

REPUBLIC OF SOUTH AFRICA



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

Case Number: 22854/16

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES:NO
(3) REVISED: NO

DATE :03/06/2025

SIGNATURE

In the matter between:

LESETJA VICTOR SEROTE

Plaintiff

And

MINISTER OF POLICE

Defendant

JUDGEMENT

Mzuzu, AJ

Introduction

[1] On or about 23 March 2016, the plaintiff instituted action against the defendant for damages arising from an unlawful arrest and detention that took place on 5 December 2014 through to 6 December 2014 (about 8 hours).

[2] On 23 August 2019, the matter was set down for hearing wherein the merits were settled and or decided in favour of the plaintiff in accordance with the court order¹ dated 23 September 2019.

[3] The matter is before this Court now for the determination of quantum.

[4] The quantum is premised on a claim for general damages arising from the experienced pain and suffering brought about by the resultant deprivation of liberty, discomfort and inconvenience.

[5] The quantum is further premised from the plaintiff's claim of loss of income suffered as a result of his dismissal from employment, which dismissal was caused by his incarceration which ended with the plaintiff being called in a disciplinary hearing for being absent at work on 6 December 2014.

Background

[6] It is alleged by the plaintiff that he was unlawfully arrested and detained by the defendant without a warrant on 5 December 2014 at about midnight at the Attridgeville Police Station in Pretoria, Gauteng. He was released the following day by the defendant on 06 December 2014. Due to the unlawful arrest he suffered general damages and loss of income as he was dismissed for being absent from work.

[7] The defendant conceded that the plaintiff was unlawfully arrested and detained by the defendant, and that the defendant is liable to compensate the

¹ section 012-3 of case lines

plaintiff for whatever damage that may be proven by the plaintiff. The merits were settled in accordance with the order dated 23 September 2019,

[8] As a result, the matter was set down for hearing on quantum in respect of general damages and loss of income. Only the plaintiff was called to testify and he gave oral evidence.

Facts That Are In Dispute

[9] Quantum of the general damages and claim for the loss of income are in dispute.

Facts Not In Dispute

[10] There is no dispute regarding compensation for general damages. The only issue is how much the plaintiff should be compensated.

Plaintiff's Case

[11] The plaintiff testified in summary as follows:

[12] He is Lesetja Victor Serote, an adult male residing at Limanyorela Street, Atteridgeville, Pretoria, Gauteng.

[13] It was common cause that he was arrested unlawfully and detained by the defendant on the 5 December 2014 and released on the 6 December 2014, he was incarcerated for about 8 hours.

[14] He had gone to Atteridgeville police station to open a criminal case of house breaking. On arrival members of the public were standing in a queue, he noticed that the police who ought to give him/them service was not giving him/them the service. He voiced out his dissatisfaction of not being given service.

[15] The police officer told him that he will show him and proceeded to escort him to the police holding cell. The police officer arrested him for requesting his attention. The arresting documents indicated that he was arrested for drunkenness, he went to the police station at 11:30 and he was arrested according to the detention register at 03:45. The day of the arrest was on the 5 December 2014 Friday, and he was detained. While he was in detention on Saturday he informed the police that he had to be at work. The police displayed indifference towards him; despite his repeated requests to contact his employer telephonically, he was denied access to such facilities until his release on 6 December 2014.

[16] On 11 December 2014 after he was released, a disciplinary hearing was held and a verdict of dismissal was given. Since that time, he has experienced difficulty securing employment, resulting in his inability to meet his financial obligations. He was a sales person earning R2 500.00 per month. Only on 28 November 2018 he secured employment at Mabilo Investment.

[17] The plaintiff is claiming, in respect of general damages, a sum of R100 000.00 and R241 773.00 in respect of loss of income alternatively R120 886.00 (50% apportionment).

The Defendant's Submission

[18] The defendant submitted its defence as follows:

[19] The merits in terms of the unlawful arrest and detention have been settled, the quantum to be considered is limited to deprivation of liberty, discomfort, inconvenience and *contumelia* as appearing on paragraph 7 and 8 of the particulars of claim totalling R300 000.00.

