

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 80728/2015

REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISED: N
16/11/2022

In the matter between:

GABRIEL STEPHANUS MARE

Plaintiff

And

THE MINISTER OF POLICE

First Defendant

THE NATIONAL DIRECTOR OF
PUBLIC PROSECUTIONS

Second Defendant

JUDGMENT

NICHOLS AJ

Introduction

[1] The plaintiff, Mr Gabriel Stephanus Mare (the plaintiff) instituted action against the Minister of Police (The Minister) and the National Director of Public Prosecutions (the NDPP) in respect of a claim pertaining to his unlawful arrest, detention, assault and prosecution.

[2] The merits of the action have been resolved in favour of the plaintiff. The Minister conceded liability for the plaintiff's unlawful arrest, assault and detention that occurred from 16 November 2014 to 17 November 2014 and further conceded 100% liability to pay the plaintiff's proven or agreed damages in this regard. Consequent upon this concession, the plaintiff withdrew his action against the NDPP.

[3] The only issues, which require consideration and determination, are the quantum that should be awarded to the plaintiff in respect of general damages, future medical expenses and loss of earnings.

Plaintiff's evidence

[4] The plaintiff gave evidence in support of the quantification of his claim. A photo album of photographs taken by him was handed into evidence and marked as exhibit 'A'. The plaintiff testified that he would be 58 years in two months. When this incident occurred in 2014, he was two months short of his 50th birthday. He resides in B[...], Randburg, and he was residing at this address when the incident occurred. He is married and has no children. He is self-employed as a technician and has been so employed for approximately 30 years.

[5] The incident occurred on 16 November 2014 on the same day as the annual 94.7 cycle race that takes place in Johannesburg. He arranged to meet his brother in Bromhof that morning at about 05h00. En route to his meeting with his brother, he encountered a road barricade at the intersection of Epsom Avenue and Malibongwe Drive. One of the South African Police Services (SAPS) members, who was on duty

at this barricade, approached his vehicle and at his request, the plaintiff was allowed to pass through the road barricade.

[6] He returned home at approximately 13h00 along the Malibongwe Drive and River Road route. It did not appear to him as if there was a total road closure at this stage since there were gaps in the steel fencing barricades that were used. He explained that he was travelling along Malibongwe Drive and at the intersection wished to turn across into River Road in order to access B[....].

[7] When he stopped at the intersection, he noticed a metro police vehicle and a SAPS canter vehicle, which were stationary across the other side of the intersection. A SAPS member and metro police officer were standing in front of the metro police vehicle. He approached them and asked if could be allowed through in order to get home. The SAPS member, whom he later learnt was Constable Mnisi (Mnisi), told him that he would have to wait until 17h00 because he was not allowed to go through.

[8] Plaintiff returned to his vehicle to call his wife to ask her to check how else he could get home. Whilst he was waiting for his wife to call him, he took a few photos of the scene around him so he could take up the situation with the organisers of the 94.7 cycle race afterwards. These photographs were pointed out in exhibit 'A'. He was then surprised and taken aback by a sharp knock on his driver's side window. It was Mnisi knocking on his window with a knife clutched in his left hand. The plaintiff immediately took a few pictures of Mnisi with his cellphone. These photos were also indicated to the Court in exhibit 'A'.

[9] When the plaintiff opened the window, Mnisi forced it all the way down, pulled his car keys out of the ignition, opened the driver's door and pulled the plaintiff out of the vehicle by grabbing him by his clothes on the right side of his body. The plaintiff testified that he said nothing to Mnisi at this point and simply raised both his hands in the air. Mnisi then roughly pulled the plaintiff up onto his toes by his belt from behind and pulled him, in this fashion approximately 50 metres, across the road intersection to the SAPS canter vehicle.

[10] This occurred in the full glare of the public and bystanders in the area, including those who were spectators for the 94.7 cycle race. In 2014, the plaintiff had been living in this area for about 7 years and he felt extreme embarrassment to be humiliated in such a public manner.

