



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

2025-02-12

DATE

SIGNATURE

Case Number: 28378/2014

In the matter between:

MBONGENI GODFREY SINGWANE

Plaintiff

and

MINISTER OF POLICE

Defendant

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 12 February 2025.

JUDGMENT

POTTERILL J

Introduction

[1] The plaintiff, Mbongeni Godfrey Singwane, issued summons against the defendant, the Minister of Police [the Minister] claiming that members of the South African Police Services [SAPS] committed acts of delict whilst acting within the course and scope of their employment. The delicts were committed during and after his arrest on 23 July 2013. It is averred that the plaintiff was assaulted and humiliated during the arrest in that he was stripped naked and called a dog. Furthermore, he was denied immediate medical care and he was chained to his bed while in hospital. The Minister denied that he was assaulted or humiliated and pleaded that any injuries could have been sustained when the plaintiff fled into the veldt to avoid his arrest.

[2] At the commencement of the trial it was conceded that the arrest was lawful. Furthermore, it was common cause that the plaintiff was arrested for robbery, taken to the police station, placed in a cell and later taken to the hospital. The charges against the plaintiff was later withdrawn.

[3] The issue to be decided is whether the injuries sustained by the plaintiff was inflicted by the members of the SAPS while humiliating him. The issue of quantum was separated in terms of Rule 33(4).

The plaintiff's version

[4] He was informed by his wife that people arrived at his house, identifying them as social workers. According to his wife they told her that they wanted to kill him and they were looking for dagga. They had firearms on them and also had grass cutters. He was not at home because he had taken a walk. They came a second time and this time a neighbour, called Sibongile, was at their home together with his wife. It was reported to him again they were looking for dagga that he was selling and that they were going to kill him.

[5] Scared, his wife called his parental home and they stayed at his mom's house for two nights. He did not report the two incidents to the police because his mother, as the elder, would tell him what is the way forward. The plan was to later report it to the chief in the area. He was controlled by the family and although urgent he had to wait before he could report it to the police. Upon their return his wife through the window saw that the same people are back. He "got a fright". He saw unmarked motor vehicles and at least 13 armed people, with some also having grass cutters and tyre strips. He exited the house and a person, nine metres/paces away, from him fired a shot directly at him. He then fled into the veldt. As he was running he could hear more fire-arms being discharged in his direction.

[6] He was hiding in the veldt, only 8 steps into the veldt, and he could hear what they were saying. He saw how they borrowed a match from a neighbour and they set the veldt alight. He explained in cross-examination that the fire was around where he was hiding and the smoke was interfering with his breathing. His clothes were blackened and he was scorched by the fire on his right arm below the elbow. He admitted this was not in the particulars of claim and was not noted in the hospital records. They also continued to shoot. They told him to come out of his hiding spot. He did not come out of his hiding spot, they found him at his hiding spot because the police dogs had arrived at the scene.

[7] Eight people arrested him and four of them were assaulting him with tyre strips and grass cutters. He could identify 4 of these people; Mlambo, Mathebula, Pokathi and Philisa. They asked about the dagga. This assault took three hours. They also kicked him. He was hurt on his spinal cord, his legs and also on his head. He had no operation but in the hospital they gave attention to his spinal cord and he used support to walk. He was called a dog. Only upon being prompted by his counsel did he volunteer that he was stripped naked by "Mlambo" and the community standing around saw him in this state.

[8] He was after three hours taken to a van. The van drove off and at an open veldt the van stopped and he was instructed to run away, but due to his injuries he could not. They then took him to the Tonga Police Station at around 1 am.

[9] He denied that he knew of the case of robbery of a Nokia cell phone he was wanted for and knew of no reason why people would be looking for him. He insisted that he was unaware of his relative Lindiwe that had laid a complaint against him. He admitted that in 2012 he was charged also for robbery of a cell phone and he was for that arrested at his home.

[10] In cross-examination he informed the court that on the first occasion his wife was also shocked with a live wire that they had cut and placed against her ear. She did not file a complaint because she is from Swaziland and did not have the proper documentation to be in South Africa. Sibongile witnessed this incident. He also mentioned then that a bag of mealie meal and a bag of rice was destroyed as they looked for the dagga inside the bags. His speaker and some of his furniture was damaged. There is no claim for these damages on the pleadings.

[11] He denied that the police came to his house several times and that every time he ran into the veldt. He also denied that he hid himself in the water stream in the veldt and covered his body with mud so much so that when he came out of the stream his whole body was covered with mud.

