



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE LOCAL DIVISION, BHISHO)**

**NOT REPORTABLE
CASE NO: 480/2021**

In the matter between

SOLETHU BANZANA

Plaintiff

and

MINISTER OF POLICE

Defendant

JUDGMENT

HARTLE J

[1] The Plaintiff who operates a licenced tavern at Masonwabe Township in Ngcobo under the moniker of “*Sox Tavern*”, claims damages by way of action for the claimed unlawful closure of his business by members of the South African Police Service (“SAPS”) on 23 April 2021 (“*Claim A*”), as well as for the unlawful assault and arrest of him by members of SAPS on 24 April 2021 (“*Claim B*”).

[2] The defendant denied the three damage causing incidents.

[3] Regarding claim A he pleaded that a closure had ensued lawfully on a different date, namely 25 April 2021, and at a time “*much later in the evening than alleged by the plaintiff*” (that is at “*around 20:30*”) for a “*valid reason*”. He alleged in this regard that there was a reasonable suspicion entertained by the members of the South African police who lawfully closed the tavern that the plaintiff was selling alcohol outside of the permitted operating times in terms of his liquor licence. Alternatively, so the justification went, patrons of the business in the presence of SAPS members were drinking at the tavern outside of operating hours and advised the police that they knock on the door and the alcohol is sold to them via the window. Hence, so the defendant explicated, the plaintiff was trading outside of normal operating hours justifying the closure of his tavern.

[4] Any assault on the plaintiff was categorically denied.

[5] As for the claimed unlawful arrest, this too was denied. The defendant however pleaded the following explanation:

“5.2 In amplification of this denial, the defendant avers that the Plaintiff was taken to the Police Station not to detain him but for him to sign a warning form J534 as he was in contravention of the Eastern Cape Liquor Act 10 of 2003.

5.3 The Defendant further pleads that the Plaintiff was taken to the police station as there were a lot of patrons at the tavern and the Police did not want to cause injury to members of the public or property such as vehicles, and decided to conclude the business of concluding the warning statement at the police station.

- 5.4 The Plaintiff was taken to the police station and not detained in custody and was released after a few minutes, between 02h00 to 02h35, after signing J534 form on warning/notice to appear in court on a certain date. The plaintiff was thereafter free to go.
- 5.5 With regards to Claim A as detailed in the particulars of claim under paragraph 6, the Defendant denies liability for any alleged damages suffered by the Plaintiff and the Plaintiff is put to the proof thereof.
- 5.6 There were no visible injuries on the Plaintiff and the Plaintiff did not complain of any injuries.
- 5.7 If there were any injuries complained of, the Plaintiff would have been taken to hospital.
- 5.8 Furthermore, should the court find that the Plaintiff was indeed arrested, it is pleaded that such arrest was lawful and that the members of the SAPS entertained a reasonable suspicion that the Plaintiff committed a Schedule 1 offence in terms of Section 40 (1) (b) of the Criminal Procedure Act 40 of 1977. (See paragraph 2.2 *supra*)
- 5.9 Alternatively, the Plaintiff committed an offence in the presence of the members of the South African Police Services in terms of Section 40 (1)(a) of the Criminal Procedure Act 40 of 1977. (See paragraph 2.3 *supra*)”

[6] There is no question that the claims attract vicarious liability for the defendant in principle if the alleged unlawful conduct is established in the plaintiff's favour.

[7] At the commencement of the trial, I issued an order separating quantum from merits and the parties adduced evidence regarding the issue of liability only.

[8] Apart from the oral evidence led, a common bundle of discovered documents (Exhibit “A”) was received into evidence on the customary basis that the documents are what they purport to be. These documents entail a special power of attorney in favour of the plaintiff’s attorneys to prosecute the claim (dated as early as 28 April 2021), a J88 Medical report in respect of the medical examination of the plaintiff by a Dr. Wilson Khangelani on 26 April 2021 at 11 H 10 at the All Saint’s Hospital in Ngcobo; proof of the plaintiff’s registration with the Eastern Cape Liquor Board to sell liquor for consumption on and off the premises and to conduct business under the name of “Sox Tavern” at the relevant time, a contentious J534 Written Notice to Appear in Court issued by one Sergeant Mzukwa in the early hours of the morning of 25 April 2021, a formal notice to the National Commissioner of Police of the plaintiff’s intention to institute the proceedings dated 3 May 2021; the acknowledgement of receipt by the defendant in respect thereof; the contents of the docket pertaining to the plaintiff’s complaint of assault against unknown preparators of the assault under Ngcobo CAS number 242/04/2021 (evidently the docket was opened on the evening of 29 April 2021); as well as an extract from the occurrence register of the Ngcobo Police Station on Sunday morning 25 April 2021.

