



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

CASE NO: 2007/62

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES:NO

(3) REVISED

DATE

SIGNATURE

In the matter between:

COLYN CHARL CILLIERS

1ST PLAINTIFF

COLYN ISABEL

2ND PLAINTIFF

DLAMINI JAPPIE JACOBS

3RD PLAINTIFF

MZIZI SAMUEL

4TH PLAINTIFF

SMIT JACQUES PIERRE

5TH PLAINTIFF

RUAN SWANEPOEL

6TH PLAINTIFF

VAN WYK CHRISTOFFEL JOHANNES ALWYN

7TH PLAINTIFF

And

THE MINISTER OF SAFETY AND SECURITY

DEFENDANT

This Judgment is deemed to have been handed down electronically by circulation to the parties' representatives via email and uploaded onto the caselines system.

Judgment

Thupaatlase AJ

Introduction

[1] This is an action for damages arising from alleged unlawful arrest and unlawful detention of the plaintiffs by members of the South African Police Services (SAPS)

[2] The defendant is Minister of Police who is being sued in a representative capacity.

[3] The defendant has conceded the merits. The trial proceeded on quantum. It is also worth noting that only three of the plaintiffs who initially instituted the action against the defendant testified. Unfortunately, due to the delay in the finalisation of the matter, two plaintiffs died before the matter was enrolled for hearing and the other plaintiff could no longer be traced. The inordinate delay in finalising this matter was not explained to this court.

Background

[4] The plaintiffs in this matter were arrested for the alleged murder of three employees of the first plaintiff. The three employees were brutally murdered at their place of employment. Their killing received wide coverage in both print and electronic media. The appearance of the plaintiffs in court was widely publicised. Unfortunately, despite this hype, in the end the charges against all the plaintiffs were withdrawn.

Facts

[5] The first witness to testify was Mr Charl Colyn. He is the first plaintiff. As already mentioned, the merits have been conceded so the court will only deal with quantum.

The first plaintiff testified about the ordeal he endured from the time of his arrest and also during the time of detention at various police stations.

[6] During all the appearances before court from the 16th to 20 January 2006, 1 to 2 February, 7 February 2006, 7 March 2006 and 24 April 2006, trade union members organized large crowds to attend the court proceedings, t-shirts were handed to the public. The crowd was stirred up to intimidate the first plaintiff, falsely accusing him of being a murderer threatening to kill him and burn down his businesses.

[7] As already mentioned, court appearances of the plaintiffs received wide publicity from the media, including newspapers, television, and radio and the first plaintiff was depicted as a racist murderer. According to the first plaintiff he bears no knowledge of what happened to the three murdered ladies. He stated he was out of town in the Northern Cape on a business trip when the incident occurred.

[8] The first plaintiff testified during his detention he was unable to take his hypertension treatment, as a result his health suffered. He described the conditions of the police cells. The place was overcrowded, there was no bed and a place to sit. There was no designated place for smoking and those who smoked did that in the same crowded cell. According to him he was never offered food during the first two days of his detention. He got food on the third day. It was little food. During his detention he had very little interaction with the outside world including his wife.

[9] During the period that he was in police custody he could not sleep as he feared for his life. He was released on bail after 28 day in police custody. He was unlawfully arrested and detained from the 12th of January 2006 until 7 February 2006. According to him there were very little amenities in the police cells.

[10] The first plaintiff described his experience as traumatic. He has lost his self-esteem and has to rely on his wife for everything. He told the court this was the first and only time that he had been arrested. He remarked that he would not wish what happened to him to happen to anybody.

[11] He told the court that he consults a doctor on a monthly basis but that he does not want to consult a psychologist as he wanted to forget everything and does not want to relive what happened. The experience has made him to withdraw form social

activities including attending church. This as result of the stigma attached to his arrest and detention and the falsely allegations which were levelled against him.

[12] The second witness to testify was Ruan Swanepoel. He is the sixth plaintiff. He described the first plaintiff as his uncle. He described how he was arrested and forced to confess to the murder the three ladies. He threatened and referred to as a bastard.

