



On 24th May 1996 Plaintiff gave evidence to prove damages. Plaintiff's evidence confirms that he was arrested on 10th August 1994 by the 2nd Defendant who was stationed at Lobamba Police Station at the time. He states further that he was taken to the police station and detained.

At the time of his arrest he was self-employed buying and

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selling second-hand clothes - an occupation he jointly ran with his mother and they jointly made approximately E1,600.00 per month.

Plaintiff stated he was detained at the police cell for seven days and in this period of time he was not afforded any facility to wash himself; nor was he allowed to see his relatives. He was subsequently transferred to Sidwashini Prison where conditions were not as bad as those at the police station but he could not get proper meals as he was allergic to beans which were offered at the Sidwashini Prison.

He had applied for bail before the death of the deceased but the application was unsuccessful because the deceased died immediately thereafter. In support of this, that is, that the deceased had died, Plaintiff handed in a photocopy of The Times of Swaziland as exhibit 'B'.

According to the contents of exhibit 'B' Plaintiff had attempted to kill Khombisile Dlamini by stabbing her twice in the face with a sharp object. She had subsequently died as a result of this incident - so reads exhibit 'B'.

Plaintiff stated he was subsequently released on 6th June 1995 when the prosecutor withdrew the charges against him. He was not told why the charges had been withdrawn. When he

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was released he found that his wife had disappeared. She had protested before her disappearance that she would not stay with a murderer, meaning the Plaintiff was a murderer. After his release she had disappeared and Plaintiff does not know what happened to her.

I now turn to the merits of the Plaintiff's claim. The arrest with or without a warrant is irrelevant in this case in view of the contents of exhibit 'B' whose contents clearly indicate that there were allegations that Plaintiff had assaulted the complainant and had been charged with attempted murder and when complainant died the charge became one of murder - a non-bailable crime.

The fact that the charge against Plaintiff is subsequently withdrawn has nothing to do with 1st and 2nd Defendants that is the Commissioner of Police and the Sergeant. Infact to this extent they have been wrongly cited. After Plaintiff was transferred to the Sidwashini Prison he was removed from the care and custody of 1st and 2nd Defendants and was under the jurisdiction of the Director of Public Prosecutions who subsequently decided after the detention of the Plaintiff for the nine (9) months 26 days to withdraw the charge.

Had Plaintiff issued summons against 1st and 2nd Defendants for the seven days he was in their custody at the Lobamba Police cells that would be a whole lot different matter.

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However, that is not the case here.

The cases Mr. Sigwane referred the court to are irrelevant for the purposes of this judgment. That is

MABONA AND ANOTHER VS MINISTER OF LAW AND ORDER AND OTHERS 1988(11) SA @ 654-655 this deals inter alia with arrest without a warrant and reasonable suspicion in effecting such arrest. As I have already pointed out exhibit 'B' disposes of the reasonable suspicion and unlawful arrest.

The second case of Mr. Sigwane referred the court to is that of RAMAKULUKASHA VS COMMANDER VENDA NATIONAL FORCE which deals with the procedure followed in effecting arrest without a warrant, wrongful arrest, and detention and malicious prosecution.

The onus in these matters is always on the Plaintiff to prove on a balance of probabilities that the persons cited are the proper Defendants and also to prove that the arrest and detention was unlawful.

This, the Plaintiff has failed to prove and the court dismisses the action. As there were no representatives on behalf of the 1st, 2nd and 3rd Defendants the court makes no order as to costs.

J. M. MATSEBULA

JUDGE