[9] The essential entries from the register that relate to the issue to be determined by this court regarding whether the plaintiff was in fact arrested concern two consecutive entries. The first entry numbered 1667 made at 2H30 states as follows:

“Arrest: Sgt Mzukwa arrested Solethu Banzana for selling liquor beyond trading hours in contravention of section 59 (1) (a) Licences Conditions and COVID-19 Regulations as per SAP 14/.../04/2021,” and entry number 1668 made at 2H35 as follows:

“Suspect Released: Sergeant Mzukwa released Solethu Banzana as per J534 D322-6596 Written Notice to Appear in Court. All in order.”

[10] It is not in contention that the normal trading hours of the tavern extended from 10H00 to 24H00 each day.

[11] The doctor who was a community service medical officer at the time of examining the plaintiff was not himself available to testify at the trial. The plaintiff adduced the testimony of Dr. Mponco in his place. She is employed at the All Saint's Hospital as clinical manager and testified in this capacity both to explain the absence of Dr. Khangelani and to confirm the authenticity of the J88 as a formal medical report issued (and signed) by him consistent with the hospital's patient file in respect of the plaintiff.

[12] She could confirm the history from the report that had ostensibly been provided by the plaintiff to Dr. Khangelani at the time of the examination, namely that he had been assaulted and had sustained injuries to both his eyes.

[13] She read out his clinical findings which are to the following effect: *“Facial exam:- (L) eye redness; Crying spontaneously. Tender lids, (R) eye also red, non-tender. (A) Swollen lids.”* Under paragraph K dealing with *“Conclusions”* that takes account of history and all findings, both positive and negative, the examining doctor motivated his conclusion with the following reasons: *“Assault; Red eyes and swollen lids.”*

[14] She readily acknowledged that the symptoms noted by the doctor could have been caused by something other than an assault. For obvious reasons she could not be drawn on the assertion put to her under cross examination that the defendant's members had not assaulted the plaintiff.

[15] The plaintiff in his testimony related the events firstly of the night of 23 April 2021 between 20H00 to 21H00.

[16] As he was coming from his house which adjoins his business premises he says he encountered a group of police on the tavern's premises. They were searching patrons and ordering them outside.

[17] He was asked about the sanitisation of patrons (which he vouched for) and was also requested to produce his trading licence, which he did. He was told without any reason having been provided that he should immediately close the tavern and indeed was warned that he should "*never open it again*" and that if he did so the police would return. He was surprised and inconvenienced by the instruction as he was perfectly within his right to operate until midnight.

[18] The only member known to him among the police contingent that night was one Mbikwana who clarified at his asking the reason for the abrupt closure that he should enquire the following day at the local police station.

[19] He wasted his time there the following morning (the 24th) from 10H00 until 12H00 trying to ascertain the position but to no avail. One of the officers told him not to quarrel with the police and suggested that he go back and open his tavern. He followed this advice and carried on business as usual until midnight.

[20] He clarified that at closing time he would often have stragglers, as he did that night. He would warn them that closing time was coming and suggest to them that if they have not finished their drinks in time they can go with them off premises as his licence permits. Some customers obey but others remain and enjoy themselves in the yard until their drinks are finished which they prefer to do rather than being arrested by the police for drinking on the way to their homes.

[21] He closed his tavern officially for the night and went to bed but was roused around 00H30 (on the 25th) by his daughter and niece who told him that the police were outside looking for him. He now related the details giving rise to Claim B.

[22] He encountered a police officer at the doorway of his room who asked why he had not closed the tavern. He remonstrated that he had. Asked what the people were outside for he explained that they were customers from before closing time who were finishing their drinks because they could not leave with them.

[23] He was told to dress and accompany the police officer to the police station in his vehicle. After dressing and when approaching his vehicle to open the door he grumbled aloud that he was tired of their treatment of him, referencing the unfortunate events of the night before. This appeared to provoke two members who assaulted him. The one slapped him with an open hand from behind across his eyes and the other lurched forward to grab him. He instantly felt as if both his eyes had been "*blackened out*". As they began to struggle with him the one remarked that the plaintiff was the one who had gone to the police station earlier to be "*silly*" against them. They now changed their tack and said that he should not drive but go with the police van. He was dragged to the Police's Venture van and forcefully pushed in to it.

