REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 16107/2018

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

1 November 2023
DATE

SIGNATURE

In the matter between:

MINISTER OF POLICE Applicant

and

LEGODI COLLEN ITUMELENG Respondent

In Re:

LEGODI COLLEN ITUMELENG Plaintiff

and

THE MINISTER OF POLICE Defendant

JUDGMENT - LEAVE TO APPEAL

MAUBANE AJ

[1] The Respondent (the Plaintiff in the main action) instituted an action against the Applicant (the Defendant in the main action) for unlawful arrest and detention of the Applicant. The matter was heard by this Court on 23 May 2022 and judgement was delivered on 21 June 2022.

[2] The Respondent who was 34 years of age at the time of the judgment was intentionally, unlawfully and wrongfully arrested and detained by the members of the Applicant who was on duty on 14 July 2014. On the said day, the Respondent was pulled over and shortly detained for a period of 4 days. The Respondent avers that he was arrested whilst on his way to his first training outing and he was shocked by the arrest. He was told by the police officer that he was arrested because *"if they let him free Mr Ngwenya (his colleague) may change his statement"* about the ownership of the vehicle, to which the Respondent told them that he was the owner of that vehicle.

[3] The Respondent submits that the conditions of the cell he was kept in were unbearable. The Respondent described the cells as being filthy, and that the detainees had to choose blankets and most of them were wet. At the time of the arrest it was the middle of winter. He was kept in a cell with about sixteen to eighteen inmates. He and Mr Ngwenya shared a mattress and they had to use two blankets.

[4] The Respondent further submits that the toilet, which was not far from where they were sleeping, had a foul smell. As a result of the detention, he could not attend his childhood friend's wedding. He had to explain his absence from the wedding to his childhood friend after his release from custody. He told the Court that he felt emotional turmoil due to being arrested for something he did not do.

[5] He applied for work at Transnet, and he could not be employed there because he was told that the criminal record check revealed that there was a possibility that he has a criminal record. During the tendering of evidence and cross-examination, the Respondent looked visibly shaken and told the Court that he was still in a state of shock over the ordeal.

[6] It is worth noting that the Respondent's testimony was not disputed. Based on the evidence tendered by both parties, the Court found that the Respondent's arrest and detention were unlawful. After the determination of the merits of the case, the Court had to deal with the issue of the quantum, and based on that, a myriad of cases were compared and considered by the court[1].

[7] This Court like any other court has a discretion when making an award for damages, which discretion be applied judiciously. In *Dolamo v Minster of Safety and Security*[2] the court held that *"the process of comparison is not meticulous examination of awards and should not infer upon court's general discretion"*.

[8] Further, in *Minister of Safety and Security v Seymour*[3] the court held that:

> "[T]he assessment of awards of general damages with reference to awards made in previous cases is fraught with difficulty. The facts of a particular case need to be looked at as a whole and few cases are directly comparable. They are useful guide to what other courts have considered to be appropriate, but have no higher value than that ..."

[9] In *Dikeni v Road Accident Fund*[4] the court held that:

> "Although these cases have been of assistance, it is trite law that each case must be adjudicated upon its own merits and no one case is factually the same as another ... previous awards only offer guidance in assessment of general damages".

[10] Determining the quantum for compensation is always a mammoth task. There is no scale to measure the injuries suffered by the injured party against the amount

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[1] These include: Minister of Safety and Security v Seymour (2006) (6) SA 320 SCA; Minister of Safety and Security v Tyulu 2009 (5) SA SCA; Mvu v Minister of Safety and Security and Another 2009 (2) SACR 29 (GSJ); Olivier v Minister of Safety and Security and Another 2009 (3) SA 434 (W).
[2] [2011] ZAGPPHC 225.
[3] *Supra* fn 1, at para 17.
[4] (2022) (C & B) (Vol 5) at B4 171.

awarded as compensation. In *Ferdinand v The Minister of Police*[5] the court remarked that:

> "...in deprivation of liberty the amount of damages is the discretion of the court. Factors which play a role are the circumstances under which the deprivation of liberty took place, the presence of absence of improper motive or malice on the part of the Defendant, the duration and nature of the deprivation of liberty, the status, standing, age, health and disability of the Plaintiff, the extend of the publicity given to the deprivation of liberty, the presence of absence of an apology or satisfactory explanation of the events by the Defendant and awards in previous comparable cases."

