's evidence for the respondent which was led at the trial was hearsay or just assumptions was rejected by this court as it was and is not legally or factually correct or applicable to the respondent's several expert witness evidence and expert reports at the quantum trial. Expert witnesses are not lay persons and, as such, expert opinions and assumptions are factually and legally correct and relevant when proved with direct information and direct observations of the respondent provided as evidence at the trial. The various expert versions including their expert reports for the respondent had and has strong probative value which cast an evidential burden on the applicant to present its' own experts versions and expert reports which the applicant failed to do. See *Prince v RAF* (CA 143/2017) [2018] ZA ECGHC 20 (20 March 2018) paras. 55, 56 and 59. There was also compliance by the respondent with Section 15 of the Civil Proceedings Act 25 of 1965 in that the quantum admissions made in the respondent's pleadings and expert trial evidence are relevant, legally and factually validated fully by his several supportive expert witnesses and expert reports plus explanatory pleadings which are satisfactory and were considered together with the respondent's expert trial evidence, with no rebuttal by the applicant who never led any quantum expert evidence.

- [10] The applicant's counsel did accept and agree to the expert evidence plus expert report of the industrial psychologist expert and also the actuarial expert report which was confirmed at the quantum trial by the counsel for the applicant.

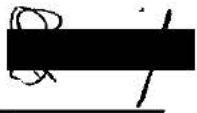
CONCLUSION

In the result, there is no evidence to support the applicant's application for leave to appeal against this court's quantum judgment and orders.

ORDER

The following order is made:

- [1] The application for leave to appeal is refused and dismissed;
- [2] The applicant shall pay into the trust account of attorney NG PILLAY the party and party costs of this application.



S. SINGH AJ

Date of hearing of application: 25 June 2024

Date of Judgment:
(Refusal of Application for Leave To Appeal): 25 June 2024

APPEARANCES

Counsel for the applicant: M. Govindasamy SC

Instructed by: State Attorney KZN

Counsel for the respondent N.G. Pillay

Instructed by N.G. Pillay and Company