

REPUBLIC OF SOUTH AFRICA



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

Case Number: 42773/2013

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

...09 JUNE 2023.....

.....
DATE
SIGNATURE

STEVEN MORRIS

PLAINTIFF

and

MINISTER OF POLICE

DEFENDANT

NEUTRAL CITATION: *Steven Morris vs Minister of Police* Case No: 42773/2013) [2023] ZAGP JHC 678 (09 June 2023)

This judgment was handed down electronically by circulation to the parties/and or parties' representatives and uploading on CaseLines. The date and time of hand-down is deemed to be 09 June 2023 at 10h00.

JUDGMENT

JORDAAN AJ

INTRODUCTION

[1] This is an action for damages arising from the arrest and detention of the Plaintiff, Mr. Steven Morris, by members of the Defendant, acting within the course and scope of their duty on the 12th of July 2013.

[2] Subsequent to his release, the plaintiff instituted a claim for damages for the unlawful arrest of the plaintiff on the 12th of July 2013 and his continued detention until his release.

[3] The Defendant defends the action on the basis that the plaintiff's arrest and detention was justified in terms of Section 40(1)(b) of the Criminal Procedure Act 51 of 1977 ("the Act").

COMMON CAUSE

[4] At the outset of the trial it was common cause between the parties that:

4.1 The plaintiff was arrested on the 12th of July 2013 at approximately 04h00;

4.2 the plaintiff was arrested on a charge of Assault with intent to do grievous bodily harm;

4.3 the plaintiff was arrested without a warrant of arrest; and

4.4 the plaintiff was detained at Ennerdale Police Station Cells.

ISSUES

[5] The issues remaining for determination by this Court are:

5.1 Whether or not the arrest and detention of the Plaintiff was justified in terms of section 40(1)(b) of the Act; and if not

5.2 The quantum of damages.

ONUS OF PROOF

[6] By virtue of its defence, the defendant attracted the onus of establishing the lawfulness of

the plaintiff's arrest¹ on a balance of probabilities. As a consequence, the defendant also attracted the duty to begin.

¹ Minister of Safety and Security and Another v Swart 2012 (2) SA 226 SCA at 19

EVIDENCE ADDUCED BY THE DEFENDANT

[7] Sergeant (Sgt) Pule Moloji testified that he was a Constable (Cst) on 12th of July 2013 when he reported for duty at 4am and went on suspect tracing and arrest duties as part of the crew of Cst Buys. It was his evidence that they proceeded to 07th Avenue Ennerdale where the plaintiff confirmed that he was the one who assaulted the complainant. It then came to his mind to arrest the plaintiff, which arrest he executed without a warrant. It was further his evidence that he charged the plaintiff at the Ennerdale Police Station at approximately 06h00 and the plaintiff was taken to court at 10h00.

[8] During cross-examination it was the evidence of Sgt Moloji that he did not depose to an arrest statement because he was not the arresting officer and he did not affect the arrest on the plaintiff, Cst Buys was the arresting officer and she affected the arrest. He further testified that Cst Buys was the only one to enter into the yard he was simply her crew and searched the plaintiff whom she had arrested as Cst Buys was female. Sgt Moloji testified that he did not read the case docket upon which the complaint and resultant arrest was based, Cst Buys did. Sgt Moloji was confronted that he commissioned Cst Buys' arrest statement after the

arrest of the plaintiff at 4am however, he recorded the time of arrest on the docket as 5am and his oral evidence was that he arrested the plaintiff at 06h05 to which he replied that he was inexperienced and that he cannot recall the time of arrest and he did not know the time of the plaintiff's release.

[9] During re-examination Sgt Moloï testified that he heard the plaintiff state he assaulted the complainant and he knew it was the suspect because Cst Buys told him, "it is him we have him".

[10] At the conclusion of the singular evidence of Sgt Moloï, the defendant closed their case.

EVIDENCE ADDUCED BY THE PLAINTIFF

[11] The plaintiff, Mr. Morris, testified that he is a self-employed man in the plumbing and construction sector, who was born and raised at 7th Avenue Mid-Ennerdale, where he lives with his girlfriend, mother, brother, two sisters and his two sons aged 15yrs and 3yrs respectively. In the early winter's day hours of the 12th of July 2013, while asleep with his family, Mr. Morris was awakened by a loud knock at the door of his home. On

establishing that it was the police, he opened the door dressed in his pyjamas and identified himself as Steven Morris to the police when the police stated that they were looking for Tots. It was his testimony further that notwithstanding the fact that he denied assaulting anyone he was informed that he will be arrested for assault and the police proceeded to cuff his hands and arrest him while dressed in his pyjamas.

