

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT
(GAUTENG DIVISION,OF SOUTH AFRICA
JOHANNESBURG)**Case No: 43727/2012**

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES / NO.
(2) OF INTEREST TO OTHER JUDGES: YES / NO.
(3) REVISED.

DATE:

SIGNATURE:

In the matter of:

AMOS VELAPHI MTSHALI

Plaintiff

and

MINISTER OF POLICE

Defendant

JUDGMENT

Todd AJ.**Introduction**

1. The Plaintiff instituted proceedings against the Defendant claiming damages for unlawful arrest and detention. The matter proceeded to trial on an unopposed basis after this court ordered, on 22 July 2021, that the Defendant's defence was struck out and that the action should proceed by way of default.
2. When the trial was convened Mr Mashimbe appeared on behalf of the Defendant. He stated that he had not been aware of the order that the matter should proceed by

default and informed the court that he had been instructed to seek a postponement of the matter so that the Defendant could have an opportunity to prepare its defence.

3. This is a matter that has its origins in an the arrest and detention of the Plaintiff during July 2011. I invited Mr Mashimbe to indicate on what basis he could seek a postponement in circumstances in which an order had already been made that the matter should proceed to trial by way of default. He indicated that he had not been aware that that was the case, and quite properly accepted that in those circumstances the court was entitled to proceed with the trial. In my view there were no good grounds on which to postpone the matter, and as a result ruled that the matter should proceed.
4. Ms Sogoni, who appeared for the Plaintiff, indicated that she would have no objection to Mr Mashimbe attendance and indeed participating in the proceedings with a view to making any submissions that he may wish to make on behalf of the Defendant in particular regarding the quantum of the claim. Mr Mashimbe indicated, however, that he would remain in attendance to observe proceedings only, and that he would take no active role, whether in making submissions or otherwise, since he held no instructions in regard to the matter other than to seek a postponement.
5. In those circumstances the matter proceeded. Mr Mtshali gave evidence in person and on his own behalf.

Summary of the facts

6. As indicated, the matter has its origins in July 2011 when, on a Friday at approximately 11h00 Mr Mtshali was stopped at a roadblock being managed by both the Johannesburg Metropolitan Police and the South African Police Services (SAPS). Mr Mtshali was asked to produce registration papers for his vehicle, which he did.
7. The vehicle was one which Mr Mtshali had purchased in 2005, with the assistance of motor vehicle finance through Wesbank. In 2007 the vehicle had been stolen, but it was subsequently recovered and returned to him by representatives of the SAPS. He thereafter continued in possession of the vehicle and continued to pay the necessary instalments to Wesbank. He had not fully paid for the vehicle at the time when, some four years later, in July 2011, he encountered the roadblock.
8. Whether or not the prior theft of the vehicle was the reason why Mr Mtshali faced special attention on July 2011 is uncertain. He speculated that this was so. In any

event, it appears that the issue initially identified by representatives of the Johannesburg Metropolitan Police at the roadblock, which they thereafter handed over to members of the SAPS, was that the engine number on Mr Mtshali's motor vehicle differed from the engine number indicated in the registration papers that he held for it.

9. Mr Mtshali explained to the officers concerned that his vehicle had previously been stolen, in 2007, and had been returned to him after it had been recovered by members of the SAPS. He insisted that he was the lawful owner and properly in possession of the vehicle as indicated by the registration papers and by the fact that he was continuing to pay instalments to Wesbank through whom the purchase of the vehicle had been financed.
10. Despite this, representatives of the SAPS present at the roadblock informed him that he was being arrested, and he was taken to the Jeppe police station for processing. Mr Mtshali continued with his protestations of innocence and he asked whether he could make a phone call to his mother to inform her of his situation. He was refused access to a telephone to contact his mother or any other person, and the SAPS officials responsible for his arrest and detention gave no consideration to releasing him on bail or bringing him before court until Monday morning.
11. As a result, Mr Mtshali spent from approximately midday on Friday in detention in police holding cells at the Jeppe Street police station.
12. He described the conditions under which he was detained as extremely dirty and unsanitary. Eight detainees shared a cell with a single toilet, with no privacy. As a result, the cell was crowded, polluted and unsanitary. It was also the place where the detainees were fed. It was extremely cold, being mid winter, but the detainees were provided with only four foam mattresses and a thin blanket each on which to sleep. This meant that the eight detainees had to take turns lying down.
13. Mr Mtshali was not fed at all on the Friday of his arrest, but on the Saturday and Sunday received a meal of bread and tea at 10h00 in the morning and bread and soup at approximately 18h00 in the evening.
14. On Monday morning Mr Mtshali was taken to court, where he was to appear before a court for the first time. To his surprise and extreme irritation he was not in fact brought before the court at all, but was simply informed, in the holding cells, that he

was now free to go. This made it clear to him that there were in fact no grounds on which to charge him, nor any reason why he should have been arrested and detained in the first place.