[11] Mnisi did not say anything to him from the time he banged on his car window and the plaintiff testified that he did not say anything either because he was afraid Mnisi would harm him further. However, when they reached the canter, Mnisi tried to force him into it by lifting him up completely by his belt from behind. This action caused him immense pain in his scrotum area, because it was pulling his jeans up his back from behind. He could then no longer restrain himself from telling Mnisi that he was assaulting him. Mnisi reacted by pulling him back by his belt, and punching him in the forehead with his left hand which still had the knife clutched in it. When he did so, he said 'this is assault' and thereafter shoved the plaintiff into the canter.

[12] The plaintiff was able to take a picture of his forehead shortly after this occurred whilst he was in the canter. The Court was referred to the photograph in the exhibit 'A'. It is evident from the photograph that the plaintiff's forehead is extremely red and there are two slight puncture marks on his forehead. The plaintiff testified that the knife clutched in Mnisi's hand when he punched the plaintiff caused these marks.

[13] The plaintiff was uncertain whether members of the public witnessed his assault because it happened on the side of the canter. He called his wife for assistance and asked her to call Douglasdale police station. He also called a client, who is a lawyer and sought assistance from him. His wife arrived at the scene and was allowed into the back of the canter to speak to him. This terrified the plaintiff who feared that she could just as easily be kept there with him since at this stage he did not know the reason for his detention.

[14] He then saw Mnisi speaking to another SAPS member who he later learnt was Colonel Swart (Swart). He asked Swart for assistance and told him that he needed the attention of a doctor because a policeman had assaulted him. Swart

turned his back on him and whispered to Mnisi who then closed the canter door effectively blocking his view of what was happening outside the canter.

[15] A smaller police vehicle arrived at about 14h00 and took him to Douglasdale police station. Here he was put straight into a cell on his own. At this stage, he still did not know why he was being detained and his rights had not been read out to him. He was detained in this single cell until 18h00. The cell had no place to sit and no ablution facilities at all. From 18h 00 to approximately midnight, he was moved into a larger cell with other people. This cell also had nowhere to sit. It had one toilet but no water and no toilet paper. A person was forced to use the toilet in front of all the cell occupants if he was desperate and he had to deal with the added indignity that it could not flush and there was no toilet paper. The plaintiff found this to be humiliating and degrading towards him and his cellmates. He was not given anything to eat at Douglasdale police station.

[16] At approximately midnight, they were all transported to Randburg police station. Here he was treated and handled quite roughly and violently by the Randburg SAPS members tasked with searching him before moving him into a cell. The plaintiff was visibly upset and distraught during the narration of this aspect of his evidence. He was told to select a blanket and he was then put into a large cell with a number of people. He could not use the blanket because it smelt terrible and seemed unclean. He did not sleep because he was terrified for his life and paralysed by fear.

[17] He ate his last meal on the night of 15 November 2014. He went to meet his brother on the morning of 16 November 2014 for a specific appointment and he was on his way home for lunch when he was detained. During the morning of 17 November 2014, he was offered a slice of dry brown bread and black coffee at Randburg police station. He informed the SAPS member that he does not drink coffee and he is allergic to bread. He was not offered any alternative meal or beverage in its place. He was not taken to see a doctor during the period of his detention.

[18] The plaintiff was taken to Randburg magistrate's court during the morning of 17 November 2014. He felt humiliated and ashamed to face court officials and members of the public in court because he was dirty, smelly, unshaven and he had bad breath. The plaintiff's bail was set at R1000. He felt helpless and terrified when he looked around and could not see his wife or his lawyer in the courtroom. His fear and disorientation must have been evident on his face because a woman came to him from the public gallery to ask if she could assist him and she contacted his wife to explain his location.

[19] The plaintiff was charged with assault, crimen injuria and failing to comply with a lawful instruction. For the assault charge, he was alleged to have assaulted Mnisi by punching him on the arm. For the crimen injuria charge, he was alleged to have called Mnisi and metro police officer Mafa (Mafa) the 'k' word and used vulgarity against them.

