

HIGH COURT OF SWAZILAND

HELD AT MBABANE

CIVIL

CASE

NO.451/2001

BONGANIMKHWANAZI

PLAINTIFF

VS

COMMISSIONER OF POLICE

RESPONDENT

CORAM

MAPHALALA PJ

FOR THE PLAINTIFF

MISS N. GWIJI MISS

THE RESPONDENT

MKHWANAZI

JUDGMENT

3rd JUNE

2009

[1] The Plaintiff, Bongani Mkhwanazi, an adult Swazi male of Mangwaneni, Mbabane in the Hhohho District has sued the Defendant who is the Commissioner of Police cited therein in his capacity as such and duly represented by the Attorney General for unlawful arrest and detention where he spent 15 months in prison and as a result demands from the Defendant payment of the sum of E320,000.00, interest thereon at the rate of 9% a *tempore morae* and costs of suit.

[2] The Plaintiff contends in his Particulars of Claim that on or about February, 1999 in Mbabane, Plaintiff was unlawfully and wrongfully arrested by members of the Royal Swaziland Police based in Mbabane on unfounded rape charges. The names and ranks of the police officers are unknown to Plaintiff. At all material times the police officers were acting within the course and scope of their employment with the Defendant.

[3] Plaintiff was subsequently released on the 11th May, 2000 when the charges of rape were withdrawn by the Crown when the matter appeared before this court for trial, Plaintiff had spent 15 months in prison.

[4] The Plaintiff further contends that the arrest and detention was wrongful and unlawful in that firstly, the arresting officers had no warrant of arrest and/or secondly, the police had no reasonable or probable ground for suspecting that Plaintiff had committed the

offence charged and/or thirdly, there was no basis whatsoever in law for the arrest and subsequent detention.

[5] As a result of the unlawful and wrongful arrest and detention the Plaintiff has suffered damages in the sum of E320,000.00 arising out of deprivation of freedom, *contumelia*, loss of *dignitus* and loss of income.

[6] At the commencement of trial the Defendant admitted liability of the claim but challenged the *quantum* of damages. It is in this vein that the trial proceeded where counsel for the Plaintiff called him to the stand to give *viva voce* evidence. The evidence he gave is similar to what is stated in the Plaintiff's particulars of claim.

[7] In arguments Counsel for the Plaintiff did not say anything save to state that the court ought to award damages as reflected in the Plaintiff's Particulars of Claim. On the other hand counsel for the Defendant submitted comprehensive arguments on the *quantum* of damages. She referred the court to a number of relevant decisions on the subject and I am grateful to Counsel for her high professionalism where she has assembled a number of local authorities in this regard.

[8] It is contended for the Defendant that the amount sought is too excessive when viewed against the *quantum* granted in similar cases before this court. In this regard

the court was referred to Civil Case i To./2/2005 of *Zakhele Gina vs Commissioner of Correctional Services et al* where *Mahuza J* granted a sum of E50,000.00 in respect of damages for unlawful detention. Plaintiff in that case had spent 5 months and 17 days in custody or 170 days. The said judgment was taken on appeal in Appeal Case No.72/2005 of *Zakhele Gina vs Commissioner of Correctional Services* which confirmed the judgment of the court *aquo*.

[9] In the present case the Plaintiff has been in custody for 15 months and therefore when applying the measure in *Zakhele Gina* he would be entitled to a higher figure than the E50,000.00 granted in 2005. It would appear to me that the Applicant in the present case is entitled to the sum of E150,000.00 when one applies the measure in *Zakhele Gina (supra)*.



S.B. MAPHALALA

PRINCIPAL JUDGE

[10] In the result, for the foregoing reasons the Respondent to pay a sum of E150,000.00 as damages arising out of deprivation of freedom, *contemelia*, loss of *dignitus* and loss of income and costs of suit.