NOT REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH)

In the matter between: **Case No: CA156/2012**

MINISTER OF SAFETY & SECURITY **Appellant**

And

MXOLISI JOHN MOKOROTLO **Respondent**

Coram: **Chetty and Eksteen JJ**

Heard: **28 February 2014**

Delivered: **6 March 2014**

Summary: ***Arrest*** *– Without warrant – Defendant pleading no knowledge of arrest – Plaintiff's evidence that he provided false name on arrest – Police station documentation reflecting name – Defendant adducing no evidence to rebut plaintiff's case – Appeal directed at Magistrate's factual finding – No basis warranting interference – Appeal dismissed*

JUDGMENT

Chetty J

[1] It is regrettable to preface this judgment by registering our disapproval at the noting and prosecution of this appeal. It was ill advised and a complete waste of limited state resources. For the sake of convenience, I refer to the parties as in the court below.

[2] In his particulars of claim the plaintiff alleged that he was unlawfully arrested on 22 October 2004 and detained until 07h30 on 23 October 2004. In its plea thereanent, the defendant averred: -

> "**Ad Paragraph 5**
>
> The contents of this paragraph are unknown to the Defendant and therefore the Defendant denies each and every allegation contained herein, and the Plaintiff is put to the proof thereof."

[3] The plaintiff was the only witness called to testify in the court below. What follows is a précis of his testimony. At approximately 7 p.m. on 22 October 2004 and whilst walking en route from a tavern to his home, he was approached by a policeman and admonished for being intoxicated. A scuffle ensued and he was arrested, assaulted, placed in a police van and taken to the local police station where he was detained in the cells until his release the following morning. He stated that on

arrival at the Bethelsdorp police station he furnished a false name, to wit, *Vuyisile Njikilana* because he was scared. It is not in issue that exhibit "A", the usual notice of rights pursuant to the provisions of s 35 of the Constitution reflects the name of the detainee as being one *Vuyisile Njikilana* and records the time and date as 19h30, and 22 October 2004, respectively.

[4] The occurrence book, exhibit "B, at entry number 1674 reflects the arrest of *Vuyisile Njikilana* in CAS 599/10/2004 on a charge of riotous behaviour. The cell register, exhibit "C", records that the said *Vuyisile Njikilana* was detained in the cell for riotous behaviour. It furthermore notes the reason for his discharge on 23 October 2004 as J534[1]. In his evidence in chief the plaintiff was referred to the aforestated documents, and confirmed that the name *Vuyisile Njikilana* was that furnished by him, that the notice of rights was signed by him and that although on his release he was given a document to pay a fine, he failed to do so.

[5] Although the plaintiff's evidence was not without blemish, his version went uncontradicted. He denied being intoxicated and maintained that he was arrested for some unknown reason. The defendant's case was closed without the adduction of any evidence. The crux of the argument advanced in the defendant's heads of argument was that the trial court misdirected itself in finding that the plaintiff and the person *Vuyisile Njikilana*, referred in the various exhibits referred to hereinbefore, was one and the same person. The trial court's acceptance of the plaintiff's

[1] Although no evidence was adduced as to its meaning, plaintiff's counsel's intimation to the magistrate was that it referred to a so-called spot fine. Appellant's legal representative silently acquiesced therein.

testimony was impugned on two main bases viz, the inability of the plaintiff to recall the date and place of his arrest and the alleged confusion concerning his geneology. The plaintiff's inability to remember the detail surrounding his arrest does not redound to his detriment. He testified more than eighteen months after the arrest. His confusion concerning his lineage is no doubt attributable to the convoluted cross-examination. On a conspectus of the plaintiff's testimony, the trial court had due regard to the imperfections therein but concluded that he was truthful. The transcript vouchsafes the magistrate's findings. There is, in my view, no proper basis warranting interference with those factual findings.

[6] In the absence of any controverting evidence, the trial court was entitled to find that the plaintiff had indeed been arrested and had furnished the false name to the police. Had the defendant elected to dispute such evidence, it was at liberty to call the police officer who had effected the arrest of *Vuyisile Njikilana*. At the close of the plaintiff's case the matter was postponed because of the lateness of the hour which, according to defendant's legal representative, militated against calling their witnesses. It is apparent from the judgment that on the resumed hearing, the defendant adduced no evidence and merely closed its case. One must assume that the defendant did so with full realisation of the consequences. To now complain that an injustice occurred because no witnesses were called is a spurious submission.

[7] Although Mr *Dala*, in his supplementary heads of argument, mounted an attack on the quantum of the damages awarded to the plaintiff, the notice of appeal is confined to the magistrate's factual findings as adumbrated hereinbefore.

Magistrates' Court's Rule 51 (7) (b) requires an appellant to state ***"the grounds specifying the findings of fact or rulings of law appealed against"***. The rule is couched in peremptory terms. The absence of any ground of appeal pertaining to the quantum of the damages awarded to the plaintiff signifies that the defendant took no issue therewith. In the result the following order will issue: -

The appeal is dismissed with costs.

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D. CHETTY

JUDGE OF THE HIGH COURT

Eksteen, J

I agree. It is so ordered.

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J.W. EKSTEEN

JUDGE OF THE HIGH COURT

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