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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 2023/025526

1. REPORTABLE: ~~YES~~/ NO
2. OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
3. REVISED: ~~YES~~ / NO

DATE: 20 January 2025

SIGNATURE OF JUDGE:

In the matter between:

STEPHANUS PRETORIUS FRITZ

Applicant

and

THE MINISTER OF POLICE

First Respondent

NATIONAL COMMISSIONER OF POLICE

Second Respondent

JUDGMENT

MEADEN AJ

On 05 NOVEMBER 2024 upon hearing counsel for the Applicant, First and Second Respondents and upon considering the papers, I handed down the following Order:

[1] *“That the application is dismissed.*

[2] *That the Applicant pays the Respondents cost on the attorney and client scale and counsel on Scale B.”*

The above Order was handed down, taking consideration of the undermentioned:

[1] By way of motion process, the applicant sought the undermentioned relief¹:

- (i) An order removing the “*hit*” or “*flagging*” effected by the respondents on the applicant’s passport/identity document;
- (ii) a declaratory order confirming that the first and second respondents’ conduct of “*flagging*” and/or placing a “*hit*” on the applicant’s passport (Number: A[...]) and/or identity number 7[...] was unlawful and unconstitutional;
- (iii) a further declaratory order confirming that the conduct of the first and second respondents in stopping and searching the applicant whenever he crosses the South African Border (be that travelling in or out of RSA) constitutes a direct violation of the applicant’s constitutional rights to human dignity, privacy and freedom of movement; and
- (iv) an order awarding the applicant general damages in the amount of R 1 Million and which damages arise as a result of the first and second respondents’ alleged violation of the applicant’s constitutional rights, unlawful detention, humiliation and embarrassment allegedly suffered by the applicant at the hands of the respondents;
- (v) a special order as to costs of this application and on the attorney and own client scale.

[2] What becomes immediately apparent in perusing the founding and replying affidavits deposed to by the Mr. FS Pretorius - the applicant in this opposed application; is that the applicant for his part has failed to take this court into his confidence in setting out the full factual circumstances of this matter; including

¹ NOM 001-2 AND III.

his alleged unlawful detention, humiliation, public embarrassment and victimization suffered and at the hands of the first and second respondents.

[3] Ad paragraphs 17 – 19 of the applicant's founding affidavit² he records that:

"17. I have been travelling without any hassles by the borders for my entire life and only started experiencing embarrassment, harassment and unlawful detention on port of entry and exit of South Africa on the 14th of January 2022.

18. I was on this day (14 January 2022) unlawfully detained at the airport police satellite station, searched without a warrant and subjected to inhumane treatment, accompanied from port of entry by full police uniform to satellite police station, then to the flight wherein my bags were stripped, then back to the boarding pass gate with the uniform police official in full view of all passengers inclusive of those not flying with me that are awaiting other flights.

19. It was really embarrassing, humiliating, and degrading I must say. It has become an ordeal I had to endure for more than a year now."

[4] The aforesaid is then supplemented with that recorded in paragraphs 20 - 21 of the applicant's Replying Affidavit³ and which paragraphs are recorded below:

"AD PARAGRAPH 10 THEREOF

20. The contents contained in this paragraph is denied, my right of freedom of movement is impaired each and every time that I leave and enter the Republic because I am not allowed to immediately leave the ports of entry. I must first be subjected to undignified stop and search for no apparent or valid reason.

21. Immediately I hand over my passport to Immigration Officer by the counter. The counter is stopped and queue blocked as my passport hit due to flagging. Police officials in full uniform are to take and escort me to the airport satellite office. Search my bags I would be carried. Thereafter escort me the flight to offload my luggages' already packed in the flight. All this happens in full view of all members or airport personnel. In fully view of the public and/or everyone

² NOM 001-10.

³ Applicant's Replying Affidavit 005-10 and 005-5.

walking to various destinations in the airport. It is really embarrassing I have no words to describe it.”

