

IN THE HIGH COURT OF SOUTH AFRICA
{EASTERN CAPE LOCAL DIVISION, MTHATHA}

Case No. 330/2/12

In the matter between:

MICHAEL VUYISA SOFIKA

Plaintiff

And

MINISTER OF POLICE

Defendant

JUDGMENT

TONI AJ

Introduction

[1] The plaintiff seeks payment of R850 000.00 for damages he allegedly suffered consequent to his arrest, assault and detention by members of the South Africa Police Service (SAPS) interest on the said amount and costs. Of suit. The claim is premised on vicarious liability, it being alleged that the perpetrators of the alleged unlawful acts were at the time employed by the defendant and committed the alleged unlawful acts during the course of their employment and whilst in the execution of their duties.

The Pleadings

[2] In the particulars of claim attached to the summons (the first particulars of claim) the plaintiff alleges that on 6 January 2011 and at Madeira Street, next to

the Market, Mthatha, he was arrested by Constable Mhlonitshwa and other members of the South African Police Service whose names are unknown to him. Consequent to his arrest, the plaintiff was detained at Madeira police station for several days and was later transferred to Ngangelizwe police station where he was further detained until released on bail by the court on 3 February 2012.

[3] As a result of the unlawful and wrongful arrest and detention, so the plaintiff continues, he suffered damages amounting to R400 000.00, R200 000.00 whereof is for wrongful and unlawful arrest and detention and R200 000.00 is for humiliation, degradation and *contumelia*.

[3] The particulars of claim further state that on the date of his arrest, the plaintiff was assaulted by the said Constable Mhlonitshwa and / or any member of the South African Police Service whose whose names are unknown to him; the alleged assault was inflicted by clapping the plaintiff with open hands on the face and back; by hitting the plaintiff with fists on the head and all over the body and by kicking the plaintiff on the head and all over the body with booted feet until he fell down. He was kicked continuously whilst on the ground and was suffocated with black plastic which was put on his head to cover his face; he was further assaulted when his head was covered with the black plastic.

[5] Consequent to the alleged assault, the plaintiff allegedly sustained injuries on his left thigh, wrist and head as a result whereof the he suffered damages in the sum of R450 000.00 being an amount of R150 000.00 for general damages, R150 000.00 for future medical expenses and R150 000.00 for pain and suffering.

[6] The action is defended and on three occasions after being served with a notice to defend, the plaintiff sought to amend the summons. The first amendment relates to paragraphs 8.1 and 8.2 of the particulars of claim and there being no objection, the amended particulars of claim were filed. From the reading of the particulars of claim, nothing was amended, the paragraphs sought

to be amended look precisely the same, word for word, with the amending paragraphs. Nothing having been amended at all, this brings a question mark on the object of the purported amendment. The only probable inference to be drawn is that the plaintiff's representatives did not apply their mind before seeking the amendment.

[7] The second amendment relates only to the date of the alleged arrest and there being no objection, the amendment was effected.. The third amendment only sought to substitute the words, "*injured on the left thigh*" by the words, "*injured on the right thigh*" and there being no objection, the amendment was effected. .

[8] During his submissions at the hearing, Counsel for the plaintiff could not proffer any cogent reason for not effecting the aforesaid amendments at the same time. Correctly so, in my view, he conceded that these piecemeal amendments had the undesirable effect of increasing the costs. The shoddy manner in which these amendments had been effected will be a matter for consideration when dealing with the issue of the costs.

[9] On 22 October 2014, approximately two years and 5 (five) months after the summons was issued, the defendant filed its plea. Despite the plea having been served on the plaintiff's attorneys on 19 April 2013, it was filed approximately a year and six months later. Typically, the tardy manner in which this matter had been conducted is symptomatic of justice delayed, justice denied and is not laudable.

[10] In its defence, the defendant raised a special plea relating to the plaintiff's alleged non-compliance with section 3 (1) of the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002 and a plea over in terms whereof it denied liability, without any amplification thereof. .

[11] On 13 February 2018, approximately three and odd years after pleadings were closed the defendant sought to amend its plea. Surprisingly, no

amendment was effected, despite there being no objection thereto. No reference was made by any of the parties to this notice of intention to amend and the court accordingly proceeded on the basis of the original plea.

[12] The matter was then set down for hearing and on the date of hearing the plaintiff was the only witness to testify with the defendant also calling only one witness, Constable Tembeleni Mhlonitshwa, to testify in his defence.

