

FADZAI RUPERE
versus
MINISTER OF HOME AFFAIRS
and
COMMISSIONER GENERAL OF POLICE
and
CONSTABLE MAVHUNGA
and
CONSTABLE MURANGANWA
and
INSPECTOR MAKOFI

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 12, 13, 14 and 19 February 2018

Civil Trial

Mrs *C. Damiso*, with her *M. Muswelanto* for the plaintiff
K. Chimiti, with him Mrs *M Gezera* for the defendants

ZHOU J: This is a claim for damages arising out of the arrest and detention of the plaintiff by members of the Zimbabwe Republic Police on 10 October 2016. In the summons the plaintiff claims a sum of US\$12 000 as damages for “illegal arrest, detention and infringing (of) the plaintiff’s constitutional rights in terms of s 50(1) and (2), 51 and 70(1)(a) and (b) of the Constitution of Zimbabwe Amendment (No. 20) Act 2013”. The declaration, which is inelegantly drafted tells a long story of what happened on the day in question, instead of just making the factual averments necessary to constitute the cause of action. It appears that the procedure of applying to strike out irrelevant averments and evidence pleaded in a declaration is not one that is invoked by legal practitioners these days. The defendants entered appearance to defend the claim and filed a plea to the defective declaration.

Two issues were referred to trial. These are (1) Whether the plaintiff was unlawfully arrested and detained, and if so whether she is entitled to damages and, if so, the quantum thereof; and (2) Whether the plaintiff’s constitutional rights were infringed and if so whether she is entitled to damages and in what amount. In seeking to prove her claim the plaintiff gave evidence and also

led evidence from her legal practitioner, Paidamoyo Kuruneri. The plaintiff's evidence was that on the day in question she was telephoned by her fellow employee who was at a police roadblock at Mbare, and was advised that a motor vehicle belonging to her employer had been stopped by the police for not having a corner lamp. She was advised that the police wanted a fine to be paid for the alleged traffic offence. The plaintiff proceeded to the place where there was the roadblock. Her evidence was that she spoke to one police officer, who later turned out to be Victor Mavhunga, the third defendant herein. The police officer informed her of the fine required. She advised the officer that she had no money on her at that juncture. When the police officer walked away from where she was she proceeded to fit onto the car a corner lamp which she had brought. Upon inquiry as to whether the fine was still required after she had fixed the lamp, the plaintiff was advised that the fine had to be paid. She then pleaded with the officer to be allowed to pay the fine the following day, and proposed that the officer could keep the driver's licence of Anesu Chidziva who had been driving the motor vehicle in question. When she asked to have the name and force number of the officer he became agitated. He advised her that he was impounding the motor vehicle, and ordered the plaintiff to get into that motor vehicle in order to proceed to the police station. She pleaded with the officer to be allowed to drive to the police station in her motor vehicle which she had parked across the road. The police officer would have none of that. He warned her that she was now resisting arrest. At that moment the plaintiff was handcuffed and driven to the police station. She was made to sit on the floor behind the counter at the police station. When her legal practitioner who was also her employer in a business not connected with the practice of law arrived she was told that the plaintiff was not under arrest. However, the police officer refused to allow the plaintiff to move from where she was seated behind the counter. It was only after the lawyer had spoken to an Inspector at the police station that the plaintiff was released and ordered to bring the money for the fine on the following day. When she returned on the following day she was informed that she was being accused of fixing the lamp of the motor vehicle, and that that amounted to obstructing the course of justice. She was, however, made to pay a fine for criminal nuisance, it being alleged that she had shouted vulgar words at a police officer in a public place. She signed the Admission of Guilt form and paid the fine.

