

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI

JUDGMENT

Case no: HC-NLD-CIV-ACT-DEL-2021/00244

In the matter between:

JOHANNA NGHIDINUA

PLAINTIFF

and

MINISTER OF HOME AFFAIRS, IMMIGRATION,

SAFETY AND SECURITY

INSPECTOR-GENERAL

POLICE SERGEANT

1ST DEFENDANT

2ND DEFENDANT

3RD DEFENDANT

Neutral citation: *Nghidinoa v Minister of Home Affairs, Immigration, Safety and Security and Others* (HC-NLD-CIV-ACT-DEL-2021/00244) [2023]
NAHCNLD 111 (23 October 2023)

Coram: MUNSU J

Heard: 24 July 2023

Delivered: 19 October 2023

Reasons: 23 October 2023

Flynote: Law of Delict – Unlawful arrest and detention – Damages – Quantum – Award in comparable cases.

Summary: The plaintiff instituted action against the defendants for damages she allegedly suffered as a result of her alleged unlawful arrest and detention. The defendants admitted liability for the arrest and detention of the plaintiff. The only issue for determination, is the appropriate quantum of damages suffered by the plaintiff as a result of the wrongful and unlawful arrest.

Held that, the evidence relied upon by the plaintiff to prove that she suffered physical, emotional and psychological pain was speculative and based on opinions of individuals who were not qualified to assist the court.

Held that, pertaining the plaintiff's medical condition and expenses, no evidence was presented regarding the diagnosis made by the doctor, the medication prescribed, and the likely cause of the medical condition, the history of such medical condition and whether same had anything to do with the plaintiff's detention.

Held further that, there was no proof of the medical expenses incurred by the plaintiff and that there was no explanation given for not presenting the best evidence.

Held that, the plaintiff did not place material before court on how the amount claimed for reputational damage to the plaintiff's business was arrived at.

Held that, the plaintiff did not disclose any income or profit margins which could assist the court to make an educated guess on the size, value or repute of the business and how same might have been affected by the plaintiff's arrest and detention.

Held further that, the plaintiff was detained for one day and that her arrest and detention was not in any way different from a normal one.

Held that, the defendants managed to show that the plaintiff was not innocent as to the reasons and circumstances that led to her arrest.

Held that, on the strength of the evidence adduced, an award of N\$20 000 in damages for unlawful arrest and detention is reasonable.

ORDER

1. The defendants are ordered to pay the plaintiff an amount of N\$20 000 for unlawful arrest and detention.
2. Interest at the rate of 20 per cent per annum from the date of judgment to the date of final payment.
3. Costs of suit.
4. The matter is removed from the roll and regarded as finalized.

JUDGMENT

MUNSU J

Introduction

[1] This is a claim for damages arising from alleged unlawful arrest and detention of the plaintiff by the Namibian police of Ondangwa. The plaintiff's case is that on 26 July 2021, at about 16h30, she was arrested without a warrant.

[2] It is common cause that a criminal case (CR 261/06/2021) had been opened against the plaintiff by one of her clients who had rented a motor vehicle from her car rental business. Upon the return of the motor vehicle, the plaintiff and the client had a disagreement. The client said that the plaintiff had rented him a car with defects and refused to settle the entire amount, while the plaintiff insisted that the client had damaged the motor vehicle.

[3] Following the client's refusal to settle the amount, the plaintiff took to social media, threatening the client as well as posting alleged defamatory content concerning the client. This led to the client opening a criminal case against the plaintiff.

[4] The defendants have admitted their liability for the arrest and detention of the plaintiff on 26 July 2021. The concession is based on the fact that the offence in respect of which the plaintiff was arrested, is not a schedule 1 offence, which would entitle the police to effect arrest without a warrant.

[5] The only issue for determination, as per the pre-trial order, is the appropriate quantum of damages suffered by the plaintiff as a result of the wrongful and unlawful arrest.

Plaintiff's case

[6] The plaintiff's case is that on the facts of this case, she is entitled to damages in the sum of N\$2 550 000. The said amount is made up of the amounts claimed for emotional and psychological pain (N\$800 000); 'developed allergies' (N\$30 000); reputational damage to business (N\$1 200 000); medical expenses (N\$20 000); pain and suffering (N\$450 000); and legal practitioner's fees (N\$50 000).

[7] The plaintiff claimed that she was detained under unhygienic conditions. It was her testimony that after she used an unclean toilet, she developed an itchy allergic reaction on her entire body.

[8] The plaintiff recounted that on 27 July 2021, she was taken to Ondangwa Magistrates' Court. There she was informed by her lawyer that the prosecution declined to prosecute her, and she did not appear in court. The plaintiff narrated that she was released from custody on the same day at about 18h00.