[13] He was arrested on the 13 January 2006. He was taken to various police stations. He was first driven to Dickson's park where he was pushed around and asked to confess. He protested his innocence, and he was tightly cuffed and even pleaded those cuffs be loosened. It was Friday and he was taken to Moroka police where he stayed until Sunday when he was fetched and taken to Vereeniging police station.

[14] He told the court that the police cells at Moroka police station were full. The cells were also dirty and were smelling with odour from the open toilet and blocked drain. He told the court he had nothing to eat from Friday until late Saturday when his mother brought him food. There were about 28 inmates in the cell.

[15] On Sunday he was moved Vereeniging police where the situation was not better than at Moroka police station. He was again put in a crowded cell and after his appearance in court he was taken to the juvenile section which was also full.

[16] He further testified that in the first week their case was postponed for bail hearing and that he didn't eat. This was because he was booked early before breakfast could be served and returned late in the afternoon when supper had already been served. He estimated that the did not eat for about six days as a result of missing mealtimes.

[17] He described his fears and the condition in the cells as bad. He told the court how he came face to face with real murderers and one of the cell mates even described in graphic details how he killed his own grandmother using a hammer. This caused him anxiety and was fearful of what could happen to him. The other inmate described how he killed his friend by shooting him.

[18] The cell was divided into two rival groups and competed for everything including food. According to him food was a big factor. The situation he described is that of the survival of the fittest. The inmates even stole his pair of shoes.

[19] He lamented at the fact that he was branded a murderer despite lack of evidence to back up the allegations. Also, the fact that the incident happened during his teens when he was preparing for adult life. He indicated that the experience has left a psychological scar on him and that he still experiences derision from some people who are still able to recognise him from the pictures which were published in the media. The same applies to his children who are still attending school.

[20] He told the court there are some small things that still reminds him of that period like the smell of Jeyes fluid. He told the court that the Jeyes fluid was used frequently to clean ablution facilities in the cells. He still believes that the police could have done better in investigating the matter in order to find the culprits who perpetrated the gruesome murders.

[21] According the Mr Swanepoel, he still has a fear of a siren sound, as it brings apprehension that police were coming for him. He feels that whilst charges have been withdrawn, he'll live with the stigma for the rest of his life.

[22] The last witness to testify was Isabella Kruger (formerly Colyn). She is the second plaintiff. She started her testimony by giving a background of what happened on the morning of 03 January 2006 and the later discovery on the three bodies inside the laundry machine.

[23] She was first questioned by the police at Orange Farm police station after taking her from her home. They had assured her father that they'll bring her back. She was surprised when the interrogation continued until it was late, and she even had to ask the police to release her. During this interrogation she was asked to confess to the murders of the three ladies. There were about 11 police officers during the questioning, and each took turn to ask her questions about the incident.

[24] She told the court that she was on diabetic medication, and that the police at Orange Farm police station refused to offer her water to take her pills and this led to her having hot flushes and collapsed, though she did not pass out. The police were cynical and attributed her condition to her refusal to tell the truth. She felt scarred as

she did not know what was happening. She was released and taken home later that night.

[25] A few days later on 12 January 2006 the second plaintiff was again arrested at her father's shop. She was refused to call a lawyer and was informed that her father was also arrested. She later saw her father and cousin in police custody but was refused permission to communicate with them. They were driven in different police vehicles.

[26] She was later taken to Bophelong police station where further attempts were made to try to get her to confess to the murders. Later that night she was taken to Johannesburg Central police station where she was informed that she was going to be charged for murder. She was informed that she was going to be kept at that police station for the weekend.

[27] Ms Kruger described her stay at the Johannesburg police station. She was not offered food on the night of her arrival as the mealtime had passed. She was allowed to phone her mother who brought her food, tablets, water, and toiletries. She was only served a small portion of food. It was bread and water.

[28] She was kept alone in the cell. The cell was dirty, and the toilet was blocked and there was bed. There was urine on the floor with no basin and place to sit. She could not sleep.