The plaintiff's second witness, Paidamoyo Kuruneri, is director of a catering company that employs the plaintiff. Her evidence was that she was informed through telephone by the plaintiff

that the police had stopped a company vehicle which was being driven by Anesu Chidziva, and that they wanted to impound the motor vehicle. She advised the plaintiff to let the police impound the vehicle and take Anusu Chidziva's licence, but that she should ask for the force number of the officer who had taken the driver's licence. Later the witness was telephoned by the plaintiff's fellow employee who advised that the plaintiff had been handcuffed and was being taken to the police station. She went to Mbare Police Station. She found the plaintiff sitting on the floor behind the counter in the charge office. The other employees were sitting on a bench. She introduced herself as legal practitioner for the plaintiff and exhibited her practising certificate to the police officer who was in the charge office. She inquired as to whether the plaintiff was under arrest. The response she was given was that the plaintiff was not under arrest. The officer, however, refused to allow the plaintiff to go to where the witness was, and advised that the police wanted the plaintiff to produce certain documents. The witness stated that she produced her practising certificate and advised the police officer that she was the plaintiff's legal practitioner and wanted to speak to her client. The police officer became aggressive and said, among other things, that he did not care about her being a lawyer. The witness asked to see the Officer-in-Charge. A meeting was held involving the Officer-in-Charge, a senior police officer whose name she did not get to know, the police officer who was manning the charge office, as well as the plaintiff's co-workers. She complained about what she considered to have been the rude conduct of the officer who was manning the charge office. The witness was told at that meeting that the plaintiff was being charged with obstructing the course of justice for fitting the missing lamp of the motor vehicle at a roadblock as described earlier on. An agreement was reached at that meeting for the plaintiff to return to the police station the following day to pay the money for the fine and collect the motor vehicle and driver's licence of Anesu Chidziva. She was assured that her presence was not necessary on the following day. The following day after paying the fine the plaintiff brought a receipt for the fine and the admission of guilt form to the witness. The plaintiff was in tears when she narrated what had taken place at the police station.

The defendant led evidence from two witnesses Peter Makofi and Victor Mavhunga who are the fifth and third defendants, respectively. Victor Mavhunga, a police constable, was one of the officers who were manning a roadblock when the motor vehicle belonging to the plaintiff's employer came. He was in the company of three other police officers. After inspecting the motor

vehicle he observed that it did not have a corner lamp and, also, that the speedometer was not working. He advised the driver that he was to pay a fine for the two defects. The driver of the motor vehicle requested to telephone someone from his work place to bring the money for the fine. After about thirty minutes the plaintiff appeared holding a lamp and proceeded straight to the motor vehicle where she fitted the lamp. After that she approached the police, including the witness, and accused them of ignorance as the motor vehicle had the lamp for which they had stopped her driver. The witness stated that he and Assistant Inspector Gatora then informed the plaintiff that she had committed the offence of obstructing the course of justice. He, supported by Gatora, informed the plaintiff that she was to get into that motor vehicle for them to proceed to the police station. When he realized that the plaintiff was agitated he handed her over to Gatora. The plaintiff indicated that he was not going to get into the motor vehicle as instructed and elected to walk to the police station. When he got to the police station the plaintiff had already arrived. He asked her if she had any identity particulars but she said she did not have them to which he told her to telephone another person to bring those particulars to the police station. The plaintiff advised that she was calling her legal practitioner to bring the particulars. The plaintiff, according to this witness, also advised that the money for the fine was also going to be brought to the police station. The witness then left the plaintiff and her colleagues in order to attend to his duties at the roadblock. He advised them that they could remain inside or go outside the charge office, but they should inform him or the other police officers present once the identity particulars and money for the fine were available. At that moment the plaintiff insulted him in the presence of other police officers using vulgar words. One of the officers present, Constable Chari advised the plaintiff that she was to be charged for the insulting words which she had uttered. After a few minutes the witness was called by Assistant Inspector Makofi. He explained to his superior that the plaintiff had committed the offence of defeating the course of justice and had insulted him using unprintable epithets. Makofi told the witness that he had advised the plaintiff and her colleagues to bring the money for the fine the following day. When the fines were paid he was not involved. The witness denied that he detained the plaintiff and stated that at no time was the plaintiff ordered to sit on the floor behind the counter in the charge office during the time that the witness was present.