[24] At the police station he was made to wait next to a container office for about an hour or so. After challenging them to charge him he was called to another office where a different officer (it is common cause that this was Sergeant Mzukwa) prevailed upon him to sign the written notice which he refused to do on account that he did not agree that he had traded in contravention of his licence conditions.

[25] It was after 02H00 in the early hours of the morning before they told him that he could go home. He made the journey home by foot over a distance of three or more kilometres. It was difficult for him to see because his eyes were sore and tearing.

[26] Once at home he slept. The next day he went to the hospital to be examined and treated (he was given eyedrops and medicine to drink). He was driven there by one of his assistants from the tavern, Lwando Kamba, because it was difficult to see out of his eyes. When he had the J88 in hand he went to the police station to open a case. At the Ngcobo police station an officer said that he was scared to open a case against

his colleagues and he was redirected to the Mthatha police station where he attempted the following day to lodge the complaint, driven again by Mr. Kamba. The latter station however turned him back to Ngcobo on the basis that it did not have jurisdiction to entertain the matter.

[27] Ultimately the case was accepted. He was informed that he would hear back once they had completed their investigations but was instead told that his case had been withdrawn. This led him to see his attorneys who commenced the action.

[28] It was apparent from the notice that he had been fined R2000.00 but when he followed up after the incident at the Ngcobo magistrates court to engage in respect of the fine, they had no record of it.

[29] He denied under cross examination that he had been informed by the police that they were unable to administer the warning other than by his going to the police station or that he had acquiesced in going with them because of this. He refuted that his having to accompany the police had anything to do with unruly customers who were drinking in the yard or anyone's safety.

[30] He refuted having been responsible for the allegation in the pleadings that suggested that he had sustained multiple serious bodily injuries. To the contrary he was quite insistent that there was really only one effective blow to his face that had caused his reported injury.

[31] Mr. Kamba confirmed in his testimony that he had been on duty at the tavern on 23 April 2021 when the police arrived. They made him and patrons to lie down on the floor, searched them, and took them outside. He was present when the plaintiff arrived and identified himself as the owner. Later he was informed by the plaintiff that he had been instructed to close the tavern as a result of which he went home to sleep.

[32] The following day he arrived at opening time (10H00). The plaintiff was not present but he learnt from his daughter and niece that he had gone to the police station to make enquiries as to when he could reopen the tavern. The plaintiff returned later after noon, opened the tavern, and business resumed as normal until midnight.

[33] When he arrived for work the next morning, he did not see the plaintiff. He was told that he was in his bedroom. He went to the plaintiff's room and noticed that he was "*just resting on his bed wearing a trunk pants.*" He could see that both of his eyes were very red. On conversing with him he learnt about the events of the night before. Work carried on as usual without the plaintiff but it was a slow Sunday.

[34] On 26 April 2021 he proceeded to work earlier than usual to check on the plaintiff's condition. The latter informed him that he felt that things were difficult for him. He added that he did not think he could even drive his car and that he was thinking of approaching a doctor. The witness encouraged him to go and he himself drove the plaintiff to the All Saint's Hospital where he waited while he was examined.

[35] Under cross examination he confirmed that the reason why the plaintiff could not drive himself to the hospital is because he was complaining "*of his eyes and bright rays of the sun*". In fact, he had been obliged to wear sunshades so he explained. He also complained of bodily pains.

[36] From his own observations, and because he knew the plaintiff well, he could say that when he saw him laying on the bed on the Sunday, apart from his eyes being affected, he noticed that his face was puffy or swollen.

[37] The Plaintiff's daughter, Ongeziwe Gasa, testified that she arrived at home from East London around noon on 24 April 2021. Her father was not there. The tavern was closed but people were seated there on the "*stoep*". She learnt about the closure of the tavern the night before and that her father had gone to the police station to make enquiries in this respect. He confirmed the news to her himself when he returned home

shortly afterwards and opened the tavern. Business continued through the day until midnight. Patrons left (although some lingered outside to finish drinks bought before closing) and the family went to sleep.

