IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~ / NO.
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO.
(3) REVISED.
DATE 9/2/16 SIGNATURE

CASE NO: 49069/2013

9/2/2016

In the matter between:

VINCENT NGOBENI Plaintiff

and

THE MINISTER OF POLICE Defendant

JUDGMENT

MOTHLE J

1. Vincent Ngobeni, an adult male Metro Police Officer in Tshwane, ("*the Plaintiff*"), instituted action against the Minister of Police ("*the Defendant*") for damages arising out of an unlawful arrest, detention and assault by members of the South African Police.

2. In defending the action, the Defendant filed a plea that is a bare denial of the allegations and also at trial, failed to call any witnesses. In short, the allegations of unlawful arrest, detention and assault on the part of the Plaintiff remained uncontested as the Defendant did not have any alternative version.

3. The brief background to the incident is that:

3.1 on 15 of June 2013 whilst the Plaintiff was a trainee for Metro Police, he was accosted by 3 persons who at that time were in civilian clothes. These persons turned out to be members of the police. They demanded to search him and when he, in turn, demanded that they identify themselves as they claimed to be police officers, they then started assaulting him in full view of the public.

3.2 According to the evidence of the Plaintiff, these men were later joined by other approximately 7 policemen who participated in the assault. He was then subdued, handcuffed and placed in a police vehicle. He was informed that he is being placed under arrest.

3.3 The police vehicle took him to the Pretoria Central Police Station were he was kept in a holding cell. It was while he was in the police station that a senior officer from the Metro

Police intervened on his behalf and he was released. According to the Plaintiff, this whole incident took place between 11H00 and 14H00 (3 hours).

4. After his release from the police station he then went to the Tshwane District Hospital where he received treatment for his injury. The J88 medical report from the doctor at the hospital indicates that he had a hematoma on the right side of the head.

5. The Plaintiff was the only witness to testify in support of his action. The cross-examination of Plaintiff by the Defendant's counsel centred around the allegation by the Plaintiff that when he arrived at the hospital he had experienced some bleeding on the head. Counsel for the Defendant pointed out that if there was such bleeding the doctor would have indicated it on the report. The Defendant does not dispute the merits of the allegations relating to unlawful arrest, detention and assault visited on the Plaintiff by the police officers. Plaintiff's injuries are also not disputed.

6. Thus having regard to the pleadings and the evidence by the Plaintiff, I am persuaded that the latter has made out a case on the merits. The Defendant is therefore liable for payment of

damages suffered by the Plaintiff consequent to the unlawful arrest, detention and assault.

7. The Plaintiff has lodged 2 claims. Claim 1 is for arrest and detention wherein he prays for compensation of R100,000.00. Claim 2 is for assault, wherein he also prays for payment of R100,000.00. There is also a prayer for costs.

8. Neither party presented evidence on the quantification of the damages to be awarded. Counsel for both parties addressed the Court at length concerning the amount that has to be awarded as damages. Each of the counsel further submitted a bundle of cases in support of their contentions, for which I am Indebted.

9. It will however be beyond the scope of this judgment to deal with all these cases, which in any event serve only as a guide. Determining the monetary value to these rights is not dependant on simple mathematical or other scientific calculations. Neither is case law very helpful in this regard. However, case law serves only as a guideline. In the words of Nugent JA in ***Minister of Safety and Security v Seymour [2007] 1 All SA 558 (SCA) at paragraph 17:***

"The assessment of awards of general damages with reference to awards made in previous cases is fraught with difficulty. The facts of a particular case need to be looked at as a whole and few cases are directly comparable. They are a useful guide to what other courts have considered to be appropriate but they have no higher value than that".

10. And at p326 paragraph 20:

"[20] Money can never be more than a crude solatium for the deprivation of what, in truth, can never be restored and there is no empirical measure for the loss."

11. The following cases were considered as a guide by the Court in the Seymour matter, namely:

"In Solomon v Visser and Another 1972 (2) SA 327 (C), a 48-year-old businessman who was detained for seven days, first in a police cell and then in a prison, was awarded R4 000 ((R136 000). In Areff v Minister van Polisie 1977 (2) SA 900 (A), this Court awarded a 41- year-old businessman who was arrested and detained for about two hours R 1 000 (R24 000). In Liu Quin Ping v Akani Egoli (Pty) Ltd t/a Gold Reef City Casino 2000 (4) SA 68 (W), a businessman who was unlawfully detained for about three hours was awarded R12 000 (R 16 978). In Manase v Minister of Safety

and Security and Another 2003 (1) SA 567 (Ck) in which a 65-year-old businessman was unlawfully detained for 49 days, incarcerated at times with criminals, the sum of R90 000 (R102 000) was awarded. In Seria v Minister of Safety and Security and Others 2005 (5) SA 130 (C), a professional man who was arrested and detained in a police cell for about 24 hours, for a time with a drug addict, was awarded R50 000 (R52 000).

