

THE HIGH COURT OF SWAZILAND

LUCKY MAMBA

Plaintiff

And

COMMISSIONER OF CORRECTIONAL SERVICES

1st Defendant

OFFICER IN-CHARGE - SIDVWASHINI

CORRECTIONAL SERVICES

2nd Defendant

ATTORNEY GENERAL

3^m Defendant

Civil Case No. 1786/2004

Coram: S.B. MAPHALALA – J

For the Plaintiff: MR. M. MKHWANAZI

For the Defendants: MR. DLAMINI (Attached to the Attorney General Chambers)

JUDGMENT

(12th July 2006)

[1] By combined summons with the Registrar's stamp dated 23^r June 2004, the Plaintiff sought damages arising out of unlawful detention of himself by the Defendants. As a result of the alleged unlawful detention aforesaid, the Plaintiff suffered damages in the sum of E200, 000-00 which he holds the government of Swaziland vicariously liable. The Plaintiff further seeks interest thereupon at the rate of 9% per annum and costs of suit.

[2] On the day the matter appeared before me the Defendants' legal representative conceded to what is demanded by the Plaintiff in his Particulars of Claim that in the circumstances of the case Government is liable and he left the question of the *quantum* of damages in the hands of the court. Indeed in view of the fact that Defendants have no issue on liability the only question for determination by this court is the measure of damages. In this regard Counsel for the Plaintiff seized the moment and filed very comprehensive Heads of Argument for which I am indebted to Counsel for his high sense of scholarship.

[3] The facts which are common cause on liability by Defendants is that on the 13th October 2003, the Plaintiff was arrested by members of the Umbutfo Swaziland Defence Force and subsequently handed over to police officers stationed at Mbabane Police Station. On the 15th October 2003, the Plaintiff appeared before the Mbabane Magistrates Court charged with possession of dagga under Case No. 482/2003. On the 15th October 2003, the Plaintiff was admitted to bail in the sum of E2, 000-00 (two thousand Emalangeni) which was paid on the same date. On the very same day the Magistrates Court issued a Warrant of Liberation in favour of the Plaintiff. Despite having been served with the Liberation Warrant and General Receipt as proof that the Plaintiff had paid and the court had ordered his release from custody, the Defendants refused to release the Plaintiff from custody.

[4] It is also common cause that the Plaintiff was kept on detention from the 15th October 2003 until the 19th December 2003. The 1st Defendant refused to release Plaintiff on bail citing some "Executive Directive" that was issued by the then Prime Minister. It is further not in dispute that the Defendants have not given a counter argument by the Plaintiff that the directive given by the then Prime Minister was

unlawful and wrongful and thus every detention authorised thereby was also illegal.

[5] As stated above in paragraph [2] of this judgment the only issue left to be decided by this court is how much compensation should be given to the Plaintiff for the delict done to him by members of the Defendants.

[6] Counsel for the Plaintiff as I have stated earlier on in the course of this judgment has advanced to the court very comprehensive Heads of Arguments on the case law relevant to the issue of *quantum*. He contended that damages for unlawful detention cannot be quantified in monetary terms with a mathematical precision. However, this court has to make a just and fair award taking into account the peculiar facts of the case in issue whilst on the other hand being guided by the past awards that have been made by the courts. He submitted, rightly so if I may say so, that the scope of comparison of past decided cases should not be confined or limited to the jurisprudence entailing within the border of the country but this court should be open to persuasion by foreign judgments and moreso, of those countries whom Swaziland shares a single currency, including South Africa, Namibia and Lesotho.

[7] *Mr. Mkhwanazi* in support of the above-cited argument mentioned the very interesting South African case on this subject that of *Ramakulukusha vs Commander Venda National Force 1989 (2) S.A. 813 at 847 B - D* where Der Spuy AJ remarked as follows:

"When researching the case law on quantum of damages, I took note with some surprise of the comparatively low and sometimes almost insignificant awards made in Southern African Courts for infringement of personal safety, dignity, honour, self-esteem and reputation. It is my respectful opinion that courts are charged with the task, nay with the duty, of upholding the liberty, safety and dignity of the individual, especially in group oriented societies where there appears to be an almost imperceptible but inexorable decline in individual standards and values".

[8] *Mr. Mkhwanazi* continued to submit that the attitude adopted by the courts in similar cases has been to award heavy damages for victims of unwarranted detention as means of voicing its disapproval for such delicts. Thus in the above-cited case of *Ramakulukusha* the court awarded the Plaintiff, who was detained from the 3rd February 1983 to 11th February 1983 on a charge of virtual murder that was alleged to

have occurred in the year 1975, damages in the amount of E2, 500-00 per day. Before the learned Judge came to this decision he referred to other legal authorities which guided him to arrive at his conclusion and held at page 849 D that:

"In addition he was subjected to the humiliation of being escorted by the police to close his business ... I nevertheless take into account the humiliation he was subjected by the police and the malice that their conduct generally envisaged towards him. In addition bail was resisted on frivolous and vexatious grounds and based on false evidence. I must add that as I remarked with wrongful arrest, the detention was totally unnecessary, vindictive and malicious".

[9] Counsel for the Plaintiff further referred the court to *Robert J Koch (2001) The Quantum Year Book* at page 48 - 49, the case of *Ireff vs Minister Van Polisie 1977 (2) S.A. 900 (AA)*, *May vs Union Government 1954 (3) S.A. 120 (N) (per Broome JP)*, *Minister of Police and another vs Gamble and another 1979 (4) S.A. 759* and that of *Todt vs Ipser 1993 (3) S.A. 577 (AD)*.

[10] Van Spuy AJ held in *Ramakulukusha's case supra* when commenting about the case of *May vs Union Government (supra)* cited above in paragraph [9] that:

"Having regard to the accepted evaluation of currency one would expect that the award over a period of 33 years have escalated on the basis stated below at least four (4) times, which would make the award in the neighbourhood of R35, 000-00 (thirty-five thousand Rands) to R40, 000-00 (forty thousand Rands) at present time in respect of the arrest and detention taken together".

[11] Having considered the able submissions by Counsel for the Plaintiff the courts in this jurisdiction have in general awarded an average of E10, 000-00 per day for every person in unlawful detention. I agree with the Plaintiffs contention that an award of 35% of that figure would be appropriate on the facts of the present case. This amount of E3, 500-00 per day will be the most fair in the circumstances for all the 64 days Plaintiff was kept in unlawful detention.

[12] In the result, for the afore-going reasons Plaintiff is granted judgment in the sum of E200, 000-00 with interest thereupon at the rate of 9% per annum and costs of suit.

**S.B. MAPHALALA
JUDGE**