

**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Not reportable

Not of interest to other Judges

CASE NO: **3503/2012**

3/6/2016

In the matter between:

EE MOKAEDI

Plaintiff

and

MINISTER OF POLICE

First Defendant

COLONEL MP MOKGOSI

Second Defendant

Heard: 30 May 2016

Delivered: 3 June 2016

Coram: Makgoka J

Summary: Damages – assessment of – malicious prosecution – duration and conditions of detention – personal circumstances and other factors considered.

J U D G M E N T

MAKGOKA, J

[1] This is a delictual claim arising from malicious prosecution of the plaintiff, Mr Mokaedi, following charges of corruption and theft falsely laid against him at the instigation of the second defendant, who was acting within the course and scope of his employment with the first defendant, the Minister.

[2] He was detained in custody for nine days from 19 May 2008 to 27 May 2008, when he was granted bail. On 19 February 2009 all charges were withdrawn against him. On 22 August 2011 the Director of Public Prosecutions declined to prosecute him. The defendants have conceded liability. Therefore, the only issue that falls for determination is the *quantum* of damages.

[3] The only evidence was that of Mr Mokaedi. The defendants closed their case without calling any witnesses. Briefly, Mr Mokaedi testified as follows. He is 51 years old (he was 43 years old at the time of the incident). He is a police officer, holding the rank of warrant officer. He has been in the police service since 1989, when he joined the then Bophuthatswana Police Force. At the time of his arrest, he was stationed at the Mahikeng Police Station in North West Province. He is a widower, his wife having passed away in August 2008. From their marriage, three children were born, who were aged 12, 8 and 1 at the time of the incident. He and his wife decided to keep the truth from the children, as to why he was away from home during the period of detention. Regarding the circumstances in which he was held, Mr Mokaedi testified that he was detained at police cells 40 kilometres from his home, which made it difficult for his wife and family to visit him. The conditions of his detention were not bad. He was detained in a single cell and provided with enough blankets. He had meals three times a day, of which he had no complaint regarding the quality. However, the water was cold, as a result of which he could not bath, given that it was winter.

[4] As to the impact of the incident on him, Mr Mokaedi testified that he was 'disturbed' by the incident. His late wife, who was also a police officer, repeatedly enquired from him as to the reason for his arrest. After being granted bail he was transferred to another police station. The incident also had a negative impact on his relationship with his fellow police officers, who seemed to distance themselves from him. However, after the case was withdrawn, the relations normalised after he was reinstated to his position at the police station where he was stationed before he was arrested.

[5] Mr *Rossouw* SC, counsel for Mr Mokaedi, submitted that an amount in the region of R300 000 would constitute adequate compensation in the circumstances. Counsel made this submission on the comparable award made in *Minister of Safety and Security* 2013 (4) SACR 231 (SCA). Ms *Pillay*, counsel for the defendants, on the other hand, contended for a figure of R200 000, with reference to, among others, *Solomon v Visser* 1972 (2) SA 327 (C); *Rahim v Minister of Home Affairs* 2015 (4) SA 433 (SCA).

[6] Although some guidance can be obtained by having regard to previous awards made in comparable cases, which afford a useful guide, the process of comparison is not a meticulous examination of awards, and should not interfere upon the court's general discretion, as stated in *Protea Assurance v Lamb* 1971 (1) SA 530 (A) at 535B-536A; *Minister of Safety and Security v Seymour* 2006 (6) SA 320 (SCA) paras 17 and 18.

[7] The proper approach to assessment of damages in matters such as the present includes the evaluation of the personal circumstances of the plaintiff, which includes his standing in the community and the circumstances around the arrest, as well as the nature and duration of the detention. See *Ngcobo v Minister of Police* 1978 (4) SA 930 (D) at 935B-F. The purpose is to compensate a claimant for deprivation of personal liberty and freedom and the attendant mental anguish and distress. See *Minister of Safety and Security v Tyulu* 2009 (5) SA 85 (SCA) para 26, where it was emphasised that the primary purpose was 'not to enrich the claimant but to offer him or her some much-needed *solatium* for his or her injured feelings.'