[9] In addition, the plaintiff testified that on 28 July 2021, she went to see her medical doctor for treatment as she was unwell. According to her, her medical aid partly covered her medical costs.

[10] The plaintiff claimed that her arrest rendered her unproductive, which ultimately had a negative effect on her business.

[11] Mirjam Hilalius was employed as the secretary for the plaintiff. She testified that following the plaintiff's arrest, the business stock meant for the Opuwo Branch could not be delivered as the plaintiff who was supposed to deliver it was detained. She further testified that due to the absence of the plaintiff on 28 July 2021, they were unable to manufacture the detergents as no materials were bought.

[12] Ms Hilalius further testified that it took some time for the plaintiff to return to work and be productive again.

[13] The evidence of Martha Latoka merely confirms that the plaintiff was arrested and that upon her release she heard her complain of itchy eyes and headache. She also testified that the plaintiff had been home for some time without going to work.

The defendants' case

[14] The defendants dispute the quantum of damages claimed by the plaintiff and contend that same is excessive, unjustified and maintained that in the circumstances of the case, the plaintiff is only entitled to damages between N\$ 0 000 to N\$15 000 and no more.

[15] According to the defendants, the plaintiff should have accepted their offered settlement of this civil action on the aforesaid lower quantum of damages and not persist with the civil action from then onwards. Thus, the defendants contended that the plaintiff should be denied the costs incurred after their settlement offer.

[16] Furthermore, it is the defendants' case that the plaintiff has, on the proven facts, failed to prove that she is factually and legally entitled to the massive millions of dollars she is claiming from the defendants.

[17] The defendants called two witnesses, Mr Klaus Emil Gustav Weichihaus and Sergeant Beata Mudjanima. Mr Klaus Emil Gustav Weichihaus confirmed that he opened a criminal case (CR 261/06/2021) against the plaintiff that resulted in her arrest and detention, the subject of this civil action.

[18] He testified that after a business transaction between him and the plaintiff did not end well, the plaintiff proceeded to wrongfully and unlawfully place defamatory, insulting and threatening messages and images concerning him on social media (Facebook). According to the witness, what the plaintiff did was criminal hence him opening a criminal case against her.

[19] The witness further testified that, in spite of him opening the said case against the plaintiff, and the plaintiff being aware that he had done so, she continued to post derogatory words and threatening messages. Additionally, the witness narrated that he pressured the police to do something about the plaintiff's conduct and progress his case. Furthermore, the witness testified that the plaintiff was however not co-operating and continued to harass him.

[20] The witness further recounted that the plaintiff subsequently got arrested and taken to court over his complaint. However, the witness was later informed that the prosecution decided against prosecuting the plaintiff. He was not happy about that and complained to the police. According to him, it has not been explained to him why the case was thrown out.

[21] Sergeant Beata Mudjanima is the police officer that arrested the plaintiff as well as the investigation officer of the criminal case that resulted in the plaintiff's arrest. She confirmed the evidence of Mr Weichihaus. She testified that once the aforesaid criminal case was assigned to her, she attempted to resolve it amicably between the parties as she did not consider it as a serious case. Sgt Mudjanima testified that although the complainant was aggrieved by the plaintiff's action, he was willing to resolve the matter amicably with the plaintiff as all he seemed to want was the plaintiff's apology and for her to desist in her conduct.

[22] In essence, Sgt Mudjanima's testimony was that, despite her efforts to amicably resolve the case between the parties, the plaintiff was uncooperative as she refused to go to the police station upon invitation. Instead, she went on about the complainant "owing" her money and that the complainant could do whatever he deemed fit.

[23] According to Sgt Mudjanima, the plaintiff unnecessarily and improperly brought racial issues into the matter. She recounted that the complainant kept on calling on his case and enquiring about its progress as the plaintiff continued to harass him and to post defamatory posts about him on Facebook.

[24] Sgt Mudjanima further narrated that, eventually the decision was made by her and her unit commander that action had to be taken on the criminal case against the plaintiff and she was subsequently arrested.

[25] Additionally, Sgt Mudjanima testified that the plaintiff was suspected to have committed the offence(s) of defamation (criminal) and assault by threat. She further narrated that she was also instructed by her unit commander to add a charge of contravention of s 117(1) (c) of the Communications Act 8 of 2009. These charges appear from the police docket discovered and presented into evidence by the defendants.

[26] Furthermore, Sgt Mudjanima testified that on the date the plaintiff was taken to court, she was informed that the prosecution had declined to prosecute her, which decision is endorsed on the police docket. She narrated that the prosecution's reasons for declining to prosecute the plaintiff were never explained to her.

