



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 86694/2014

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES
Date: 14 November 2024

In the matter between:

MARULE: TSHEKO JAPHTA

PLAINTIFF

and

THE MINISTER OF POLICE

DEFENDANT

JUDGMENT

ALLY AJ

[1] In this matter the plaintiff succeeded with a claim, in this Court, wherein defendant was held liable for all proven damages of the plaintiff.

[2] The only aspect to be determined by this Court is therefore the quantum of damages of the plaintiff.

[3] Plaintiff was represented by Adv. D. Mtsweni with Adv. N. Sibeko and the defendant was represented by Adv. T. Madileng.

[4] At the outset, both parties moved for applications in terms of Rule 38(2)¹ of the Uniform Rules of Court and Section 3 of the Law of Evidence Amendment Act². After hearing Counsel for both parties the said applications were granted.

BRIEF FACTUAL MATRIX

[5] The plaintiff was arrested on 5 November 2012 without a warrant and charged with murder, attempted murder, contravention of Sections 5 and 27(1) (c) (read with the provisions of section 1) of the Explosives Act, 26 of 1956, and a contravention of Section 115 of the Correctional Services Act, 111 of 1998.

[6] It is common cause that the plaintiff was released on 6 December 2012, a proverbial month after incarceration.

[7] This Court found, as stated above that the arrest and detention of the plaintiff was unlawful.

QUANTUM EVIDENCE

¹ "The witnesses at the trial of any action shall be orally examined, but a court may at any time, for sufficient reason, order that all or any of the evidence to be adduced at any trial be given on affidavit or that the affidavit of any witness be read at the hearing, on such terms and conditions as to it may seem meet: Provided that where it appears to the court that any other party reasonably requires the attendance of a witness for cross-examination, and such witness can be produced, the evidence of such witness shall not be given on affidavit."

² 45 of 1988

[8] The plaintiff has relied on the expert reports of Dr Stephen Ferreira-Teixeira, a clinical psychologist and Dr JP Roux also known as Dr K Roux, a psychiatrist.

[9] Dr Teixeira's evidence is to the effect that the plaintiff, psychologically, presented with minimal features of depression, low levels of anxiety, and minimal symptoms of PTSD which demonstrated that he had adjusted coped adequately following the traumatic events that happened to him some 12 years ago³.

[10] Dr Teixeira does conclude that from a psychological point of view, plaintiff's involvement in the incident has had a 'significant impact' on his psychological capacity⁴. His recommendation is that the plaintiff would benefit from psychotherapeutic intervention to help him overcome his ongoing emotional difficulties⁵. In this regard Dr Teixeira recommends an estimate of 12-16 sessions at a cost of approximately R1200-00 per session.

[11] Dr Roux's evidence is to the effect that the plaintiff has suffered from major depression and PTSD from 2012 to 2017 and that the plaintiff will benefit from ongoing psychiatric treatment for 2 to 5 years at an approximate cost of R25 000-00 per annum.

[12] The defendant relied on the evidence of Evelyn Nagel, a clinical psychologist who had sight of Dr Roux's report.

³ Caselines: Section 003-14 para (a)

⁴ Caselines: Section 003-14 para (e)

⁵ Caselines: Section 003-14 para (f)

[13] Ms Nagel concluded that, from a psychological perspective, the plaintiff's symptoms point to residual symptoms of post traumatic stress and anxiety that has persisted for longer than a decade and can be considered as relating to the incident⁶. Ms Nagel furthermore recommends 12 sessions of psychotherapy at approximately R1200-00 per session.