[20] Over the course of the next eight months, the plaintiff attended court for various adjournments and his criminal trial. During the course of this period, he ran out of funds to pay his attorney and was obliged represent himself at his trial. The state witnesses called in support of the criminal charges and at the criminal trial against him were Mnisi and Mafa.

[21] The plaintiff was ultimately acquitted on all charges on 2 July 2015. During this period, plaintiff testified that he felt humiliated and like he had no rights. He was upset and angered at the fact that Mnisi was allowed to fabricate charges against him and he is still allowed to be a SAPS member. He could not eat or sleep. He was stressed and worried that he could lose his livelihood, house, business, and wife and all because of false allegations. He worried that since the prosecutor believed enough to proceed with the criminal trial, the possibility existed, that he could be wrongly and unfairly convicted. This thought terrified him throughout the criminal proceedings. His fear was exacerbated by the fact that Mnisi and Mafa's false allegations were accepted and acted upon although they were proffered without corroborating or supporting evidence such as photographs, videos or witness evidence from members of the public.

[22] He was additionally angered and infuriated by the fact that part of the false allegations were accusations of racism and accusations of having repeatedly used the 'k' word against Mnisi. He felt strongly that the SAPS members conspired successfully against him with these false charges since they managed to persuade the prosecutor to prosecute him on these charges. His anger was further enflamed by the Minister's concession to the liability aspect of his claim with no apparent repercussions for Mnisi.

[23] The plaintiff testified that his life has changed since his acquittal. He fears leaving his home. He only does so because he has to earn an income. He narrated a story about when he went to the post office on his motor bike. As he arrived in the parking lot, he saw Mnisi leaving the post office. He was dressed in his SAPS uniform with his gun at his waist and he was preoccupied with his phone. The plaintiff testified that he froze on his bike and did not move or take off his helmet. He had to go home after because he was shaking.

[24] He is infuriated and angered by the fact that Mnisi could acknowledge that he fabricated these charges him; admit that he assaulted the plaintiff; admit the plaintiff was wrongly arrested and detained; has made his life a misery and yet he is still a SAPS member and is allowed to carry a firearm. Mnisi has yet to answer to the plaintiff's complaint and charge of assault against him. It appears that he has not been charged or prosecuted in relation to this complaint. The plaintiff stated that he feels trapped and terrified in his residential area and neighbourhood because he does not know when he might see or come across Mnisi. As such, he has had no social life for the past eight years. He feels afraid to leave his house.

[25] Prior to this incident, the plaintiff viewed the police as individuals you could approach for assistance and to help. He never expected a policeman to assault him. He always expected that the police would protect him. Now, he lives in fear of the police. He worries that such an incident may recur since there was no valid reason for it to have occurred in the first place. He feels particularly unsafe in his residential area, which falls within the jurisdiction of the Douglasdale police station.

[26] The plaintiff was quite emotional, upset and visibly distraught during his evidence and he cried at least once. It is apparent that this incident has had an enormous impact on him and his life.

[27] Ms Nodada, who appeared for the Minister, elected not to cross-examine the plaintiff. The Minister does not take issue with the plaintiff's version regarding the circumstances surrounding his assault, arrest, detention and prosecution and elected not lead to any evidence in rebuttal. Accordingly, the plaintiff's version regarding the circumstances surrounding his assault, arrest, detention and prosecution stands uncontroverted and uncontested.

Future medical expenses and loss of income

[28] Both parties appointed medico-legal experts to assess the plaintiff. Their reports were delivered in terms of rule 36(9)(a) and (b). The experts also prepared joint minutes and it is apparent from these joint minutes that there is strong consensus and agreement amongst the expert witnesses across all issues. The experts agreed on the plaintiff's clinical condition and the nature, extent, frequency and costing of future medical treatment, which he would require. The Minister has not repudiated any joint minute and is resultantly bound by the agreements reached in the joint minute.¹

[29] Although the Minister's legal representatives did not have any mandate or authority to agree or settle any aspect of the quantum to be awarded to the plaintiff, Ms Nodada confirmed that the joint minutes and medico-legal reports, upon which they were premised, had been carefully considered. She did not take issue with the opinions expressed therein, or the points of agreement set out in the joint minutes.

