

*IN THE HIGH COURT OF*  
**GAUTENG LOCAL DIVISION,**



*SOUTH AFRICA*  
**JOHANNESBURG**

**CASE NO: 16458/2016**

1. Reportable: No
2. Of interest to other judges: No
3. Revised: Yes

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(Signature)

Date: 22 April 2022

In the matter between:

**NOBLE: FELECITY**

**PLAINTIFF**

and

**MINISTER OF POLICE**

**DEFENDANT**

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**JUDGMENT**

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**ALLY AJ**

**INTRODUCTION AND BACKGROUND FACTS**

[1] This is a delictual claim for damages arising from the arrest and detention of the Plaintiff on 29 November 2014 by members of the Defendant.

[2] There was no representation in Court for the Defendant and the Plaintiff's representative, Ms Gowrie, was requested to contact the State Attorney with no success. The Judge's secretary was also requested to contact the State Attorney involved, also without success.

[3] The case then proceeded on a default basis as there was no appearance by the Defendant.

## **BACKGROUND FACTS**

[4] The Plaintiff testified that she was at her boyfriend, Shane's, flat with her children when two male persons, Spokes and Bin came to the flat. They were carrying two speakers, a snooker ball and some other items.

[5] Later that day, the abovementioned Spokes and Bin came to collect the items they had left. At this time, the Plaintiff was in the bathroom and she heard that the items belonged to Jonas. The Plaintiff decided to go to Jonas and tell him that his items were in their flat whereafter he stated that he was going to call the police.

[6] Later that day, two policemen came to Shane's flat and wanted to know the whereabouts of Jonas's goods. The Plaintiff took them to the bedroom to show them the goods. At the time of entering the flat, the policemen came with a person known to the Plaintiff as 'Nani'. The tall policemen was a rude and aggressive person. After showing the policemen the goods, she was instructed to carry one of the speakers to the police van.

The Plaintiff wanted to know what would happen to her children if she had to carry the speaker to the police van and the policemen showed no interest in her plight.

[7] At the police van, and out of the blue, the Plaintiff was handcuffed and told to show the police where Spokes lived. The Plaintiff remonstrated as to why she was being handcuffed. 'Nani' also wanted to know why the Plaintiff was being handcuffed as she was not the person that stole the goods.

The tall policemen told 'Nani' that she was only being handcuffed up to Spokes's place whereafter she will be released. The Plaintiff was able to arrange with her sister to look after her children.

[8] This incident at the flat took place in full view of residents at the flats. The Plaintiff testified that she felt embarrassed and ashamed of being treated like a

criminal by the police especially because she had done nothing wrong and 'Nani' said as much to the police.

[9] The Plaintiff was forced into the back of the van and 'Nani' was requested to accompany the police to Spokes's place. The two, policeman accompanied by 'Nani' and the Plaintiff drove to Spokes's place. On arrival at Spokes's place, Spokes was not at home but there were two male persons, one of which was his cousin. The policemen asked where Spokes's bedroom was situated and were told that his bedroom was locked. The policemen responded by stating that they would open the bedroom by force. They were told that they did not have a search warrant and could not force the door open.

[10] The absence of a warrant did not bother the policemen and they stated that Spokes had broken in at someone's place and accordingly did not need a search warrant. Spokes's cousin then gave the policemen a screwdriver that was used to open the bedroom door. The policemen, Plaintiff and 'Nani' entered the bedroom which contained a bed, wardrobe, computer box and a flatscreen Television.

[11] The policemen then asked Spokes's cousin and the other male person about the ownership of the Television and they responded that they did not know. 'Nani', however, did not identify the Television as belonging to her. The policemen nevertheless took the Television and placed it in the police van. At the

police van, the Plaintiff was once again handcuffed. The Plaintiff wanted to know why she was being handcuffed again taking into account that the policemen had stated that they would release her at Spokes's place. The tall policemen replied by stating that she would be released at the police station.

[12] The two policemen, 'Nani' and the Plaintiff then drove to the police station. At the police station, the Plaintiff was not released but instead was instructed to take the speaker into the charge office. At the charge office she was given a 'Notice of Rights' to sign by other police officers. The 'Notice of Rights' document was not explained to her. The Plaintiff explained to the police officers that she had done nothing wrong and that 'Nani' would confirm this. The police officers were not interested and told the Plaintiff that they had nothing to do with 'Nani'.

