

IN THE HIGH COURT OF SWAZILAND

**HELD AT MBABANE In the
matter between: ARMSTRONG
ROBINSON AND
THE ATTORNEY GENERAL**

CASE NO. 1220/98

PLAINTIFF

DEFENDANT

**CORAM
FOR PLAINTIFF
FOR DEFENDANT**

**MAMBA J
MR Z. MAGAGULA
MR ZWANE**

**JUDGEMENT 23rd
JUNE, 2009**

[1] The plaintiff, Mr Armstrong Robinson was born on the 17 August, 1969. He is a qualified boiler-maker and has been in this trade since 1995. He has sued the Government of the Kingdom of Swaziland, herein duly represented by the Attorney General, and claims for damages in the sum of E50.000-00 (fifty thousand emalangeni) for pain and suffering in respect of an assault perpetrated upon him by

members of the Royal Swaziland Police Force in or about the 20 May, 1997.

[2] It is common cause that, following a complaint on a housebreaking with intent to steal and theft around eMagevini area on the early morning hours of the 18th May 1997, three police officers from the Sigodvweni Police Post arrested the plaintiff at his home at eMagevini at around 5.00 a.m. on the 20th May, 1997. The plaintiff was arrested and taken to the police post after a search in his house had yielded nothing incriminating him. The said police were acting during the cause and within scope of their employment as servants or agents of the Defendant.

[3] On arrival at the police post that morning, the plaintiff was interrogated or questioned about a radio cassette that he had allegedly stolen from a certain house within the neighbourhood. He pleaded his innocence and he was ordered to remove his belt and shoes and he was locked into one of the police cells at the Police Post. The three police officers who had arrested him were joined by others during the interrogation.

[4] According to the plaintiff, at about 6pm that day, he was taken out of the cells into an office and interrogated again. He also stated that whilst in that office being interrogated by the Police Thomas Phahlaza Dlamini, came into the office and confirmed to the police that they had arrested the right person. Thomas is said to have further stated that the plaintiff should be stripped naked so that the police could see the wounds inflicted on his buttocks by his dogs when they bit him during a chase after the commission of the crime. On being stripped naked no such scars or wounds were found on him. He also denied having been involved in the housebreaking and also denied having been bitten by Dlamini's dogs or any dogs at all.

[5] After taking Dlamini home, the police interrogated the plaintiff again and demanded to know where he had put a radio cassette and video cassette recorder he had stolen from the house that he had broken into. He

maintained his innocence. He was, according to him, handcuffed with both hands tied behind his back, his legs were tied or bound together with a bed-sheet and his whole body wrapped in two blankets, whilst in a standing position. He testified that this caused him to sweat as he was starved of fresh air. At this stage Police officer Fakudze went away and returned later with a motor vehicle tyre tube. The several policemen who were interrogating him caused him to lie down prostrate. Some set on his back and others held him on his bound legs whilst Fakudze covered his head and face with the tube and suffocated him. His head and face would remain covered in this way for about a minute or so and then the tube would be removed. This went on repeatedly or intermittently for about eleven times and he was in between each suffocation event, being asked about the items referred to above. This went on for over an hour. At one stage he was hit three times with a fist on his chest and slapped twice with an open hand on his right ear.

[6] During the interrogation, it came to the point that he falsely admitted to his interrogators that the items they were looking for were in his house at Magevini. He also told them that he had committed the crime together with one Mleman who lived in the same area. A visit to his house and the scene of crime yielded nothing as the goods could not be found. He had lied to the police about this to escape their assault or torture as described above, he said.

[7] When they could not find the items at his house, the police insulted him in front of his mother - the plaintiff told his mother in the presence of the police officers that he had falsely admitted committing the offence in an attempt to stop the police from assaulting him. After the visit to his house, he was again returned to the cells where he spent the night.

[8] He was severely injured by the handcuffs on his wrists and back. His right ear was painful and partially deaf for a period of about two (2) weeks and for the same number of weeks, endured pain in his chest.

[9] In the morning on the following day, the Police told him that he could go home as there was no evidence against him. Seeing that he had been badly assaulted he refused to leave the police post and demanded that he be taken before a Magistrate and be released by an order of court. His sister Carol Ngcobo was called and she witnessed the injuries on his wrists. She said his wrists were blue and bruised. His attorney also came and consulted with him before he was transferred to the Manzini Police Station where he spent the night before being taken to court for his first appearance.

[10] On his remand, he related his encounters with the police to the magistrate and showed her the injuries he had sustained during the assault. He was released on bail. He went to Dr Vilakati in Manzini on the following day and was given medication for his injuries. There is no evidence that he required any further medical attention for his troubles. He was never tried for the offence he was arrested and interrogated on.

