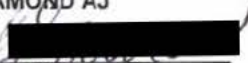


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)

CASE No: 8085/2021

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO THE JUDGES: YES/NO
(3)	REVISED: YES/NO
DIAMOND AJ	
	14/03/2021
SIGNATURE	DATE

In the matter between:

PAUL TSHAMANO

PLAINTIFF

And

MINISTER OF POLICE

DEFENDANT

JUDGMENT

DIAMOND A J:

[1] On or about 14 November 2018 the Plaintiff, while in Johannesburg received a call from a police officer a certain officer Moraba from the Polokwane police station. The warrant officer enquired about the Plaintiff's whereabouts and requested the Plaintiff to arrive at the Polokwane police station. The Plaintiff indicated to the warrant officer that he was in Johannesburg but that he would visit the police station the following day upon his return.

[2] The Plaintiff presented himself at the police station on 15 November 2018. He was arrested summarily without a warrant and the police officers alleged that he committed fraud as intended in section 1 of act 51 of 1977, on or about 17 October 2018 at or near Hans van Rensburg Street in the district of Polokwane.

[3] The Plaintiff was detained for one day without release on bail.

[4] Resulting from the rest the case was opened against the Plaintiff

[5] Resulting from the arrest the case was opened against the Plaintiff, but the case was withdrawn and struck from the roll on 16 November 2018 due to a lack of evidence.

[6] The Plaintiff issued summons against the Defendant on 22 September 2021, for payment of an amount of, amongst others, R 2 500 000,00 general damages resulting from what he alleged to be unlawful detention. In its plea the Defendant filed a bare denial.

[7] The plea and the defence of the Defendant were struck on 8 October 2024 since the Defendant failed to comply with a court order dated 25 April 2024 to make discovery in terms of Rule 35 (7).

[8] The Plaintiff now applies for default judgement in terms of Rule 31(2)(a), for judgement for general damages in the amount of R 2 500 000-00.

[9] At the hearing Counsel representing the Plaintiff, Mr Sikhwari SC, argued that a quantum of R 500 000-00 should be awarded to the Plaintiff, being a justifiable amount compensating the Plaintiff for general damages suffered.

[10] I agree with the submissions made by Mr Sikhwari.

[11] I am fully conscious of the fact that an amount of R 500 000-00 may seem unjustifiably high given the fact that the Plaintiff was a single night in detention.

[12] Mr Sikhwari referred the court to the case of *Motladile v Minister of Police*¹, in which the Supreme Court of Appeal explicitly stated that the duration of the detention is not the only factor that the court must consider in determining what would be a fair and reasonable award. Other factors are the following: the circumstances under which the arrest and

¹ 2023(2) SACR 274 (SCA).

detention occurred, the presence or absence of improper motive or malice on the part of the Defendant, the conduct of the Defendant, the nature of the deprivation, the status and standing of the Plaintiff, the presence or absence of an apology or satisfactory explanation of the events by the Defendant, the simultaneous invasion of other personality and constitutional rights and the contributory action or inaction of the Plaintiff.

[13] In my view, the following factors are relevant and substantiates the amount of R 500 000-00 to be awarded.

- The Plaintiff received a telephone call from a police officer requesting into present himself to the police station in Polokwane.
- He did so at his earliest convenience.
- He is summarily arrested on suspicion of fraud, however up until today not a single explanation has been given by the Defendant as to why the arrest took place. It is mind-boggling that the Plaintiff was arrested in the first instance: what one would have expected was that the police officers should have realised that they dealing with a law-abiding citizen that cooperates with the requests of the police and that they would be no need to arrest the Plaintiff, at

least not before any investigators work had been done.

- In any event, after the investigation had been done the criminal case was withdrawn struck of the role and still as of yet, there is no explanation why the arrest took place.
- While in detention, the Plaintiff was locked up in an overcrowded police holding cell in Polokwane. The cell was filthy and there was no proper sanitation. There was no bed to sleep on. During the night there were attempts by some inmates to sodomise the Plaintiff. When the Plaintiff alerted the police officials of these attempts, they simply stated that this was the normal lifestyle of incarcerated people in custody. He had to fight off attempts to sodomise him the whole night. When he had to relieve himself, it was in full sight of these people.
- The Plaintiff is a successful businessman in Polokwane and is married with children.
- He states that the entire experience was dehumanising and it is adversely affecting his relationship with his wife and his children.

[14] In my view, the conduct Defendant compounds an already unacceptable situation: There is not the slightest indication as to what led to the immediate arrest. Members of the public are entitled to rely on an assumption that police officials would act lawfully and legally within all circumstances. In the context of this case the Plaintiff cooperated with the police and could have expected the police to independently investigate any allegations against the Plaintiff that he committed fraud as was alleged. This was not done, nor was there any indication at a later stage as to why the police official deemed it necessary to effect an immediate arrest.

[15] The circumstances under which the Plaintiff was detained were shocking. The unconcerned attitude of the police officials when the Plaintiff attempted to report the fact that inmates tried to sodomise him, is unforgivable.

[16] Several common law, statutory and constitutional rights of the Plaintiff were infringed upon -with no explanation or apology whatsoever.

[17] For the above reason I am of the opinion that the Plaintiff is entitled to judgement in his favour, for an amount of R 500 000-00.

[18] Mr Sikhwari handed the draft order in. I marked the court order "x" and I order that the draft order "X" is made an order of court.



G DIAMOND AJ
ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION: POLOKWANE

APPEARANCES:

FOR THE PLAINTIFF : ADV. S. SIKHWARI SC

INSTRUCTED BY : MK MULAUDZI ATTORNEYS

FOR THE DEFENDANT : No Appearance

INSTRUCTED BY : STATE ATTORNEYS:
POLOKWANE

DATE OF HEARING : 07 MARCH 2025

DATE OF JUDGMENT : 14 MARCH 2025