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**IN THE HIGH COURT OF SOUTH AFRICA
NORTHWEST DIVISION, MAHIKENG**

CASE NUMBER: 2222/18

In the matter between:-

TSHEPANG SHONGWANE

Plaintiff

and

MINISTER OF POLICE

Defendant

CORAM: MFENYANA J

Delivered: This judgment was handed down electronically by circulation to the parties' representatives *via* email. The date for hand-down is deemed to be 10h00 on **20 February 2024**.

ORDER

- (1) *The arrest and detention of the plaintiff on 20 January 2018 to 21 January 2018 was unlawful.*
- (2) *The defendant is liable for 100% of the plaintiff's agreed or proven damages.*
- (3) *The defendant shall pay an amount of R20 000.00 in respect of damages for the plaintiff's unlawful arrest and detention.*
- (4) *The defendant shall pay interest on the above amount at the prescribed legal rate, from date of demand to date of payment jointly and severally, the one paying the other to be absolved.*
- (5) *The defendant shall pay the costs of suit on a scale as between party and party on the Magistrates' Court tariff.*

JUDGMENT ON QUANTUM

MFENYANA J

Introduction

- [1] This matter served before me for determination of the quantum of damages suffered by the plaintiff as a result of his arrest and detention by employees of the defendant on 20 January 2018. The defendant is thus, vicariously liable for the actions of his employees. He claims an amount of R900 000.00 against the defendant, for unlawful arrest and detention, contumelia, inhumane treatment and emotional shock as a result of the arrest.
- [2] The defendant conceded the unlawfulness of the arrest and detention. What remains in dispute is the duration of the detention, and consequently, the damages suffered by the plaintiff.
- [3] During the trial, the plaintiff testified that on 20 January 2018 he was driving at Mmakau, North West province, on his way to drop off his aunt and her child at their place of residence, when another car hit their car from behind. It later transpired that the driver of the other vehicle was a police officer who was under the influence of alcohol at the time of the accident. An argument ensued as the other members of the SAPS wanted to take both the plaintiff and the drunk policeman to

hospital for blood samples. They were subsequently both taken to George Mukhari hospital where blood samples were taken from both of them. At the date of trial he had not been provided with the test results.

[4] He further testified that he was subsequently placed under arrest and transported to Makau police station in a police van, where he was charged with reckless driving and thereafter detained for a period of 14 hours. He was released at approximately 11h00 the next day and given a piece of paper containing a date on which he was informed to appear in court. The date turned out to be a public holiday.

[5] He testified that his arrest and detention had a negative effect on him as he was placed in a very dark and dirty cell for 14 hours. He was detained with older people who sent him around and bullied him. As a result of this bad experience, he did not complete his diploma as he became withdrawn and had no desire to go out. He isolated himself as he did not feel safe out there. He told the court that he only started going out a year later.

- [6] It was the plaintiff's testimony that prior to the incident, he was socially and physically very active, playing soccer and involved in church activities, and mentorship programs at his old school, but has not done any of that since the incident.
- [7] Under cross examination the plaintiff testified that he was 21 years at the time of his arrest. He stated that he was arrested at approximately 21h00, although the incident started at around 17h00. Asked as to what was happening between 17h00 and 21h00, the plaintiff told the court that there was an argument between himself, the driver of the other vehicle, and his parents whom he called immediately after the accident occurred. He further stated that the police officers told them that they think they know it all, and that they would lock him up. Presumably to teach him a lesson.
- [8] He stated that he was only arrested at the hospital but could not remember the time of his arrest. It was during cross examination that the plaintiff told the court that he saw a psychologist two years later and was admitted for 21 days at Akhiso, in Parktown, where he was seen by a psychologist and a psychiatrist. He was given sleeping tablets as he sometimes struggled to fall asleep. When questioned about

why he did not include the impact of the incident in his particulars of claim, the plaintiff stated that he only sought treatment after the action had been instituted.

- [9] Mr Ramabulana, for the defendant, questioned the plaintiff why he did not institute any claim for psychological impact and why he waited so long to seek psychological intervention. He stated that he waited until he could afford to take himself to a private facility, and thought that it was not a “big deal”, he could handle it. It was put to the plaintiff that the reason he did not seek psychological intervention is that the impact on him was no so bad, which he denied.