[13] The matter proceeded with the plaintiff adducing evidence first in keeping with rule 39 (3) of the Rules of the Superior Courts Practice on the basis of him bearing the onus to prove the alleged assault. However, before the hearing proceeded various concessions were made on behalf of both the plaintiff and the defendant. The plaintiff abandoned all its claims, save that of the assault. The defendant abandoned its special plea relative to the alleged failure to comply with section 3 (1) of the Institution of Legal Proceedings Against Certain Organs of the States Act.

Issues to be determined

[14] At the commencement of the hearing the issues falling to be determined by the court narrowed themselves to:

- (a) whether the plaintiff was assaulted by members of the SAPS; and
- (b) in the event of a finding being in the affirmative, the quantum of damages to which the plaintiff is entitled.

The Evidence

[15] The plaintiff's evidence is that on 6 January 2012 he was in town when he received a telephone call from his ex lover, E., "the Complainant", asking him about his whereabouts. He told her that he was next to the Market, Mthatha, opposite the BP Garage. Whilst still at the same spot, the complainant arrived

in company of 4 (four) police officers who told the complainant to identify him. The police officers then told him that he was under arrest for raping the complainant. He was assaulted with open hands for falling in love with a minor. He was handcuffed and he fell down before being 'dragged' to Madeira police station. Next to Madeira police station he was assaulted again and he once again fell down on his head and got injured on his right leg. His trousers were also torn out.

[16] Whilst being assaulted at the police station, the complainant's mother was also assisting the police in assaulting him and whilst being dragged inside the police station he was told that he would rather have fallen in love with the complainant's mother than the minor. He was then taken into a police van that was driven through a gravel road to Ngangelizwe police station. He was handcuffed and the driver of the police vehicle would maliciously apply sharp breaks and as a result he was pitched from side to side. He was detained at Ngangelizwe police station and his attorney, Mr Nolangeni came.

[17] The plaintiff did not know the names of the police officers who allegedly arrested and assaulted him, his evidence continued. This is despite the fact that in his particulars of claim the plaintiff avers that he was unlawfully arrested and assaulted by Constable Mhlonitshwa and other members of the South African Police Service. As a result of the alleged assault he suffered injuries on the head, right thigh, wrists and had pains in his penis and testicles. He was not taken to the Doctor even though the Magistrate had ordered that he be taken to the Doctor. He was taken back to the police holding cells. He was then taken to Wellington prison where his injuries were recorded.

[18] At Wellington a certain Inspector Wesley, "Wesley", looked at the Magistrate's instructions and instructed that he be taken to the hospital. However, Wesley took him out and drove around town with him without taking him to the Doctor. Wesley was grumbling that the plaintiff also did not take his victim to the Doctor after enjoying raping her. He was taken to the Doctor only

after his release on bail on 3 February 2012 and the Doctor recorded his injuries in the J88 and also made a report. After the assault he was urinating blood. There was also swelling in his head. At the time he visited the Doctor the scars in his wrists were still not healed. The plaintiff conceded under cross examination that the Doctor who examined him may not have recorded all the injuries he sustained but contended that he was injured.

[19] The only injuries recorded in the J88 is 4 x 1.5 meters swelling in the right thigh and 1.5 x 2.5 metres of wrist marks that had already healed. No injuries on the head, penis and scrotum or any other part of the body were recorded by the Doctor. The plaintiff conceded under cross examination that the Doctor who examined him may not have recorded all the injuries he sustained but contended that he was injured.

[20] The conclusion recorded is soft tissue injuries which have not been properly described or located. Even though it was not put in dispute during evidence, the measurement of these injuries is queer and seems to be exaggerated. According to the J88, the plaintiff's height is a mere 1.7 metres and for him to sustain 4 x 1.5 metres swelling of the thigh and 1.5 x 2.5 metres marks on the wrists is improbable. These parts of a human body cannot be that long and injuries so recorded are disproportionate to the plaintiff's whole body height.

[21] During cross examination the defendant's Counsel, Mr Nqoko, intimated that the injuries sustained by the plaintiff did not result from assault by the police, they were self created. He put the defendant's version to the plaintiff that the defendant will deny that the police assaulted him and will come and testify that the plaintiff sustained no injuries during the arrest. The above intimation notwithstanding, the state did not call the arresting officers to testify and bolster the defendant's version. The matter died then and there, leaving the plaintiff's version largely undisputed.

