



IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO LOCAL DIVISION, THOHOYANDOU

CASE NO: 518/08

(1)	REPORTABLE: NO/YES	YES
(2)	OF INTEREST TO OTHER JUDGES: NO/YES	YES
(3)	REVISED.	17/8/2017
DATE		17/8/2017
SIGNATURE		

BEFORE THE HONOURABLE MR JUSTICE AML PHATUDI

In the matter of:

MANZERE NDINDENI DANIEL

Plaintiff

And

MINISTER OF SAFETY & SECURITY

1ST Defendant

NATIONAL COMMISSIONER OF

POLICE SOUTH AFRICAN SERVICES: LIMPOPO

2ND Defendant

PROVINCIAL COMMISSIONER: SOUTH AFRICAN

POLICE STATIONS: SAPS

3RD Defendant

STATION COMMANDER: MAKUYA POLICE

STATIONS: SAPS

4TH Defendant

CONSTABLE MANAVHELA L.P (NO: 70511241)

5TH Defendant

JUDGMENT

AML PHATUDI ADJP

INTRODUCTION

[1] The plaintiff claims to have incurred damages allegedly occasioned by an unlawful arrest and detention effected by the fifth defendant who, on 22 October 2007, was a member of South African Police service. The fifth defendant was under the employ of the first defendant and executing his duties in the course and scope of his employment while under the direct supervision and control of the forth defendant, thus rendering the first defendant vicariously liable¹.

[2] I ordered separation of determination of liability from quantification of damages as envisaged in terms of Rule 33(4) of the Uniform Rules of this Court. I further ordered postponement of the determination of quantum *sine die*. The defence accepted that they have the duty to begin. They called one witness, the fifth defendant, being the officer who effected the arrest to testify. The plaintiff led the evidence of two witnesses of which the plaintiff was the first to testify.

FACTUAL BACKGROUND

[3] Just after midday on 22 October 2007 and at or near Makuya village, Thohoyandou, Limpopo, the police officers deployed at the area for official duties, of which Philemon Manavhela was amongst them, stopped a motor vehicle driven by Samuel Nemaakalangani Matibe. Matibe was stopped because he had failed to wear a safety belt.

[4] When Manavhela was engaging Matibe with intent to issue summons (commonly known as a ticket) for his failure to wear a safety belt, Daniel Manzere, the plaintiff, alighted from the motor vehicle's (bakkie) loading bay and started to interrupt the conversation between Manavhela and Matibe. Manzere started swearing at Manavhela and the other police. Despite the reprimand, the plaintiff continued to scorn at Manavhela. The plaintiff pushed Manavhela off the side of the driver. Further reprimands yielded no fruit. Manavhela arrested the plaintiff and took him to Makuya police station, Limpopo.

[5] On arrival at the police station the plaintiff indicated to Manavhela that he was sorry for his actions. Manavhela told the plaintiff to tell the station commissioner. The plaintiff was taken to the station

¹ It is trite law that an employer is vicariously liable for the wrongful conduct of an employee if such wrong was committed by the employee in the course and scope of his or her employment.

commissioner where he admitted the guilty and apologised. An endorsement in the occurrence book (O/B) was made. The plaintiff then signed in the occurrence book as a sign of acknowledgement of guilt where after he was cautioned and released. The inscription recorded in the O/B at 14h40 read:

"I Constable Manavhela arrested Manzere N D for interference. After realising that he was wrong he then made an admission of guilt and we reached an agreement, we decided to release him"

[6] The plaintiff denied ever been stopped by the police. He testified that the police were at the scene, he was a passenger seated at the front passenger seat. He, as the senior deputy sheriff of the area of jurisdiction, was on his way to effect service of some Court documents on debtors as instructed by the Courts.

[7] Two police officers approached them at the time when the motor vehicle they were in was by the pavement of a certain building housing a Government Department. One police came and stood by the door. He and the said police's conversation led to him reprimanding the police not to speak with him in the manner they did as he (the plaintiff) was on duty. The police responded that they as well were on duty. Their conversation led to his arrest. He was taken to the police station where he was released after he (plaintiff) had explained to one Khabubu, the station commissioner, that the police officer had accused him of being rude. Khabubu ordered the police officers to release him. He was then released.

