



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

REASONS

Case no: I 2358/2012

In the matter between:

SIMON EDWARD AFRIKANER

PLAINTIFF

and

THE MINISTER OF SAFETY AND SECURITY

1ST DEFENDANT

THE INSPECTOR GENERAL OF THE NAMIBIAN POLICE

2ND DEFENDANT

Neutral Citation: Afrikaner v The Minister of Safety and Security (I 2358/2012) [2017] NAHCMD 81 (15 March 2017)

Coram: Miller AJ

Heard: 21 May 2013

Order granted on : 21st May 2013

Reasons Delivered: 15 March 2017

REASONS

Miller AJ:

[1] Plaintiff issued summons against the defendants for damages sustained as a result of an alleged unlawful and wrongful arrest and detention. I shall quote the particulars of claim as they are –

1. Plaintiff is **SIMON EDWARD AFRIKANER**, an adult male, resident at Erf;280, Havana Location No. 1, Katutura, Windhoek and Republic of Namibia.

2. The First Respondent is **THE MINISTER OF SAFETY AND SECURITY, MR. NANGOLO MBUMBA**, an adult male, employed at The Ministry of Safety and Security, Goethe Street, Windhoek and Republic of Namibia.

3. The Second Respondent is **THE INSPECTOR-GENERAL OF NAMIBIAN POLICE, MR. SEBASTIAN NDEITUNGA**, an adult male, employed at National Police Head Quarters of The Ministry of Safety and Security, Cnr. Lazarett Street and Jan Jonker Road, Ausspännplatz, Windhoek and Republic of Namibia.

4. Order by The Magistrate Court of Katutura is attached hereto and marked **Annexure "A"**. "DOCKET NOLLE PROSEQUI – ACCUSED TO BE RELEASED, Casw No. 403/11/11"

5. Notice by Plaintiff to the Respondent's is attached hereto and marked **Annexure "B"**. "Notice of intention to institute proceedings against the State in terms of Section 39 of The Police Act, (No 19 of 1990) Gazette No. 113"

6. Particulars of claim by the Plaintiff to the Respondent's are attached hereto and marked **Annexure "C"**. "Unlawfully and wrongfully detention – Simon Edward Afrikaner Case No. 403/11/11"

7. Notice's of Plaintiff of demand to the Respondent's are attached hereto and marked **Annexure "D"**, **via faxes**. "Notice's of claim and letter of demand – the Inspector General of Namibian Police and Ministry of Safety and Security respectively"

8. Notice of Representation by Ministry of Justice Government Attorney on behalf of their client the Inspector General and all related correspondence attached hereto and marked **Annexure "E"**. "Settlement offer and Letter's reply thereto by Plaintiff"

CLAIM NO.1

9. Plaintiff complied with the obligations in terms of the Namibian Police Act of 1990. Plaintiff files proper notice in 1 (one) month period state in the Namibian Police Act.

10. Respondent's however and despite written demand foresee the possibility of a settlement which the Plaintiff decline/ not accept which is not fair and reasonable. Plaintiff sue an amount N\$ 4 500 000.00 (Four Million Five Hundred Thousand Namibian Dollars in terms of the unlawful and wrongful detention without legal justification).

WHEREFORE THE PLAINTIFF CLAIMS: . . .'

[2] The defendants filed a notice of intention to defend the action against them and further filed an exception on the basis that the plaintiff's particulars of claim lacks averments which are necessary to sustain the relief sought in that the plaintiff makes no averments in the particulars of claim in relation to the nature; date and period of detention; whether or not the aforesaid detention was effected with or without a warrant and the plaintiff further failed to state the name/s of the person/s who allegedly detained the plaintiff in the particulars of claim.

[3] The defendants further filed an application to strike out annexures marked "E1" to E10" to plaintiff's particulars of claim on the basis that the same are scandalous and vexatious and irrelevant in that they constitute letters written on a "without prejudice" basis in an effort to reach settlement between the parties and such defendants are prejudiced in the conduct of their case.

[4] The particulars of claim do not comply with the requirements of Rule 18(4) of the Rules of Court, and by this the defendants are prejudiced.

PJ MILLER

PARTIES:

PLAINTIFF: Simon Edward Afrikaner

DEFENDANT: Government Attorneys, Windhoek