

IN THE HIGH COURT OF SWAZILAND

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CASE NO. 3595/97

IN THE MATTER BETWEEN:

BUSI M. DLAMINI

APPLICANT

VS SKONKWANE HARDWARE (PTY) LTD

RESPONDENT

CORAM

S.B. MAPHALALA - A J

FOR APPLICANT

MR T. MLANGENI

FOR RESPONDENT

IN ABSENTIA

JUDGEMENT

(29/06/98)

In this action the plaintiff sues for damages alleged to have been suffered by her in consequence of her wrongful arrest on the 9th December, 1997 by the police officers from Manzini Police Station on the instructions of the respondent. She was detained until the 10th December, 1997 until she was released by Manzini Magistrate Lindiwe Nkambule. She alleges that her arrest and detention was caused solely by the defendant, was unlawful and malicious. It was the culmination of a civil dispute in which the defendant, which was her employer, sought to repossess from her a motor vehicle which she was using at the time. Her employment by defendant had recently been terminated. Her arrest and detention was on the alleged basis that she was in contempt of the court order to the effect that she was to surrender the motor vehicle to the defendant.

The plaintiff is a 37 years female who states in her affidavit to prove damages that she had never been arrested and have never been in any sort of trouble with the law. The squalid environment that she found herself in the cell at the police station is something that will live with her for the rest of her life. She lived with two young children, aged 6 and 12 years respectively, whom she left at the flat when she was arrested. She deposed that she agonised about them throughout her sleepless night at the cells. She told the court that at the time of her dismissal by the defendant she was in a relatively senior position as Personnel Officer.

The matter came to court by way of combined summons supported by particulars of claim dated the 23 rd December, 1997 where in her particulars of claim she claimed for the following:

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Emotional trauma and stress	-	E12,000-00
Humiliation and loss of status & dignity	-	E12,000-00
Inconvenience	-	E 1,000-00
Total		E25,000-00

The defendant was served with the summons on the 5th February, 1998 though its branch manager a certain Mr Abednigo Nyawo at Skonkwane Hardware in Manzini. The defendant elected not to defend the

action and plaintiff obtained a judgement by default in terms of the rules of court.

On the 15th may, 1998 the plaintiff was granted leave to prove damages by way of affidavit. The said affidavit was filed of record on the 18th June, 1998. On the 24th June, 1998 the court heard submissions by Mr Mlangeni for the plaintiff on the quantum of damages to be awarded in this case. This is the only issue for determination. Mr Mlangeni submitted that it has been the tendency of the court in such matter to award globular awards in damages instead of awarding the individual features of the damages being sought. He urged the court to follow this practice in this particular case. He then referred the court to decide cases of this court to show the attitude of the court to the duration of time vis a vis the award of damage. The point for this exercise is for the court to be able to arrive at a proper award. Mr Mlangeni cited the case Mlangeni vs Attorney General Civil Case 396/89. In the case Joel Masotsha Ziyane and the Attorney General Civil Case No. 396/89 the plaintiff in that case was detained for a period of between thirty and sixty minutes and the court awarded him E5,000-00 in damages. Mr Mlangeni submitted that in the present case an award of E15,000-00 would be reasonable and the figure initially sought of E25,000-00 would be rather too excessive in the circumstances.

I have perused through the papers before me and considered Mr Mlangeni's submission. I agree in toto with his views on the matter and hold that a sum of E15,000-00 would be a fair and reasonable award of damages in view of plaintiff's allegations at paragraph 6 of her affidavit to prove damages.

The defendant is ordered to pay a sum of E15,000-00 to the plaintiff as damages for the unlawful and malicious detention she endured on the 9th December, 1997 at Manzini Police Station.

The defendant is further ordered to pay the costs of this suit.

S.B. MAPHALALA

ACTING JUDGE