[8] He denied having ever admitted the guilt and having apologised. He denied having appended his signature in the O/B.

ISSUES

[9] The issues to be determined are:

9.1 Whether the arrest of the plaintiff was effected in terms of either section 40(1) (a) or 40(1) (j) of the Criminal Procedure Act 51 of 1977;

9.2 Whether the plaintiff had interfered with and/or wilfully obstructed the members of South African Police Services while executing their duties; and

9.3 Whether the arrest and the subsequent detention of the plaintiff was lawful or not.

THE LAW

[10] Section 40 (1) (a) of the CPA provides that a peace officer may without a warrant arrest any person 'who commits or attempt to commit any offence in his presence' and s40 (1) (j) stipulates: 'who willfully obstructs him in the execution of his duty';²

EVALUATION

[11] It is common cause that the plaintiff and his co-worker interacted with the police on the day, time and place in question. The interaction led to the arrest of the plaintiff. He was kept in the police van and taken to the police station where he was released.

[12] The plaintiff's counsel submitted that the plaintiff's arrest was unlawful in that the defendant failed to prove how the plaintiff "obstructed the course of justice" or how he "interfered with the police in the execution of their duties" as pleaded. He submits that by the time the police arrested the plaintiff, they had already issued a "ticket" to the driver if reliance is "obstruction or interference with the execution of duties". He submits further that the contents of the statement made by Manavhela be taken as the correct version of what transpired as opposed to his viva voce evidence

[13] Manavhela testified that the plaintiff interfered with their duties at the time when they were to issue the traffic offence summons "ticket". He said that the plaintiff uttered the following words: "Whatever you are doing, you are doing 'shit' and you are wasting my time" The evidence is the same as recorded in Manavhela statement. For aases of reference, it is recorded that:

"Mr Manzere insisted on telling us that we won't issue the traffic summons as he is the messenger of the court and he knows the law more than we do".

² 40 Arrest by peace officer without warrant

(1) A peace officer may without warrant arrest any person-

(a) who commits or attempts to commit any offence in his presence;

...

(j) who willfully obstructs him in the execution of his duty;

[14] When reprimanded, the plaintiff pushed Manavhela off as testified. It is that conduct which Manavhela regarded as an offence which prompted him (Manavhela) to effect the plaintiff's arrest.

WAS THE ARREST EFFECTED IN TERMS OF SECTION 40 (1) (J) OF CRIMINAL PROCEDURE ACT (CPA)

[15] The plaintiff's counsel submitted that the defendant failed to prove its defence as pleaded. He referred to the plea and read it on record as follows:

"Save to admit the fact that the plaintiff was arrested and taken to police station... the fifth defendant plead that such arrest was lawful as the plaintiff was obstructing the course of justice by insulting the police officers while they were busy...."

[16] The defence counsel rebutted the contents as placed on record and stated that the defence has since amended plea as referred to by the plaintiff's counsel. He submitted that the defence no longer rely on the arrest in terms of section 40(1) (j) but in terms of the provisions of s40 (1) (a). He further submitted that the defence substituted the word- "obstruction" with "interference with duty" as stipulated in the defendant's amended plea. The amended plea is worded:

"...The [fifth] defendant avers that the plaintiff was arrested and detained for interfering with police in the execution of their duties." (My underline)

[17] The plaintiff failed to rebut the averments set out in the defendant's plea as amended in his replication. The defendant's pleaded amendments remained uncontested. The determination of whether the arrest was effected in terms of s40 (1) (j) or not is, in my view, requires no further adjudication because the defendants are not relying on the provisions of the subsection.