[30] In *Bee v Road Accident Fund*² the SCA held that:

'The joint report of experts is a document which encapsulates the opinions of the experts and it does not lose the characteristic of expert opinion. The joint

¹ *Bee v Road Accident Fund* 2018 (4) SA 366 (SCA); *Kgoete and Another v MEC for Health, Gauteng Province* 2022 JDR 0658 (GJ).

² *Bee* *Ibid*.

*report must therefore be treated as expert opinion. The fact that it is signed by two or more experts does not alter its characteristic of expert opinion. The principles applicable to expert evidence or reports are also applicable to a joint report. The joint report before the court is consequently part of the evidential material which the court must consider in order to arrive at a just decision.*³

[31] I do not intend to traverse all the medico-legal reports or joint minutes and shall merely refer to the salient features of the relevant joint minutes.

[32] The joint minute compiled by the psychiatrists notes their agreement that:

As a result of his assault, arrest and detention, the plaintiff has been diagnosed with adjustment disorder with depression and anxiety, chronic symptomatology; acute stress disorder in partial remission and fear of being victimised by SAPS. The plaintiff requires psychotherapy with a clinical psychologist and the frequency of these sessions. He will also require further outpatient treatment for two to five years and certain prescribed medication. The plaintiff was at an increased risk of developing post-traumatic stress disorder (PTSD) with a recurrence of the same or similar trauma.

[33] The joint minute compiled by the clinical psychologists notes their agreement that:

The plaintiff's psychological symptoms could render him vulnerable to some disruption in optimal cognitive functioning, although his neurocognitive profile appears to have remained intact. As a result of his assault, arrest and detention, the plaintiff could be diagnosed with PTSD, anxiety disorder, and depressive symptoms. The incident was traumatic for the plaintiff and left him psychologically vulnerable. The psychological sequelae of the incident affected the plaintiff's network of social support and affected his perception of himself. The plaintiff's occupational functioning and earning potential has been affected because of his psychological trauma. The plaintiff will require

³ *Bee* fn1 above para 30.

at least 25 sessions of psychotherapeutic intervention from a clinical psychologist.

[34] The joint minute compiled by the industrial psychologists notes their agreement that:

Pre-morbidly the plaintiff presented with a stable work history. He was self-employed, mainly performing work that falls at the semi-skilled level of the open labour market and he would most likely have continued his self-employment. Post-morbidly the plaintiff remains traumatised by the incident involving his assault, arrest and detention. Notwithstanding the plaintiff continues with his self-employment. The plaintiff probably worked less hours than what he would have ordinarily and they recommended that a higher post-incident contingency be applied for quantification of the plaintiff's past loss of earnings. The plaintiff will experience a future loss of income and a higher post-incident contingency deduction should be applied when calculating this loss.

[35] The plaintiff's actuarial report is based upon the experts' joint minute agreements on the type, need and frequency of the plaintiff's required future medical treatment and associated expenses and costs. The parties' legal representatives discussed, identified and agreed upon the calculations separately to ensure that any duplication of treatment or costs has been removed.

[36] Ms Nodada noted that there were no points of disagreement arising from the joint minutes submitted by the parties' expert witnesses. Having considered the experts' individual reports and opinions, which informed the basis for the joint minutes, she contended and the parties agreed that the amount of R113 806 represented a reasonable amount for the plaintiff's future medical treatment and associated expenses and costs.

[37] Accordingly, I accept the parties' submission, supported by the plaintiff's actuarial report dated 2 November 2022 that a fair and reasonable amount for the plaintiff's future medical expenses is the amount of R113 806.