[13] The Plaintiff asked the police officers if she could make a telephone call whereupon she was told that she could not make a telephone call. She was then taken to the police cells and pushed into the police cell.

[14] During the Plaintiff's interaction with the police from the time she was confronted, no police woman was present. The Plaintiff testified about the atrocious conditions in the police cell. It was dirty with broken windows with the shower and toilet not working. The Plaintiff had to use the blankets in the cell that were sweaty and bloodied. There was a thin sponge mattress covered in a leather-like cloth. The toilet was blocked and faeces were floating in the toilet.

When she urinated she had to stand. The Plaintiff had also began her menstrual cycle at the time she was in the cell. The Plaintiff was not given any assistance in terms of sanitary pads but was only given a small toilet roll. The Plaintiff used dirty cloths she found in the cell to control the menstrual flow. The Plaintiff was given bread with jam and tea on the Sunday morning and later in the day received fish and rice.

[15] The Plaintiff's fingerprints were taken on the Sunday evening and she asked the police officers for medication and was told that the police station was not a Clinic and she could request the Court the next day for medication. The Plaintiff was taken to Court the next morning which was a Monday morning. The conditions in the Court cells were markedly better than those at the police cells. In this regard, the toilets were in working order, the Plaintiff was able to wash and there was a cup to drink water.

[16] The Plaintiff stayed in the Court cells for about an hour before her name was called. She entered the Court where there was a Magistrate and Prosecutor. The Magistrate stood the matter down for further investigation. However, the Prosecutor told the Plaintiff that she could go home. What is clear from the evidence is that the Plaintiff was released on the day she appeared in Court which was on 1 December 2014.

[17] The Plaintiff testified how the fact of being portrayed as a criminal by the South African Police Services has affected her relationship with her community

as well as that she could no longer continue with her work as a domestic worker because of her arrest. The Plaintiff received no visitors whilst in the police cells which affected her emotionally. She heard from a member of the community which was corroborated by 'Nani' that the police demanded a bribe of R50.00 [fifty rand] in order to visit and give her food.

[18] The Plaintiff called Tshegofatse Mapeke, also known as 'Nani' to testify in support of her case. 'Nani' corroborated the evidence of the Plaintiff in all respects where they were together.

[19] 'Nani' testified that she made no statement in support of the case against the Plaintiff. 'Nani' and Jonas told the police officers at the Police Station that they had arrested the wrong person but the police officers indicated that they could not do anything.

[20] Plaintiff's case was closed after the testimony of 'Nani'.

## **ANALYSIS AND EVALUATION**

[21] There is no evidence to gainsay that of the Plaintiff and her witness and accordingly, this evidence must be accepted.

[22] It is a sad day in our democracy where policemen who are appointed to uphold the rights of citizens of the country behave in a manner as testified to by

the Plaintiff<sup>1</sup>. It would appear, that the two policemen involved had no regard for human dignity of the people they interacted with on the day of the arrest of the Plaintiff. Suffice to say that the behaviour of these policemen as well as their colleagues at the Police station must be censured and there should be consequence management applied.

[23] In the above regard, it is important to mention that at all times, the two policemen involved in the arrest of the Plaintiff, were aware that the Plaintiff had nothing to do with the theft of the goods in this case. 'Nani' told them from the beginning when she saw that the Plaintiff was being handcuffed. The attitude of these two policemen seems to be that they were in charge and accordingly could do anything they wanted.

[24] In order to succeed with this action against the Defendant, it is trite that the Plaintiff must prove that the arrest was unlawful and the subsequent detention was unlawful. The Plaintiff has also claimed for damages relating to malicious arrest and malicious detention. This aspect was not dealt with, that is, the malicious arrest and malicious detention and will not detain this Court save to state that it is clear from the evidence and pleadings that the Plaintiff did not claim for malicious prosecution against the Defendant.

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<sup>1</sup>

Mahlangu &amp; Another v Minister of Police 2021 CC 10 at para 25



[25] It is clear from the evidence, in my view, that the conduct of the policemen was wrongful and that the arrest and detention of the Plaintiff was unlawful and not in accordance with the law.

