

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA
DIVISION, OSHAKATI
JUDGMENT



NORTHERN LOCAL

PRACTICE DIRECTION 61

Case Title: <i>Abraham Ngwenda v Minister of Home Affairs, Immigration, Safety and Security.</i>	Case No: HC-NLD-CIV-ACT-DEL-2021/00309
	Division of Court: Northern Local Division
Heard before: Mr Justice Munsu	Heard on: 08 May 2023
	Delivered on: 15 May 2023
Neutral citation: <i>Ngwenda v Minister of Home Affairs, Immigration, Safety and Security</i> (HC-NLD-CIV-ACT-DEL-2021/00309) [2023] NAHCNLD 49 (15 May 2023)	
IT IS ORDERED THAT: The Court grants judgment in favour of the Plaintiff against the Defendant, in the following terms: <ol style="list-style-type: none">1. In respect of unlawful arrest and detention: Payment in the amount of N\$ 5 000.2. In respect of the assault claim: Payment in the amount of N\$ 15 000.3. Interest on the total (N\$ 20 000) of the abovestated amounts at the rate of 20% per annum from the date of judgment to the date of final payment;4. Costs of suit;5. The matter is removed from the roll and regarded finalised.	
Reasons for decision:	
MUNSU J	

Introduction

[1] The plaintiff instituted action against the defendant for damages, arising from alleged wrongful acts committed by alleged members of the Namibian Police. As a result, the plaintiff claims payment in the amount of:

- (a) N\$ 10 000 in respect of unlawful arrest and detention;
- (b) N\$ 80 000 in respect of assault.

[2] The above claims are based on the fact that members of the Namibian Police are employees of the defendant and that the defendant is vicariously liable for the wrongful acts committed by its employees during the course of their employment.

[3] The defendant defended the action and the matter proceeded in the ordinary manner with the parties filing pleadings and discovery. The plaintiff further filed witness statements.

[4] The defendant failed to file its witness statements timeously and applied for condonation, which application was granted. The defendant was then ordered to file witness statements by 23 August 2022.

[5] Once again the defendant failed to comply with the court order and indicated that it would apply for condonation. The court gave directions in respect of the filing of the condonation application.

[6] The defendant did not file any condonation application and on 20 October 2022, the court ordered the parties to file sanction affidavits explaining their non-compliance. The plaintiff filed his sanctions affidavit wherein he explained that he could not file answering papers in the condonation application as no condonation was filed by the defendant. The defendant did not file any sanctions affidavit.

[7] At the hearing of sanctions, there was no appearance on behalf of the defendant. Accordingly, the defendant's defence was struck. The plaintiff enrolled the matter to lead evidence in an application for default judgment.

The evidence

[8] The plaintiff gave evidence and called one witness Teopolina Ngwenda.

[9] The plaintiff testified as follows: That he is a major male and resident of Ondangwa. He is employed by the Ministry of Finance. During January 2021, he was involved in a motor vehicle accident. He attended to his insurance provider to file a claim and the latter indicated that they required a statement under oath that the vehicle was bought privately on a cash basis. The vehicle was not purchased through the bank and was registered in his wife's name. He informed his wife, the second witness, to depose to an affidavit at the Ondangwa Police station.

[10] He stated that when his wife returned from the police station, she told him that they refused to help her because they needed documentation that the purchase price had been paid to the previous owner. The plaintiff and his wife duly attended to the Police Station on the same day. The plaintiff spoke to one of the police officers who refused to assist his wife, however, the said police officer still refused to offer assistance. He was referred to the shift commander, who also failed to offer any assistance. As the interaction between the plaintiff and the shift commander continued, the plaintiff took out his cell phone and started to record the police officer's conduct.

[11] The plaintiff further narrated that a police officer unknown to him noticed that the plaintiff was recording the conduct of the shift commander. The unknown officer then grabbed the plaintiff from behind in an attempt to stop further recording. Two unknown police officers then removed him from the charge office and took him outside to a dark area. Whilst there, the police officers assaulted him. They punched and kicked him in the stomach. Other police officers arrived and they circled the plaintiff while kicking and punching him.

[12] In addition, he recounted that he was escorted outside of the police station by two unknown officers who beat and punched him in the face, particularly in the left eye. They then handcuffed him and took him back to the charge office where he was instructed to sit and remain quiet. After a few hours another unknown police officer arrived with the plaintiff's cell phone and a laptop. The cell phone was connected to the laptop. The plaintiff

was then instructed to enter the cell phone pin number for access, after which the police officer copied the video recording that the plaintiff had made to the laptop and subsequently deleted it from the plaintiff's cell phone. The plaintiff was then released from custody and went home.