[38] The plaintiff's actuarial report depicts two calculations for his damages pertaining to loss of income. These calculations are premised on the scenarios provided by each party's industrial psychologist. Both calculations are confined to future loss of income since the plaintiff did not suffer a quantifiable past loss of income.

[39] Mr Mtsweni, who represented the plaintiff, informed the Court that the plaintiff was prepared to accept the actuarial calculation premised upon the scenario proposed by the Minister's industrial psychologist with a further 10% contingency spread. The consequent calculation of R106 570 is acceptable to both parties as a reasonable amount that could be paid to the plaintiff in respect of his loss of income.

[40] The plaintiff bears the onus to prove his case on a balance of probabilities. Actuarial reports and calculations are premised upon the assumptions of the industrial psychologist or prepared on instructions. I have considered the industrial psychologists reports and am satisfied that the assumptions and hypothesis, which formed the premise for the actuarial calculations, were not speculative or conjectural.

[41] In the premises, I accept the parties' submission, supported by the plaintiff's actuarial report dated 31 October 2022 that a fair and reasonable amount for the plaintiff's loss of income is the amount of R106 570.

General damages

[42] It is evident from the plaintiff's uncontested evidence and the joint minutes that he suffered psychological trauma and associated sequelae as a result of his assault, arrest, detention and prosecution. It is common cause that he requires psychotherapy and clinical intervention to help him process and cope with the aftermath of his experience. He is at risk of PTSD with a recurrence of the same or similar incident. His social life, business and sense of safety and wellbeing has been adversely affected. This Court noted the plaintiff's highly charged emotional state, clear distress and tears more than once during his evidence in chief.

[43] In *Zealand v Minister of Constitutional Development and Another*⁴ the Constitutional Court stated:

‘. . .it is by now well established in our constitutional jurisprudence that the right not to be deprived of freedom arbitrarily or without just cause affords both substantive and procedural protection against such deprivations. As O’Regan J said in S v Coetzee:

“[There are] two different aspects of freedom: the first is concerned particularly with the reasons for which the state may deprive someone of freedom [the substantive component]; and the second is concerned with the manner whereby a person is deprived of freedom [the procedural component]. Our Constitution recognises that both aspects are important in a democracy: the state may not deprive its citizens of liberty for reasons that are not acceptable, nor, when it deprives its citizens of freedom for acceptable reasons, may it do so in a manner which is procedurally unfair”

[44] In the assessment of damages for unlawful arrest and detention, it is trite that the primary purpose is to offer the plaintiff a measure of *solatium* for the wrongful act committed against him and it is not intended to enrich him.⁵ The period of his detention is not the only determining factor. All surrounding and relevant circumstances must be taken into account. These include awards made in previous comparable cases, and whether any other personal rights of the appellant were affected.⁶ As pointed out by Nugent JA in *Minister of Safety and Security v Seymour*,⁷ *‘It is generally undesirable to adhere slavishly to a consumer price index in adjusting earlier awards. But provided that stricture is borne in mind it is useful as a general guide to the devaluation of money.’*

[45] Mr Mtsweni contended that the appropriate amount to be awarded for general damages should be considered first through a constitutional lens before the Court conducts a comparative analysis of awards in similar matters. In this regard, he

⁴ *Zealand v Minister of Constitutional Development and Another* 2008 (4) SA 458 (CC) para 33.

⁵ *Minister of Safety and Security v Tyulu* 2009 (5) SA 85 (SCA) para 26.

⁶ *Tyulu* *ibid* paras 25 - 26; *Manase v Minister of Safety and Security* 2003 (1) SA 567 (CkH).

⁷ *Minister of Safety and Security v Seymour* 2006 (6) SA 320 (SCA) para 16.

argued that SAPS members are enjoined by s 7(2) of the Constitution to respect, protect, promote and fulfil the rights in the Bill of Rights. This includes the rights enshrined in s 10⁸ and s 12⁹ of the Constitution. He further contended that the Minister, as the executive head of the SAPS, is further enjoined in terms of s 199(5) of the Constitution to teach and require his members to act in accordance with the Constitution and the law, including customary and binding international law and agreements.