[26] In determining the quantum in matters of this nature our Courts have laid down the following principles and guidelines. In this regard the Constitutional Court held<sup>2</sup>:

*“It is trite that damages are awarded to deter and prevent future infringements of fundamental rights by organs of state. They are a gesture of goodwill to the aggrieved and they do not rectify the wrong that took place.”*

The Constitutional Court also quoted with approval, the case of Tyulu<sup>3</sup>:

*“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. 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 to have regard*

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<sup>2</sup> Mahlangu case supra at para 50

<sup>3</sup> Minister of Safety and Security v Tyulu 2009 SCA 55 at para 26

*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.”*

[27] The Court was referred to various cases as a comparison and Ms Gowrie submitted that whilst the Court was not bound by such cases as outlined in the principles and guidelines above, the Court should show its displeasure with the conduct of the policemen by awarding a higher than normal amount taking into account the conditions that the Plaintiff was subjected to as well as the embarrassment suffered by the Plaintiff. This Court is in agreement with Ms Gowrie that although the Plaintiff was in detention from the 29<sup>th</sup> November to the 1<sup>st</sup> December 2014 which is not an inordinate amount of time, the treatment of the Plaintiff and the conditions under which she was detained were disgraceful and unacceptable to say the least.

[28] In determining a fair and reasonable amount in this matter the Court has had regard to a similar unreported case in this Division recently, namely, Nhlapo v Minister of Police.<sup>4</sup> The Plaintiff in that was a male of 41 years of age and had been detained for a period of 2 days. His arrest was also in similar circumstances as the Plaintiff and the conduct of the police officials was similar.

The conditions in the police cells were similar but I am of the view that the treatment that the Plaintiff received when informing the police officials of the fact

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<sup>4</sup>

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that she was menstruating, can only be described as worse and inhuman in the extreme.

## **CONCLUSION**

[29] On a conspectus of the evidence, this Court is satisfied that the Plaintiff has succeeded in proving her claim for damages for unlawful arrest and detention against the Defendant.

A fair and reasonable amount to be awarded, taking into account all the circumstances of this case, is an amount of **R300 000-00** [three hundred thousand rand].

## **COSTS**

[30] Ms Gowrie submitted that the Court should further show its displeasure with the conduct of the Defendant in dealing with this matter and that the Plaintiff should not be out of pocket. It was therefore submitted that this Court should award costs on a punitive scale on an attorney and client basis. I see no reason why, in this circumstances of this case, costs should not be awarded as requested and accordingly costs are awarded on an attorney and client scale.

## **INTEREST**

[31] Ms Gowrie, submitted that the Court has a discretion in determining when prescribed interest would run and that in this case the Court should exercise its discretion in favour of allowing interest run from the date of demand. It should be noted, however, that the Plaintiff, in its amended pleadings<sup>5</sup> claimed interest from the date of service of the summons.

I am not convinced that this Court should change the date from which the prescribed interest should run and accordingly the said prescribed interest shall run from the date of service of the summons.

[32] Accordingly, an Order in the following terms will issue:

- a) The Defendant shall pay an amount of **R300 000-00 [Three Hundred Thousand Rand]** to the Plaintiff;
- b) The Defendant shall pay interest on the amount in paragraph (a) at the prescribed legal rate from date of service of the summons;
- c) The Defendant shall pay the costs of this action on an Attorney and Client scale.

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<sup>5</sup>

Caselines at 030-20

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**G. Ally**

**ACTING JUDGE OF THE HIGH COURT**

**GAUTENG DIVISION OF THE HIGH COURT, JOHANNESBURG**

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be **25 April 2022**.

Date of Virtual Hearing : 15 and 16 February 2022

Date of Judgment : 22 April 2022

**APPEARANCES:**

**Plaintiff** : **Ms M. Gowrie**  
Madelaine Gowrie Attorneys  
107 Albertina Street  
Elephant House, 4<sup>th</sup> Floor, Suite 405  
Johannesburg  
[admin@mgowrieattorneys.co.za](mailto:admin@mgowrieattorneys.co.za)

**Defendant** : No appearance  
State Attorney  
10<sup>th</sup> Floor, North State Building  
95 Albertina Sisulu Street

Johannesburg

[kthaver@justice.gov.za](mailto:kthaver@justice.gov.za)