[20] The claim for loss of income is a non-starter, loss of income or employment is a form of delict giving rise to patrimonial damages. It is an *aquilian* action that must be pleaded properly and proved. However, the claim for loss of income is moot as the merits were settled on 23 August 2019.

Analysis Of The Evidence

[21] In dealing with an award for damages arising from unlawful arrest, the SCA in *Minister of safety and security v Tyulu* said the following²:

“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 feeling. 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 damages they make for such infractions reflects the importance of the right to personal liberty and the seriousness with which arbitrary deprivation of personal liberty is viewed in our law. I readily concede that it is impossible to determine any 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 previous as a guide, such an approach is to have regard to all the facts of the particular case and to determine the quantum of damages on such facts”.

[22] It is alleged that the plaintiff was arrested and detained on 5 December 2014 at 03h34 for drunkenness without a warrant. On 6 December 2014 at 12h40 he was released. The plaintiff was therefore arrested and detained for approximately 8 hours.

[23] The court must consider the following factors in awarding damages

- a. The circumstances under which deprivation took place³;
- b. Presence or absence of improper motive on the part of the defendant⁴;
- c. The harsh conduct of the defendants⁵;
- d. The duration and nature of the deprivation of liberty⁶;
- e. The status and standing of the plaintiff⁷;

² 2009 (5) SA 85 par [26]

³ Ramakukulusha v Commander, Venda National Defence Force 1989 (2) SA 813 (v) at 375.

⁴ Thandani v Minister of Law and Order 1991 (1) SA 702 (E) at 707.

⁵ Stapeberg v Afdelingsraad van die kaap 1988 (4) SA 875 (c).

⁶ Goldschagg v Minister Van Polisie 1979 (3) SA 1284 (T) at 1303.

⁷ Minister van Wet en Orde v Van Der Heever 1982 (4) SA 16 (c) at 22.

- f. The extent of publicity given to the deprivation of liberty;
- g. The presence or absence of apology or satisfactory explanation of events by the defendant⁸;
- h. Honor and good name have been infringed;
- i. High value of the right to physical liberty⁹;
- j. The fact that *action iniarum* has a punitive function.

[24] The approach for arriving at the quantum of general damages is well established. A court, at all times, endeavours to determine a just and equitable award aimed at compensating for the adverse impact on the injured party's quality of life and emotional well-being. There are no two cases that will ever be the same. The award may not adequately compensate the injury but it must be fair and reasonable. It must take into account, for instance, the premium placed against the deprivation of freedom to liberty which is constitutionally protected.

[25] The amount of the award for general damages is not susceptible to a precise calculation. It is arrived at in the exercise of a broad discretion¹⁰ bestowed to the trial court. The discretion must be exercised reasonably¹¹. At the end of the day, a court is called upon to exercise its discretion to determine an amount which it feels is fair and reasonable to both parties, given the particular circumstances of the case in question¹².

[26] The constitutional court in the matter of *Mahlangu and Another v Minister of Police*¹³ held that:

"It is trite that damages are awarded to deter and prevent future infringements of fundamental rights by organs of state. They are a gesture of goodwill to the aggrieved and they do not rectify the wrong that took place. In Seymour, the Supreme Court of Appeal encapsulated the purpose of damages and said:

⁸ Makhanya v Minister of Justice 1965 (2) SA 488 (N) at 492

⁹ Masawa v Chabata and Another 1991 (4) SA 764 (ZH) at 774

¹⁰ See Minister of Safety and Security v Augustine and Others 2017 (2) SACR 332 (SCA) at para 25.

¹¹ Dikoko v Mokhatla 2006 (6) SA 235 (CC) at para 57

¹² See Komaphe and Others v Minister of Basic Education and Others 2020 (2) SA 347 SCA at para 56

¹³ [2021] ZACC 10 at para 50

"Money can never be more than a crude solatium for the deprivation of what in truth can never be restored and there is no empirical measure for the loss".

[27] In *De Klerk v Minister of Police*¹⁴ the aggrieved party had been in detention for eight days. In that matter, as it is the case in the present matter, the quantum of damages was not seriously challenged. The court awarded a sum of R300 000.00.

