

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO
Circulate to Regional Magistrates:	YES / NO



IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

CASE NO: 52/2021

In the matter between:

MPHO CHRISTOPHER MVALA

APPLICANT

and

THE MINISTER OF POLICE

RESPONDENT

JUDGMENT

MAAKANE AJ

Introduction

[1] The matter came before me for determination of the amount or quantum of damages to be awarded to the plaintiff, as compensation. This follows his arrest and subsequent detention by a member of the South African Police Services ("SAPS") on **20 January 2019**.

[2] Summons in the matter were issued on **15 January 2021**. After service thereof, defendant did through the state attorney, serve and file a notice of intention to defend the action. He however failed to file a plea. On **30 September 2021** plaintiff applied for and obtained an order of separation of issues of merits and quantum. The order was granted by Snyman J (as she then was).

[3] On **6 January 2022**, plaintiff successfully applied for default judgement, which was granted by Peterson J. In terms of the order, defendant was held delictually liable for 100% of the plaintiff's proved damages.

Factual background and Evidence

[4] For the purpose of determining quantum, plaintiff testified under oath. His evidence is to the effect that he was 36 years old at the time of his arrest. He was arrested at about noon on Thursday **10 January 2019**. At the time of his arrest, he was at the Klerksdorp Police Station, together with his friend. He had accompanied his friend who had gone to the Police Station to have his documents certified.

[5] Subsequent to the arrest, they were taken to Potchefstroom. There, a third person that was also arrested. The three were then transported to Potch Police Station. It was at this stage that the learnt for the first time that they were being arrested on a charge of possession of suspected stolen motor vehicle. All three were then detained at the Potchefstroom Police cells. This was shortly after midday. He described the cell as being filthy, and unhygienic. They were about sixteen detainees in that cell, with only one toilet which was not functioning or flushing properly. There was a strong stench smell with very poor ventilation. There was no privacy at all and sleeping accommodation was limited.

[6] He was never assaulted nor threatened with violence by any of his cell mates. He was however not at ease, scared that this may happen. They were given and fed mainly bread. He was on his first day, unable to eat. He gave his bread to his cellmates. It was only on Sunday that he was able to eat his food.

[7] On Monday morning the **14th of January 2021**, he together with his co-accused and other detainees, were transported in a police van to the Potchefstroom Magistrate's Court. On arrival, they were all locked in the court cells. While there, he made attempts to arrange for legal representation. However, he and his co-accused were ultimately released without even appearing in court.

[8] He is unmarried. At the time of his arrest, he was working for Clicks. Following his arrest, his colleagues at work no longer trusted him. He was always treated with suspicion. He, as a result decided to resign. His grandfather owns a fleet of taxis in Klerksdorp and is for that reason, known by many people in that area. His arrest therefore, impacted negatively on his reputation.

[9] There was no appearance for the defendant. As a result, the plaintiff was never cross-examined. This was all the evidence tendered by and on behalf of plaintiff.

Relevant legal principles

[10] The determination of quantum in the award of delictual damages in a case such as this, is not an exercise capable of mathematical calculation. The starting point is of course reference to previous cases and the approach of the courts. However, these serve as mere guidelines and are not to be harshly followed.

[11] In Minister of Safety and Security v Tyulu 2009 (5) SA 85 (SCA) Bosielo JA warned that the award of delictual damages in a case such as this, should not be used as a means to enrich the aggrieved party. On the contrary, damages awarded must serve as solatium sufficient soothe his or her injured feelings. The court held:

“26. 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 feeling. 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. I readily concede that 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 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 the quantum of damages on such facts...” (Emphasis added).

[12] This approach was also confirmed by the Constitutional Court in Mahlangu and Another v Minister of Police 2021 (7) BCLR 698 (CC) where the Constitutional Court held that the awarding of damages in such a case, is intended to deter and prevent future infringements of human rights, by organs of state. The court went further to confirm that the award of damages constitutes goodwill gesture for the successful plaintiff and not intended to try and rectify the wrong that has been committed.

[13] In Minister of Safety and Security v Seymour 2006 (6) SA 320 the Supreme Court of Appeal explained the purpose of damages as follows:

“Money can never be a crude solatium for the deprivation of what in truth can never be restored”.

(at paragraph 20)

[14] In Rahim v Minister of Home Affairs 2015 (4) SA 435 (SCA) the Supreme Court of Appeal held that in determining the amount of damages, the following factors are relevant:

“(a) The circumstances under which the deprivation of liberty took place, which would include the fact that the arrest was not only arbitrary but was also preceded by brutality and torture by the arresting officer.