[29] She was collected on Sunday by the investigating team and taken to Vereeniging police station where she was charged and kept overnight until her appearance the following day at court. At Vereeniging police station, she was able to sleep as she was provided with a blanket. During her appearance in court, she was handcuffed, and leg iron was put around her legs.

[30] She was kept at Johannesburg Correctional Facility. She was approximately 20 years old at the time of the arrest. She was at various times transported late to court and that caused her to miss her appearance in court for the Tuesday, and Wednesday of the first week of their bail hearing.

[31] Every time she returned to the cells at the prison, after attending court she was strip-searched in the presence of 4 male officers. She was having her menstruation

cycle and she had to remove her underwear so that they could see that she did not have any hidden items with her. During the search she felt helpless and ashamed.

[32] She testified that she did not go for psychological treatments as she felt ashamed to talk about what happened to her. She felt like she was treated like an animal even though she was innocent. She also did not want to relive the moment by repeating it.

[33] During one of the days on the way to court, the investigating officer Molapisi stopped at the Spar and left her in the car for approximately an hour with her hands cuffed around the seat. People were staring at her, and she felt ashamed and embarrassed. She felt terrible as she was not guilty of any offence.

[34] The second plaintiff also confirmed that the case attracted media attention and that there a big crowd of people whenever they appeared in court and that people hurled insults at them and branded them as racists murderers.

[35] She further testified that she had just left school and wanted to start life and felt that the police should acted differently during their investigation.

Defendant's Case

[36] The defendant called Motlalepula Ephraim Molutsi. he is a lieutenant colonel in the South African Police Services. He is stationed at Van Der Bijl Park police station. He is a relief officer. He testified that the duties of relief officer entail the checking of the state of cells at the police station and also to check condition of inmates and also receive any complains.

[37] To ensure that the rights of the inmates have been explained. In addition, to check if inmates have had access to a phone in order to enable to contact their families or legal representatives. In a nutshell, the relief officer is responsible for the well-being of the inmates.

[38] He explained the protocol that is followed when food is prepared. He indicated that there is rooster that his followed. He indicated that food from outside is not allowed in order to prevent contrabands being brought into the facility. The preparation of food is depended on the occupancy at any given time. There are three meals per day.

Quantum of damages

[39] In the case of *May v Union Government* 1954(3) 120 at 130 'Our law has always regarded deprivation of liberty as serious injury "and where the deprivation carries with it the imputation of criminal conduct of which there is no reasonable suspicion, the injury is very serious'.

[40] The approach to the calculation of damages to be awarded was enunciated in *Minister of Safety and Security Tyulu* 2009 (2) SACR 282 that 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 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.

[41] In the *Corbett and Honey* " Law of Damages " 3rd edition at 548 contains a useful and comprehensive list of factors consider and determining damages and these are " *The circumstances under which the deprivation of liberty took place, the presence or absence of an improper motive or "malice on the part of the defendant; the harsh conduct of the defendant; the duration and nature (e.g. solitary confinement or humiliating nature) of the deprivation of liberty; the status , standing, age and health and disability ; the extent of the publicity given to the deprivation of liberty; the presence or absence of apology of satisfactory explanation of events by the defendants; awards in previous comparable cases And constitutionally entrenched rights have been infringed."*

[42] The court has a wide discretion to award an amount which it deems to be fair and reasonable under the circumstances. The underlying principle in awarding such damages is that money can never be more than a crude consolation for the deprivation of liberty. It is to also be noted that courts have not been extravagant in compensating loss. See *Minister of Safety and Security v Seymour* [2007] 1 All SA 558 (SCA), 2006 (6) SA 320 (SCA) 326.

[43] In considering quantum, sight must not be lost of the fact that the liberty of the individual is one of the fundamental rights of a human being in a free society, which should be jealously guarded at all times and there is a duty on the courts to preserve this right against infringement. Unlawful arrest and detention constitute a serious inroad into the freedom and rights of an individual. Where members of the police

transgressed in that regard, the victim of abuse is entitled to be compensated in full measure for any humiliation and indignity which resulted.