[8] I am quite aware of, and take into account, the recent tendency by our courts to make higher awards than has been the trend in the past. See *Road Accident Fund v Marunga* 2003 (3) SA 164 (SCA) (para 27) where the rationale therefor was articulated, with reference to *Wright v Multilateral Vehicle Accident Fund*, in *Corbett and Honey, The Quantum of Damages in Bodily and Fatal Injuries Cases* vol 4 at E3-31. However, the remarks in *Marunga* were tempered later in *De Jongh v Du Pisanie* N.O. 2005 (5) SA 457 (SCA) at para 60, where, after noting that the tendency towards increased awards in respect of general damages in recent times

was readily perceptible, the court reaffirmed conservatism as one of the multiple factors to be taken into account in awarding general damages. The court concluded that the principle remained that the award should be fair to both sides – it must give just compensation to the plaintiff, but 'not pour out largesse from the horn of plenty at the defendant's expense', as pointed out in *Pitt v Economic Insurance Company Limited* 1975 (3) SA 284 (N) at 287.

[9] In the present case, I take into account the following: Mr Mokaedi is a well-respected member of the community, having progressed through the ranks of the police to the position of a Warrant Officer. He was detained for nine days. However, the conditions of his detention were not deplorable beyond the inconvenience of being detained. Unlike the plaintiff in *Du Plessis*, who was incarcerated under conditions which the Court described at para 35 as 'appalling', Mr Mokaedi was kept in a single cell and provided with enough blankets and meals three times a day. His arrest and detention does not seem to have had long-term effect on the respect and esteem with which his colleagues held him as they embraced him once the charges were withdrawn against him. The arrest and detention did not affect his career as he was reinstated to his position.

[10] Having said that, deprivation of liberty remains a serious human right violation. In *Masisi v Minister of Safety and Security* 2011 (2) SACR 262 (GNP) this court the following at para 18:

'The right to liberty is an individual's most cherished right, and one of the foundational values giving inspiration to an ethos premised on freedom, dignity, honour and security. Its unlawful invasion therefore strikes at the very fundament of such ethos. Those with authority to curtail that right must do so with the greatest of circumspection, and sparingly. In *Solomon v Visser and Another* 1972 (2) SA 327 (C), at 345C–E, it was remarked that where members of the police transgress in that regard, the victim of abuse is entitled to be compensated in full measure for any humiliation and indignity which result.'

[11] In *Du Plessis* the Supreme Court of Appeal said the following at para 15:

'Our new Constitutional Order, conscious of our oppressive past, was designed to curb intrusions upon personal liberty which has always, even during the dark days of apartheid, been judicially valued, and to ensure that the excesses of the past would not recur. The right to liberty is inextricably linked to human dignity. Section 1 of the Constitution proclaims as

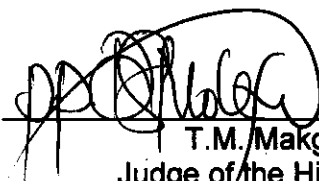
founding values, human dignity, the achievement of equality and the advancement of human rights and freedoms. Put simply, we as a society place a premium on the right to liberty.'

[12] In the light of all the circumstances of the case, I conclude that an amount of R250 000 would be constitute adequate compensation for Mr Mokaedi.

[13] With regard to costs, Ms *Pillay* submitted that the costs of senior counsel are not warranted in the circumstances of the case. I agree. Mr *Rossouw* did not press for such costs.

[14] In the result the following order is made:

1. The defendants are ordered to pay the plaintiff the following:
 - 1.1 An amount of R250 000;
 - 1.2 Interest on the above amount, which shall run at the prescribed rate from the date of judgment to the date of final payment;
 - 1.3 The costs of the action.
2. The above amounts are to be paid by the defendants jointly and severally, the one paying, the other to be absolved.


T.M. Makgoka
Judge of the High Court

Date of hearing: 30 May 2016

Judgment delivered: 3 June 2016

Appearances

For the Plaintiff: Adv. A.B. Rossouw

Instructed by: Van Zyl le Roux Inc., Pretoria

For the Defendants: Adv. L. Pillay

Instructed by: State Attorney, Pretoria