

IN THE HIGH COURT OF SWAZILAND

CIVIL CASE NO.2010/95

In the matter between:

JOHN DLAMINI: PLAINTIFF

and

COMMISSIONER OF POLICE: 1ST DEFENDANT

THE ATTORNEY GENERAL: 2ND DEFENDANT

CORAM: MAPHALA AJ

FOR PLAINTIFF: MR. DLAMINI

FOR DEFENDANTS: MS. MABUZA

JUDGMENT

In this action the Plaintiff sues for damages alleged to have been suffered by him in consequence of his wrongful arrest by the Sidvokodvo Police on the 25th August 1994 and his subsequent detention at Zakhele Remand Centre in Manzini until the 2nd September 1994 when he was released on bail by the Manzini Magistrate Court.

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Plaintiff states in his particulars of claim that the policemen who effected the arrest were acting within the course and scope of their employment as members of the Royal Swaziland Police.

He states that the arrest was wrongful and unlawful and without any justification or excuse. By the reason of the aforesaid arrest Plaintiff had been injured in his good name and reputation; had been deprived of his liberty and endured hardship and suffering, where he sustained damages in the sum of E56,000.

In their plea the Defendants admit the arrest but deny that the arrest was wrongful. They allege that at the time mentioned the Plaintiff:-

1. Removed cattle belonging to one Doricah Mathobela without her consent and without a removal permit,
2. The Defendant alleges further that the arrest was based upon reasonable suspicion that the Plaintiff had committed an offence and was thus unlawful.

Defendant deny liability to the Plaintiff for the amount of E56,000 or at all.

On the 12th June 1992 Plaintiff gave evidence under oath when the matter came for trial. He related the sequence of events that led him being arrested by the Sidvokodvo Police. Plaintiff's evidence confirms that he was arrested on the 25th August 1994 and that subsequent to that he was detained for a period stated in his particulars of claim. He told the Court that on the 24th August 1994 he got a message that he was wanted by Sidvokodvo Police. He proceeded to the Police Station in the company of one Ndabezwe Nxumalo. At the Police Station he met a police officer by the name of Ndlela. Ndlela asked him where were the cattle that he took from one Doricah Mathobela. He told the police officer that there was a dispute between him and the said

Mathobela who was his mother-in-law. He told Ndlela that the matter was pending before the Swazi National Court in Manzini. Ndabezwe also confirmed this story before Ndlela but Ndlela refused to listen. Ndlela then instructed him to take him where the cattle were. They proceeded to that place and found the seven (7) herd of cattle. They then went back to the Police Station at Sidvokodvo whereupon Ndlela arrested the Plaintiff and placed him in custody. He told him that he was arresting him for stealing the cattle.

Plaintiff went further in his evidence to outline the history behind these disputed cattle. He told the Court that he had paid the cattle as lobola for his wife. His in-laws came later and took away his wife and child. He then decided to take back the cattle. He got the permission of the veterinary officer as well as the elders of the dip tank where the cattle were brought for dipping purposes. He told the Court that he had the stock removal permit for the removal of the cattle to his possession. He then removed the cattle. He further told the Court that the dispute between himself and his mother-in-law was being handled by the President of the Swazi National Court who ruled that the matter be discussed at family level between his family and that of his mother-in-law. However, his mother-in-law failed to come to meetings convened with the sole purpose of finding a solution to this problem. On the 20th July 1994 he went to the Station Commander in Manzini to report that his child had been taken by his mother-in-law. At the Police Station he discovered that his mother-in-law had laid a charge against him for having stolen the cattle. He was released by Manzini Police after showing them summons showing that the matter was with the National Court. He related all this to Ndlela before he was arrested. Ndlela refused to listen to him.

Plaintiff told the Court he has six children and is self-employed running kombis. During the time

he was in custody noone was looking after his business and as a result his business came to a standstill.

Plaintiff was cross-examined at length by counsel for the Defendants.

The Plaintiff then closed his case. The Defendant proceeded to call witnesses to prove that the arrest and detention was justified. The Defendant called one Musa Magagula who is a Veterinary Assistant at the dip tank where the cattle were taken by the Plaintiff. He told the Court that the cattle were registered in the name of Mathobela. He deposed that when Plaintiff approached him with a view to remove the cattle he told him that he was unable to sign the stock removal permit as the owner of the cattle was not present. He told the Court that the Plaintiff took the cattle unlawfully because he had not signed the stock removal permits as a Veterinary Officer of the area. Some days later the Plaintiff came to him with a letter from a Magistrate allowing him to remove the cattle. He then phoned the stock removal permits after Plaintiff had taken away the cattle. This witness further told the Court that the procedure is that if the kraal owner was not present he was not allowed to sign the permit. He made a statement regarding this matter on the 26th August 1994.

The Defendant then called Doricah Mathobela who also related the sequence of events leading to Plaintiff removing the cattle from the dip tank. She told the Court that the cattle were paid to her as lobola for her daughter by the Plaintiff. Later on Plaintiff had a quarrel with her daughter and as a result of which the two separated. The matter was then taken to the National Courts. After Plaintiff had taken the cattle on the 20th July 1994 she reported the matter to the Manzini Police who did not investigate the case. She then went to report to the Matsapa Police post who

advised her to report the matter to the Sidvokodvo Police under whose jurisdiction the matter fell. She then went to report the matter to the Sidvokodvo Police who eventually arrested the Plaintiff.

