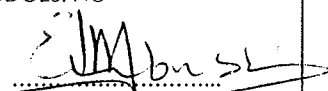


REPUBLIC OF SOUTH AFRICA

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

18/5/16

CASE NO: 46454/10

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
19/5/2016	
DATE	SIGNATURE

In the matter between:

MIRRIAM MEIKIE MAHLANGU

PLAINTIFF

and

MINISTER OF SAFETY & SECURITY

DEFENDANT

J U D G M E N T

KUBUSHI, J

[1] The plaintiff, in this instance, issued summons against the defendant, the Minister of Safety and Security, for damages emanating from her unlawful arrest and detention, assault and malicious prosecution. The plaintiff's evidence is that she was arrested by members of the South African Police Service, who at the time were acting within the course and scope of their employment with the defendant.

[2] In terms of uniform rule 33 (4) the issues were separated. The matter was heard first on the merits and the trial court found in favour of the plaintiff and granted the following order: 1) the plaintiff's claim on the merits succeeds with costs; 2) the claim for *quantum* is postponed *sine die* for determination.

[3] The matter is before me for the determination of *quantum*.

[4] The parties agreed in a pre-trial minute of 3 March 2015, in respect of *quantum*, that:
a) there is no need to lead oral evidence of any sort; b) the parties will argue on *quantum* based on the law and on available documentation and reports.

[5] The plaintiff's submission is that she is entitled to the amount of R750 000 claimed in the summons for the unlawful arrest and detention, assault and malicious prosecution, whilst the contention by the defendant is that the amount claimed by the plaintiff is in the circumstances of this case exorbitant and should not be awarded. The defendant instead proposes an amount of R120 000 to be fair and equitable.

[6] The trial court, based on the plaintiff's evidence, found that during the arrest of the plaintiff she was assaulted with an open hand by a female officer and thereafter kicked with booted feet by constable Skosana until she fell to the ground. As a result of such assault she sustained injuries which occasioned that she be taken to the hospital for treatment. The trial court did not make any findings as to the type of injuries the plaintiff sustained. But in argument before me and in the plaintiff's heads of argument, the submission is that the plaintiff was repeatedly kicked in the abdomen and as *per* the J88 form, sustained softness and tenderness on the left abdominal flank and redness on the left eye which was swollen.

[7] The submission by the plaintiff is also that, when considering *quantum*, I should take into account the manner in which the plaintiff was assaulted which amounted to the abuse of power on the part of the police officer; an act of contempt and embarrassment to the plaintiff resulting in an insult to her dignity and self-worth.

[8] In regard to the claim of unlawful arrest and detention, except for finding that the plaintiff was wrongfully arrested, the trial court did not consider the issue of unlawful detention at all in its judgment, as a result, it did not determine the period within which the plaintiff remained in custody after the arrest. I note that the period is stated in the plaintiff's pre-trial questions as 16 hours.

[9] The plaintiff's submission that she was in detention for a period of 17 ½ hours calculated from 21h00 on 12 February 2010 when she was arrested and remained in

detention until she was released on police bail at about 14h15 the following day, can, therefore not be taken as correct.

[10] In respect of malicious prosecution, the trial court made a finding that the plaintiff was able to establish malice on the part of the defendant and concluded that the requirements of malicious prosecution have been established.

[11] It is trite that there is no fixed formula for the determination of *quantum* in matters of this nature. A court has a wide discretion in determining the amount of damages for compensation. Each case must be decided on its merits and the circumstances of what is just and fair.

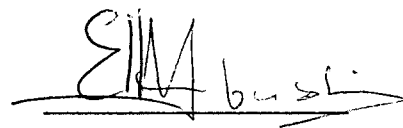
[12] The parties provided me with a plethora of case law as a guide in determining a just and fair amount in respect of the plaintiff's claim. Ordinarily, it is impossible to determine an award of damages for these kinds of *injuria* with any kind of mathematical accuracy.

[13] 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 *quantum* of damages on such facts.¹

¹ See Minister of safety and Security v Tyulu 2009 (5) SA 85 para [26] at 93D-F.

[14] The facts of this case are that from the evidence given by the plaintiff it does not appear as if she suffered serious injuries. She was also not detained for a long time as she was released the following day. She was in custody for 16 hours. I should, however, not discount the fact that she was kicked in the abdomen and complained of softness and tenderness on the left abdominal flank and the assault with an open hand caused the redness in the left eye and the swelling; she felt humiliated and embarrassed.

[15] Having considered argument by the parties and the case law provided, I am of the view that a just and equitable amount to compensate the plaintiff is in the circumstances R175 500.



E.M. KUBUSHI

JUDGE OF THE HIGH COURT

APPEARANCES:

HEARD ON THE	: 13 May 2016
DATE OF JUDGMENT	: 19 May 2016
PLAINTIFF'S COUNSEL	: ADV. L G P LEDWABA
PLAINTIFF'S ATTORNEY	: M. N. MOABI ATTORNEYS
DEFENDANT'S COUNSEL	: ADV. M A B MAJOKO
DEFENDANT'S ATTORNEY	: STATE ATTORNEY