



IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)

- (1) REPORTABLE: YES/NO
- (2) OF INTEREST TO THE JUDGES: YES/NO
- (3) REVISED.

CASE NO: HCA 07/2016

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DATE.....

SIGNATURE:.....

In the matter between:

MONAMA MALESELA ELLIOT

APPELLANT

and

MINISTER OF POLICE

RESPONDENT

JUDGMENT

MAKGOBA JP

[1]. The Appellant appeals against the judgment and order of the Magistrate Court of Mokerong in terms whereby the Appellant's action was dismissed with costs on the 11 February 2016.

The Appellant had issued summons in the Court *a quo* claiming damages arising out of an assault by members of the South African Police Service.

[2]. In the pleadings the defendant in the Court *a quo* denied the allegations of assault and the matter went on trial on the issues of both liability and quantum of damages. There had not been any prior exception to the particulars of claim on the ground that same do not disclose a cause of action. It was common cause that the members of the Police Service who allegedly assaulted the Appellant were acting within the course and scope of their employment with the Minister of Police.

[3]. At the trial the Appellant was the only witness to testify.

The Respondent closed his case without leading evidence.

[4]. The Appellant testified that he was called to the scene of an accident where his friend's wife was involved. He phoned the police to come to the scene. Upon arrival two police officers accused him of being disrespectful to them and started to assault him. He was later taken to the Police Station where he was further assaulted.

The assault at the scene of the accident took place in the presence of several members of the public.

[5]. As a result of the assault the Appellant sustained injuries. His face was swollen and he felt pain all over his body. He bled through his mouth which was also swollen. He had to undergo medical treatment and a medical report in the form of Form J88 was handed in as an exhibit at the trial.

[6]. The trial magistrate made a finding that there was a *prima facie* case against the Respondent. Notwithstanding the established *prima facie* case the Respondent closed his case without calling any witness to controvert the Appellant's version. In my view the trial magistrate should have granted judgment in favour of the Appellant.

- [7]. However, the learned magistrate dismissed the Appellant's claim on the ground that the particulars of claim do not disclose a cause of action. His reasoning was that the Appellant's summons lacked the allegations of wrongfulness or unlawfulness and malicious intention and thus it disclosed no cause of action.
- [8]. For the reasons that follow hereunder the learned magistrate was clearly wrong in his judgment. In the particulars of claim the allegation of "Assault" is clearly set out and is supported by the undisputed evidence of the Appellant.
- [9]. Assault consists in unlawfully and intentionally (1) applying force to the person of another or (2) inspiring a belief in that other that force is immediately to be applied to him.
- See JRL Milton, South African Criminal Law and Procedure
Volume II 3rd Edition at page 406**
- [10]. Assault encompasses the elements of wrongfulness and *animus injuriandi*. Although in an action based on assault a plaintiff must

normally allege and prove *animus injuriandi* and unlawfulness on the part of the defendant, in the present case this was unnecessary: the allegation of assault is an allegation of an unlawful inroad upon the plaintiff's right to the integrity of his personality and the animus is sufficiently alleged by the allegation of assault.

See **Bennet v. Minister of Police and Another 1980(3) SA 24 (CPD)**

[11]. If the particulars of claim lack an express averment of *animus injuriandi* it can be implied from other averments in the plaintiff's pleadings. *Prima facie* if the plaintiff alleges an assault on him he is alleging an unlawful and violent physical attack upon him which in the normal course involves an element of the *contumelia* inflicted.

[12]. In *casu* it was not necessary for the Appellant to have alleged the elements of unlawfulness, wrongfulness or intention in his particulars of claim in order to establish his cause of action.

It is trite that in a delictual claim the requirements of fault and unlawfulness are not factual ingredients of the cause of action, but are legal conclusions to be drawn from the facts.

See Truter and Another v. Deysel 2006(4) SA 168 (SCA)

[13]. In the result the learned magistrate in the Court *a quo* erred in dismissing the Appellant's claim on the ground that the particulars of claim do not disclose a cause of action. In the circumstances the appeal should succeed.

[14]. The injuries sustained by the Appellant are of a serious nature and needed medical treatment. There are also elements of *contumelia* and/or *animus injuriandi* in the assault in as much as the assault took place in the presence of members of the public at the scene of accident. The assault was even repeated at the Police Station where the Appellant was taken to and without any just cause.

An amount of R60 000-00 is in my view reasonable to compensate the Appellant in the circumstance of this case.

[15]. I accordingly grant the following order:

15.1. The appeal is upheld with costs.

15.2. The order of the Court *a quo* is set aside and substituted with the following order:

“Judgment is granted in favour of the Plaintiff and against the Defendant for payment of the sum of R60 000-00 with costs”.

E M MAKGOBA JP
JUDGE PRESIDENT OF THE HIGH
COURT OF SOUTH AFRICA,
LIMPOPO DIVISION, POLOKWANE

I agree

M G PHATUDI J
JUDGE OF THE HIGH COURT OF
SOUTH AFRICA, LIMPOPO
DIVISION, POLOKWANE

APPEARANCES

Heard on : **14 October 2016**

For Appellant : **Mr. M P Phooko**
Moloko Phooko Attorneys

For Respondent : **Mr. L. Molepo**
Molepo & Phala Attorneys