



IN THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION

MBOMBELA (MAIN SEAT)

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

CASE NUMBER 3589/2022

01 August 2025
DATE

SIGNATURE

WONDER MDUDUZI NKAMBULE

PLAINTIFF

And

**MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES**

1ST DEFENDANT

**NATIONAL COMMISSIONER OF CORRECTIONAL
SERVICES**

2ND DEFENDANT

**PROVINCIAL COMMISSIONER OF CORRECTIONAL
SERVICES, MPUMALANGA**

3RD DEFENDANT

JUDGMENT

SHAI AJ

Introduction and Background

[1] This is a claim for damages arising from an unlawful detention. When the matter came before court merits and quantum were still in dispute.

[2] Plaintiff had been sentenced to life imprisonment on 25 November 2013.

[3] The judgment and sentence were subsequently successfully appealed against on 16 December 2021.

[4] An order for the release of the plaintiff was given on the same day, i.e 25 November 2025.

[5] Apparently, the order for the liberation of the plaintiff was not timeously transmitted to the personnel of Correctional Services, as it should have been. As a result of this failure, plaintiff was only released from his detention on 4 March 2022.

[6] It is common cause that the Department of Justice and Department of Correctional Services fall under the same Ministry.

Issue

[7] The issue for determination herein is whether the detention was unlawful or not;

7.1 If found to be unlawful, there should be a determination as to how much the plaintiff should be compensated for.

Detention

[8] Detention is, in and by itself, unlawful. The *onus* rests on the detaining officer to justify it.¹ The Constitutional Court remarked that the question whether the applicant's detention was consistent with the principle of legality and his right to freedom and security of the person in s 12 of the Constitution, is a constitutional matter. S 12(1) of the Constitution guarantees that everyone has the right to freedom and

¹ Zealand v Minister of Justice and constitutional Development and Another [2008] ZACC 3; 2008 (2) SACR 1 (CC)

security of the person, which includes the right not to be deprived of freedom arbitrarily or without just cause.

Quantum

[9] Concerning deprivation of liberty, Erasmus J in *Ntshingana v Minister of Safety and Security and Another*² referred to the general principles that the amount of damages to be awarded when determining the *quantum* of damages in matters which concern unlawful deprivation of liberty, is in the discretion of the court, amounts to an estimate, is calculated *ex aequo et bono* and is based on the extent and nature of the violation of the personality.

[10] In assessing the *quantum* of damages, Bosielo AJA, as he then was, in *Minister of Safety and Security v Tyulu*³ held:

“[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

² [ECD 14 October 2003] (case no 1639/01)

³ 2009 (5) SA 85 (SCA)

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 (5) SA 94** (SCA) ([2009] ZASCA 39) paras 26 - 29)".

[11] Past awards can, therefore, be used for guiding the Court in determining what a fair and reasonable compensation is.

[12] It was held in *Minister of Safety and Security v Seymour*⁴ that -

"The assessments of awards of general damages with reference to awards in previous cases is fraught with difficulty. The facts of a particular case need to be looked at as a whole and few cases are directly comparable. They are useful guide to what other courts have considered to be appropriate but they have no higher value than that".

[13] In *Maphalala v Minister of Law and Order (WLD, Case No. 29537/93, 10 February 1995)*, the Plaintiff therein was detained for approximately three (3) months and assaulted. He was awarded an amount of R145 000 (presently R300 000).

[14] In *Sibuta and Another v Minister of Police and Another*⁵ the Plaintiff therein was awarded R470 000 for unlawful arrest and detention, he having been detained for fifteen (15) days.

[15] In *Oriyomi v Minister of Police*⁶ the Plaintiff therein was awarded R120 000, he having been in detention for about four days

⁴ 2006(6)SA 320(SCA) para 17

⁵ (3709/2016; 3710/2016[2020]ZAECGHC 6(15 January 2020)

⁶ (14132/13)[2020]ZAGPPHC 224 (6 April 2020)

[16] In *De Klerk v Minister of Police*⁷ the plaintiff was granted R30 000 for having spent almost an hour in detention.

Evaluation

[17] It was argued on behalf of the Department of Correctional Services that the delay in releasing the plaintiff was occasioned by personnel in the Department of Justice. This argument becomes academic when one considers that the Departments fall under the same Ministry.

[18] A finding that the delay was occasioned by the Department of Justice will render the same Minister for Correctional Services liable to compensate the plaintiff.

[19] Be as it may, I find that on the facts before this Court that the delay was occasioned by the Department of Justice in delaying to timeously remit the warrant of liberation to the Department of Correctional Services.

[20] In my view, this is a matter wherein I have to make a sound estimate of an amount which seems to me to be fair and reasonable. In doing so I have considered, *inter alia*, that the plaintiff was detained for 77 days.

Conclusion

[21] I am satisfied that the Plaintiff successfully proved, on a balance of probabilities that his detention was unlawful. He was thus arbitrarily deprived of his freedom or without just cause. and he should be compensated.

[22] In my view, a fair and reasonable compensation is an amount of R750 000-00

[23] Consequently, the following order is made:

1. The Defendant is ordered to pay to the Plaintiff a total amount of R750 000-00 .
2. Defendant is ordered to pay costs of suit, including costs of Counsel, on a party and party Scale B.

⁷ (329/17)[2018]ZASCA 45 (28 March 2018)



SHAI AJ

DATE OF HEARING: : 24 February 2025

DATE OF JUDGMENT : **01 August 2025**

This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be **15h00** on **01 August 2025**.

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