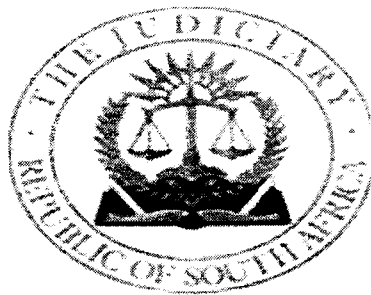


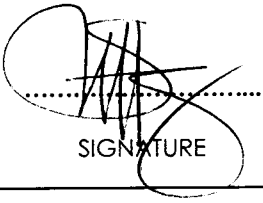
REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

30/3/2017
CASE NO: 59340/16

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED.
30/03/2017	
DATE	SIGNATURE

In the matter between:

SITHOLE AMELIA LELE PINKIE

APPLICANT

and

THE COMMISSIONER OF THE

SOUTH AFRICAN POLICE

FIRST RESPONDENT

THE DETECTIVE STATION COMMANDER

MIDRAND SAPS.

SECOND RESPONDENTS

JUDGMENT

SIBUYI AJ

INTRODUCTION

- [1] In this matter, the plaintiff instituted an action against the defendants claiming for what was labelled as contumelia and or violations of constitutional rights. The plaintiff is claiming damages in the amount of R5 000 000-00. In paragraph 5 of the particulars of plaintiff's claim the plaintiff described the cause of action as follows: "The cause of action in this matter arise out of deliberate or intentional dereliction of duties...or refusal to investigate the plaintiff 's criminal case of house breaking and theft without good cause, an act regarded as a violation of constitutional right as enshrined and protected by the South Africa Constitution Act 108 of 1996".
- [2] The action is unopposed. On the morning of 27 July 2014, the plaintiff woke up to discover that her Sony Home Theatre sound system, a DVD Player, 4 speakers and a remote were stolen from her residence. The estimated value of the stolen goods was R4 500.00 (Four Thousand, Five Hundred Rands). The plaintiff telephoned the Midrand police station to report the crime. She waited in vain for about 5 hours for the police to attend the crime scene. Thereafter, she drove to the Midrand police station to report the crime in person. The criminal case was opened under case number: Cas 738/07/2014. She waited for 22 months, during which period the police never contacted her on the matter.
- [3] On 20 May 2016 the plaintiff attended the police station to enquire about the progress on the case. The Station Commander told her that she did not have a

right to access the criminal docket and refused to assist her. The Acting Station Commander assisted her until the closed docket was located. On perusal of the docket she discovered that Constable Manganye's report statement was "short", "shallow in facts", "erroneous" and "faulty". One Warrant Officer Sejaphala made an entry into the docket wherein he alleged that he contacted and interviewed the plaintiff. The plaintiff denies this allegation. It was also reported by the same Warrant Officer that the case was reported late hence no finger prints expert were dispatched to the scene.

[4] One Sergeant Skhosana, among other entries, made an entry in the investigation diary that he visited the crime scene, there were no surveillance cameras at the plaintiff's complex, fingerprints were filed as per B2 (through earlier he allegedly wrote that fingerprints investigation could not be done as there was nobody inside the house, and or no access through the security gate could be obtained). The plaintiff flatly denied the above allegations. The plaintiff specifically denies that fingerprints were uplifted at the crime scene.

[5] The plaintiff views the behavior of the police officers as unacceptable, fraudulent, victimization, defeating the ends of justice and or a violation of her constitutional rights. In her own words the police should be held liable for deliberately and or intentionally neglecting their duties without a cause. The above summary of facts comes from the plaintiff's testimony and the contents of the particulars of plaintiff's claim.

THE CONSTITUTIONAL DAMAGES CLAIM

[6] The question here is whether or not a claim for constitutional damages is legally tenable. Although the Constitutional Court in *Fose v Minister of Safety and Security*¹ accepted that there may be circumstances in which in terms of s 172(1)(b) of the Constitution damages are a just and equitable remedy for the breach of a constitutional right, the only subsequent cases in which damages have been awarded as a remedy for the breach of a constitutional right are the *Modder East Squatters v Modderklip Boerdery (Pty) Ltd*; *President of the RSA v Modderklip Boerdery (Pty) Ltd*² and *Kate v MEC for the Department of Welfare, Eastern Cape*³. Those three cases demonstrate that the question of remedy can only arise after the relevant right has been properly identified and the pleaded or admitted facts show that the right has been infringed.

[7] In this matter the plaintiff failed to identify and pleads the relevant constitutional right infringed by the defendants and or their members. Nor could I, on the pleaded facts, identify any infringement of a particular right justifying a claim for constitutional damages. Even if the proved facts showed that any of the plaintiff's rights were infringed, that does necessarily establish their right to claim damages. A further issue is whether the actions, or more accurately inaction, of the police constituted a wrongful act in relation to the plaintiff. The facts of this matter do not suggest so. Hence, the particulars of plaintiff's claim, as they stand, do not disclose a cause of action for constitutional damages and the claim for constitutional damages cannot be sustained.

¹See 1997 (7) BCLR 851 (CC); 1997 (3) SA 786 (CC)

² See [2004] 3 All SA 169 (SCA); 2004 (6) SA 40 (SCA)

³ See [2005] 1 All SA 745 (SE); 2005 (1) SA 141 (SE)

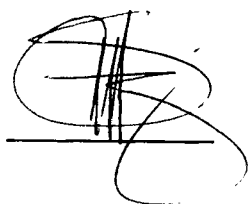
THE CONTUMELIA CLAIM

[8] In the case of Timothy Chinyadza v Melton Phiri HH 76-09 Kudya J at 4 of the cyclostyled judgment defined contumelia as follows: "Contumelia is equated to the injury, hurt, insult and indignity inflicted upon a plaintiff by [the defendant's conduct]". A person guilty of the intentional invasion of a person's rights to his dignity, reputation or liberty becomes liable to pay damages for the contumelia or insult inflicted on the other party. The claim in such cases is based on the *actio injuriarum*. Such actions usually follow on acts of defamation, assault, false arrest, false imprisonment, malicious legal proceedings, rape, seduction and etc..

[9] No claim under *actio injuriarum* has been pleaded in this matter. Nor could the facts of this matter be accommodated under the above mentioned categorized delicts. Again, the particulars of plaintiff's claim do not disclose a cause of action for such injury claim. It follows that the claim under this heading must also fail.

[10] I thus make the following order:

1. The plaintiff's claim is dismissed.

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a vertical line and a horizontal line, with a flourish underneath.

H.W SIBUYI

Acting Judge of the High Court, Pretoria

CASE NO.

: 59340/16

HEARD ON

: 8 DECEMBER 2016

COUNSEL FOR THE APPLICANT

: LEBOGANG LERUTABE

COUNSEL FOR RESPONDENT

: NONE

DATE OF JUDGMENT

: 23 MARCH 2017
30