[5] In pursuing this High Court application and over and above that recorded aforesaid; the applicant omits providing additional necessary and material insight and information regarding the following:

- 5.1 The dates and times of the applicant's airline travel;
- 5.2 where the applicant is travelling to and from;
- 5.3 the airports of departure and arrival;
- 5.4 the airlines being flown on;
- 5.5 the airline counters attended on by the applicant;
- 5.6 the applicant's flights and flight numbers;
- 5.7 particulars of how the applicant was allegedly unlawfully detained and the circumstances in which this occurred;
- 5.8 the periods of detention;
- 5.9 where the applicant is allegedly engaged and detained and by whom on arrival at airports;
- 5.10 particulars of what transpires in the course of the alleged detention;
- 5.11 particulars of the conduct including alleged inhumane treatment meted out to the applicant and by whom;
- 5.12 the number and identification of police officials attending on, engaging and escorting the applicant;
- 5.13 particulars relating to the circumstances of the actual searching of the applicant and his luggage and by whom;
- 5.14 particulars of the actual embarrassing, humiliating and degrading circumstances suffered by the applicant.

What is recorded above is not to be construed as being exhaustive of necessary and material information and insights omitted from the applicant's above affidavits. In the absence of the aforesaid necessary insights, this application as compiled by and on behalf of the applicant is bald, vague, embarrassing and actually excipiable.

- [6] The applicant's application as framed leaves the court with more questions than answers. As is apparent from the aforesaid, the applicant's Founding and Replying Affidavits lack necessary and material averments, particularity and documentary evidence including annexures to establish, sustain and prove the applicant's contentions and claims and in the absence of which, render the applicant's application fatally defective.
- [7] This court is not able in these circumstances to determine and establish the full scope and extent of the applicant's application as filed as of record.
- [8] Further and in resorting in pursuing such court process, the applicant was clearly able to anticipate that the allegations contained in his above founding affidavit coupled with the relief sought in the notice of motion would be scrutinized and challenged by and on behalf of the respondents. This indeed occurred and with the respondents opposing this application and filing their answering affidavit. The respondents' disputing of facts and allegations contained in the applicant's application were reasonably foreseeable.
- [9] The respondents in their answering affidavit⁴ have confirmed that the applicant is "*a person of interest*" and in circumstances where the South African Police Services Directorate for Priority Crime Investigation Unit has been in receipt of information relating to the applicant and activities that he may be involved in, including questionable cross border activities entailing his being in contact with a known fugitive of justice – Prophet Bushiri (who the SAPS are seeking to apprehend and extradite back to RSA) and which then renders the applicant a suspect in ongoing police investigations. With this, the respondents then further in their answering affidavit deny the various allegations raised by the applicant, thus resulting in material dispute of facts arising.
- [10] In this context, motion proceedings cannot be resorted to and where material disputes of fact are foreseeable and have actually arisen. Application

⁴ Respondents' Answering Affidavit 004-6 and 004-07.

proceedings are not designed to resolve factual disputes, but rather have as their object; the determination of legal issues based on common cause facts.⁵

[11] This is then aggravated and with the applicant in the course and scope of pursuing such application process, then also resorting and per paragraph 4 of the notice of motion and in introducing an unliquidated financial claim for damages (R 1 Million) and which the applicant can reasonable anticipate will be opposed by the respondents and involve the ventilation and resolution of factual issues associated with such unliquidated claim for damages.

[12] As a general rule, a party claiming damages, must produce the best evidence available to substantiate the claim for damages, so as to enable an accurate assessment to be made thereof.⁶ It is not competent for the court to award an arbitrary approximation of damages to a plaintiff who has failed to produce available evidence upon which a proper assessment of the loss could have been made.⁷ The court cannot embark upon conjecture in assessing damages where there is no factual basis in evidence for an assessment.⁸

[13] In *Greyling v George Randell High School*⁹ the court concurred with the decision in *Leymac Distributors Ltd v Hoosen* which held that the quantum of damages claimed necessarily, has to be assessed by a court on the basis of what the court itself considers to be reasonable, fair and just. The court went further to say “*the court cannot assess the quantum of damages in a vacuum. It has to hear evidence...*”¹⁰

[14] Per Rule 17(2)(a) of the Uniform High Court Rules, a combined summons drawn in accordance with Form 10 is to be used where the claim is not for a debt or liquidated demand. The applicant’s claim contained in paragraph 4 of his notice of motion constitutes an unliquidated claim for damages requiring to be proved and established and which in the ordinary course of being pursued

⁵ *Plascon-Evans Paints (TVL) Ltd v Van Riebeck Paints (Pty) Ltd* [1984] 2 All SA 366 (A).

