

IN THE HIGH COURT OF SWAZILAND

CIVIL CASE NO.1906/2002

In the matter between:

WONDERBOY NXUMALO      PLAINTIFF

vs

COMMISSIONER OF POLICE    1<sup>st</sup> DEFENDANT

ATTORNEY GENERAL          2<sup>nd</sup> DEFENDANT

CORAM: MATSEBULA J

FOR PLAINTIFF MR. M. THWALA

FOR DEFENDANTS: MR. F. MKHWANAZI/MS. NDZIMANDZE

JUDGMENT

28<sup>th</sup> JANUARY 2005

The plaintiff, Wonderboy Nxumalo claims damages as a result of an alleged wrongful arrest and detention. He alleges that the arrest was effected without a warrant. He claims to have suffered damages in the sum of E50 000 00. He also claims interest on the amount at the rate of 9% per annum and costs of suit.

DW3 Detective Constable Mabuza is a police officer as defined in Section 2 of the CRIMINAL PROCEDURE

& EVIDENCE ACT 67/38 and is empowered to arrest a person without a warrant if he has reasonable grounds to suspect him of having committed any of the offences mentioned in Part II of the first schedule. Theft is one of such offences. DW3 gave evidence on how he got involved in the investigation of the theft case. A complaint had been made by a Mr. Russell Crawford who was an employee of S & B Civils (Matsapa) as paymaster.

It was plaintiff's duty to cash cheques at Standard Bank and Nedbank in Matsapa. On the day in question he did so at the one bank and proceeded to the other bank. He testified that he left the amount of money he had encashed at the former bank in the motor vehicle and locked the motor vehicle. He was not long in the latter bank. He came out and observed that the lock of the door of the motor vehicle had been damaged. He had placed the money he had cashed at Standard Bank in the cabin hole of the motor vehicle. It was E14039-00.

It was his evidence that he had parked the motor vehicle within sight and could see it as he went about doing his business in the bank. He says he spent plus minus 15 minutes in the bank and then went out and discovered that the door lock on the driver's side had been damaged and the money was no longer in the cabin hole. He reported the incident to the security officer. He subsequently reported the theft to a Mr. Russell Crawford. The police were then informed.

According to the plaintiff, the interrogation by the police was so violent that one would have expected of him to have laid criminal charges against some of the officers. I certainly would have expected some of the occurrences that took place during the interrogation to have featured in the pleadings.

Under cross examination, plaintiff admitted to have told management that he had stolen the money. However, he says this was what the police had suggested he should tell management.

DW2 did not take the plaintiffs case any further and plaintiff rested his case.

DW1 Bheki Mayisela a security man at the bank where plaintiff had parked his motor vehicle gave evidence. According to him plaintiffs motor vehicle was the only one at the parking base. Being his duty to look after motor vehicles parked at the parking area, he would now and again cast an eye at plaintiffs motor vehicle and he saw no one fiddling with it.

Once the report was made about the damaged lock and the missing money, he noticed that the knob indicating whether the door of the motor vehicle was locked. He saw that it was pushed down indicating that the door was still locked. DW1's evidence is important as indicating that the report by plaintiff concerning the burglary of the door and theft of the money was suspect already at the initial stages.

DW2 Joshua Mosana driver of the security motor vehicle. On the 13<sup>th</sup> March 2001 he was waiting for a colleague to come and collect him. He was at the entrance to the Nedbank building. He had a good view of the parking area. Plaintiff came in a motor vehicle and parked opposite where he was standing. It was plaintiffs vehicle only in the parking area. During the time he was waiting he saw no one fiddle with plaintiffs motor vehicle. Subsequently DW1 made a report to him. He and DW1 went to have a look at plaintiffs motor vehicle.

DW3 Constable Friday Mabuza, the arresting officer also gave evidence. He told the court that on 13<sup>th</sup> March 2001 a Mr. Russell Crawford reported that money had gone missing in the hands of plaintiff. The report by Russell Crawford set in motion police investigation. DW3 and other police officers confronted plaintiff and told him about Russell Crawford's report. DW3 told the court that Russell Crawford and plaintiff took the police to the motor vehicle plaintiff drove in when he went to the banks. After examining the motor vehicle, the police and Mr. Crawford went back to the premises of S & B Civics. Here they met another of S & B employees, a certain

Mr. Daniels. In the presence of DW3 and others, plaintiff asks Mr. Daniels to go and apologise to Mr. Crawford on his behalf about the disappearance of the money. Plaintiff told Mr. Daniels that he had financial problems. Plaintiff went on to search the drawers in his office where he hoped to retrieve the money. He failed to find the money.

DW3 and the other police officers then took plaintiff back to the police station to further interrogate him about the missing money. Before the party reached the police station and opposite the Liquor Distributors plaintiff informed the police officers that the money was hidden in the drain. The police looked in the drain but no money was found. Plaintiff finally said he had deposited the money in his savings account.

On 14<sup>th</sup> March 2001 he was taken to the Nedbank to confirm this. An employee of the bank found no trace of the money deposited in plaintiff's account. I should add that DW3 testified that plaintiff had been warned, in terms of the Judges' Rules each time he made these revelations. Finally on 15<sup>th</sup> March 2001 plaintiff was taken to court for his first remand after he had been formerly charged.

Considering the period between 13<sup>th</sup> March 2001 to 15<sup>th</sup> March 2001 - The 13<sup>th</sup> March 2001 was when DW3 first received the report from Russell Crawford and 15<sup>th</sup> March 2001 when plaintiff was taken for his remand before a Magistrate. I do not find any delay in taking plaintiff to court for a remand. This, also takes into account his various explanations where the money would be found and when these places were visited nothing was there.

I have been referred to many decided cases by both counsel for whose assistance I am highly indebted. I find that DW3 had sufficient reasonable ground to suspect that plaintiff had taken the money for himself. The story about the assault seems to me to be an afterthought, it appears nowhere in the plaintiff's particulars of claim and pleadings. The detention for one day is to me a reasonable period of time considering all the circumstances of

this case.

I find that plaintiff has not discharged the onus resting on him on a balance of probability. I dismiss plaintiffs claim with costs.

S.B. MAPHALALA

JUDGE