

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 1124/02

In the matter between:

SPHAMANDLA GININDZA

PLAINTIFF

and

THE COMMISSIONER OF POLICE

1ST DEFENDANT

THE DIRECTOR OF PUBLIC PROSECUTIONS

2ND DEFENDANT

THE ATTORNEY GENERAL

3RD DEFENDANT

CORAM

FOR THE PLAINTIFF FOR THE

DEFENDANTS

Q.M. MABUZA -J

MR. J. MAVUSO OF JUSTICE M.

MAVUSO & COMPANY

MR. V. DLAMINI OF ATTORNEY

GENERAL'S CHAMBERS

JUDGMENT 9/04/09

[1] The Plaintiff sued the Government of Swaziland for the sum of E4,500.000.00 (Four million five hundred

thousand Emalangeni). This is in respect of damages he suffered for a delict perpetrated against him by certain police officers on the 3rd August 2000 at Ngwenya border gate. His claim is for unlawful arrest, unlawful detention and malicious prosecution. His claim is made up as follows:

1)	Loss of liberty and deprivation of freedom		
	E1,500.000.00		
2)	Discomfort	E	
	500,000.00		
3)	Loss of earnings for six (6) months	E	90,000.00
4)	Loss of terminal benefits	E	2,000.000.00
5)	Costs of repairing and respraying vehicle	E	
	30,091.46		
6)	Contumelia	E	367,058.54
7)	Cost of instructing attorneys	E	<u>12,850.00</u>
			<u>E4 500 000.00</u>

[2] The Defendants admit liability but contest the quantum of damages.

[3] It is important to set out the background before deciding the quantum of damages. The Plaintiff testified that he was arrested on the 3/8/2002 at about 8.00 p.m. at Ngwenya border gate. From there he was taken to the police cells at Mbabane police station. He was told to take off his belt and shoes and taken to a stinking cell. He was given blankets that had lice to sleep with and there were no toilet facilities in the cell except a bucket in which he had to relieve himself.

The following day which was a Friday he was taken back to Ngwenya border gate and was made to stand beside a truck which had been found to have dagga in it. A photograph of him

standing next to the truck was taken and he was charged with possession of dagga. He stated that people were staring at him because he was in handcuffs. From Ngwenya he was taken back to Mbabane Regional Headquarters for interrogation by about 15 police officers.

He informed the court that he was asked many questions about the dagga which he denied. His denial caused the police to insult him and use abusive language towards him. He was advised that if he did not accept ownership of the truck which had dagga he would be incarcerated for about two years before his matter would be heard at the High Court. After his interrogation he was taken to the Mbabane Post Office where the dagga was weighed. Thereafter he was advised that there was no motor vehicle to transport him so he had to walk back to the police station in handcuffs. Many people who knew him some of whom were clients of his saw him in handcuffs at the Post office and along the way back to the police station. He did not have any shoes on. Thereafter he was returned to the cells where a cellmate responded to the call of nature using the bucket which created a stench. On Tuesday morning he was taken for a remand before the Magistrate, after which he was taken to Sidwashini Correctional facility where the living conditions improved slightly. He complained that he was given blankets which had lice. He further complained that he was placed with people who smoked a lot and this caused him to cough and affected his vision. He has defective eye vision and the smoke caused his eyes to itch. He told the court that he used one blanket as a mattress and the other two to cover with. There were sleeping mats provided but they were not enough. Inmates inherited these whenever someone left. He would sit in a room the whole day and was only able to move when he went out to fetch his food. He was allowed to read. He ate three times a day. His relatives brought food and

reading material. His matter was heard on the 13/12/2000 and he was acquitted and discharged.

[6] Prior to his arrest he was employed by Old Mutual Insurance Company in South Africa as a senior financial advisor. His duties involved obtaining business for his employer. He was based in Ermelo but his duties spread to Swaziland and the whole of South Africa namely Johannesburg, Pretoria and Cape Town. He did not earn a fixed salary. His salary came from commissions. His average income per month was E26,000.00. He lost this income when he was in custody. He was in custody for 4 months 14 days. While he was in custody his employment was terminated on the 29th August 2000. After he was released he was unemployed for 3 months and he then became self-employed. When he was arrested his motor vehicle a Mercedes was impounded by the police and released after his release. At the time of his arrest he held a Bachelor of Science degree from the University of Swaziland. His qualifications were not in issue. At his criminal trial he had engaged the services of an attorney who charged him E12,850.00 (Exhibit "C"). He was preparing to get married at the time of his arrest and the marriage did not take place. He lost his girlfriend because of his incarceration.

[7] **The Plaintiffs claim is for a total of 6 months: 4 months in custody and 2 months for the period before he started his own business.** He did not receive any remuneration while in custody.

[8] Mr. Dlamini for the Defendant denied that the police were harsh and insulted the Plaintiff. He denied that the Plaintiff was made to walk from the Post office to the police station.

Mr. Dlamini also put to the witness a denial that the police cells and the dormitories at Sidwashini Correctional facility were not fit for human habitation. Mr. Dlamini did not call any witness to counter the Plaintiffs allegations. Consequently I believe the Plaintiffs version about the poor living conditions at both the police cells and correctional services.

[9] The witness explained that as a senior financial advisor he sold Old Mutual financial products which included insurance policies both short term and long term, life covers and funeral benefits, funeral plans investment policies, retirement funds, motor vehicle covers and household covers.

[10] During the hearing of the matter the Plaintiff did not pursue the following:

•	Loss of terminal benefits	E2,000.000.00
•	Costs of repairing and spraying vehicle	E 30,000.00
•	Contumelia	<u>E 367,058.54</u>
	Total	<u>E2,397,058.54</u>

[11] He pursued the following:

•	Loss of liberty and deprivation of	
•	Freedom	E1,500.000.00
•	Discomfort	B 500,000.00
•	Loss of earnings for 6 months	B 90,000.00
•	Costs of instructing attorneys	<u>12,850.00</u>

Total

E2,102.850.00

[12] The Plaintiff was arrested together with Bamblela Boycey the Plaintiff in the High Court case no. 2097/2002 (unreported). It is fair for me to use the award in that case as a guideline having decided it first. The facts and circumstances are similar to the present case.

[13] Hereunder are my findings:-

- **Loss of liberty and deprivation of freedom.**

When the Plaintiff was unlawfully arrested, he was unlawfully detained. As a result of his detention he suffered discomfort. In the Bamblela Boyce case after analysing several authorities in similar cases I awarded E50,000.00 for wrongful arrest and E200,000.00 for unlawful detention. I am satisfied that the Plaintiff has proved his claim under this head.

- **Loss of earnings for 6 months.**

I am satisfied that the Plaintiff has proved loss of earnings under this head.

- **Legal costs.**

I am equally satisfied that the Plaintiff has proved legal costs under this head.

[14] The order of the court is as follows:

The Defendant is ordered to pay to the Plaintiff:

8) E250,000.00 (Two hundred and fifty thousand Emalangi) in respect of loss of liberty deprivation of freedom;

9) E90,000.00 (Ninety thousand Emalangeni) in respect of loss of earnings;

10) E 12,850.00 (Twelve thousand eight hundred and fifty Emalangeni) in respect of legal costs; and

(d) Costs of suit.


Q.M. MABUZA -J