Peter Makofi was the Officer-in-Charge of the Zimbabwe Republic Police, Administration, based at Mbare. On the day in question he left his work place but returned later on to pick his

phone which he had left in his office. When he got into his office a police detail who was manning the charge office followed him. The witness inquired about the persons who were seated in the charge office who were wearing a uniform. He was told that one of them had been arrested for insulting the police who were on highway patrol duties. He advised the officer that the offence warranted the imposition of a fine, but was advised that the police were waiting for the identity particulars of the arrested person to be furnished so that she would be released in order to be able to bring the money for the fine the following day. When the police officer left his office a lady entered and introduced herself as the employer of the accused person. The witness had a discussion on the type of business that the lady was involved in which he was also interested in because he was running a restaurant business. When he inquired about whether she had been attended to she advised that the accused's identity particulars had been brought and accused would pay the fine the following day. He saw the plaintiff the following day when she came to pay the fine. According to him the plaintiff was directed to go and pay her fine at the Mbare charge office as the offence for which she was paying the fine was not a traffic offence.

The witnesses who testified on behalf of the defendant did not see the plaintiff when she was sitting on the floor, and are not in a position to dispute that at some point she was indeed ordered to sit on the floor behind the counter in the charge office. Victor Mavhunga stated that he left to go back to attend to the roadblock. He has no knowledge of what happened in his absence. Peter Makofi did not see the plaintiff when he entered the charge office. The plaintiff's evidence that she was made to sit on the floor was therefore not rebutted. Her evidence was supported by the evidence of Paidamoyo Kuruneri that the plaintiff was indeed behind the counter and on the floor. The same can be said as to whether the plaintiff was in handcuffs when she was taken to the police station. Victor Mavhunga did not go with the plaintiff but found her already at the police station. Her evidence that she was handcuffed has therefore not been rebutted.

The issue of whether the arrest and detention of the plaintiff were unlawful is one that can be easily disposed of by reference to the evidence which is common cause. The plaintiff was told by the police officer at the roadblock that she had committed an offence of obstructing the course of justice by fixing the lamp of the motor vehicle at the roadblock when it was already the subject of a charge. Although she denies that she was explicitly told that she had committed an offence, her version of events does not accord with the probabilities. She was ordered to get into the motor

vehicle upon which she had fitted the lamp. She does not explain why she would be ordered to get into that motor vehicle when on her own evidence she had brought a motor vehicle. Also, when the plaintiff asked to use her motor vehicle to go to the police station she, on her own evidence, was told by the police officer that she was resisting arrest. She would have therefore known that at that stage she was a suspect and was being arrested. She does not state that she asked what she was being arrested for or that she said there were no grounds for her to be arrested. In fact, in cross-examination she conceded that her conduct of tempering with the motor vehicle by putting the lamp on it amounted to an offence for which she could be arrested. On why the police insisted on her getting into the car which they said they had impounded, the plaintiff conceded that the police probably thought that she wanted to run away. Put in other words, the facts as outlined by the plaintiff clearly justified her arrest. The plaintiff does not suggest that there was an improper exercise of the powers of arrest in the circumstances.

The plaintiff paid a fine and signed an admission of guilt form. Her suggestion that the environment compelled her to sign the admission of guilt form and pay the fine cannot be accepted, firstly, because there is no evidence of any pressure being exerted upon her to sign the form and pay the fine and, secondly, because she never sought to challenge the admission of guilt subsequent to the payment of the fine. Not only was she represented by a legal practitioner who was also the director of a company that employed her; her legal practitioner was also her witness in this court.