[22] The failure by the defendant to lead evidence challenging the plaintiff's testimony as intimated above reminds me of the purpose of cross-examination and the resultant failure to challenge evidence summed up by the Constitutional Court in *President of the RSA v South African Rugby football Union* as quoted by Mbenenge JP in *Mkwati v The Minister of Police* as follows:

“The institution of cross-examination not only constitutes a right, it also imposes certain obligation. As a general rule it is essential, when it is intended to suggest that a witness is not speaking the truth on a particular point, to direct the witness's attention to the fact by questions put in cross-examination showing that the imputation is intended to be made and to afford the witness an opportunity, while still in the witness box, of giving any explanation open to the witness and of defending his or her character. If a point in dispute is left unchallenged and that the unchallenged witness's testimony is accepted as correct. This rule was enunciated by the House of Lords in *Browne v Dunn* and has been adopted and consistently followed by our courts.

[23] Under cross examination, the plaintiff vehemently denied having been suffocated with a black plastic which was put on the plaintiff's head covering his face and that he was further assaulted when his head was covered with the black plastic as contended in paragraphs 10.4 and 10.5 of his own particulars of claim. When this was put to the plaintiff by Mr Ngoqo, the plaintiff emphatically said: *“I never said anything about the plastic except what I said in court. I was never suffocated by plastic. I do not know that”*. Disowning his own version makes the plaintiff's case on this aspect a little doubtful or at least the drafting of his pleadings somewhat questionable.

[24] When called to testify, Constable Mhlonitshwa, testified that he was not present during the plaintiff's arrest; the plaintiff was handed to him for detention and he did not observe any injuries. This is how short the evidence of this witness was. Under cross examination he said he was not present when the plaintiff was allegedly arrested and assaulted and it was not put to him that he

was. It is not known why this witness was called to testify in the first place as he had no knowledge relative to the gist of the plaintiff's claim..

Submissions

[25] During his argument Mr Bembe, for the plaintiff, argued that the defendant failed to gainsay the plaintiff's testimony and therefore the plaintiff's story has to be believed. With regard to the quantum he further submitted that only prayers 2.1 and 2.3 have to be considered which is patrimonial damages and pain and suffering. However, when asked by the court, he later conceded that these two prayers constitute the same aquilian action and that the inclusion of one is the exclusion of the other. This then left the court with a discretion to decide whether compensation in the amount of R150 000.00 for the alleged assault is fair and reasonable, if the court ruled in favour of the plaintiff. Mr Bembe made no submissions in relation to the costs.

[25] Whilst Mr Ngoqo initially argued that the plaintiff has failed to prove his case on a balance of probabilities and that the plaintiff has not made a case at all, he later conceded that the assault did happen during the arrest and that there is no evidence to gainsay the plaintiff's evidence. He further conceded that the plaintiff might have suffered pain but such pain should not be exaggerated. Finally, he submitted that an amount of R15 000.00 for compensation was sufficient and that the costs should be awarded at the Magistrate's Court scale.

[27] The issue is whether the plaintiff has made a proper case for the assault and, if so, whether R150 000.00 is a fair and reasonable compensation in relation to the injuries sustained during the assault.

Findings

[28] I am faced with two mutually destructive versions and the court should follow the approach adopted in *National Employers General Insurance Co. Ltd v Jagers*¹. In this matter, which is referred to by Mbenenge J (as he then was) in *Nel v Minister of Police*², Eksteen AJP (as he then was) said:

“It seems to me, with respect, that in any civil case, as in any criminal case, the onus can ordinarily only be discharged by adducing credible evidence to support the case of the party on whom the onus rests. In a civil case the onus is obviously not as heavy as it is in a criminal case, but nevertheless where the onus rests on the plaintiff as in the present case, and where there are two mutually destructive stories, he can only succeed if he satisfies the Court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the other version advanced by the defendant is therefore false or mistaken and falls to be rejected. In deciding whether that evidence is true or not the Court will weigh up and test the plaintiff’s allegations against the general probabilities. The estimate of the credibility of a witness will therefore be inextricably bound up with a consideration of the probabilities of the case and, if the balance of probabilities favours the plaintiff, then the Court will accept his version as being probably true. If, however, the probabilities are evenly balanced in the sense that they do not favour the plaintiff’s case any more than they do the defendant’s, the plaintiff can only succeed if the Court nevertheless believes him and is satisfied that his evidence is true and that the defendant’s version is false.

[29] Having followed this approach, I find the principle stated by the court in *Hodgkin v Fourie*³ more appropriate. In this case the court said:

“At the close of the case for one side upon whom the onus lies, the question which the judicial officer has to put himself is: Is there evidence on which a reasonable man may find for that side “.