[12] The further testimony of the plaintiff recounted his detention at the Ennerdale Police Station Cells where that he was detained in a 15m² cell with approximately 15 cellmates in it. It was his testimony that the cell was very cold and dirty, the toilet could not flush and had faeces in it, the shower was redolent of urine, the cell windows were broken, he was not provided with a blanket and he had nothing to sit on and thus stood hunched forward. He further testified that due to the cold, his arm was paining as a result of a previously healed injury, but he was denied a phone call and never received pain medication. He was later called out of the cell with other cell mates and processed for court. He was thereafter placed in a holding facility with other arrestees in preparation for transportation to court. This holding facility had no roof and again no blankets were provided until they were transported to court. At the Vereeniging Court Cells he was kept in the cells until late afternoon when he was released from the cells without appearing in court. He testified that no provision for transportation was made. He felt embarrassed and humiliated as he, as an adult man, had to walk in pyjamas in public in

Vereeniging, and had to request transport money from a woman that he knew work in the mall.

[13] It was his testimony that he no longer trusted the police as they arrested him for assault with intent to do grievous bodily harm when he never assaulted anyone, his younger son always ask if he will be arrested whenever he sees police officers. His neighbours, mom, sister and brother saw him being arrested, which is an embarrassment to the plaintiff. It was his testimony that people in his community did not trust he will not assault them as a contractor.

[14] There was no significant cross-examination worth recounting and the plaintiff closed their case at the conclusion of the evidence of Mr. Morris.

THE LAW

[15] Section 40(1)(b) of the Act reads as following:

“40 Arrest by peace officer without warrant

(1) A peace officer may without warrant arrest any person-

(a) ...

(b) *whom he reasonably suspects of having committed an offence referred to in Schedule 1, other than the offence of escaping from lawful custody.*"

[16] Schedule 1 to the Act provides for a list of offences of which the offence:

"Assault, when a dangerous wound is inflicted."

is provided for in the Schedule.

[17] It is trite² that there are four jurisdictional facts that has to be proved in justification of a section 40(1)(b) defense, namely:

17.1 The arrestor must be a peace officer;

17.2 The arrestor must entertain a suspicion;

17.3 The suspicion must be that the suspect (the arrestee) committed an offence referred to in Schedule 1; and

17.4 The suspicion must rest on reasonable grounds

² *Duncan v Minister of Law and Order* 1986 (2) SA 805 (A) at 818G.

[18] The determination whether a peace officer acted lawfully when he arrested someone without a warrant is objective- whether, on an objective approach, the arresting officer in fact has reasonable grounds for his suspicion that the plaintiff has committed an offence listed in Schedule 1.

[19] Malicious detention takes place under or in terms of a valid judicial process, where the defendant makes improper use of the legal machinery of the state. The requirements to succeed in an action for malicious detention are therefore like those for malicious prosecution namely:

1. that the defendant instigated the detention;
2. that the instigation was without reasonable and probable cause; and
3. that the defendant acted with *animus iniuriandi*.³

ANALYSIS

I will now have regard to the evidence tendered to see whether the requirements have indeed been met.

[20] Sgt Moloï initially testified that he arrested the plaintiff, but later denounced that he was the arresting officer- testifying that he was not the arresting officer, he was the crew to the arresting officer in that he

³ Neethling et al *Law of Delict* 5 ed (2006) at 304-306

searched the plaintiff once Cst Buys arrested the plaintiff and said “its him”. Cst Buys was never called to testify.

[21] While Sgt Moloi initially testified that the plaintiff was arrested on the charge of assault with intent to do grievous bodily harm, on the basis that the plaintiff admitted that he assaulted the complainant. This version of Sgt Moloi later changed to that he heard it from the distance that he stood away from the plaintiff and Cst Buys as opposed to the initial impression he evoked that he was one of the two officers that it was said to. The plaintiff in contrast denied that he stated or admitted that he assaulted the complainant, it was his testimony that he denied assaulting anyone and identified himself as Steven Morris. When Sgt Moloi was confronted with this version, he confirmed that the plaintiff indeed stated that he is Mr. Morris.

[22] It was Sgt Moloi’s further evidence that he never saw or spoke to the complainant, that he never read the docket and that he did not know why the plaintiff was being sought. In the circumstances the evidence of Sgt Moloi does not rise to the level of a reasonable suspicion that the plaintiff committed a Schedule 1 offence.

[23] Having regard to the evidence this court finds that the defendant, burdened with the onus to proof the lawfulness of the arrest of the plaintiff on a balance of probabilities, has failed to discharge the onus that the

arrest was lawful in terms of s40(1)(b) of the Act. It follows that the plaintiff has established that his arrest was unlawful.

[24] Having regard to the evidence, no evidence of malicious detention was presented. On this basis the claim for malicious detention cannot succeed.

QUANTUM

[25] In assessing the plaintiff's damages, the Court has regard to what the SCA said in the case

of *Minister of Safety and Security v Tyulu*⁴: -

'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

⁴ 2009 (5) SA 85

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.’