12. The Supreme Court of Appeal in the matter *of* ***Minister of Safety and Security v Tyulu [2009] 4 All SA 38 (SCA)*** awarded compensation in the amount of R15 000 for a magistrate who was arrested and briefly detained for being drunk in the early hours of the morning.

13. One of the cases which both counsel rely on and which has striking similarity with the present case, is the unreported judgment of Van Oosten J in the matter of ***Ngema v Minister of Police South Gauteng High Court, Johannesburg; Case No. 5081/2011, judgment delivered on 24 May 2012.*** In this matter, the Plaintiff was arrested at approximately 06H30. He was slapped, punched and kicked by members of the South African Police Service. He was detained in a police holding cell until approximately 09H15 the same day when he was released. On examination by a doctor, the following injuries were detected:

a. Small haemorrhages of both eyes,

b. tenderness of the neck and right lower chest,

c. two small lacerations of the left hand and

d. bruising on the right knee and leg.

14. The wounds were cleaned, a dressing was applied to the injuries on the hand and eye ointment and anti-inflammatory medication given to him. On a claim of unlawful arrest, detention and assault, Van Oosten J awarded a global amount, which included all claims, of R40,000.00. The initial claim in the summons was in the amount of R250,000.00. The assault took place in April 2010, 3 years before the incident which gave rise to the present case.

15. The similarities between the Ngema case and the present case are that both relate to claims of unlawful arrest, detention and assault. Further, in both cases the claimant was kept in custody in a holding cell for approximately three (3) hours. However, the injuries in the Ngema case were quite substantial and more severe than the ones sustained by the Plaintiff in the present action.

16. Counsel for the Plaintiff submitted that the circumstances of the present case were such that the police acted with malice. With reference to an unreported decision by Makgoka J of this Division, he contended that the award should be increased because of the presence of malice. I am not persuaded that the circumstances of this case, while raising the possibility of malice on the part of the police, warrants a punitive measure in the form of increasing the award. Suffice to state that where members of the police arrest a person without any intention of bringing such person to Court to answer any charges, there is indeed malice. Counsel, however, could not establish how this presumed malicious conduct on the part of the police should result in an increase in the award to the Plaintiff. Malicious conduct on the part of the police is a matter which speaks to the overall conduct and should be sanctioned by police management through internal disciplinary procedures. No increase in the award to the Plaintiff would be necessary as a sanction for this behaviour.

17. I am persuaded that the circumstances of this case reflect that of ***Ngema v Minister of Police.*** I am informed by counsel for the Defendant that the award of R40,000.00 made by Van Oosten J, in 2010 is now R49 000.00, using Robert J Koch scales of inflation adjusted awards in Quantum of Damages.

18. Although the Plaintiff sought to distinguish the claim of unlawful arrest and detention from assault, I am of the view that in this particular case all three claims arose in one single incident over a period of 3 hours. The assault in particular, was committed in the execution of the arrest. I will therefore make an award that includes all of them in one globular amount.

19. In regard to costs, Plaintiff's counsel submitted that because of the conduct of the police, and the fact that no substantial defence to the claim was offered, the Court should consider granting punitive costs. I do not agree. While the costs are a matter of the Court's discretion, it would not be proper for the Court to punish a litigant with punitive costs simply because such litigant mounted a weak defence or a defence that is simply a bare denial. I am of the view that the ordinary costs should follow the result.

20. In the premises I make the following order:

1. That the Defendant is liable to pay to the Plaintiff compensation for damages arising out of the unlawful arrest, detention and assault visited on him on 15 June 2013;

2. The Defendant is ordered to pay an amount of R49,000.00 to the Plaintiff as compensation for the damages.

3. The Defendant is ordered to pay the costs of suit on a party- party scale, including costs of counsel.

S P MOTHLE
Judge of the High Court
Gauteng Division, Pretoria

For the Plaintiff: **Advocate C Zietsman**

Instructed by: Loubser van der Walt Inc.
Brooklyn
Pretoria

For the Defendant: **Advocate H O R Modisa**

Instructed by: The State Attorney
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