[30] If the evidence is not only not convincing but is actually found by the trial court to be a fabrication, then it is the evidence on which a reasonable man would not find, and the court would be justified to grant absolution. In this case

¹ 1984 (4) SA 437 (A) at 440 E - G

² Unreported Judgment of the East London Local Circuit Court under case no. EL375/15(ECD775/15, delivered on 26 July 2016

³ 1930 TPD (740) at 743

the defendant has not adduced evidence in rebuttal of the plaintiff's evidence and therefore the plaintiff's evidence of assault remains undisputed.

[31] Mr Ngoqo conceded to this as much during his submissions. It is, therefore, more probable from the evidence before the court than not that the defendant was assaulted. It should only be the extent of injuries sustained by the plaintiff that could be an issue. The evidence of Dr Mduna who examined the plaintiff is not conclusive and may not be of assistance to the court.

[32] Clear from the plaintiff's testimony is that he was assaulted, I am not dissuaded by the minor injuries that the plaintiff might have suffered. Assault is an unconstitutional and degrading invasion of the bodily integrity of an individual and deserves a strongest possible form of censor by any court of law. It is a form of corporal punishment that need to be discouraged by the courts as it flies in the face of the Constitution. Whilst police are by law allowed to use minimum force to effect arrest and subdue a suspect in circumstances, for example, of resisting arrest, such force was not justified in this case. No evidence was led at all as to why the plaintiff was arrested in the first place. Clearly the assault on the plaintiff is *prima facie* unlawful.

[33] I am satisfied that the plaintiff has discharged the onus in line with the reasoning of the court in *Koster Ko-öperatiewe Landboumaatskappy Bpk v Suid-Afrikaanse Spoorweë en Hawens*⁴ (*supra*) and *African Eagle Assurance Co Ltd v Cainer*⁵, as referred to in Nel (*supra*), where Coetzee J stated:

"I would merely stress, however, that when in such circumstances one talks about a plaintiff having discharged the onus which rested upon him on a balance of probabilities one really means that the Court is satisfied on a balance of probabilities that he was telling the truth and that his version was therefore acceptable. It does not seem to me to be desirable for a Court first to consider the question of the credibility of the witnesses as the trial Judge did in the present case, and then, having concluded that enquiry, to consider the probabilities of the case, as though the two aspects

⁴ 1974 (4) SA 420 T at 426

⁵ 1980 (2) SA 234 W

constitute separate fields of enquiry. In fact, as I have pointed out, it is only where a consideration of the probabilities fails to indicate where the truth probably lies, that recourse is had to an estimate of relative credibility apart from the probabilities.”

[34] What stands to be determined by the court is the damages suffered by the plaintiff as a sequel to the injuries he sustained.

Quantum of Damages

[35] In assessing damages reference to prior awards is a useful aid to assist a Court in determining what would be a fair and reasonable compensation, recourse being had to the specific circumstances of each case. The court considers the facts and the circumstances of the case, the injuries sustained by the plaintiff, including their nature, permanence, severity and impact on the plaintiff’s life⁶. However, each case must be determined on its own merits. Nugent JA in *Minister of Safety and Security v Seymour*⁷ states it aptly as follows:

“The assessment of awards of general damages with reference to awards made in previous cases is fraught with difficulty. The facts of a particular case need to be looked at as a whole and few cases are directly comparable. They are a useful guide to what other courts have considered to be appropriate but they have no higher value than that”.

[36] The non-pecuniary nature of general damages makes it difficult to assess with certainty an appropriate amount, leaving the court with a discretion to award an amount that it may deem reasonable under the circumstances depending on the peculiar circumstances of a particular case⁸. In *Minister of Police v Dhwati*⁹ the court reaffirmed that an assessment of an appropriate award of general damages is a discretionary matter and has its objective to fairly

⁶ See Mimi Margret Philanber v Minister of Safety & Security (Unreported Judgment of North West High Court under case no. 473/2011

⁷ [2007] 1 All SA 558 (SCA) at 17:

⁸ See Sandler v Wholesale Coal Suppliers Ltd 1941 AD 194 at 199; Klopper: The Law of Third Party Compensation, 2nd ed, p 152-158

⁹ (20604/14) [2016] ZASCA 6 (3044/2016) [2017] ZAGPPHC 817

and adequately compensate an injured party¹⁰. The court further stated in this case that the appellate court will interfere with the award of the court *a quo* where there has been an irregularity or a misdirection¹¹ which might sometimes appear from a court's reasoning and in other instances it might be inferred from a grossly excessive award¹².