[11] The Plaintiff was unable to say how much he paid as medical fees in respect of his injuries and could only say the consultation alone was about E150.00. In fact he told the court that the usual consultation fee at this Doctor's surgery at the time was between E120.00 and E150.00.

[12] The Defendant denied having assaulted the plaintiff. Police officer Petros M. Fakudze testified that he was one of the investigating officers who arrested and interrogated the plaintiff at the relevant time. The rest of his colleagues who were with him had since died.

[13] Fakudze's evidence was that the plaintiff had been arrested and interrogated based on information by Thomas Phahlaza Dlamini implicating him with the commission of an offence of house breaking with intent to steal and theft committed at eMagevini at the home of Mrs Mbuli. He told the court that the plaintiff resisted being arrested at his house and when he was eventually overpowered by the police, he was handcuffed and had to be physically lifted into the police motor vehicle.

[14] Other than denying the assault on the plaintiff Mr Fakudze was unable to remember most of the details pertaining to this case.

[15] The other witness led by the Defendant was Thomas Phahlaza Dlamini who testified that on the night of the 18th May 1997 he and his dogs had chased after a person in the dark who had committed an offence in the area. The dogs had caught up with the thief who turned out to be the plaintiff, who was well known to him. He gave evidence further that he had stood about a metre away from the plaintiff upon being caught by his dogs and the plaintiff had hit him with a video cassette recorder and had then swiftly disappeared into the darkness of the night. Plaintiff steadfastly denied being the man herein.

[16] The plaintiff's case is not based or founded on unlawful arrest or malicious prosecution. It is based on the assault he suffered or sustained in the hands of the police following his arrest on the night in question. He gave his evidence in a straight forward manner and was unshaken under cross examination. He related the events that unfolded from the moment of his arrest until he was released on bail. The Defendant presented or offered a bare denial of the assault.

[17] It is significant to note that the Police did not deny that the plaintiff was told that there was no evidence against him and he could go home in the morning on the 2nd day after his arrest. The Defendant was further unable to deny that the plaintiff refused to be released by the police under those circumstances-as he had been seriously injured. The injuries on the plaintiff's wrists were observed by her sister, Carol Ngcobo, at the Sigodvweni Police Post where the plaintiff was detained before being transferred to the Manzini Police Station. The Defendant was unable to deny the presence of these injuries and only suggested that they could have been caused by the handcuffs when the plaintiff was resisting arrest.

[18] The plaintiff did not call the Magistrate to whom he reported and showed his injuries when he was being remanded. He has offered no

explanation for this. He was, of course, not obliged to do so. He also did not call the medical doctor who examined him following the assault. Again, he was not obliged to do so.

[19] Notwithstanding the above deficiencies or shortcomings in the evidence of the plaintiff and the absolute denials by the police, I am satisfied that the plaintiff has on a preponderance of probabilities established that he was severely assaulted by the police at the relevant time and in the manner described herein by him. This assault was unlawful and deliberate. Even if the plaintiff had been implicated in the commission of the offence by Phahlaza Dlamini or other persons, the Police were not permitted in law to assault him - in order to force a confession from him or for any other reason.

[20] The plaintiff was interrogated, physically assaulted, insulted and humiliated by being caused to strip naked in the presence of several police officers and his accuser, Phahlaza Dlamini. The suffocation with the tyre-tube lasted for over an hour and was being administered in bouts or instalments lasting about a minute each. For two weeks, his right ear and chest were painful as a result of the assault by the police.

[21] I have no doubts whatsoever that the violence perpetrated on the plaintiff was severe. But such severity did not reach the particular level that is inherent in the concept of torture. I am therefore unable to say that it amounted to torture - which is a very aggravated and prolonged form of assault. In the case of **IRELAND V UNITED KINGDOM**, judgement of January 18, 1978 of the European Court on Human Rights, the Court said torture involves "a special stigma to deliberate inhuman treatment causing very serious and cruel suffering, [and] constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment."

[22] Taking into account all the circumstances of this case I am of the considered view that an award of E50,000-00 in respect of pain and suffering is appropriate in this case.

[23] The plaintiff has failed to justify the claim of 5,000-00 in respect of past and future medical expenses. His evidence that he paid a sum of about E150-00 for consultation when he visited the Doctor has not been challenged. He is entitled to be compensated in that amount in respect of this heading, bringing the total award to a sum of E50,0150-00 together with interest thereon at the rate of 9% per annum a tempore morae with effect from the 22nd April, 2009. The Defendant is also ordered to pay the costs of the action.



MAMBA J

(An ex tempore judgement was delivered on 15 April, 2009 immediately after submissions).