(b) The conduct of defendants – the arresting officer, continued attempt to influence the prosecutor...to ensure that the applicants would remain in detention...

(c) The nature and duration of the deprivation”.

[15] The Supreme Court of Appeal in Mr Woji v Minister of Police 2015(1) SACR 409 (SCA), awarded an amount of R500 000-00 to Mr Woji who was detained for a period of approximately thirteen (13) months. In coming to the figure, the SCA took into account various factors, among others the fact that the cell was overcrowded. There were insufficient beds and space to sleep on, he was subjected to the control and rule of a prison gang that raped other prisoners. He was humiliated and traumatized by being raped on two occasions. He was helpless and could not report the rapes for fear of retaliation and victimization by the same gang members.

[16] In Tyulu (Supra) the Supreme Court of Appeal awarded to the appellant an amount of Fifteen Thousand Rand (R15 000.00). In coming to that conclusion, the SCA held:

“27. Having given consideration to all relevant facts, including the age of the respondent, the circumstances of his arrest, the fact that he was arrested for an improper motive and awards made in comparable cases, I am of the view that a fair and appropriate award of damages for the respondent is unlawful arrest and detention is an amount of Fifteen Thousand Rand (R15 000.00).”

[17] Previously decided cases on the issue of quantum serve as a useful guide. They however, should not be interpreted as having the effect of taking away the discretion that a presiding officer has. In this regard Fischer AJ said the following:

“22. I am mindful of the fact that the assessment of awards for general damages with reference to awards made in earlier cases is “fraught with difficulty” as each case falls to be analysed with reference to its own particular facts and circumstances, which seldom, if at all, compare directly with those in another case. Earlier cases are regarded as a useful guide as to what has been considered to be appropriate in the past, but such earlier cases quite clear. Serve on greater purpose than that. (See the Seymour case supra at page 325 par [17]).”

See: Steenbergen and Others v Minister of Safety and Security (1071 / 2003; 1072/2003) [2011] ZAFSHC 132 (21 July 2011)

[18] On comparable facts and very close to have, I echo the sentiments of Hendrick J (has he then was) in this division, and the principles he enunciated in Ngweya v Minister of police (924/2016) [2019] ZANWCH 3

(7 FEBRUARY 2019). In relation to award for both unlawful arrest and detention, his determination, he said the following:

*“[9] The plaintiff can only claim for unlawful arrest and subsequent detention from Friday **28th August 2015** at 10:00 am to Monday **31st August 2015** at 11:00 am, which equates to three (3) full days although it stretched over four (4) days (Friday to Monday). Having assessed all the circumstances for this case, the plaintiff’s age, the circumstances under which he was arrested, the nature and the duration of detention relevant for consideration, the alleged assault and emotional effect of the arrest on him, bearing in mind that no expert or medical evidence was provided in this regard, and the evidence regarding the cell in which he was placed during that weekend, I am of the view that it would be fair and appropriate to award in the amount of fifteen thousand (R15 000.00) per day.”*

Conclusion

[19] It is clear from authorities that in this case, plaintiff can only claim for his unlawful arrest and later detention from Thursday **10 January 2019** at noon, to Monday **14 January 2019** at noon. Although the period stretched over five (5) days, the period of arrest and detention equates to four (4).

[20] It is also clear from authorities that there are no hard and fast rules as to determination of quantum of damages. This being so, the court is left with a discretion to determination what a fair and appropriate amount is in each case.

[21] Taking into account all of the above, the unique facts of the case, the manner and circumstances surrounding the arrest, the conditions under which the plaintiff was detained and so on, I am of the view that a fair and appropriate amount to be awarded as delictual damages is the amount of

One Hundred and Forty Thousand Rand (R140 000.00) only. This equates to Thirty Five Thousand Rand (R35 000.00) per day.

Costs

[22] The normal practice is that costs follow the results. I do not find any reason to deviate therefrom.

Order

[23] Consequently, I make the following order:

1. The defendant is ordered to pay to the plaintiff an amount of R140 000.00 (One Hundred and Forty Thousand Rand only) as compensation for damages arising out of his unlawful arrest and detention.
2. The defendant shall pay plaintiff's costs of this action.

**S.S MAAKANE
ACTING JUDGE OF THE HIGH COURT,
NORTH WEST DIVISION, MAHIKENG**

I AGREE

APPEARANCE

For the	Adv C Gobetz
Plaintiff:	

Instructed	Jan Ellis Attorneys c/o Loubser Ellis
By:	Associate
	MAHIKENG

For the	
Defendant:	No appearance

Date Heard	06 February 2023
------------	------------------

Date of Judgment	12 October 2023
------------------	-----------------