[26] The Court further has regard what the SCA stated in the case of Rahim⁵:

“[27] The deprivation of liberty is indeed a serious matter. In cases of non-patrimonial loss where damages are claimed, the extent of damages cannot be assessed with mathematical precision. In such cases the exercise of a reasonable discretion by the court and broad general considerations play a decisive role in the process of quantification. This does not of course absolve a plaintiff from introducing evidence which will enable a court to make an appropriate and fair award. In cases involving deprivation of liberty the amount of satisfaction is calculated by the court *ex aequo et bono*. In ter alia the following factors are relevant:

- (i) the circumstances under which the deprivation of liberty took place;
- (ii) the conduct of the defendant; and
- (iii) the nature and duration of the deprivation.”

⁵ Rahim and Others v Minister of Home Affairs 2015 (4) SA 433 SCA

[27] The plaintiff, Mr. Morris, testified that he was handcuffed and arrested at home at approximately 4h00 on the cold winter's morning of the 12th of July 2013 in the presence of his family and view of his neighbours in the community where he was born and raised. He was not allowed to change his clothing or get a jacket. The plaintiff is an adult man self-employed in the plumbing and construction field.

[28] Mr. Morris testified that he was detained at the Ennerdale Police Station Cells with approximately 15 other cellmates in a 15m² cell which had approximately 15 other cellmates in it. It was his testimony that the cell was very cold and dirty, the toilet could not flush and had faeces in it, the shower was redolent of urine, the cell windows were broken, he was not provided with a blanket and he had nothing to sit on and thus stood hunched forward. He further testified that due to the cold, his arm was paining as a result of a previously healed injury, but despite requests he never received pain medication. He was thereafter placed in a holding facility with other arrestees in preparation for transportation to court. The holding facility had no roof and no blankets were provided.

[29] Mr. Morris was later released from the Vereeniging Court Cells at approximately 15h30 without appearing in court and suffered the indignity of having to walk in pyjamas into a mall in Vereeniging in order to obtain transportation from a person he knew. He then had to embark

on a train to Ennerdale and walk a further one kilometre from the train station to his home. Mr. Morris was detained for eleven and a half hours from his arrest at approximately 04h00 until his release from the Vereeniging Court Cells at approximately 15h30.

[30] This court is nonetheless reminded about what Holmes J in *Pitt v Economic Insurance Co Ltd* 1957 (3) SA 284 (D) stated: -

'(T)he Court must take care to see that its award is fair to both sides - it must give just compensation to the plaintiff, but it must not pour out largesse from the horn of plenty at the defendant's expense.'

[31] The court had regard to the Heads of Argument of the parties and comparative authority. In the case of *Minister of Police and Another v Erasmus*⁶ the plaintiff was suspected of having committed the crime of housebreaking with intent to steal and theft. He was arrested and detained in unpleasant conditions for approximately 20 hours and the High Court awarded R50 000 in damages. The award was reduced to R25 000 by the SCA.

⁶ [2022] ZASCA (22 April 2022)

[32] The court further has had regard to what was stated in the Minister of Safety and Security v Seymour⁷

“Money can never be more than a crude solatium the deprivation of what, in truth, can never be restored and there is no empirical measure for the loss. The awards I have referred to reflect no discernable pattern other than courts are not extravagant in compensating the loss. It needs to be kept in mind that when making such awards there are many legitimate calls upon the public purse to ensure that the other rights that are no less important also receive protection.”

[33] The case law Court has been referred to, merely serves as a guide as the facts of this case is distinguishable from the cases referred to. This Court awards damages bearing the full eleven and a half hours of detention in mind, the humiliation and degradation in the arrest and detention, the public humiliation Mr. Morris suffered walking in pyjamas, the unhygienic and cold cell that he was detained in and the failure to provide a phone call, pain tablets and blanket while bearing comparable caselaw and authorities in mind.

COSTS

⁷ 2000 (6) SA 320 SAC at 326

[34] Throughout the proceedings, the plaintiff has not advanced any circumstances nor was the matter of a complexity warranting the institution of these proceeding in the High Court. In this matter at an earlier pre-trial⁸ held on the 18th day of May 2022 the parties agreed that the matter be transferred to the Magistrates Court, however this never happened. Court in the exercise of its discretion and having heard the evidence submitted in the case, is of the view that there is nothing justifying the institution of the claim in the High Court. For this reason, costs will be awarded on the Magistrates Court scale.

ORDER OF COURT

1. The arrest of the plaintiff on the 12th day of July 2013 is found to be unlawful.
2. The claim for malicious detention is dismissed with costs.
3. The Defendant is ordered to pay the Plaintiff damages in the sum of R 50 000.00 (Fifty Thousand Rand).
4. The Defendant is ordered to pay the Plaintiff interest on the said amount of R50 000.00 (Fifty Thousand Rand) at the rate of 15.5% commencing 15 days after the date of this order until date of payment.

⁸ CaseLines 002-6 paragraph 7

5. The Defendant is ordered to pay the Plaintiff's costs of this action on the Magistrates Court scale.

M T Jordaan

Acting Judge of the High Court,
Johannesburg

HEARD ON

7 to 8 February 2023

JUDGMENT DATE

09 June 2023

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