



**IN THE HIGH COURT OF ESWATINI**

**JUDGMENT**

In the matter Between:

Case No.3763/2006

**CELANI SHABANGU**

Plaintiff

And

**SWAZILAND GOVERNMENT**

1<sup>st</sup> Defendant

**THE COMMISSIONER OF POLICE**

2<sup>nd</sup> Defendant

**THE DIRECTOR OF PUBLIC PROSECUTION**

3<sup>rd</sup> Defendant

**THE ATTORNEY GENERAL**

4<sup>th</sup> Defendant

Neutral citation : ***Celani Shabangu v Swaziland Government and 3 Others***  
***(3763/2006) [2020] SZHC 87 (8<sup>th</sup> May, 2020)***

Coram : **M. Dlamini J**

Heard : **16<sup>th</sup> April, 2020**

Delivered : **8<sup>th</sup> May, 2020**

**Summary:** The plaintiff had claimed a total of E5 164 2000 for an unlawful arrest, detention and malicious arrest, inclusive of general damages, medical expenses, loss of earnings and future earnings. His claim succeeded only in malicious prosecution. My duty is to decide on the *quantum*, following the parties' failure to reach a consensus.

### **Quantum**

[1] Plaintiff had initially claimed as follows:

|  |   |                             |
|--|---|-----------------------------|
| “15.1 Loss of earnings                   | - | E 31,200.00                 |
| 15.2 Loss of future earnings             | - | E280,000.00                 |
| 15.3 Future medical expenses             | - | E350,000.00                 |
| 15.4 Impairment of dignity               | - | E100,000.00                 |
| 15.5 Wrongful arrest, unlawful detention |   |                             |
| And malicious prosecution                | - | E4,053,000.00               |
| 15.6 General damages                     | - | <u>E 350,000.00</u>         |
|  | = | <b><u>E5,164,200.00</u></b> |

[2] In his submission following that he succeeded on malicious prosecution, he urged the court to consider items 15.4, 15.5 and 15.6 when assessing the damages.

### **Determination**

[3] The plaintiff appeared before the then Principal Magistrate **S. Gama**. His evidence is that he was acquitted by the Principal Magistrate after he declined a request by prosecution to be an accomplice witness. This was on the first day of the hearing. In my earlier judgement, I had pointed out that the reason plaintiff was detained without given the opportunity to apply for bail was because at the relevant time, the charge he was facing of robbery fell under the Non-Bailable Offences Order. His continued detention and

periodical remands could not be held unlawful therefore as it was sanctioned by the said Order.

- [4] In brief, he did not spend much time during his prosecution as he was acquitted on the first date of trial. It is my considered view therefore that I shall award him the sum of E15 000.

**Was his dignity impaired?**

- [5] Dignity must be impaired among your peers or public members. Do I have any evidence that the malicious prosecution took place among members of the public? No. I was not told how packed the courtroom was by other members or his peers.

- [6] I however, can infer from the case that when he was acquitted, his accomplices were present. Could it be said he lost his dignity from them? Certainly no. They were in the same boat, facing robbery charges. In brief, no facts served before me demonstrated that he lost his dignity. I therefore make no award.

**General damages**

- [7] By reason that there is malicious prosecution, general damages do arise. He did suffer general hardship at the end of the day. I am however constrained as I do not have information as to who plaintiff is in relation to his society and members of his family. All I have before me is that he was an accomplice in an armed robbery. However, this does not detract from the fact that he suffered general damages. I grant him E10 000 for that.

### **Interest**

[8] When the judgement on the merits was passed, the parties were ordered to appear in court on 2<sup>nd</sup> August 2019 in the event they failed to reach common ground on *quantum*. None of the parties turned up in court on the day. The court *mero motu* enrolled the matter and directed the Registrar to call the parties to appear on 6<sup>th</sup> March 2020 i.e. over six months later.

[9] On this date both Counsel requested for a postponement pending negotiations. Again the court put them to terms and the matter was postponed to 27 March 2020. On this date, the parties requested a further postponement on the same ground. The court had to put its foot down by pointing out that it shall no longer grant them any further indulgencies. The matter was postponed to 9<sup>th</sup> April, 2020.

[10] On 9<sup>th</sup> April, 2020, both Counsel appeared in court not ready. They requested for file written submission on later dates. To me, this laxed approach confirms that none of the parties was ready to have the matter concluded. I shall for this reason grant interest from date of this ruling on *quantum*.

### **Costs of suit**

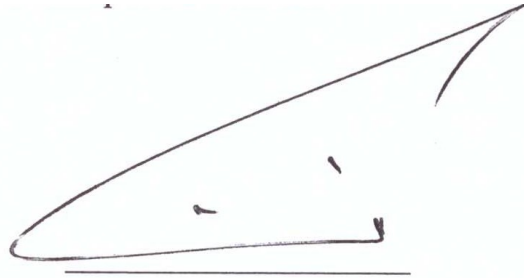
[11] Obviously, the plaintiff succeeded partly. He is therefore entitled to that portion of costs of suit.

[12] In the final analysis, the 3<sup>rd</sup> defendant is ordered to pay plaintiff the following sums:

13.1 E25 000;

13.2 Interest thereof at the rate of 9% per annum from date of this ruling;

13.3 1/3 costs of suit and full costs of withdrawing special plea on  
6<sup>th</sup> February, 2018.

A handwritten signature in black ink, appearing to be 'M. Dlamini J', written over a horizontal line. The signature is stylized and somewhat cursive.

**M. DLAMINI J**

**For the Plaintiff** : S. Masuku of Howe Masuku Nsibande Attorneys

**For the Defendant** : N. M. Dlamini of the Attorney General