

IN THE KWAZULU-NATAL HIGH COURT, PIETERMARITZBURG

REPUBLIC OF SOUTH AFRICA

Case No AR 45/11

In the matter between :

Eardley Kieck

Appellant

and

The Minister of Safety and Security

1st Respondent

Sergeant M Rose

2nd Respondent

Judgment

Lopes J

[1] The appellant in this matter instituted action against the respondents in the Magistrates' Court for the district of Newcastle for payment of the sum of R100 000, being damages allegedly suffered by the appellant as a result of his allegedly wrongful arrest and detention by the second defendant acting within the course and scope of his employment as a policeman with the first defendant.

[2] The learned magistrate in the court a quo dismissed the appellant's claim with costs, and it is against that decision that this appeal comes before us.

[3] The facts :-

The facts of the matter may be summarised as follows :-

- a) on the 22nd December 2007 the appellant, his wife, his daughter and his daughter's boyfriend went out to dinner, during the course of which the appellant consumed two whiskies; and
- b) returning home at approximately 11.30pm the appellant was seated in the back left hand side of the motor vehicle with his wife, and his daughter was driving the vehicle with her boyfriend sitting next to her; and
- c) the motor vehicle was observed by the second respondent who requested that it pull over because it was being driven without any lights; and
- d) the second respondent then proceeded to question the appellant's daughter;
- e) the appellant then got out of the back left-hand passenger side of the motor vehicle and began to remonstrate with the second respondent and another police official. An Inspector Fox who was at the scene asked the appellant to get back into the vehicle. The second respondent then came around the vehicle and instructed the appellant to get back into the motor vehicle;
- f) the appellant refused to get back into the motor vehicle whereupon the second respondent told him he was under arrest;
- g) the appellant then got back into the motor vehicle and the second respondent , Inspector Fox and a certain Constable Mthethwa then

removed the appellant from the motor vehicle and took him to the police station where he was kept for approximately four hours;

- h) the appellant was not arrested pursuant to any warrant, but in terms of sub-s 40(1)(a) of the Criminal Procedure Act, 1977;
- i) the offence with which the plaintiff was charged was apparently being drunk in a public place and he was acquitted at the trial.

[4] The judgment in the court a quo

Having read the evidence of the witnesses and the judgment of the learned magistrate, it is difficult to fault his analysis of what happened on the night in question. It is clear that the appellant was being obstructive and difficult and interfering with the police officials in the execution of their duties. Having said that, the attitude of the second respondent was somewhat high handed, and there is little doubt that the appellant was injured when he was handcuffed by the police officers. This was primarily as a result of the fact that he suffered from rheumatoid arthritis and was unable to be handcuffed with his hands behind his back. After intervention by the appellant's wife the police officers eventually handcuffed him with his hands in front of his body, and then took him to the police station.

[5] It is unfortunate that matters got so out of hand that it became necessary to arrest the appellant. Perhaps, with a little more courtesy and tact, the police officials could have dealt with the matter without having to resort to arresting the appellant. After all, when he climbed back into the motor vehicle he evidenced an intention to comply with the requests of the

police officers. Had they simply then allowed him to stay in the motor vehicle while it followed them to the police station, there would probably have been no problem.

[6] The fact remains, however, that the police officials reasonably suspected the appellant of being drunk in a public place. That the appellant was in fact intoxicated comes through clearly in the evidence. The evidence of Constable Mthethwa is particularly important in this regard because it was purely fortuitous that he was on the scene. He was not accompanying other police officers, and testified that the appellant looked under the influence, he smelt of liquor, and the way the appellant was behaving you could see that he had been drinking. In those circumstances the police officials were entitled to arrest the appellant and detain him for a sufficient period of time for him to sober-up before being released.

[7] Having found that the arrest was not wrongful, the learned magistrate correctly in my view dismissed the appellant's claim with costs. In all the circumstances I would dismiss the appeal with costs.

Moodley AJ : I agree.

Date of hearing : 20th June 2011

Date of judgment : 24th June 2011

Counsel for the appellant : S Jasat (instructed by Southey Steyn & Mphela Inc)

Counsel for the respondent : C S Sibiya (instructed by the State Attorney)