



SWAZILAND HIGH COURT

James Mbokodvo Mbhamali
Plaintiff
Vs
Swaziland Government
Defendant

Civ. Case No. 1357/96

Coram

Sapire, CJ

For Plaintiff

Mr. Thwala

For Defendant

Ms Sikhondze

JUDGMENT (31/10/2000)

This is a matter in which the plaintiff sues the Government for damages arising from wrongful arrest and detention. The facts of the matter are that the plaintiff, a young man aged approximately 30 years at the time was arrested on of charges arising out of the death of an individual in the Republic of South Africa.

The charge against him was one of attempted murder and from the date of his arrest to the date on which he was released, a period of more than two months

elapsed. At that time there were no extradition papers served on the accused, he was never brought before the Magistrate, the question of bail never arose and there is no indication before the court as to what prompted his release after this extended period in custody.

He was held originally at the police cells and later transferred to the prison at Big Bend. Neither of these places offered desirable or comfortable accommodation and one can accept that the stay there was degrading and humiliating. I have previously observed that there is no need for people who are held even legitimately to await trial to be treated with anything less than consideration and there is no reason why they should suffer the same indignities privations and hardships as prisoners who are already convicted.

The defendant has not denied liability and has only contested the amount of damages. I have heard the plaintiff testify as to his damages. I am satisfied that he is a perfectly decent man. Although not enjoying a prestigious position in society he is nonetheless respected. He at least enjoyed this respect before his incarceration. To be treated like a convicted criminal is a grave denial of his rights.

He was a photographer earning some E100.00 per week. By reason of his incarceration he directly lost 10 weeks income. After his release he had to re-establish his business and it would be proper in these circumstances to allow him compensation for a further 10 weeks at a reduced amount which would be make an award of E6 000.00 fair.

As far as general damages are concerned, I have regard to but am not bound by¹ awards in similar previous cases.

In *Sibusani Dlamini vs the Attorney General*¹ I awarded damages in very similar circumstances. In that case the period of detention was 3 months. The difference on this account have to affect the amount of damages I awarded. In many other respects the cases are similar and the considerations to which I referred are

¹ Civil Case No. 78/97

apposite in the present case. In the case I referred to I reviewed a number of judgments and indicated therein differences from and similarities to the present circumstances.

I also referred to the words of *Broome JP in May vs the Union Government*²

"I have always regarded the deprivation of personal liberty as a serious injury, and where the deprivation carries with it the imputation of criminal conduct of which there was no reasonable suspicion the injury is very serious indeed."

The considerations which prompted me to make an award of damages in the previous case are present in the instant case. The basis of the award in that case having regard to the fact that the period of incarceration was 1 month less than that in the previous case, an award of general damages in the amount of E50 000.00 is apposite to which must be added the amount awarded in respect of the loss of income. Therefore the judgment to the plaintiff in the amount of E56 000.00 and costs.


SAPIRE, CJ

¹ Edited

² 1954(3) SA 120 @ 130(F)