WAS THE ARREST IN TERMS OF SECTION 40 (1) (a)

[18] The defence counsel submitted that the plaintiff's arrest was effected within the ambit of section 40 (1) (a) of CPA. He submitted that Manavhela was justified to effect the arrest because the plaintiff interfered with the police in the execution of their duties. He submitted that the swearing and pushing of the police officers in the execution of their duties is an offence which was committed in the presence of Manavhela, the arresting officer. He further submitted that the defence, in reliance of s 40 (1) (a) must establish that

(i) The arrestor was a peace officer;

(ii) An offence must have been committed or there must have been an attempt to commit an offence and

(iii) Such commission or attempt must have been in the presence of the arresting officer.

[19] It is common cause or not seriously contested that Manavhela was a peace officer³ on the day in question. It is further common cause that the plaintiff was arrested without a warrant. The question to determine is whether the plaintiff was arrested while committing or attempting to commit an offence in the presence of Manavhela.

[20] Manavhela testified on the one hand that the plaintiff did swear at them (police) and told them how stupid they are. He further testified that the plaintiff pushed him (Manavhela) off the motor vehicle the plaintiff was at. On the other, the plaintiff testified that two police officers came to the motor vehicle in which he and Matibe, the driver, were in. He (plaintiff) spoke with the police who came to the door. The plaintiff said he told the said police officer to stop talking with them in the manner the police were because he was the senior deputy sheriff on duty. During that conversation, the other police was talking to the driver. Matibe corroborated the plaintiff's version in as far as the number of the police officers who approached them at their motor vehicle. He testified that Manavhela was one of the police officers. He confirmed that the plaintiff was talking with one of the two police officers. He however, did not witness what actually transpired that led to the arrest of the plaintiff. He was asked during cross examination what he saw or heard. This is how it unfolded:

Question: Did you hear any conversation between the police officer and the plaintiff

Answer: No

Question: Will you deny the swearing at the police officer by the plaintiff

Answer: I did not hear that⁴

³ 'Peace officer' as defined in section 1 of Criminal Procedure Act 51 of 1977- includes any magistrate, justice, police official, correctional official as defined in section 1 of the Correctional Services Act, 1959 (Act 8 of 1959), and, in relation to any area, offence, class of offence or power referred to in a notice issued under section 334 (1), any person who is a peace officer under that section;

⁴ This is how I noted in my manuscript notes.

[21] It is clear that Matibe did not see or hear what was said or transpired between the plaintiff and the police officers. Matibe's testimony does not corroborate the evidence of the plaintiff in as far as what happened and who said what to whom. This leaves the plaintiff's version as against that of Manavhela.

[22] It is clear that the two versions are destructive to one another. The court in *Stellenbosch Farmers' Winery Group Ltd & Another v Martell ET CIE & Others*⁵ stated that to come to a conclusion on disputed issues a court must make findings on:

- (a) Credibility of various factual witnesses;
- (b) Their reliability; and
- (c) The probabilities.⁶

[23] In developing the principles further the court in *Dreyer and Another NNO v AXZS Industries* indicated that 'on a proper approach, a court should also have regard to the probabilities inherent in respective conflicting versions'.⁷ The court in *Minister of Safety and Security v Kleinhans*⁸ stated that the power to arrest comes into existence as long as the three elements are present, irrespective of the trivial nature of the crime'

[24] I indicated earlier that the plaintiff and Manavhela were at the scene on the day in question. The plaintiff told Manavhela and his co-worker to stop talking to him and Matibe in the manner they were because he was the senior deputy sheriff on duty. He told them how high the position he was occupying and how he knew the law. Equally, Manavhela told the plaintiff that he was also on duty executing his duties in accordance with the law.

[25] When testifying, especially during cross examination, the plaintiff kept on looking at his legal representative with an "assistance seeker" look before answering his questions. He, at some point, asked his legal representation a question with a view to solicit an answer to the question he was asked. A quick objection from the defence counsel followed by a

⁵ 2003 (1) SA 11 SCA

⁶ *SFM v Martell* op cit para [5]
⁷ 2006 (5) SA 548 SCA para [30]

⁸ 2014(1) SACR 613 WCC

reprimand by the Court left the plaintiff with his eyes wide opened and a fallen lower mouth lip. The plaintiff's demeanour changed henceforth.

