

IN THE REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 07223/14

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

13/12/2018

DATE

SIGNATURE

IN THE MATTER BETWEEN:

ROYHEED RAMDIN

And

MINISTER OF POLICE

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JUDGMENT

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CORAM: MAKHOBA AJ

[1] In this matter plaintiffs are Mrs. and Mr. Ramdin and defendants are the Minister of Police and Raymond Le Roux. The Plaintiffs claim for damages

including constitutional damages against the defendants for the unlawful arrest and killing of their son by the 2<sup>nd</sup> defendant.

[2] The following is common cause;

2.1 On the day of trial the defendants conceded liability thus the merits were settled in favour of the plaintiffs

2.2 The claim for future medical expenses was settled at an amount of R66000.00

2.3 The claim for general damages was settled at an amount of R300 000.00.

[3] The only issue to be determined by court is the claim of three million rands (3 000 000.00) for constitutional damages. In proving this claim both Plaintiffs and their daughter testified. Defendants did not lead evidence.

[4] Mr. Ramdin testified that up to today the police never explained to them why their son was killed. His health deteriorated both physically and mentally after the death of his son.

[5] Mrs. Sharon Ramdin testified that the deceased was her biological son. Since his death her life changed drastically. The deceased was her only son.

The death of the deceased affected her emotional and physically, her health deteriorated.

- [6] Melody Peroomal she testified about the events leading to the discovery of the death of her brother. The death of the deceased was so tragic that it affected her parents' health and emotional status both her parents health deteriorated as a result of her brother's death at the hands of the police
- Both plaintiffs and defendants closed their case.

- [7] In *Fose v Minister of Safety and Security (1997) ZACC 6* the constitutional court held that the plaintiff should not get a large amount of money over and above compensatory damages to which he or she is entitled under the common law. According to the court it was in appropriate to use the country's scarce resources to pay punitive damages to plaintiff who have already been fully compensated for the injuries done to them with no real assurance that such payment will have any deterrent or preventative effect on the state in the future.

- [8] In *Modderklip Squatters, Greater Benoni City Council v Modderklip Boedery (Pty) Ltd 2004 (6) SA 40 SCA* in this case the squatters could not be moved because they had nowhere else to go, the court held that since the owner

of the land's constitutional rights have been infringed he was entitled to be compensated for his constitutional right to own property.

- [9] In *MEC, Department of Welfare Eastern Cape v Kate* 2006 (4) SA 478 (SCA) in this matter on the 16<sup>th</sup> April 1996 the respondent applied to the Eastern Cape Department of Welfare for a disability grant. The application was approved after 40 months. The court held that the delay was a breach of her substantive constitutional right. The court ruled that the only remedy was a constitutional remedy namely an award of constitutional damages.
- [10] These decision I have referred to above in my view they all say that there must be a connection between an award and a breach of constitutional nature. This is very clear from a recent decision in *Michael Komape and Others v Minister of Basic Education* 2018 ZALMPPHC 19 in this matter the family of the deceased claimed constitutional damages against the department of Basic Education. The court found that the constitutional damages claimed were punitive damages and it would result in the family being over compensated.
- [11] In the matter before me there is a duty on the Plaintiff to show that there was a direct breach of a constitutional right as a result of the actions of the

2<sup>nd</sup> defendant. In my view the Plaintiff failed to show such a breach of constitutional breach. Even if the court were to decide that there was such a breach. The 1<sup>st</sup> defendant has already agreed to compensate the Plaintiffs in form of general damages agreed to by the parties before the start of the trial. Should the court award the Plaintiff for a breach of constitutional damages this will result in the Plaintiffs being over compensated. See Fose v Minister of Safety and Security supra referred to above.

[12] The claim for award of constitutional damages to the Plaintiff is dismissed.

[13] The following order is made:

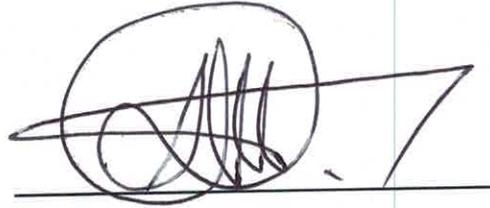
13.1 1<sup>st</sup> defendant to pay damages to the Plaintiff as follows;

(a) Damages for future medical expenses an amount of R66000.00

(b) General damages R300 000.00

Total R366 000.00

(c) Cost of suit

A handwritten signature in black ink, consisting of a large, stylized 'M' and 'A' intertwined, with a horizontal line extending to the right and a vertical line extending upwards from the top of the 'M'.

D MAKHOBA

ACTING JUDGE OF THE HIGH COURT

Counsel for the Plaintiff: Adv. Z Omar

Counsel for the Defendant: Adv. N Sikhakhane

Judgement reserved: 26 November 2018

Delivered: 13/12/18