The Defendant then called the officer who effected the arrest on the Plaintiff one sub-Inspector J. Ndlela.

He told the Court that he investigated the case pertaining to the Plaintiff after receiving a docket from the Manzini Police. On his investigations he went to Mposi area where the said cattle were kept at a Shongwe homestead. He asked Shongwe whether there was any stock removal permit which effected the conveyance of the cattle to Mposi area. He replied that there were no removal permits. He established that the cattle were brought there by the Plaintiff. He then sent some officers to get a statement from the Veterinary Assistance on how the cattle were removed from its area. He established that the stock removal permit was never endorsed by the Veterinary Officer in accordance with the law. Finally the Plaintiff reported himself on the 25th August 1994 at the police station. He cautioned the Plaintiff in terms of the Judge's Rules and charged him for stock theft as he believed that his conduct constituted an offence. He then took the docket of the case to a prosecutor in Manzini and sent the Plaintiff to a Magistrate on the 26th August 1994 for a formal remand.

At this stage the Court heard submissions from both parties.

Counsel for the Plaintiff argued that the crux of the matter is whether the police when effecting arrest believed that reasonable grounds existed that Plaintiff had committed an offence. Mr. Dlamini argued that the Plaintiff did not have the intention to steal. The police officer had no such grounds to believe that the crime of stock theft has been committed. The police officer knew about the dispute between the Plaintiff and his mother-in-law. The dispute centred around the

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cattle. He also knew that Plaintiff claimed that he was entitled to the return of the cattle. This was a clear civil dispute and the officer knew about this fact. Nevertheless, he went ahead and abused his powers. The officer also knew that the Plaintiff had been with the Manzini Police. Furthermore, that to date, the Plaintiff has not been prosecuted for the alleged offence.

Miss Mabuza for the Defendant relied of Section 22(B) of the CRIMINAL PROCEDURE AND EVIDENCE ACT which provides as follows:

"Every police officer and every other officer empowered by law to execute criminal warrants is hereby authorised to arrest without warrant every person; (b) when he had reasonable grounds to suspect of having committed any of the offences mentioned in Part II of the First Schedule.

She argued that the police officer had reasonable grounds to suspect that Plaintiff has committed an offence. The Defendant has led the evidence of the Veterinary Officer to show that the Plaintiff removed the cattle without proper authority. Furthermore the owner of the cattle said she regarded the action by the Plaintiff to be theft. Plaintiff took the law into his own hands.

These are the issues before the Court. The issue of paramount importance in this case is whether the Defendant's arrest and detention were justified; and the second issue is, if it has not done so, then is the amount of E59,000 being sought by the Plaintiff as appropriate measure of damages? It is common ground that the Defendant bears the onus of proving justification for its conduct. (See ZIYANE VS ATTORNEY GENERAL CIVIL CASE NO 395/89 AND MAGAGULA VS COMMISSIONER OF POLICE AND OTHERS CIVIL CASE NO.455/90.

I will start with the first issue under determination From the evidence before me I am unable to find that such reasonable ground existed for the arrest and the detention of the Plaintiff. I agree

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with counsel for the Plaintiff that the police officer when he effected the arrest he had been informed by the Plaintiff that there was a case pending before the customary courts concerning the very same cattle. This was a customary law matter involving the return of lobola. The officer knew this as it is borne by his replies under cross-examination by counsel for the Plaintiff which run "verbatim" as follows:

QUESTION: When you arrested the Plaintiff you already knew that there was a dispute over the lobola cattle?

ANSWER: Yes.

QUESTION: You also knew that the cattle he had taken were cattle he had paid as lobola?

ANSWER: Yes.

QUESTION: You knew that he took the cattle because he had claim over them?

ANSWER: Yes.

It is clear therefore from the aforementioned exchange that the officer should have been aware that Plaintiff when he removed the cattle he did not have the requisite intention to steal. It was totally misconceived to charge the Plaintiff with the offence of stock theft in view of the aforementioned.

Another important point worth mentioning in this connection is the fact that Ndlela got to know that the Plaintiff did not have a signed stock removal permit on the 26th August 19984 after the Plaintiff was already charged and in custody. In fact on that day the Plaintiff was caused to appear before a Magistrate in Manzini for a remand hearing. The argument by Defendant that this is one of the facts which raised a reasonable suspicion in the mind of Ndlela when he arrested the

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Plaintiff is not true.

For these reasons I rule that the arrest and detention was unlawful.

Now, I come to the second issue that of the measure of damages. In this regard I refer to the case of MAXWELL LUKHELE VS ATTORNEY GENERAL CIVIL CASE NO. 1057/91 which was cited by counsel for the Plaintiff were M. J. Strydom at page 25 of his judgment has this to say when considering the quantum of damages in that case:

"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 man in a free society which should be jealously guarded at all time and there is a duty on the courts to preserve this right against infringement. Unlawful arrest and detention constitutes a serious inroad into the freedom and the rights of an individual."

The Plaintiff in the present case was not only wrongfully arrested but he remained in custody at the Zakhele Remand Centre from the 25th August 1994 up to the 2nd September 1994. A period of about eight days. He has told the Court that he is self-employed and at the time he was in custody his business ceased to operate and thus incurring losses. That being so, Plaintiff is, in my view entitled to be compensated for the humiliation and indignity that resulted in consequence of Defendant action. I thus find that a sum of E40,000 is appropriate in the circumstances of this case.

S.B. MAPHALALA

ACTING JUDGE

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