



IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST PROVINCIAL DIVISION, MAHIKENG

CASE NO: 71/2011

In the matter between:

ELENA LETLHOGONOLO NTSEANE

Plaintiff

AND

MINISTER OF SAFETY AND SECURITY

Defendant

DATE OF HEARING

: 03 NOVEMBER 2015

DATE OF JUDGMENT

: 19 NOVEMBER 2015

COUNSEL FOR THE PLAINTFF

: ADV. ZWIEGELAAR

COUNSEL FOR THE DEFENDANT

: ADV. D SMIT

JUDGMENT

DJAJE AJ

- [1] The Plaintiff instituted an action for damages against the Defendant in the amount of R150 000-00 for unlawful arrest and detention by members of the South African Police Service acting within the scope and authority of their employment. The Defendant conceded the merits 100% in favour of the Plaintiff. The only issue for determination was quantum.

Background

- [2] The Plaintiff testified that on 17 December 2009 she was arrested and detained at Vryburg Police station and released on 18 December 2009. The reason for her arrest was that her neighbour accused her of stealing money from her bank account which she knew nothing about. She appeared in the Vryburg Magistrate's Court twice and the case was withdrawn. At the time of arrest the Plaintiff testified that she had one minor child of one year and was seven months pregnant. Further that she was eighteen years old and still doing grade eleven at school. As a result of her arrest and detention she testified that she had to miss school. Further that during her detention in the Police cells she could not have any food as other inmates took all her food. She also had to sleep on the floor sharing a blanket with one of her cell mates.

Issue

- [3] As stated above in this judgment the only issue for determination is the quantum.

Submissions

- [4] The submission by the Plaintiff was that she is entitled to compensation as she was deprived of her freedom for twenty one hours. Further that she was deprived of her constitutional rights to be informed of the reason for her detention and denied the basic right to food. It was argued that at the time of her arrest the Plaintiff was seven months pregnant and had to leave a one year old baby at home for several hours albeit with her parents. She was still young and attending school. The Plaintiff's argument was that the amount of R150 000-00 claimed is fair considering all the above circumstances and that the conduct of the Defendant was unjustified. In support of the amount to be paid counsel for the Plaintiff referred to the judgment of **Landman J** in the matter of **Emmanuel Tlhatlhaganyane, case no. 1661/09 date of judgment 14 January 2013** where an amount of R140 000-00 was awarded to the Plaintiff who was arrested and detained for 19 hours. The Plaintiff in that case was a senior at the mine and was arrested in front of his subordinates.
- [5] The Defendant's submission was that the police who came to arrest the Plaintiff were driving an unmarked vehicle and there is no evidence that the community know or saw the Plaintiff being arrested. Further that there is also no evidence of any stigma to

the Plaintiff related to the arrest. It was argued by the Defendant that the fact that the Plaintiff was pregnant on the day of arrest did not entitle her to preferential treatment in the police cells and her one year old baby was not left alone as the Plaintiff's parents were present at home. The contention by the Defendant was that the amount claimed was not justified and the fair and reasonable amount to be awarded should be R60 000-00. In justifying the amount to be awarded counsel for the Defendant referred to a number of decided cases. In **Minister of Safety and Security v Kruger (183/01) [2011] ZASCA 7 (8 March 2011)** the court on appeal awarded an amount of R50 000-00 for unlawful arrest and detention of one day. The award in the matter of **Minister of Safety and Security v Seymour 2006 (6) SA 320 (SCA)** was R90 000-00 for unlawful arrest and detention for 5 days. In a more recent judgment of **Guidione v Minister of Safety and Security (2008/37480) [2015] ZAGPJHC 110 (11 June 2015)** the Plaintiff was arrested and detained from 24 August 2008 to 25 August 2008 and the amount awarded was R75 000-00.