⁶ *Erasmus v Davis* 1969 2 SA (AA) 227-G (per Muller AJA).

⁷ *Monument Art Co v Kenston Pharmacy (Pty) Ltd* 1976 2 SA 111 (C) 118D-F.

⁸ *Monument Art Co* 118D-F.

⁹ (PR11/22) [2023] ZALCPE 2; [2023] 5 BLLR 412 (LC); (2023) 44 ILJ 1254 (LC) (27 February 2023).

¹⁰ 1974(4) SA 534(D).

would form the subject of a combined summons (as opposed to motion process) and as envisaged in terms of Rule 17(2) of the Uniform High Court Rules.

[15] Further, and per Rule 18(10) of the Uniform High Court Rules, a plaintiff in suing for damages requires to set such claim out in such a manner as would enable the defendant to reasonably access the content thereof and be able to plead thereto. In *Economic Freedom Fighters v Manuel*¹¹ it was held that:

“92. ...an unliquidated claim for damages must be pursued by the institution of an action ... that has always been the position and it is reflected in Uniform Rules of Court. Uniform Rule 17(2) compels a person claiming unliquidated damages to use a long form summons and file particulars of claim, and Uniform Rule 18 (10) obliges a plaintiff suing for damages to set them out in such a manner as would enable the defendant reasonably to access the content thereof and plead thereto....

93. This is not mere technicality. Claims for unliquidated damages by their very nature involve a determination by the court of an amount that is just and reasonable in the light of a number of imponderable and incommensurable factors. That exercise cannot be undertaken in proceedings by way of application.”

[16] The formulation and incorporation of such an illiquid claim for damages in this application in the prevailing circumstances is clearly irregular and with that wholly incomplete. There is no indication of how the applicant’s claim for damages is founded and quantified and the raising of such an illiquid claim for financial damages amounts to an abuse of process.

[17] In *National Director of Public Prosecutions v Zuma*¹², the Supreme Court of Appeal clarified the Plascon-Evans principle as follows:

¹¹ 2021 3 SA 425 SA at para 92.

¹² 2009 (2) SA 277 (SCA), at para 26.

“Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special they cannot be used to resolve factual issues because they are not designed to determine probabilities.”

[18] Rule 6(5)(g) of the Uniform High Court Rules provides that where an application cannot be properly decided on affidavit, the court may dismiss the application or make such order as it deems fit with a view to ensuring a just and expeditious decision.

[19] The applicant in referencing there allegedly being breaches of his rights, including fundamental constitutional rights in this opposed application; then enjoys the onus of formulating and making out a substantial case to this end. With this, the applicant is required to correctly and substantially frame his cause of action and which in the face of foreseeable opposition including disputes of fact arising; will entail leading of oral witness testimony and in the establishment of the applicant's case.

[20] In the face of the applicant's founding and replying affidavits being substantively incomplete and devoid of necessary and material facts required in the proper formulation of the allegations and claims and this then being aggravated with the further introduction by the applicant of the above illiquid financial claim for damages in the amount of R 1 Million and which in so doing; the applicant could and should have realized will culminate in a serious dispute of fact arising that is not capable of resolution on the court papers at hand; this court has proceeded to dismiss the application and with an appropriate punitive order as to costs against the applicant.

ORDER

Accordingly, this application has been dismissed and on the basis below.

[1] “That the application is dismissed.

[2] That the Applicant pays the Respondents cost on the attorney and client scale and counsel on Scale B.”

**MEADEN JR
ACTING JUDGE OF THE HIGH COURT**

This Judgment was handed down electronically by circulation to the parties’ and or parties’ representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be 17h00 on this 20th day of January 2025.

Appearances

For Applicant:	TN Baloyi (Baloyi Ntsako Attorneys Inc.)
For Respondents:	Office of the State Attorney – Ref Mr. E Scharf
Date of Hearing:	05 November 2024
Date of Judgment:	20 January 2025