[13] The plaintiff further related that the next morning he was in pain as a result of the assault. He attended to the Oshakati Police station where he was provided with a J88 medical report, whereafter he proceeded to Oshakati State Hospital for medical treatment. Because his left eye's vision was not improving, he went to see a private doctor, who referred him to Northern Vision Centre, where he consulted Dr. Onephillipus. As a result of the assault he sustained injuries to his eye, jaw and abdomen.

[14] The plaintiff stated that he laid criminal charges against the police officers at the Oshakati Police Station under CR 79/02/2021 for the assault he endured. He further related that the police had no reason to arrest and assault him.

[15] The plaintiff's evidence was corroborated by that of Teopolina Ngwenda. She is the wife to the plaintiff and she is employed as an HR practitioner at the Ministry of Education. She confirmed that she went to Ondangwa police station to make a sworn declaration in respect of the vehicle that was involved in a collision. She also narrated that the police officers refused to render her any assistance. She returned home and informed the plaintiff and during the course of the evening she was accompanied by the plaintiff to the police station. Despite the plaintiff's explanation, the police officers refused to render any assistance.

[16] After some explanation, the witness noted that the plaintiff had removed his cell phone and was filming his interactions with the shift commander. She witnessed an unidentified officer seize the plaintiff and his cell phone. She witnessed the plaintiff being led outside. She couldn't see what was going on, but she noticed a group of officers gathered around her husband. The plaintiff was eventually brought back into the charge office. She could tell that he was handcuffed, struggling to walk, and in a lot of agony.

[17] She stated that the plaintiff was then detained while another police officer attended to her and offered her assistance with the sworn declaration. After about 2 or more hours, the

plaintiff was released.

Analysis

[18] The evidence is that the plaintiff's detention at Ondangwa Police Station was without reasonable and probable cause and that it was not done in accordance with the laws and prescribed procedures for arrest and detention. According to the evidence, the plaintiff was detained for 2 to 4 hours.

[19] An arrest or detention is *prima facie* wrongful and the defendant must allege and prove the lawfulness of the arrest or detention.¹ In this matter there is no version from the defendant alleging and proving the existence of grounds justifying the detention.

[20] I come to the conclusion that the plaintiff succeeded in discharging the onus of proving that he was detained in the manner as described by himself and his witness by members of the Namibian police and that the latter were acting within the course and scope of their employment with the defendant.

[21] As for the assault claim, the plaintiff presented a medical report indicating that he suffered traumatic uveitis of the left eye, abdomen and right hip tenderness. In the unreported judgment of *Lubilo and Others v Minister of Safety and Security*² this court remarked that an assault violates a person's bodily integrity and that every infringement of the bodily integrity of another is *prima facie* unlawful. There is no version from the defendant alleging and proving the existence of grounds justifying the assault. Similarly, I conclude that the plaintiff succeeded to prove the assault claim.

Damages

[22] In *Sullivan v Government of the Republic of Namibia*³ Usiku J stated that:

¹ See *Tjipepa v Minister of Safety and Security* (I271-2013) [2014] NAHCMD 193 (7 August 2015).

² *Lubilo and Others v Minister of Safety and Security* (I 1347/2001) [2012] NAHC 144 (8 June 2012).

³ *Sullivan v Government of the Republic of Namibia* (HC-MD-CIV-ACT-DEL-2020/01020 [2021] NAHCMD 439 (31 August 2021).

‘When a court makes an assessment of the delictual conduct, regard should be had to comparative cases of a similar nature, whilst taking into cognizance of the factual differences and circumstances of each particular case.’

[23] I have done a comparative analysis of similar decided cases,⁴ and on the strength of the evidence that was adduced, I am of the opinion that the amount of N\$ 5000 in respect of unlawful arrest and detention and the amount of N\$ 15 000 in respect of the unlawful assault, are reasonable in the circumstances.

[24] In the result, I make the following order:

The Court grants judgment in favour of the Plaintiff against the Defendant, in the following terms:

6. In respect of unlawful arrest and detention:
Payment in the amount of N\$ 5 000.
7. In respect of the assault claim:
Payment in the amount of N\$ 15 000.
8. Interest on the total (N\$ 20 000) of the abovestated amounts at the rate of 20% per annum from the date of judgment to the date of final payment;
9. Costs of suit;
10. The matter is removed from the roll and regarded finalised.

Judge’s signature:	Note to the parties:
D Munsu Judge	None

⁴ *Mouton v Mouton* (I 889/2011) [2021] NAHCMD 91 (26 February 2021); *Nghilundwa v Maritz* (HC-MD-CIV-ACT-DEL-2019/04292) [2020] NAHCMD 409 (4 September 2020); *Sullivan v Government of the Republic of Namibia* *ibid*; *Du Plessis v Katjimune* 2006 (1) NR 259 (HC); *Meyer v Scholtz* (I 3670/2012) [2014] NAHCMD 148 (25 March 2014).

Counsel:	
Plaintiff	Defendant
J Greyling (Jnr) of Greyling and Associates Oshakati	None