

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

Case No: 30337/2015

REPORTABLE: No
OF INTEREST TO OTHER JUDGES: No
REVISED: NO

DATE

30/11/2022

SIGNATURE

[Handwritten Signature]

In the matter between:

SIBIYA KHAKHWE THOKOZANI

PLAINTIFF

and

MINISTER OF POLICE

DEFENDANT

JUDGMENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email, and uploaded on caselines electronic platform. The date for hand-down is deemed to be 30 November 2022.

JUDGEMENT

Mahalelo J

[1] This is an action for damages arising from an unlawful arrest and detention which took place on 5 June 2015. The plaintiff was released from custody without appearing in court on Monday 8 June 2015. He instituted an action for damages on 26 August 2015 seeking payment of R400 000- 00 against the defendant. The action is defended by the defendant who delivered a plea dated 30 November 2015 containing a bald denial of the events as pleaded which plea was amended on 13 November 2018.

[2] The matter came before me on the civil trial roll on 1 November 2022. Mr Vilakazi represented the plaintiff and Mr Mpulo the defendant.

[3] The plaintiff was the only witness who testified about the events and their impact on him. During cross examination of the plaintiff Mr Mpulo informed me that the defendant is conceding the merits of the claim and that the only issue to be determined was the quantum.

[4] The defendant contended that an award of damages as prayed for by the plaintiff is excessive and exaggerated. He suggested an amount of approximately R45 000-00.

[5] The events unfolded in the morning of 5 June 2015 when the plaintiff was at home preparing for work. He worked as a taxi driver. He heard a knock at the door. When he asked who it was a voice came out saying "we are the police open the door". He opened and the police entered. They asked him his full names. He told

them that he is Kwakhe Thokozani Sibiya. They asked for his identity document to confirm his names. He gave it to them and thereafter enquired from them what he had done. They conveyed to him that he had stolen a motor vehicle in Sebenza in 1997. When he denied any knowledge he was told to come with and that he will explain at the police station.

[6] He was taken to Sebenza police station where he was placed in a room. In less than an hour he was taken to Edenvale police station where he was detained. His rights were read to him and he signed a form. He was detained over the weekend. On Monday in the morning he was called out of the cells and let out of detention. It was explained to him that he was to be taken home. The police officer transported him up to the nearby Mall and he dropped him. This police officer apologised to him saying that he had arrested him on unfounded allegations. He promised to compensate him with money which he never did.

[7] The issue for determination is what is a just and equitable compensation to be awarded to the plaintiff.

[8] The plaintiff is an adult man who is currently unemployed. He was employed as a taxi driver at the time of the incident. He did not give evidence regarding his earnings. He testified that the conditions at Edenvale police station cells were terrible and uncomfortable to an extent that if he was a child he would have cried. He mentioned that he was not afforded an opportunity to contact his family members or his lawyer. He was detained from Friday until Monday morning. He did not go back to work because the taxi he was driving was already allocated a new driver. He could

not find employment and he eventually went back home in KZN where he currently stays with his mother.

[9] In assessing the issue of quantum of damages the plaintiff suffered, I bear in mind what was held in *Minister of Safety and Security v Tyulu*¹:

"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) 325 para 17; Rudolph & others v Minister of Safety and Security & others (380/2008) [2009] ZASCA 39 (31 March 2009) (paras 26-29)."

¹ 2009 (2) SACR 282 (SCA) para 26.

[10] In evaluating what damages to award to the plaintiff, Visser en Potgieter – Law of Damages, Third Edition, at 15.3.9 at page 505 to 548, states the following factors that generally play a role in the assessment of damages in similar cases, an assessment to determine what is fundamentally fair and equitable, as follows:

“... The circumstances under which the deprivation of liberty took place; the presence or absence of improper motive or ‘malice’ on the part of the defendant; the harsh conduct of the defendants; the duration and nature of the deprivation of liberty; the status, standing, age and health and disability of the plaintiff; the extent of the publicity given to the deprivation of liberty; the presence or absence of an apology or satisfactory explanation of the events by the defendant; award in previous comparable cases; the fact that in addition to physical freedom, other personality interest such as honour and good name as well as constitutionality protected fundamental rights have been infringed constitutionally protected fundamental rights have been infringed; the high value of the right to physical liberty; the effect of inflation; the fact that the plaintiff contributed to his or her misfortune; the effect an award may have on the public purse; and according to some, the view that actio injuriarum also have a punitive function.”

[11] In *Minister of Safety and Security v Seymour*² the Supreme Court of Appeal reduced the general award of damages awarded to the plaintiff from R500 000 to R90 000.00. The plaintiff was a 63-year-old man and had been unlawfully arrested and imprisoned for a period of five days. In *Olivier v Minister of Safety*

² 2006 (6) SA 320 (SCA)

*and Security and Another*³, the plaintiff was a senior police officer who was arrested by the police in full view of his colleagues and then detained at the same police station where he worked. He had claimed R150 000.00 for such arrest where he spent about six hours in custody. He was awarded R50 000.00. In *De Klerk v Minister of Police*⁴ the plaintiff was awarded R300 000.00 compensation for wrongful arrest and detention. De Klerk was arrested on 20 December 2012, around 8h00. He was detained and was not granted bail and was released from prison on 28 December 2012. He had been detained for nine days. The plaintiff in this matter was detained for 3 days.

[12] I have had regard to all other judgments I was referred to by the parties and am mindful that they only serve as a guide without losing sight of the facts of this matter. The ultimate purpose of this award is to compensate the plaintiff for his injured feelings and not to enrich him.

[13] I am of the view that a just and equitable compensation under the circumstances of this matter is an amount of R100 000.00 (*Hundred Thousand Rand only*).

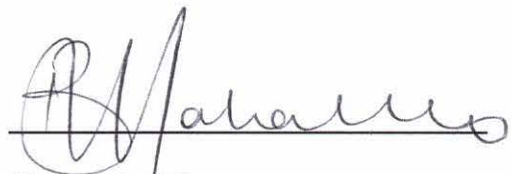
[14] The quantum that is being awarded by this court falls within the jurisdiction of the Magistrate's Court. The plaintiff had made a choice to pursue the matter in the High Court. It follows that costs of the action should be on the Magistrate's Court's scale.

³ 2009 (3) SA 434 (W),

⁴ 2020 (1) SACR 1 CC

[15] In the result I make the following order:

1. The defendant is ordered to pay the plaintiff an amount of R100 000.00
(*One Hundred Thousand Rand only*) with interest at the prescribed rate
from date of judgment to date of payment.
2. The defendant is to pay the costs of the action on the Magistrate's
Court Scale.



M B Mahalelo

JUDGE OF THE HIGH COURT OF
SOUTH AFRICA, GAUTENG
DIVISION, JOHANNESBURG.

Representation:

For the applicant : Adv Vilakazi
Instructed by : Mangxola Attorneys

For the respondents : Adv Mpulo
Instructed by : State Attorney Johannesburg
Heard on : 1 November 2022
Delivered : 21 November 2022