[37] In *Mogakane v Minister of Police*¹³, Legodi JP made the following observations:

“There is no fitted formula for the determination of the quantum of damages obtainable through the *actio iniuriarum*. Such a determination is in the discretion of the Judge, who must determine the quantum by taking into account all relevant factors and circumstances according to what is just and fair.

[38] In this matter the court was not pointed to any authority that may be used as a baseline for its assessment of damages, leaving it with a discretion to source relevant authorities, particularly those that have similarities to the present case.

[39] In assessing quantum for general damages in *Fisa v Minister of Police*¹⁴, Smith J found R300 000.00 to be appropriate as the damages were of a serious nature (resulted in post traumatic stress) and had a long-lasting effect on the plaintiff.

[40] In *Peterson v Minister of Safety and Security*¹⁵, Plasket J awarded R120 000 in respect of assault, to a plaintiff who had been assaulted by having pepper spray sprayed into his face, dragged from his home in shorts to be assaulted again at the police station holding cells.

¹⁰ See *Protea Accident Fund v Lamb* 1971 (1) SA 530 (A) at 534H-535A; *Road Accident Fund Marunga* ZASCA 9144/2002) [2003] ZASCA 19; 2003 (5) SA 164 (SCA) para 23).

¹¹ *Minister of Safety and Security v Scott & another* ZASCA (969/2013) [2014] ZASCA 84; 2014 (6) SA 1 (SCA) para 42

¹² *Minister of Safety and Security v Kruger* ZASCA (183/10) [2011] ZASCA 7; 2011 (1) SACR 529 (SCA) para 27

¹³ This is a judgment of the South Gauteng High Court under case no. 50811/2011, delivered on 24 May 2012.

¹⁴ An unreported decision of the Eastern Vape Division - East London (as it then was) under case no. 1263/2012, delivered on 26 April 2016

¹⁵ 2009 6 QOD K6-1 (ECG)

[41] In *Poswa v Minister of Safety and Security* (115/08) [2011] ZAECPHC 41 (29 September 2011), Beshe J awarded damages in the amount of R170 000 to a plaintiff who developed depression and post-traumatic stress after being assaulted by police officers.

[42] The court also considered the awards made by other jurisdictions in similar cases of assault. In *King NO v Minister of Police*¹⁶, the plaintiff initiated an action against the Minister of Police for damages suffered as a result of an assault upon her by members of the SAPS who used a stick or baton. She was injured in full view of members of the public and the media. She sustained abrasions on her elbow, thigh, breast, chest, back, hands, arms, left eye, haematomae on her left back, lacerations on the scalp, the left eye and lower leg, which required suturing. She suffered headaches for 18 months thereafter. The Court regarded the conduct of the police officers as reprehensible and repulsive and ordered general damages in the amount of R140 000.00.

[43] In *Nkosi v Minister of Safety and Security*¹⁷ the Plaintiff was awarded an amount of R100 000.00 in general damages in consequence of an assault which resulted in a cut lip and tenderness to his testicles.

[44] In *Bantu v Minister of Police and another*¹⁸ the Plaintiff was awarded R80 000.00 for an assault, during which he was, *inter alia*, held by his testicles. Another important case, *albeit*, distinguishable from the one at hand is the unreported judgment of Nicholls J in *Sibanda and another v The Minister of Police and another*¹⁹. The Plaintiff was charged and detained for a total of 17 days, 16 of which were spent in hospital. He was released on bail by the court. Dr Dov E Gantz provided a medico-legal report and was called to testify and confirmed injuries which were of a permanent nature. The distinction is that

¹⁶ 2012 (6G3) QOD 11 (ECM)

¹⁷ [2012] JOL 29147 (GSJ)

¹⁸ [2015] JOL 33018 (GJ)

¹⁹ (2011/23229) [2012] ZAGPJHC 200

in this case the Plaintiff was shot in both legs and there was evidence that the injury had a lasting effect on the Plaintiff's mobility. This is not the case in *hoc casu*.

[45] The case at hand is distinguishable from all the above cases in that in the present case the plaintiff's injuries are not severe and are not supported by any form of medical evidence. The J88 form completed by Dr Mduna is fraught with irregularities and cannot be relied upon. This leaves the Court with no useful guide in its assessment of damages sustained by the plaintiff. In his own saying, the plaintiff sustained injuries on his right thigh and wrist. He also had pains in his penis and testicles, even though no causal link was established between these pains and the assault. The only injuries recorded by Dr Mduna is swelling in the right thigh and wrist marks that had already healed. No injuries on the head, penis and scrotum or any other part of the body were recorded by the Doctor.