Determination of damages

- [10] What stands for determination is the appropriate amount of general damages to be awarded to the plaintiff for the infraction. In the particulars of claim, he claims an amount of R900 000.00, comprising R450 000.00 for unlawful arrest and detention, and R450 000.00 for contumelia, inhuman treatment and emotional shock caused by the arrest. However, in the heads of argument submitted on behalf of the plaintiff, it is submitted that an amount of R20 000.00

would be appropriate in the circumstances.

[11] The plaintiff relies on *Minister of Police and Another v Erasmus*¹ in which the plaintiff was awarded R25 000.00 on appeal by the Supreme Court of Appeal (SCA) for unlawful arrest and detention spanning 20 hours in unpleasant conditions. He further relies on *Lekala and Another v Minister of Police and Another*², a decision of this Division, where the plaintiff was awarded an amount of R20 000.00 for unlawful detention of 17 hours.

[12] On the other hand, the defendant places reliance on various decisions of this Division for the proposition that an amount of R20 000.00 would be a just and fair award.

[13] It is trite that that the purpose of an award for damages is not to enrich the plaintiff, but to provide the necessary *solatium* for the infraction on his rights. It goes without saying that such infractions are inimical to the Constitution, which guarantees the right to personal liberty and dignity. Since the dawn of democracy, the SCA in *S v Tyulu*³ cautioned that:

¹ (366/2021) [2022] ZASCA 57 (22 April 2022).

²(1037/2017) [2023] ZANWHC 64 (25 May 2023).

³ 2009 (5) SA 85 (SCA).

“... 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.”⁴.

[14] This is indicative of the seriousness with which the courts view invasions of the right to personal liberty. The court should seek to strike a balance and should take to heart the observations made by Holmes J in *Pitt v Economic Insurance Ltd*⁵ that the court ‘must give just compensation to the plaintiff, but must not pour out largesse from the horn of plenty at the expense of the defendant. The court must take care to see that its award is fair to both sides.’⁶

Comparative awards

[15] Comparative awards serve as a useful guide to what other courts have considered appropriate. “They have no higher value than that”.⁷ I have previously noted that no price can be assigned to a person’s worth in circumstances where their

⁴ Paragraph 93D.

⁵1957 (3) SA 284 (D).

⁶ Paragraph 287E – F.

⁷See in this regard: *Minister of Safety and Security v Seymour* [2007] 1 All SA 558 (SCA).

rights have been arbitrarily infringed.

[16] From the decisions relied on by the parties, it is clear that there is no one size fits all approach to awarding damages. The circumstances of each case should be considered.

[17] The plaintiff in this case was arrested and detained for no apparent reason while going about his business, and in the company of his relatives. His detention, similar to his arrest, occurred in circumstances where he ought to have been protected by members of the SAPS.

[18] Pertaining to his personal circumstances, the plaintiff testified that he was 21 years at the time of the incident, pursuing his studies in mechanical engineering. All this came to an abrupt stop after the incident as he lost interest in various things and opted to isolate himself. He testified that he continues receiving psychological assistance.

[19] The plaintiff's evidence that he was assessed by a clinical psychologist was not disputed by the defendant. In view of the defendant's objection to the use of the psychologist's report due to the plaintiff's non-compliance with the Rules of

Court relating to the filing of expert reports, the plaintiff elected to abandon the report and proceeded with his evidence. He recounted his experience in the police cell where, being the youngest, he was bullied and sent around by his inmates. He told the court that this traumatised him and caused him mental anguish.

Costs

[20] It is clear from the plaintiff's concession in relation to the quantum of damages that this action should have been instituted in the Magistrates' Court having jurisdiction. It is therefore prudent that costs should be in accordance with the tariff applicable in the Magistrates' Court.

Order

[21] In the result, I make the following order:

(1) The arrest and detention of the plaintiff on 20 January 2018 to 21 January 2018 was unlawful.

(2) The defendant is liable for 100% of the plaintiff's agreed or proven damages.

- (3) *The defendant shall pay an amount of R20 000.00 in respect of damages for the plaintiff's unlawful arrest and detention.*
- (4) *The defendant shall pay interest on the above amount at the prescribed legal rate, from date of demand to date of payment jointly and severally, the one paying the other to be absolved.*
- (5) *The defendant shall pay the costs of suit on a scale as between party and party on the Magistrates' Court tariff.*

**S MFENYANA
JUDGE OF THE HIGH COURT
NORTHWEST DIVISION MAHIKENG**

Appearances:

For the plaintiff: G. K Seleka
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For the defendants: M. M Ramabulana
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DATE RESERVED: 02 JUNE 2023

DATE OF JUDGMENT: 20 FEBRUARY 2024