[46] He referred the Court to various comparable cases. In the *Seria*¹⁰ matter the plaintiff, an architect in his fifties, was wrongly arrested whilst entering his home. He was detained for 3.5 hours at the police station in full view of the public and then detained overnight at the police station. He was awarded an amount of R50 000 in 2004 which is equivalent to R126 000 in 2022.

[47] In the *Sondlo*¹¹ matter, the plaintiff, a paint mixer, was detained for 20 hours in various overcrowded police cells and in unhygienic conditions. He suffered humiliation and trauma. He was awarded R50 000 in 2012 which is equivalent to R82 300 in 2022. In the *Peterson*¹² matter, the plaintiff was assaulted in his home by policemen, arrested and dragged from his home in only a pair of shorts and assaulted further at the police station. The plaintiff was arrested at 20h00 and released at 04h00. He was awarded R60 000 in 2009 for his unlawful arrest and detention which is equivalent to R115 860 in 2022.

[48] Mr Mtsweni argued that Mnisi acted unlawfully when he fabricated charges against the plaintiff and arrested on him this basis. The SAPS members who colluded with Mnisi were the reason the plaintiff was put to the trauma of a criminal prosecution. They instigated criminal proceedings against the plaintiff without reasonable cause. This has resulted in the plaintiff's psychological trauma and

⁸ Section 10 guarantees everyone the right to dignity and to have such dignity respected and protected.

⁹ Section 12 (1)(a) guarantees everyone the right to freedom and security of the person, including the right not to be deprived of freedom arbitrarily or without just cause.

¹⁰ *Seria v Minister of Safety and Security* (9165/2004) [2004] ZAWCHC 26 (15 October 2004).

¹¹ *Sondlo v Minister of Police* (14842/2012) [2012] ZAGPJHC 140 (21 August 2012).

¹² *Peterson v Minister of Safety and Security* (1173/2008) [2009] ZAECGHC 65 (23 September 2009).

sequelae. In the premises, it was contended that an appropriate award for general damages would be between R200 000 and R250 000.

[49] Without derogating from or seeking to trivialise the unlawfulness of his assault, arrest and detention, Ms Nodada contended that there was nothing particularly unusual about the plaintiff's particular circumstances that justified a significantly higher award for general damages than the awards in comparable cases.¹³ She contended that an appropriate award for general damages would be an amount of R90 000.

[50] In this regard, she referred to the *Sofika*¹⁴ matter, where the plaintiff had been assaulted with open hands on his face and back; assaulted with fists on his head and all over his body; and assaulted by kicking on his head and all over his body. The plaintiff was suffocated with black plastic on his head and over his face and assaulted when his head was covered with black plastic. The plaintiff was awarded R23 000 for damages in respect of this assault in 2018. This amount is equivalent to R27 324 in 2022.

[51] In the *Tladi*¹⁵ matter, the plaintiff was a 48 year old single mother of four, employed as a deputy principal. She was arrested and detained for approximately 24 hours. The plaintiff spent her night of detention in a single cell with one toilet and five inmates. She did not receive any food during her detention. She was awarded R25 000 for general damages in 2013 which is equivalent to R38 950 in 2022.

[52] In the *Mvu*¹⁶ matter, the plaintiff, an inspector in the SAPS, was arrested without a warrant and detained. He was released the next day on warning. He was kept overnight in the police cells with about six other inmates, among them suspected rapists and robbers. He was subsequently acquitted on all charges and his detention was found to be unlawful. He was awarded R54 000 for general damages in 2009 which is equivalent to R104 274 in 2022.

¹³ *De Jongh V Du Pisanie NO* [2004] 2 ALL SA 565 (SCA) para 66.

¹⁴ *Sofika v Minister of Police* (330/2/12) [2018] ZAECMHC 37 (31 July 2018).