Law

- [6] In the matter of **Strydom v Minister of Safety and Security and Another (31353/2007) [2014] ZAFSHC 73 (28 May 2014)** the following was stated:

“[12] In the assessment of damages for unlawful arrest and detention, it is important to bear in mind that the primary purpose is not to enrich the aggrieved party but to offer him or her some much needed *solatium* for his or her injured feelings. It is therefore crucial that serious attempts be made to ensure

that the damages awarded are commensurate with the injury inflicted. However, our courts should be astute to ensure that the awards they make for such infractions reflect the importance of the right to personal liberty and the seriousness with which any arbitrary deprivation of personal liberty is viewed in our law. It is impossible to determine an award of damages for this kind of *injuria* with any kind of mathematical accuracy. Although it is always helpful to have regard to awards made in previous cases to serve as a guide, such an approach if slavishly followed can prove to be treacherous. The correct approach is to have regard to all the facts of the particular case and to determine quantum of damages on such facts.”

[7] In relation to deprivation of freedom the following was said in **Takawira v Minister of Police (A3039/2011) [2013] ZAGPJHC 138 (11 June 2013)**:

“29. A delictual claim for damages may also be brought in terms of Section 12(1) (a) of the Constitution. By definition such a claim is based on the unreasonable and unjustifiable infringement of an individual’s right not to be arbitrarily deprived of freedom or to be so deprived without just cause. See *Zeeland v Minister of Justice and Constitutional Development & Another*, [2008] ZACC 3; 2008 (4) SA 458 (CC), at paras 24, 25 and 35....42. It is trite that an enquiry into unlawful detention (as with arrest) seeks to determine the extent to which the various affected rights of personality were impaired and their duration. The enquiry involves both a subjective element based on the emotional effect of the wrong committed to the plaintiff (such as the humiliation or anguish of suffering the injustice, the loss of self-esteem and self-respect) and an objective impairment

based on the external effects of the wrong (such as loss of reputation in the eyes of others).”

[8] In assessing damages the purpose is not to enrich the Plaintiff but rather to offer her *solatium* for her injured dignity and loss of liberty. **See Minister of Safety and Security and M Tyulu [327/08] [2009] ZASCA 55 (29 May 2009)**. An award for damages in respect of the Plaintiff’s *injuria* cannot be calculated with mechanical precision, recourse must be had for guidance in previous similar fact decisions.

[9] In **Minister of Safety and Security v Seymour 2006 (6) SA 320 (SCA)** at paragraph [20] it was stated that:

“[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. The awards I have referred to reflect no discernable pattern other than that our courts are not extravagant in compensating the loss. It needs also to be kept in mind when making such awards that there are many legitimate calls upon the public purse to ensure that other rights that are no less important also receive protection.”

Analysis

[10] In determining the quantum of damages I will consider evidence tendered by the Plaintiff that at the time of the arrest she was 18 years old and still doing grade 11. She had to miss school for two days even though the teachers were not aware of the reason. She

further testified that at the time of her arrest and detention she was 7 months pregnant and had to sleep on the floor sharing a blanket with one of the detainees. She had a one year old baby who had to spend the night without her albeit with her parents and other family members. The Plaintiff was arrested at home with an unmarked police vehicle and none of the community members was aware of the arrest. There is no evidence that as a result of the arrest the Plaintiff suffered any degradation and humiliation from the community or friends.

[11] Having considered the circumstances of Plaintiff's arrest and detention, her vulnerability as a pregnant young mother to a one year old child and the trauma she went through , I am in agreement with the submission by the Defendant that an appropriate composite award for the Plaintiff's claims is the amount of R60 000.00.

Costs

[12] It is trite that costs follow the result and as the Plaintiff is successful the Defendant is ordered to pay costs of suit.

Order:

Consequently, the following order is made:

1. The Defendant is ordered to pay the Plaintiff's damages in the amount of R60 000-00 with interest thereon at the rate of 15,5% per annum *a tempore morae* from the date of judgment to the date of payment;
2. The Defendant is ordered to pay the costs of suit.

DJAJE AJ

ACTING JUDGE OF THE HIGH COURT