

IN THE HIGH COURT OF SWAZILAND

CIVIL CASE NO.3253/01

In the matter between:

MFANAFUTHIMALINGA

PLAINTIFF

AND

COMMISSIONER OF POLICE

1st DEFENDANT

DIRECTOR OF PUBLIC PROSECUTIONS

2nd DEFENDANT

ATTORNEY GENERAL

3rd DEFENDANT

JUDGMENT

2ND AUGUST 2006

The above matter was heard by me and judgment handed down in favour of the respondents with costs. Thereupon plaintiff noted and filed an appeal to the Court of Appeal. On 17th March 2005 the Court of Appeal handed down judgment allowing the appeal with costs and setting aside the order of the High Court and remitting this matter to this Court for the assessment of the quantum of damages arising from the wrongful arrest and subsequent detention of the appellant.

The matter has now been argued before me by both counsel for the respective parties. This court is indebted to counsel for their valuable submissions. The effect of the Court of Appeal judgment is that the arrest and subsequent detention of the appellant was wrongful.

Mr. Magagula's contention that the amount claimed by plaintiff should now be inflated in order to rank parilis with the present monetary value of the Lilangeni and not the value the Lilangeni as it was when plaintiff first issued summons is not convincing. It is simple logic that the value of the Lilangeni at the issue of summons and the amount claimed then should be the amount to be considered as also the time spent by this court.

It has been submitted by Mr. Magagula that plaintiff spent altogether 10 months in custody and 10 months is exceptionally a long time in custody.

What is of great assistance to this court is the mode of computation made by Mr. Magagula at page 4 paragraph 4.1 of his heads of argument. The period of time plaintiff spent in detention multiplied by the amount he was earning when he was taken in detention. Plaintiff's evidence is that when he was detained he was earning E2,500.00. However, the prayer to the effect that he lost his employment is watered down by the fact that according to annexure MM1, plaintiff was made an offer by Caritas. There is no evidence that plaintiff accepted the offer. MM2 still has the offer. Finally, MM3's withdrawal of the offer. As argued by Mr. Dlamini, convincingly, in my view, that plaintiff suing for damages must lead evidence that will enable the court to assess the amount of damages he alleges to have suffered.

In his particulars of claim plaintiff alleges to have suffered E250.000.00 as a result of the unlawful incarceration. This amount is against the backdrop of plaintiff being "a fairly educated young man who was just beginning his B.Comm degree." He has never had brushes with the law before. The case of **MANASE VS MINISTER OF SAFETY AND SECURITY AND ANOTHER** is not being helpful at all. Beside being a Republic of South Africa whose courts have been handing down judgment in such cases for a long time, based on their constitution the particulars in that case are distinguishable.

I have indicated above in my judgment that the period of time spent in custody by plaintiff is considerably long.

Under cross-examination plaintiff agreed that he had prayed for E250,000.00 in his particulars of claim for unlawful incarceration. He says the amount claimed is for deprivation of liberty and loss of dignity. As it appears from MM 1-3 when the plaintiff was incarcerated he had not worked for any period of time. His statement of account handed in as "EXH A" reflects the attorneys fees as E3,955.00. However he ended up paying only E800.00. Mr. Magagula has argued that the final payment of the E800.00 was through the ingenuity of plaintiff and defendants should not be made to benefit therefrom. I do not agree. Plaintiff paid E800.00 as attorney's fees and he is entitled to that amount. I did point out that the arrest and incarceration was unlawful whether the prolonged detention was as a result of the Non Bailable Offences Order of 1991 is of no moment. Plaintiff has been detained unlawfully for 10 months. Though it is not clear from the contents of MM1-3 whether plaintiff had accepted the offer for employment. In his evidence and under cross-examination he is adamant he had accepted and worked for a couple of days. I am prepared to find in his favour in that regard.

In that result, the court makes the following award:-

- (a) Plaintiff is awarded E2,500.00 multiplied by 10 months.
- (b) E15,000.00 for unlawful incarceration.
- (c) Interest at the rate of 9% per annum a *tempora morae*.
- (d) Costs of suit.

J.M. MATSEBULA
JUDGE