15. In a sequel to the indignity of his arrest and detention, Mr Mtshali was subsequently unsuccessful in securing the release of his motor vehicle from the custody of the police. After various attempts to secure its release had been refused Mr Mtshali was threatened with further arrest. He then simply gave up and abandoned his vehicle, which he never since recovered.
16. Mr Mtshali made arrangements to settle the outstanding amount due to Wesbank from a provident fund payment made to him.

Evaluation

17. I am satisfied on the evidence that Mr Mtshali's arrest and detention were unlawful, for the reasons submitted by Ms Sogoni, and I do not deal further with that aspect of the matter in this judgment.
18. The primary focus of Ms Sogoni's further submissions concerned the quantum of damages that should be awarded to Mr Mtshali in these circumstances.
19. Ms Sogoni submitted, referring to *Minister of Police v Tyulu* 2009 (5) SA 85 (SCA), that in assessing the quantum 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 much a needed *solatium* for his injured feelings.
20. As to the amount that should be awarded, Ms Segoni submitted that there were no hard and fast rules of general application, and submitted that the matter was ultimately one that resided within the discretion of the court. She submitted, however, that the court should be guided by awards previously made in comparable cases.
21. In this regard, the Plaintiff referred in its heads of argument to awards made in *Olivier v Minister of Safety and Security* 2009 (3) SA 434 (W), *Mvu v Minister of Safety and Security and another* 2009 (2) SACR 291 (GSJ), and *Koekemoer v Minister of Police* [2017] ZAGPPHC 110. I was also referred to the award of the Supreme Court of Appeal in *De Klerk v Minister of Police* 2018 (7K6) QOD 420 (SCA), which was subsequently increased by the Constitutional Court (primarily because that court

found that Mr de Klerk was entitled to damages for the entire seven days of his unlawful detention and not only for the initial period before he was brought before court for the first time, as had been held by the SCA). The Constitutional Court decision is reported as *De Klerk v Minister of Police* 2021 SACR 1 (CC).

22. Ms Sogoni urged me to take into account the trauma suffered by Mr Mtshali, including as indicated by the fact that he had chosen not to pursue the return of his vehicle, a matter which, she submitted, indicated that he had been severely traumatized by the experience.
23. Mr Mtshali was unlawfully detained for a period of approximately three days. I accept that the experience was extremely uncomfortable, that it was an unwarranted interference with his liberty, that he was effectively treated unjustifiably like a common criminal, and that he felt betrayed by the police who were expected to protect the rights of citizens and not to violate them.
24. Ms Sogoni submitted that it would be appropriate in these circumstances to award compensation in the amount of R300 000.
25. I have carefully considered the facts and circumstances of Mr Mtshali's arrest and the evidence indicating that it was unjustifiable, that it could easily and should have been avoided, and that the experience was deeply unfair and uncomfortable for Mr Mtshali. I have also taken into account the awards in comparable cases, accepting of course that no two cases are exactly the same but rather that I should nevertheless regard them as providing some level of guidance in regard to the appropriate amount of damages.
26. In my view, the appropriate amount of damages for Mr Mtshali's unlawful arrest and detention over a period of three days is R180,000. This takes into account both the length of the unlawful detention, being a period of approximately three days, and also the cumulative effect of the deprivation of his liberty.
27. Ms Sogoni submitted that this was a case in which the Defendant should be ordered to pay the Plaintiff's costs. I agree. Although the matter ultimately proceeded on an unopposed basis it was defended up until an order was made striking out the Defendant's defense and it was necessary for the Plaintiff to be called to give evidence and for submissions to be made on both the merits and quantum. In those

circumstances it seems to me that the costs should be granted on a normal opposed scale.

Order

In the circumstances I make the following order:

1. The Defendant is ordered to pay the Plaintiff damages in the sum of R180,000 together with interest calculated at the prescribed legal rate from date of this order to date of payment.
2. The Defendant is ordered to pay the Plaintiff's costs.

C Todd

Acting Judge of the High Court of South Africa.

REFERENCES

For the Plaintiff: Adv. P R Songoni

Instructed by: Dudula Attorneys

For the Defendant: Adv. Mashimbye

Instructed by: The Office of the State Attorney

Judgment reserved: 22 August 2022

Judgment delivered: 30 August 2022