[46] In argument, Mr Ngoqo submitted that an amount of R150 000.00 is too excessive in relation to the injuries sustained. I agree with him. He suggested that R15 000.00 would be a fair and reasonable compensation. I disagree with him.

[47] Having taken into consideration the evidence placed before court and after analysing the peculiar circumstances of this case, I come to a conclusion that an amount of R23 000.00 is a fair and reasonable compensation and this takes me to the next issue, namely; that of the costs. As correctly observed by the learned Judge President in Mogakane above:

“It is important to bear in mind that the primary purpose when assessing damages is not to enrich the aggrieved party, but to offer some much-needed solatium for his or her injured feelings²⁰”

Costs

²⁰ See also Mkwati above at par. 17

[48] The issue of costs in this matter cannot, in my view, be insulated from the conduct of the parties and the status of the pleadings in general. Rule 18 of the Rules regulates the manner in which pleadings in general should be formulated. in that “*a plaintiff suing for damages shall set them out in such a manner as will enable the defendant reasonably to assess the quantum thereof*”.²¹ Rule 18 (4) further provides that:

“18 (4) Every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim, defence or answer to any pleading as the case may be, with sufficient particularity to enable the opposite party to reply thereto”.

[49] In *Molusi & others v Voges N O & others*²² Nkabinde J observed:

‘The purpose of pleadings is to define the issues for the other party and the Court. And it is for the Court to adjudicate upon the disputes and those disputes alone. Of course, there are instances where the court may, of its own accord (*mero motu*), raise a question of law that emerges fully from the evidence and is necessary for the decision of the case as long as its consideration on appeal involves no unfairness to the other party against whom it is directed.

[50] In *Minister of Safety and Security v Slabbert*²³ the Supreme Court of Appeal held:

“A party has a duty to allege in the pleadings the material facts upon which it relies. It is impermissible for a plaintiff to plead a particular case and seek to establish a different case at the trial. It is equally not permissible for the trial court to have recourse to issues falling outside the pleadings when deciding a case.”

²¹ Rule 18 (10)

²² 2016 (3) SA 370 (CC) para 28

²³ [2010] 2 All SA 474 (SCA)

[51] I am of the view that, better advised, the plaintiff could have made a proper choice of forum. I also have serious reservations about the status of the pleadings in this matter. Traversing the pleadings have been both an eye sore and a tedious exercise. The Plaintiff's pleadings are not a model of clarity and good draftsmanship and the manner in which the plaintiff's claim is formulated leaves much to be desired. Practitioners are strongly advised to consult with their clients properly before advising them on their cause of action and the choice of appropriate forum. Otherwise this court will be inundated with and finds itself adjudicating on a flurry of claims which should not have been brought before it in the first place.

[52] This is one of those cases in which the court has to be meticulous in crafting its order for the costs. Whilst a plaintiff cannot be penalised for manifest slackness in the presentation of its case, the defendant also deserves protection from the costs incurred through remissness on the part of the plaintiff's legal representatives. In this regard I will disallow the costs incurred through the unnecessary amendments which should have, in a manner of speaking, been done in one single short.

[53] The above pertains to the costs caused by the first amendment contained in pages 18 to 27 and the third amendment contained in pages 40 to 50 of the record.

Order

[54] In the result, I grant the following order:

- (a) The defendant is liable for damages suffered by the plaintiff arising from assault by members of the South African Police Service on 6 January 2012.
- (b) The defendant is directed to pay the plaintiff R23 000.00 as and for damages in respect of his assault and also interest on this amount at the prescribed legal rate from a date 14 days from today to date of final payment.

(c) The defendant shall pay the plaintiff's costs of suit on the Magistrate's Court scale, together with interest thereon at the prescribed legal rate from a date 14 days after *allocator* to the date of final payment. These costs shall exclude the costs caused by the amendment to the plaintiff's particulars of claim contained in pages 18 to 27 and 40 to 50 of the record.

H. S. TONI

ACTING JUDGE OF THE HIGH COURT

Appearances

Counsel for the plaintiff : J. Bembe
Instructed by : State Attorney
MTHATHA

Counsel for the defendant : Ngoqo
Instructed by : D. N. Nolandeni & Associates
MTHATHA

HEARD ON : 24 MAY 2018
DELIVERED ON : 31 JULY 2018