Damages

[27] In *Hamunyela v Minister of Home Affairs, Immigration, Safety and Security*¹ the court stated that in the determination of the award, the court must:

¹ *Hamunyela v Minister of Home Affairs, Immigration, Safety and Security* (HC-MD-CIV-ACT-DEL-2021/01244) [2023] NAHCMD 459 (31 July 2023).

- a) bear in mind that the primary purpose of the award is not to enrich the aggrieved party, but offer to him or her, much needed solation for his or her injured feelings;
- b) ensure the damages award is commensurate with the injury inflicted;
- c) the award for the infractions must reflect the importance of the right to personal liberty and dignity, and the seriousness of any arbitrary deprivation of personal liberty;
- d) the court can have regard to awards made in previously decided cases as a guide;
- e) the court should also have regard to the personal circumstances of the victim, the nature, extent and affront to his or her dignity and sense of self-worth; and
- f) in considering the appropriate award for damages, consider the effect of inflation on the value of money.

[28] The evidence relied upon by the plaintiff to prove that she suffered physical, emotional and psychological pain was mainly speculative and based on opinions of individuals who are not qualified to assist the court. In respect of the claim related to her medical condition and expenses, the plaintiff merely presented the doctor's prescription which is not of any assistance to this court. The issues pertaining to the diagnosis made by the doctor, the medication prescription, the likely cause of the medical condition and the history of such medical condition were all not explained to the court. Thus, there is no evidence upon which this court can conclude that the medical condition the plaintiff might have had on the day was as a result of her detention. Similarly, there was no proof of the medical expenses she incurred in order for this court to make a determination. There was no explanation tendered for not presenting the best evidence.

[29] As for the claim of reputational damage to her business, there was equally no material placed before court, for instance, how the amount of N\$1 200000 was arrived at. A plaintiff has to allege and prove the quantum of damages suffered as a result of the unlawful act of the defendant. Where damages are difficult to assess, a court may resort to an educated guess on such material placed before it.²

[30] Other than the mere say so that her business was affected, the plaintiff did not disclose any income or profit margins which could assist the court. Thus, there is no material from which the size, value or repute of the business and how same might have been affected can be deduced. There was simply no material placed before court in order to assist the court to make an educated guess on the damage the plaintiff's arrest had on her business.³ Thus, all other claims other than the one for unlawful arrest and detention fails.

[31] The plaintiff was detained for one day. Her arrest or detention was not in any way different from a normal arrest and detention. The defendants managed to show that the plaintiff is not innocent as to the reasons and circumstances that led to her arrest. The content she posted on Facebook concerning her client was presented to the court and clearly, it is not in tune with the law.

[32] I have done a comparative analysis of similar decided cases⁴ and on the strength of the evidence adduced, I am of the considered view that the amount of N\$20 000 in respect of unlawful arrest and detention is reasonable.

Costs

² See *Cloete v Minister of Safety and Security* (HC-MD-CIV-ACT-DEL-2018/00404) [2021] NAHCMD 523 (12 November 2021).

³ See *Nantinda v Minister of Safety and Security* (HC-MD-CIV-MOT-GEN-2020/00281) [2022] NAHCMD 450 (31 August 2022).

⁴ *Naomab v Minister of Safety and Security* (HC-MD-CIV-ACT-DEL-2019/03037) [2022] NAHCMD 125 (31 March 2022).; *limene v Minister of Safety and Security* (HC-MD-CIV-ACT-DEL-2018/94207) [2020] NAHCMD 121 (26 March 2020); *Simon v Minister of Home Affairs, Immigration, Safety and Security* (HC-MD-CIV-ACT-DEL-2021/02450) [2023] NAHCMD 298 (6 June 2023); *Makiwa v Minister of Home Affairs and Immigration* (HC-MD-CIV-ACT-DEL-2016/04103) [2023] NAHCMD 52 (24 January 2023).

[33] The general rule is that costs follow the event. The quantum of damages the court has determined in this matter are higher than the offer the defendants had made to the plaintiff. Thus, there is no reason why the general rule on costs should not be applied in this matter.

The order:

[34] For these reasons, I make the following order:

5. The defendants are ordered to pay the plaintiff an amount of N\$20 000 for unlawful arrest and detention.
6. Interest at the rate of 20 per cent per annum from the date of judgment to the date of final payment.
7. Costs of suit.
8. The matter is removed from the roll and regarded as finalized.

D C MUNSU
JUDGE

APPEARANCES

PLAINTIFF:

A Shapumba

Of Shapumba and Associates, Ondangwa

DEFENDANTS:

M Khupe

Of the Government Attorney, Windhoek