The plaintiff, in para 24 of her declaration, alleges contravention of the Constitution. Her first complaint is that s 50(a) and 70(b) were contravened in that she was not informed of the reason for her arrest at the time that she was arrested. This court has already found that she was, in fact, informed of the reason for her arrest. She was informed that she was being arrested for obstructing the course of justice. The fact that she ultimately paid a fine for another offence which she admitted to committing does not negate the lawfulness of her arrest and the fact that she was informed of the reason for that arrest.

The second complaint concerning the alleged contravention of s 50(5)(c) of the Constitution is that she was not permitted to consult in private with her legal practitioner. The applicant did not lead evidence that she asked to be allowed to consult with her lawyer. She never made such a request. The legal practitioner's evidence was that she asked if the plaintiff was under arrest and that when she got the response that the plaintiff was not under arrest she then asked the

plaintiff to stand up from the floor where she was seated and join her on the other side of the counter. Put in other words, she merely sought that the plaintiff be released. She did not ask for a private place in which to consult with her client although she stated that later on she said she wanted to talk of her client. The evidence led does not prove any loss which was suffered which would justify a claim for damages. After all, the legal practitioner advised the plaintiff to pay the fine as demanded by the police, which means that there was no deprivation of the right to consult with the legal practitioner in the manner alleged or at all.

The third ground of complaint predicated upon alleged violation of s 50(1)(a) and s 51 of the Constitution is that the plaintiff was not treated humanely and with respect to her inherent dignity. Section 50(1) deals with the requirement for an arrested person to be informed at the time of arrest of the reason for the arrest. I have already made the finding that the plaintiff was informed of and was aware of the reason for her arrest.

Section 51 provides that: “Every person has inherent dignity in their private and public life, and to have that dignity respected and protected.” Human dignity, a concept that defies precise definition, is considered to be that which gives a human being intrinsic worth as a person Iain Currie & Johan de Waal, *Bill of Rights Handbook 5th Ed.*, p273. What can be said is that the constitutional imperative is “to acknowledge the value and worth of all individuals as members of society” *National Coalition for Gay & Lesbian Equality v Minister of Justice* 1999 (1) SA 6(CC). It is closely linked to the right of equality. AKERMANN J in *S v Dodo* 2001 (3) SA 382(CC), para 38 explained the importance of the right to dignity in the following terms: “Human beings are not commodities to which a price can be attached, they are creatures with inherent worth and infinite worth; they ought to be treated as ends in themselves, never merely as means to an end.” The precise nature of the treatment complained of in relation to the alleged contravention of s 51 is neither alleged nor established by the evidence led. The plaintiff did not complain that she was treated differently from the other suspects who were in the charge office. If the complaint relates to being handcuffed then that, in the circumstances alleged, would not constitute inhumane treatment or infraction of the inherent dignity of the plaintiff. The plaintiff was already under arrest in circumstances where, on her own account, the police reasonably believed that she was resisting arrest and/or intended to escape from them. The use of handcuffs in such circumstances does not constitute a contravention of the constitution, as it is an acceptable practice in all civilized

nations. If the complaint pertains to the applicant being made to sit on the floor then then that, too, would not ground an action for contravention of the Constitution. What must be understood is that once arrested the demands of security entail that the police must handle the arrested person in a manner that does not undermine the process of arrest by treating the arrested person like an ordinary visitor to the police station. This is so where there are grounds to believe that the arrested person was resisting the arrest or may escape. The police station by its very nature is not a place for comfort to any person who has been arrested. An arrested person does not lose their dignity as a human being by being asked to sit on the floor in a police station unless the order to sit on the floor is made as a punishment calculated to embarrass the person.

In all the circumstances of this case, the court does not accept that the plaintiff is entitled to the damages sought.

In the result, IT IS ORDERED THAT:

1. The plaintiff's claim be and is hereby dismissed.
2. The plaintiff shall pay the costs.

Kuruneri Law Practice, plaintiff's legal practitioners
Civil Division of the Attorney-General's Office, defendants' legal practitioners