[38] Shortly after they had retired to bed police arrived at the door of their home. She and her cousin were asked the whereabouts of the tavern owner. She pointed them in the direction of the plaintiff's bedroom where he was sleeping. One of the officers approached his door and knocked. She later saw her father leaving the house with the officer going in the direction of the other members who were outside. They asked him why he had not closed the tavern, which he denied he had not done. Asked what about the other customers who had remained there drinking, he explained that they were probably finishing up their drinks.

[39] Her father was instructed to dress, fetch his mask, and accompany them to the local police station. When he reappeared, he was instructed also to fetch the keys for his own motor vehicle as he would be driving himself.

[40] She observed from the *stoep* that when he was about to open the door of his vehicle that he was assaulted by one of the officers who slapped him. Another officer to his side also "*helped*" by partaking in the assault.

[41] She and her cousin screamed but were rebuked by a female officer who asked why they were crying as it was not as if their father were about to die. She asked if the two of them were drunk and threatened that if they continued to be "*mad*" that she would use her pepper spray on them.

[42] From there her father was dragged by all the policemen uphill in the yard to the police vehicle where they loaded him "*in a bad way*".

[43] By this time the straggling patrons(who were mostly neighbours from close by) had run away.

[44] Her father returned home around 03H00, on foot. She noticed that his eyes were swollen, tearing and “*red spotted*”.

[45] She denied under cross examination that the trailing patrons (who were only a few) had behaved in an unruly fashion or that they were making a noise. She also denied the suggestion that her father had sold liquor to them after closing time as he had gone to sleep at the time.

[46] Asked if she assumed that her father was getting arrested when he was instructed to fetch his car keys, she replied that it was her thought that they were arresting him only at the point they dragged him off to the police vehicle.

[47] Despite the evidence for the plaintiff the defendant called only a single witness in the person of Sergeant Mzukwa who at the time of his testimony was in the full time employ of the Eastern Cape Liquor Board. He clarified that even at the time of the incident giving rise to the plaintiff's claims he was a provincial liquor inspector involved in special operations involving the police and district officers of the Board.

[48] He claims that he went to the plaintiff's premises only once, which was on 25 April 2021. He could confirm however that there had been other operations undertaken at the time around Ngcobo.

[49] He related that he had received a call around 02H00 that morning from Colonel Ngalo who requested him to come to Sox Tavern. When he arrived there, he found him in the company of Colonel Sali (the Commissioner of Ngcobo police station) and another person who was said to be the owner of the tavern. It is common cause that this was the plaintiff.

[50] He was informed that the plaintiff was selling liquor at that time. He noticed that there were many customers in the yard. When he questioned the plaintiff about this, he

denied that the tavern had been operating. To the contrary he said that he had been sleeping when the police arrived. According to him he established from a patrons that the liquor they were drinking had been sold to them through the window. In challenging the plaintiff with this information which he had elicited he sought to explain to him that he had tried to encourage the customers to leave. He was not satisfied with this explanation and informed him that he was going to give him a fine for exceeding his trading hours. Since the customers were however unruly and were singing songs, he claims that he asked the plaintiff to accompany him to the police station where he was going to issue him with this fine. They went to the station for him to do just that, but the plaintiff refused to sign for it claiming that he had not been trading at that time. The plaintiff was given a copy and was then released to go away.

[51] He recalled that the plaintiff had been conveyed to the station in one of the police vehicles which he had boarded willingly at his request.

[52] He never observed any injuries on the plaintiff neither did he complain of any. Whilst denying that the plaintiff had been arrested at the tavern, he sought to explain that if he had had any injuries the “*process*” would have required that the police first take him to the doctor or to hospital.

[53] Asked if the plaintiff had been handcuffed when taken to the police van, he could not recall “*well*”, but was adamant that he had not been placed under arrest. He insisted that he could not perform his duties at the tavern because the patrons outside were becoming unruly as they were singing songs. He added that it was also dark there as a further reason why he needed the plaintiff to accompany him to the police station.

[54] Asked about the entry in the occurrence book that suggests that the plaintiff was arrested and then released, he clarified that it was written by the CSC Commander rather than himself. He agreed that the purpose of the occurrence book is to record daily events that occur. He believed that the entry supported his version of the events that the plaintiff had been released shortly after having been taken to the police station.

[55] Under cross examination he purported to explain that he had not taken down the name or details of the patrons who had said that they were buying liquor from the plaintiff after hours because he was not intending to open any docket and neither did he.