[11] On 12 July 2022, the Applicant launched an application for leave to appeal, which was recently brought to the attention of this Court, otherwise it could have been attended as speedily as possible. The ground for appeal raised by the Applicant was against the quantum awarded to the Respondent. It is a trite law that for a party to be successful in applying for leave to appeal, the party should demonstrate to the court that there is a reasonable prospect of success or that there are compelling reasons, which include conflicting judgements, why the appeal should be heard.

[12] The principle of a reasonable prospect of success was determined in *Member of Executive Council for Health Eastern Cape v Mokita and Another*[6] the court held that:

> "An application for leave to appeal must convince the court on a proper ground that there is prospect of realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal."

[13] In *Minister of Justice and Constitutional Development and Others v South African Litigation Centre (Helen Suzman Foundation)* as amicus curiae[7], the court held

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[5] [2018] ZALMPPHC 58.
[6] (2016) JOL 36940 (SCA) at paras 16-17.
[7] (2016) JOL 35472 (SCA) at para 23.

that leave to appeal may be granted even if the application for leave to appeal had limited prospects of success, however there must be compelling reasons for so doing.

[14] In the present case, both parties agree that, in provisions of section 17(a)(i) of the Superior Courts Act 10 of 2013 provide that leave to appeal may only be granted where the Judge or Judges concerned are of the opinion that the appeal would have a reasonable prospect of success.

[15] However, the parties have a different standpoint on whether another court would make a different award. The Applicant contends that there is a prospect that the appeal will be successful, whilst the Respondent maintains a different view. Both parties referred the Court to comparable cases.

[16] During argument and also in his heads of argument, the Applicant referred the Court to *Dolamo v Minister of Safety and security*[8], wherein the plaintiff was detained for 4 days and was awarded an amount of R100 000.00. In that case the conditions of the Plaintiff 's detention was not raised or dealt with. In that case, Makgoka J, held that:

> "having regard to the circumstances of the arrest, and in particular that malice has been established, the detention, the very limited personal circumstances of the Plaintiff, the lack of information as to the conditions under which the Plaintiff was detained and the effect of the detention on him, the award made in previous comparable cases, the gradual devaluation of the currency, I deem R100 000,00 to be a just and fair amount of damages for the Plaintiff".

[17] On the other hand, the Respondent referred the court to various cases where a higher quantum was awarded these includes the case of *Mphindwa v Minister of Police*[9]. In *Diljan v Minister of Police*[10] wherein the plaintiff was detained in

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[8] GNHC, Pretoria Case No: 5617/2011) delivered on April 2015 at para 15 [an unreported case].

[9] [2019] ZAECMHC 9. See also: Van der Laarse v Minister of Police and another [2014] ZAGPPHC 614; Phefadu v Minister of Police [2017] ZAGPPHC 583; and *Fisa v Minister of Police* [2016] ZAECELLC 1

[10] (746/2021) [2022] ZASCA 103 (24 June 2022.

appalling conditions for a period of 3 days, the Plaintiff was awarded an amount of R120 000.00.

[18] In *Mphindwa* the Plaintiff was detained for 5 days and was awarded an amount of R480 000.00 which in today's value would amount to R583 000.00. In both *Mphindwa* and the present case the plaintiffs'conditions while held in detention were appalling. In the present case the detention was malicious in that the police officer who arrested the Respondent told him that he was detained so that his colleague would make the statement concerning the ownership of the car. The Respondent's application at Transnet was rejected due to records indicating that there was a possibility that he has a criminal record.

[19] The facts in *Phefadu v Minister of Police*[11] are similar to those found in *Mphindwa*. In that case, the Respondent's detention were humiliating and appalling. The Applicant's counsel argued that the present case cannot be compared to *Mphindwa* because in *Mphindwa "the plaintiff was kept in leg irons during his detention."*

[20] This court finds that humiliation cannot be measured and condoned in either of the mentioned cases, as the action of the police was unbecoming. As already stated above, it is common cause that the Respondent's conditions during detention were humiliating. Further, the Respondent, was at the time of when judgment was handed down still suffering from the trauma experienced during his detention, even though the arrest and detention occurred more than five years ago.

Order

[21] Having considered all evidence submitted by both parties, the Court concludes that there are no reasonable prospects of success on appeal and the following order is made:

a. The application for leave to appeal is dismissed.

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[11] [2017] ZAGPPHC 583

b. The Applicant to pay costs.

MC MAUBANE
ACTING JUDGE OF THE HIGH COURT
PRETORIA

Appearance

For the Applicant: A instructed by Adv SG Maritz

For the Respondent: X instructed by Adv Simon Maelane