

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 02100/2018

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|------|--|
| (1) | REPORTABLE: YES / NO |
| (2) | OF INTEREST TO OTHER JUDGES: YES/NO |
| (3) | REVISED 2/5/2019 |
| DATE | SIGNATURE |

IN THE MATTER BETWEEN

MOGAKI JOHANNA LEFETE

APPLICANT

AND

THE MINISTER OF POLICE

RESPONDENT

JUDGMENT

SENYATSI AJ

- [1] In this action, the Plaintiff issued summons against the Defendant for unlawful arrest. The merits of the claim were conceded by the Defendant. The only issue that remains to be determined by this court is the quantum.
- [2] The claim by the Plaintiff for unlawful arrest amounts, in total, to R450 000 made up as follows:-
- 2.1 Unlawful arrest and contumelia R100 000.
- 2.2 Unlawful detention for 5 days R350 000.
- [3] The only witness to testify in the assessment of the quantum was the Plaintiff herself on 14 February 2019. She testified that she was arrested on 8 November 2017 and kept in custody for 5(five) days until released on 13 November 2017.
- [4] During her arrest for suspicion of a stolen Range Rover, her neighbours came out of their houses due to the commotion occasioned by the number of police vehicle as well as the helicopter hovering over her family house. There were approximately 50 people witnessing her arrest.

- [5] She was kept in the police cell together with one inmate. The cell had toilet and shower which did not have doors and offered no privacy to the inmates. She testified that upon her fingerprints being taken and after alerting her family members and being kept in the prison cell, she cried the whole night and could not bear with the arrest.
- [6] She was eventually taken to court but never appeared before court on 13 November 2017. She was simply told to go home. After her release, she received a letter from her child's school about the argument her child had with another child regarding her imprisonment. This was painful to her as another child teased her child about her being an ex-convict.
- [7] The Plaintiff is 44 years of age and works for a medical practitioner as a receptionist. She felt humiliated by the arrest and taken into police van in the presence of her neighbours. Her employment was, however, not affected by the arrest. She claimed to have lost her phone which was allegedly taken by a police officer known as Bester. She has, however, not made a claim in respect of the phone in her particulars of claim.
- [8] The approach in respect of determination of quantum for general damages is that the trial judge has a large discretion to award what

he/she in the circumstances of each case, considers to be a fair and adequate compensation to the Plaintiff. In support of this approach Potgieter JA said the following in *Protea Assurance Co Ltd v Lamb* 1971 (1) SA530 (A) 534H-535A:

"It is settled law that the trial Judge has a large discretion to award what he in the circumstances considers to be a fair and adequate compensation to the injured party for these sequelae to his injuries. Further, this court will not interfere unless there is a substantial variation or as it is sometimes called a striking disparity between what the trial court awards and this court considers ought to have been awarded."

- [9] In *May v Union Government* 1954 (3) SA 120 (N) at 130C-F, Broome J said the following:

"Our law has always regarded the deprivation of personal liberty as serious injury, and where deprivation carries without the imputation of criminal conduct of which there was no reasonable suspicion the injury is very serious indeed."

- [10] Our Courts are always intolerant of incursions upon personal liberty. It is more so that our Constitution ensures that those incursions upon personal liberty will not recur. This has been a

consistent feature of judicial oversight on personal liberty for many years.

[11] In determining the quantum for damages in these type of claims, as pointed out by botha AJA in *AA Onderlinge Assuransie Assosiasie Bpk v Sodoms* 1980 (3) SA 134 (A) 141 G-H, it is generally undesirable "*to adhere lavishly to a consumer price index in adjusting earlier wards. But... it is useful as a general guide to the devaluation of money.*"

[12] In *Maphalala v Minister of Law and Order* unreported case no: 29537/93 dated 10 February 1995, the Plaintiff was arrested on 23 June 1992 and released in consequence of an order of court on 16 September 1992. He was immediately arrested again and released only on 19 November 1992. During the period that he was detained, the Plaintiff was held in solitary confinement, mostly *in communicado*, for 150 days. While in detention he was also tortured. The court awarded Plaintiff R145 000 (R300 000) the index was 1863, for his unlawful arrest and detention. He was awarded an additional R35 000 for assault.

[13] In *Solomon v Visser* 1972 (2) SA 327 (C), the court award a 48 years old businessman detained for seven days, first in police cell and then in a prison, R4000 (R136 000), where the 1972 index

was 113. In *Arebb v Minister van Polisie* 1977 (2) SA 900 (A) at 914H-915 A, the court awarded a 41 years old businessman who was arrested and detained for about two hours R1000 (R24 000) where the 1977 index was 194.

[14] In *Seria v Minister of Safety and Security* 2005 (5) SA 130 (C) a professional man who was arrested and detained in a police cell for about 24 hours, for a time with a drug addict, was awarded R50000-00 (R520 000) where the 2005 index is 3681. The list of the cases quoted provides an indication of how other courts have viewed incursions upon personal liberty, but they are by no means exhaustive of cases that dealt with the issue.

[15] In The present case the Plaintiff was deprived of her liberty for five days. Throughout her detention, she was allowed access to make calls and receive visits from her family members. She was in the company of one female inmate although her prison cell had no privacy. She was not subjected to physical harm.

[16] There is no doubt that the experience being in custody was traumatic and caused her a significant distress and humiliation.

[17] Bearing all the circumstances in mind, in my view, an appropriate award should be the sum of R280 000.

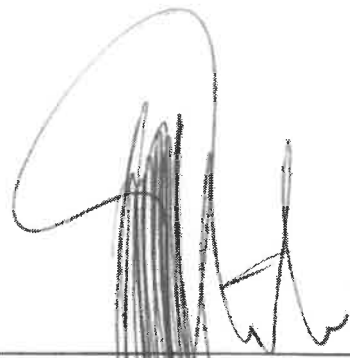
ORDER

[17] The Defendant is ordered to:-

17.1. Pay the sum of R280 000

17.2. Interest thereon at the rate of 10.5% per annum from date of
Judgment to date of payment;

17.3. Costs of suit on party and party scale.

A handwritten signature in dark ink, appearing to be 'M.L. Senyatsi', is written over a horizontal line. The signature is stylized with a large loop at the beginning and a series of vertical strokes in the middle.

M.L. SENYATSI
ACTING JUDGE OF THE HIGH COURT
OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION,
JOHANNESBURG

Appearances:

Date of hearing : 14 February 2019

Date of Judgment : 02 May 2019

For the Applicant : Mr L.N Naidoo

Instructed by : Logan Naidoo Attorney

For first Respondent : Adv C Seabela

Instructed by : State Attorney