[56] He was unaware that the plaintiff had his own vehicle which he could have used to go to the police station with. Asked if he had seen his vehicle on the premises, he reflected that there were more or less twenty vehicles in his yard and outside. Put to him that the plaintiff had clarified to his counsel that he was not one of the officers who had come on to his premises that night, he offered that it was dark on his arrival there and that the plaintiff perhaps for this reason did not “*notice*” him there. Put to him that the plaintiff’s daughter had mentioned the presence of a bright light at the tavern’s premises, he countered that it did not cover the whole yard and that he had in any event met with the Colonels Ngalo and Sali and the plaintiff “*aside on the dark spot*”.

[57] The witness could ironically also not describe the police vehicle in which the plaintiff had been taken to the station. Further although he had said in his evidence in chief that he had himself taken the plaintiff to the vehicle, he contradicted himself by saying that he had merely been the one to ask the plaintiff to go with them to the police station. (In re-examination he again reverted to his primary version that he had been *present* when the plaintiff was getting into the police vehicle.) He could also not say who drove the motor vehicle that the plaintiff drove in or how he got back. That he placed squarely on the station commander, Colonel Sali, to have arranged, so he explained, since he had to rush to Queenstown where he was sleeping

[58] He was surprised to hear that the plaintiff’s eyes had been injured or that he had consulted with a doctor at the hospital.

[59] He was vague not only in providing a headcount of the patrons he found at the plaintiff’s place but also in respect of the number of police officers present on the scene.

He loosely speculated that since it was a provincial operation “*there were many police officers there*”.

[60] Asked by the court why he specifically had gone to the plaintiff’s premises he explained that he in his capacity as provincial liquor inspector was the “*one at the disposal of those fines*” and their issue. Despite this he seemed unable to convincingly explain to the court why the notice that he had issued had not had the formal consequences of law in the sense that there was no control document at the magistrates court to match its issue. Neither could he convincingly explain the absence of any formal paper trail regarding the offence or the lack of an applicable police reference number.

[61] He claimed that he wrote down the names of the patrons who had vouched for the commission of the offence by the plaintiff in a pocket book, but this pocket book (despite the plaintiff’s attorneys having contemporaneously issued the formal statutory notice to the Commissioner to commence proceedings days after the incident) was purportedly not available and was evidently not discovered. He distanced himself from any responsibility for the predicament on the premise that he was no longer in the service of the police.

[62] The defendant failed to adduce the evidence of the two senior officers in charge of the operation and who were said by Sergeant Mzukwa himself to have been present at the scene of the purported crime. The station commander would also have been the last person, on his account, to have seen the plaintiff upon leaving the police station. The plaintiff had also identified at least one other police officer by name (Mbikwana) who had been present when his business was closed on 23 April 2021 but the latter was not called to refute these events at least.

[63] One would also have expected the officer who made the official entries in the occurrence book to gainsay the plain intimation appearing therefrom that the plaintiff had at first been arrested, and thereupon released, but no explanation was put in this

regard whereas it had been made plain by the plaintiff's legal representative that they would rely on this vicarious admission in his favour to support the fact that as far as the police were concerned he had been placed under arrest. The entry coincidentally accords with the general import of the provisions of section 56 of the Criminal Procedure Act, No. 51 of 1977, which provides as follows in this respect:

“56 Written notice as method of securing attendance of accused in magistrate's court

(1) If an accused is alleged to have committed an offence and a peace officer on reasonable grounds believes that a magistrate's court, on convicting such accused of that offence, will not impose a fine exceeding the amount determined by the Minister from time to time by notice in the *Gazette*, such peace officer may, whether or not the accused is in custody, hand to the accused a written notice which shall—

- (a) specify the name, the residential address and the occupation or status of the accused;
- (b) call upon the accused to appear at a place and on a date and at a time specified in the written notice to answer to a charge of having committed the offence in question;
- (c) contain an endorsement in terms of section 57 that the accused may admit his guilt in respect of the offence in question and that he may pay a stipulated fine in respect thereof without appearing in court; and
- (d) contain a certificate under the hand of the peace officer that he has handed the original of such written notice to the accused and that he has explained to the accused the import thereof.

(2) *If the accused is in custody, the effect of a written notice handed to him under subsection (1) shall be that he be released forthwith from custody.*

(3) The peace officer shall forthwith forward a duplicate original of the written notice to the clerk of the court which has jurisdiction.