ANALYSIS AND EVALUATION

[14] An instructive guide, in my view, in determining the quantum of damages for unlawful arrest and detention is the case of **Minister of Safety and Security v Tyulu**⁷

*"[26] In the assessment of damages for unlawful arrest and detention, it is important to bear in mind that the primary purpose is **not to enrich** the aggrieved party but to offer him or her some much-needed solatium for his or her injured feelings. It is therefore crucial that serious attempts be made to ensure that the damages awarded are commensurate with the injury inflicted. However, our courts should be astute to ensure that the awards they make for such infractions reflect the importance of the right to personal liberty and the seriousness with which any arbitrary deprivation of personal liberty is viewed in our law. I readily concede that it is impossible to determine an award of damages for this kind of injuria with any kind of mathematical accuracy. Although it is always helpful to have regard to awards made in previous cases to serve as a guide, such an approach if slavishly followed can prove to be treacherous. The correct approach is to have regard to all the facts of the particular case and to determine the quantum of damages on such facts (**Minister of Safety and Security v Seymour** 2006 (6) SA 320 (SCA) at 325 para 17; **Rudolph and Others v Minister of Safety and Security and Another** 2009 (2) SACR 271 (SCA)."*

⁶ Caselines: Section 003-71

⁷ 2009 (2) SACR 282 SCA

[15] I align myself with the principle that an arithmetic calculation taking into the number of days and multiplying same by R15 000-00 per day is unhelpful and that each case must be dealt with according to its own facts. Furthermore, the deprivation of one's liberty is incongruent with the principles of our Bill of rights and the Constitution.⁸

[16] The plaintiff in this case has sought the expert opinion of experts to assist the Court in determining a fair and reasonable quantum in this matter. The evidence of both parties is, to a large extent, common cause. The evidence of the experts falls within the guidelines of the Supreme Court outlined above.

[17] Counsel for both parties provided the Court with comparative cases and the Court is appreciative of same.

[18] The plaintiff has furthermore claimed for future medical expenses to which the defendant had no objection. In this regard the experts have provided the Court

⁸ Motladile v Minister of Police 2023 (2) SACR 274 SCA at para 17:

'[t]he assessment of the amount of damages to award a plaintiff who was unlawfully arrested and detained, is not a mechanical exercise that has regard only to the number of days that a plaintiff had spent in detention. Significantly, the duration of the detention is not the only factor that a court must consider in determining what would be fair and reasonable compensation to award. Other factors that a court must take into account would include (a) the circumstances under which the arrest and detention occurred; (b) the presence or absence of improper motive or malice on the part of the defendant; (c) the conduct of the defendant; (d) the nature of the deprivation; (e) the status and standing of the plaintiff; (f) the presence or absence of an apology or satisfactory explanation of the events by the defendant; (g) awards in comparable cases; (h) publicity given to the arrest; (i) the simultaneous invasion of other personality and constitutional rights; and (j) the contributory action or inaction of the plaintiff.'

with an approximate number of sessions as well as an approximate amount per session.

CONCLUSION

[19] I have had regard to the expert reports and I am of the view that the sessions required by the plaintiff for psychotherapeutic treatment must be pegged at 12 sessions at an amount of R1200-00 per session which will amount to **R14 400-00** [fourteen thousand four hundred rand].

[20] The Court has only the evidence of Dr Roux to take into account when determining the amount to be determined for psychiatric treatment of the plaintiff. Dr Roux has given an approximate number of years being 2 to 5 years at an amount of R25 000-00 [twenty-five thousand rand]. Counsel for the plaintiff has recommended a median with regard to the number of years. This Court cannot find any reason why this approach should not be followed and in any event the approach accords with reason and fairness to the both parties. Accordingly, the amount of **R87 000 - 00** for psychiatric treatment is fair and reasonable.

[21] In respect of the amount for unlawful arrest and detention, I am of the view that a reasonable amount based on the facts of this case is an amount of **R600 000-00** [six hundred thousand rand].

COSTS

[22] There is no reason why this Court should deviate from the norm that costs follow the result. However, plaintiff's Counsel has requested that the costs be costs of two Counsel. The basis of this request is that my sister Van der Schyff J found

that 2 Counsel were warranted and accordingly the same reasoning should be applied at this stage of the proceedings.

[23] In my view, I can find no reason why the costs of two Counsel should not be awarded.

Accordingly, the following Order shall issue:

- a). An Order in terms of the Order marked "X" is made an Order of Court.



ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

Electronically submitted therefore unsigned

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 14 February 2024

Date of virtual hearing: 5 February 2024

Date of judgment: 14 November 2024

Appearances:

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