[28] In *Mahlangu*¹⁵ the aggrieved had been detained for eight months and ten days. Taking into account their peculiar circumstances the court awarded them R550 000 and R500 000 respectively.

[29] In the case of *Minister For Safety and Security v Scott and Another*¹⁶ the plaintiff was arrested for nine hours and the SCA reduced the amount of R75 000 awarded by the court to R30 000. In today's value the amount is approximately R40 000.00.

[30] In the case of *Tyulu*¹⁷, the plaintiff, a Magistrate, was awarded R15 000 for having been detained for 9 hours. In today's value the amount is R40 000.00

[31] Considering the circumstances under which the deprivation took place, the fact that the defendant had improper motive, the duration of deprivation, the importance of the right to freedom and security and the above-mentioned comparable case laws, I am of the view that a sum of R20 000,00 is a fair award to compensate the plaintiff.

Loss Of Income

[32] It is trite law that when dealing with the plaintiff's loss of income, the plaintiff has a duty to prove his claim for loss of income.

¹⁴ 2019 [12] BCLR 1425,-[2019] ZACC 32

¹⁵ *Supra* at fn 13.

¹⁶ 2014 (6) SA 1 (SCA) at paras 1 & 24

¹⁷ *Supra* at fn 2.

[33] In this case the plaintiff testified in respect of how he is entitled for the claim of loss of income suffered as a result of the dismissal from employment which dismissal was caused by his incarceration.

[34] The court is satisfied that the plaintiff proved on a balance of probabilities his claim for loss of income, in that the defendant had also contributed to the dismissal of the plaintiff in that, had it not been for the conduct of the defendant the plaintiff would not have been dismissed from work.

[35] The court also needs to take into consideration that the plaintiff was already on a final written warning, he could have been dismissed for any other conduct that could have arisen. His employment was hanging on a high risk of dismissal even before the arrest. For this reason, a fair award for loss of income would be the one that takes into account this fact. In the circumstances it would be proper to apply higher than normal contingency. This will account for a possibility that the plaintiff could be dismissed for other cause. For instance, he could be absent from work for any other reason. And since he was already on a final written warning due to his bad record at work, he could have been dismissed. He should not be compensated for his bad record at work. The other is that, since he was dismissed, he did not have to spend money on travelling to work. This would imply a saving on his part. I am of the view that a 20% contingency should be applied. It will be applied accordingly in the final award for loss of income.

[36] The plaintiff testified that he was earning a sum of R2578.00 per month. The plaintiff did not lead evidence of an actuary. Although there is an actuarial report, that evidence was not introduced and parties did not record any agreement in that regard. For that reason I will not use the actuarial report to arrive at the amount for compensation. Nevertheless, the court is duty bound to do its best to arrive at an award based on the material before it. In this case, the material available is that plaintiff was earning a sum of R2578.00 per month. He was out of employment from December 2014 to November 2018. This is equal to forty-seven (47) months. For this period on ordinary calculations the plaintiff would have earned a sum of R121 166.00 . Applying the 20% contingency, the total would be R 96,932.80

Conclusion

[37] Considering all of the above the plaintiff's claim for general damages and loss of income succeeds with costs. Given the ultimate award on quantum, I am of the view that costs should be in the Magistrates' court scale, and I will award them as such.

ORDER

[38] In the result, the following order is made:

1. GENERAL DAMAGES

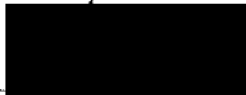
- 1.1. The defendant is liable to compensate the plaintiff for damages arising from unlawful arrest and detention of a sum of R20 000.00.

2. LOSS OF INCOME

- 2.1. The defendant is liable to compensate the plaintiff for a loss of income of a sum R96 932.80.

3. COSTS

- 3.1. The defendant shall pay the plaintiff costs of the action on the magistrate court scale.


N MZUZU
ACTING JUDGE OF THE HIGH COURT
PRETORIA

APPEARANCES

Heard on:	:	06 FEBRUARY 2025
Judgment delivered on:	:	03/06/2025
For the Plaintiffs:	:	Adv A MOJA
Instructed by		FM MALESA ATTORNEYS
For the Defendant:	:	Adv WN MOTHIBE
Instructed by:		The State Attorney