(4) The mere production to the court of the duplicate original referred to in subsection (3) shall be *prima facie* proof of the issue of the original thereof to the accused and that such original was handed to the accused.

(5) The provisions of section 55 shall *mutatis mutandis* apply with reference to a written notice handed to an accused under subsection (1).” (Emphasis added)

[64] The document that purports to have been the official J534 is so patently defective I cannot imagine that Sergeant Mzukwa imagined that it would stick. The defendant adduced no evidence to suggest that this court’s criticism of the process through the questions posed to a so called experienced liquor inspector was misplaced.

[65] Given that no other evidence was adduced on behalf of the defendant to counter that given on behalf of the plaintiff there is very little that this court is required to resolve by way of true factual disputes according to the technique usually employed by courts in this regard.¹

[66] Indeed, the question is whether Sergeant Mzukwa was on the crime scene at all as he says he was (which includes his denial on behalf of the defendant that no assault or arrest happened) and whether when he issued the written notice to the plaintiff at the police station, the plaintiff was uninjured as he insisted he was.

¹ *Stellenbosch Farmers’ Winery Group Ltd and Another v Martell et Cie and Others* 2003 (1) SA 11 (SCA) at par [5].

[67] The plaintiff and his witnesses made a favourable impression upon the court. Their evidence was logical and consistent and coherent. There were no material contradictions in their respective accounts and everything lines up seamlessly with the probabilities as well as the documentary evidence including the fact that the notice turned out to be a sophistry to justify the plaintiff's having been unceremoniously brought to the police station under the circumstances he attested to. It even aligns with the odd features that emerged from their collective testimony, for example the behaviour of the female officer at the plaintiff's premises, and the fact that the station refused to take his complaint. It is commendable that not one of the plaintiff's witnesses exaggerated the extent of the injuries he sustained or the manner in which they were occasioned to him even though the incident seemed to have been quite traumatically perceived by the family. It goes without saying that the details related about the assault align with the medical report as well.

[68] Sergeant Mzukwa contrariwise failed to impress this court as a witness or an officer of this court who has a duty to respect and uphold the law. He contradicted himself and was particularly evasive, leaving this court to conclude ineluctably that he could not have been at the plaintiff's premises when the assault and arrest happened on the plaintiff's account. If he had been he would certainly have been able to describe the vehicle in which the plaintiff was conveyed to the police station. Moreover, his version that the plaintiff supposedly accompanied him to the police station voluntarily for the express purpose of been served with a notice doesn't fit comfortably with his testimony that he thereafter refused to sign for the notice.

[69] This was decidedly one of those cases where the police's power to arrest was abused to teach him a lesson no doubt for daring to assert that he was tired of the way he was being treated. The fact that he offered the lament and that it evoked certain negative comments about him lends further support to the plaintiff's case that his business had been closed prematurely by the police the night before.

[70] In the result I have no hesitation in rejecting the evidence of the Sergeant Mzukwa such as it is in supposed conflict with that of the plaintiff's. I further find, given the assurance by the plaintiff and all his witnesses that his eyes were obviously injured, that he deliberately concealed the plaintiff's condition at the time he issued him with the warning notice.

[71] The plaintiff has accordingly succeeded in establishing the burden upon him to prove his claims on a balance of probabilities.

[72] In the premises I make the following order:

1. The defendant is liable to pay such damages as may be found proven arising upon the unlawful assault and arrest of the plaintiff by members of the South African Police Service ("SAPS") on 25 April 2021, as well as the unlawful closure of the plaintiff's business trading as "*Sox Tavern*" by members of SAPS on 23 April 2021.
2. The defendant is liable to pay the plaintiff's costs of suit.²

B HARTLE
JUDGE OF THE HIGH COURT

DATE OF HEARING : 14 & 15 February 2024.
HEADS OF ARGUMENT : 22 & 23 February 2024
DATE OF JUDGMENT : 28 June 2024*

² The parties may approach me by consent to determine the appropriate scale of counsel's costs, failing which Scale A applies.

Appearances:

*For the plaintiff: Mr. T.H Melane instructed by Mgweshe Ngqleni Inc., East London
(Ref. MN/bk/B27/21)*

*For the defendants: Ms. V Jozi instructed by The State Attorney, East London (Ref.
672/21 – P7 Mr Isaacs)*

**By arrangement with the parties this judgement was delivered electronically by email.*