[44] Physical liberty is a recognised and entrenched as a common law and constitutional right. It follows that a breach of this right of personality will give rise to an action for damages. See Section 12 of the Constitution. The right includes the right not to be arbitrarily deprived freedom or without just cause, and the right not to be detained without trial. Third, where a right is said to be so important that it has been afforded constitutional protection, any damages to be awarded should reflect that importance. The need to ensure that awards reflect the importance of the right to personal liberty and the seriousness with which any arbitrary deprivation of personal liberty is viewed.

[45] It was held in the case *Minister of Police v Du Plessis* (666/2012) [2013] ZASCA 119 (20 September 2013) at paragraph 15 that “Our new Constitutional order, conscious of our oppressive past, was designed to curb intrusions upon personal liberty which has always, even during the dark days of apartheid, been judicially valued, and to ensure that the excesses of past would not recur. The right to liberty is inextricably linked to human dignity. Section 1 of the Constitution proclaims as founding values, human dignity, the achievement of equality and the advancement of human rights and freedoms. Put simply, we as society place a premium on the right to liberty.”

[46] The three plaintiffs testified that they were made to endure unbearable conditions in the respective cells where they were held. They were given small food rations or no food at all on some days. They had to wash with cold water and endure filthy and unhygienic cells. In addition, the cells both at the police stations and the Johannesburg Correctional Facility were made to hold an excess number of inmates. The blankets were filthy or no blankets or place to sleep was provided.

[47] The second plaintiff Ms Kruger was subject to a humiliating and degrading treatment was forced to undress before male officers and was stripped searched for contrabands. This happened even when she was menstruating. The male officers accompanied her to an open toilet. The investigating officer left her for a considerable period in public place handcuffed to the seat of a car. She was stripped of her dignity and self-worth. On three occasions she was brought late to court and was returned to prison without appearing in court.

[48] The argument that all the three plaintiffs did not attend psychological treatment is an indication that they have healed is misplaced. They all explained that it was how they thought best to deal with their trauma. Each of the plaintiff told the court they were never arrested prior this incident. Both the second and sixth plaintiffs were teenagers when this incident befell them.

[49] The length of time that the plaintiffs were unlawful detained was for a long period of time (28 days). During that period, they were subjected to humiliation whenever they appeared in court. It is not disputed that their case received widespread media attention.

[50] It is also trite that when assessing damages for unlawful arrest and unlawful detention prior comparable awards serve only as a guide. Each case must be determined on its merits bearing in mind the fundamental rights that the law confers on all the citizens of this country. See *Mvu v Minister of Safety and Security* [2009] JOL 23450 (GSJ), 2009 (6) SA 82 (GSJ) 91.

Conclusion

[51] In considering an amount to be awarded in this matter the court has to express the importance of the constitutional right to individual freedom. I am satisfied that each of the three plaintiffs have successfully proved their respective damages. In respect of the causes of action the court is find satisfied that each of the plaintiffs have proved damages in respect unlawful arrest and detention

Order

a. First Plaintiff: Charles Colyn

1. Unlawful arrest and unlawful detention: R 500 000.00

b. Second Plaintiff: Isabella Kruger (nee' Colyn)

1. Claim 1: Unlawful deprivation of freedom R100 000
2. Claim 2 unlawful arrest and unlawful detention: R 500 000.00

c. Sixth Plaintiff: Ruan Swanepoel

1. Unlawful arrest, deprivation of liberty and detention R500 000

Interest at current prescribed rate from the date of the order until date of final payment.

Cost of suit to include costs of counsel.

THUPAATLASE AJ
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Date of the hearing: 13, 14, 16, & 20 November 2024

Judgment Delivered on: 31 January 2024

For the Plaintiffs: Adv. AE Smit

Instructed by: Van Heerden De Wet Inc.

For the Defendant: Adv. AM Pheto

Instructed by: State Attorney Johannesburg