¹⁵ *Tladi v Minister of Safety and Security* (11/5112) [2013] ZAGPJHC 7 (24 January 2013).

¹⁶ *Mvu v Minister of Safety and Security* (07/20296) [2009] ZAGPJHC 5; 2009 (2) SACR 291 (GSJ) (31 March 2009).

[53] In the *Madyibi*¹⁷ matter, the plaintiff was unlawfully arrested and detained for 24 hours. The court took account of the manner of the plaintiff's arrest, his standing in society and the duration of his detention. The plaintiff was awarded R40 000 for general damages in 2020 which is equivalent to R43 600 in 2022.

[54] In the matter of *Nel*¹⁸ the court took account of comparable awards and the impact of inflation in concluding that the amount of R35 000 was an appropriate award for general damages for 20 hours detention in a dirty stinking cell. The 2022 equivalent of this amount is R41 580.

[55] The following factors are relevant to a determination of the plaintiff's general damages. The circumstances of his arrest and the extent of the publicity during the arrest. The improper motive or malice by Mnisi when he laid false charges against the plaintiff.¹⁹ This was most likely a tactical attempt to frustrate the plaintiff's assault charge against him. The conduct of the SAPS members who colluded with Mnisi to facilitate the plaintiff's arrest, detention and prosecution. These SAPS members have shown no remorse for their conduct towards the plaintiff. His complaint and charge of assault against Mnisi has not been followed through. This appears to have heightened the plaintiff's fears and social isolation.

[56] Additional relevant factors are the duration of the plaintiff's detention being less than 24 hours. The failure of the SAPS to provide the plaintiff with medical attention during his detention. The unsanitary and unhygienic conditions of the plaintiff's detention including the fact that he was detained in a cell with one toilet, no water or toilet paper and numerous cellmates. The failure by the SAPS to provide the plaintiff with lunch, supper or breakfast during his detention. The plaintiff's ensuing psychological trauma and comparable past awards. In the premises, I consider a fair and reasonable amount for general damages for the plaintiff's unlawful arrest, detention and assault to be R120 000.

Order

¹⁷ *Madyibi v Minister of Police* 2020 (2) SACR 243 (ECM) (17 March 2020).

¹⁸ *Nel v Minister of Police* [2018] ZAECHGHC 1.

¹⁹ *Masisi v Minister of Police* 2011 (2) SACR 262 (GNP);

[57] In the result the following order is made:

(a) The first defendant shall pay the plaintiff the total amount of R340 376 (Three Hundred and Forty Thousand Three Hundred and Seventy Six Rand) which amount is calculated as follows:

(i) The amount of R113 806 (One Hundred and Thirteen Thousand Eight Hundred and Six Rand) is payable for the plaintiff's future medical expenses;

(ii) The amount of R106 570 (One Hundred and Six Thousand Five Hundred and Seventy Rand) is payable for the plaintiff's loss of income; and

(iii) The amount of R120 000 (One Hundred and Twenty Thousand Rand) is payable for the plaintiff's general damages for his unlawful arrest, assault and detention.

(b) The total amount referred to in paragraph (a) above, together with any interest due, shall be paid in accordance with the provisions of section 3(3)(a)(i) of the State Liability Act 20 of 1957 as amended.

(c) The first defendant shall pay the plaintiff's agreed or taxed High Court costs of suit on a high court party and party scale, such costs to include (but not be limited to):

(i) The costs of counsel; and

(ii) All costs in obtaining all medico-legal reports by the plaintiff's medico-legal experts.

(d) Should the first defendant fail to make payment of any of the amounts referred to in this order within 30 (thirty) days of this order, interest will commence to accrue on the amount payable from the due date at the applicable morae interest rate until date of final payment.

T NICHOLS
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

This judgment was handed down electronically by circulation to the parties' representatives via email, by being uploaded to CaseLines and by release to SAFLII. The date and time for hand-down is deemed to be 10H00 on 16 November 2022.

HEARD ON: 2 November 2022

JUDGEMENT DATE: 16 November 2022

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