[26] Manavhela, on the other hand, remained cool and collected notwithstanding a lengthy cross examination. He conceded that the facts contained in his statement were more accurate as opposed to his viva voce testimony pertaining to whether the ticket was issued at the scene or at the police station respectively. Of importance is what he averred was said by the plaintiff that led him to effect the plaintiff's arrest. This is how it unfolded.

Question: Why did you not issue a ticket?

Answer: Manzere, the plaintiff, alighted and said "whatever you are doing is "shit" and you are wasting my time.

Question: What else happened?

Answer: I tried to reprimand the plaintiff as he was not the owner and driver of the motor vehicle.

[27] Manavhela's testimony in court differs not with what is recorded in his statement, for ease of reference. I find it inevitable to quote from the statement the relevant paragraphs. It is recorded

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'The one Mr Manzere who was at the other side of the vehicle started to insult us and also asking on who stopped the car as he wanted to deal with that person accordingly. I answered Mr Manzere by saying "all of us" as we believe in working as a team. Mr Manzere told us that what we are doing is a shit as we are delaying him from doing his duties. We then tried to talk to Mr Manzere telling him to remain silence as he was not the driver. Mr Manzere insisted on telling us that we won't issue the traffic summon as he is the messenger of the court and he knows the law more than we do.

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We then appealed to Mr Manzere to stop interfering with our job as we also know exactly what we were doing. I then told Mr Manzere stop disturbing us as the driver Mr Matodzi Samuel Matibe was complying and ready to accept the traffic summon. But the one Mr Manzere didn't stop insulting us until I told him that he will be in trouble if he continues like that. Mr Manzere said he is not afraid of being arrested as it doesn't mean anything to him. Mr Matodzi Samuel Matibe didn't follow what Mr Manzere was saying...and we issued him with the traffic summon. But Mr Manzere never stopped accusing us of giving the driver a traffic summon as we are not traffic officers'...

[28] It is clear from Manavhela's testimony and statement that the plaintiff was interfering with the duties of either Manavhela or the other police officer on duty with Manavhela. It is further in my view that the plaintiff attempted to intimidate or to beguile the police officers when he told them that he was a senior deputy sheriff.

[29] The crux of the matter to be determined is whether the plaintiff was committing or attempting to commit an offence. Interference with the duties of member of the defendant or SAPS while executing their duties is, in my view, an offence. The plaintiff's conduct, in all probabilities, was an interference with the duties of Manavhela and his co-worker who were on duty executing their duties. The plaintiff was thus, in my view, committing an offence.

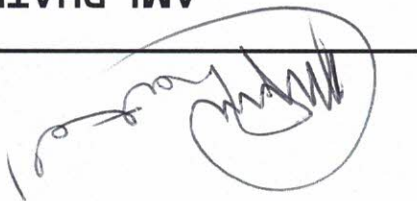
[30] It is common cause that such offence was committed in the presence of Manavhela, a peace officer as defined and who, added in thereto, was on duty executing his duties. The offence was committed in the presence of Manavhela and while Manavhela was observing the plaintiff's behaviour which he, Manavhela, concluded was prima facie a criminal offence.⁹ Considering the evidence in all probabilities, the plaintiff committed or attempted to commit an offence rendering his arrest and detention in the police van lawful. The plaintiff's claim stands to be dismissed.

[31] It is trite law that costs follow the event. The defendant succeeded with his defence and thus entitled to the costs occasioned by this litigation and trial.

[32] I, in the result, make the following order

ORDER

32.1 The Plaintiff's claim is dismissed with costs



AML PHATUDI

JUDGE OF THE HIGH COURT

⁹ See Minister of Justice and Others v Tsose 1950(3) SA 88 (T)

DATE HEARD	:	06 MARCH 2017
PLAINTIFF	:	ADV MALULEKE
INSTRUCTED BY	:	MVUNDLA & ASSOCIATES ATTORNEYS
DEFENDANT	:	ADV SEGWAVHUMU
INSTRUCTED BY	:	OFFICE OF THE STATE ATTORNEY,
		THOHAYANDOU