[12] In the van he was still naked, but his mother brought him clothes. But these new clothes were also soiled by blood because in the van, on the drive to the police station they were still assaulting him. When he was placed in the van they were standing on him. When confronted with a hospital report noting that his clothes were

soiled he said that in the back of the van there was some soil. He had no operation on his leg, only his spinal cord and his head was given attention to.

[13] He denied that he went to his mother's house to hide from the police. He denied that he was a problem in the community and that he and his friends were committing robberies in the community.

[14] Thulile Mathebula testified that she is the girlfriend of the plaintiff since 2011. She testified that the "Police arrive at home saying they are social workers, they want Godfrey they want to kill him." She denied that these people came on many occasions to look for her boyfriend. In cross-examination she explained that the first time the police came her husband was working in the garden ploughing not far from the home. Her reason for not calling her husband or going to fetch him was that there are snakes there and it did not strike her to do that. She told the people he is at work. She denied that she was hiding her husband and said it slipped her mind to tell them where her husband is. Then she testified that it did not slip her mind she was scared because these social workers were armed. Sibongile, a tenant, was present when they arrived. She denied that the police came several times and every time he ran away. She was unaware that her husband was terrorising the community.

[15] After the people left she called her mother-in-law as elderly protocol dictates and the mother-in-law said they must sleep at her place. Her husband agreed and he said the next morning he will go to the social workers' office because perhaps they wanted to build him a house because his father was in the military. She said it took an hour's walking from their house to their mother-in-law's house. When confronted with why go the social workers' place if scared of them she retorted that they in fact thought perhaps the men with the weapons were soldiers. As they hurriedly left the house, leaving goods behind, they returned home. Upon their return when looking out of the window she saw the very same cars of the day before and she told the plaintiff that the same people, at least 20 people, have arrived and they wanted to kill him. The plaintiff then left the house and when he approached them trying to speak to them

a shot went off. The plaintiff ran away and 11 armed people followed him. The shot that was fired was aimed directly at the plaintiff and from 9 paces away and the bullet landed at the neighbour's house. He ran from their house to the neighbour's house and then to the veldt, while the shooting continued. They were calling him a dog and also with his mom's private parts.

[16] They looked for him, but as the grass was very tall, could not find him. They then called the K9 dogs. However, the dogs could not sniff him out. Only when prompted did she say the veldt was set alight at the same time as the K9 dog unit arrived. She said her husband came out of the veldt out of his own, contradicting the plaintiff that testified that the dog sniffed him out and they then arrested him. Later she heard crying and the plaintiff came out of the veldt. He was naked and one was holding him on each side and one in front pulling him by his penis. Three people were following behind.

[17] She saw him being slapped with a grass cutter and a knopkierie. She lost sight of him and did not see him being taken to the van. He was naked and she called his mother to bring the clothes. The mother took 10 minutes to bring the clothes. When she realised her contradiction she said one could do it in 10 minutes but one had to be strong. It was an hour walking from her mother-in-law's place to her place.

[18] She heard that they said they were going into the house and she followed. One had a knife and she saw the wardrobe was damaged. They said that they were looking for dagga and they spoke harshly. One of them pulled an electric wire from the TV and put it next to her hear. She knows one of them as Pelusi, but an unknown man hurt her ear. The electrical current did not last long and one of the 8-9 people in the house said that is wrong what they are doing and took it off her ear.

[19] She said her boyfriend sold water as his job. He was a motor mechanic and he used to plough and plant and sell the vegetables. Only when prompted by his counsel did she say he sometimes built.

[20] She knew Desmond Matshebula from sight and hearing people referring to that person as Desmond, but had never spoken to him. She knew of no previous charges or this averred charge against her boyfriend. She did not know of a previous incident in 2012 with the Linda as complainant. She said perhaps that was before she met him.

[21] She informed the Court that at the court hearing the magistrate bowed her head and said assaults had stopped in 1994 and her boyfriend is released and must report the matter. She admitted that the charge sheet reflects that the Magistrate wrote that the matter is withdrawn because there was no docket before Court.

[22] On the day of the arrest the plaintiff fled after the first shot was fired. But, after the amount of shots fired it was obvious to her they wanted to kill him. She could not answer why if they wanted to kill him the bullets missed him, but thought it was because he lowered his head while running.

[23] She could not see her husband in the veldt. The stream is 2-3 minutes away from the veldt where he hid. She could only see after they set the place alight. There was smoke and fire, even the next day the veldt was still burning. When confronted with how she could see, she then said it was only burning on the side of the veldt. The fire was only started after the dogs arrived. It was not a controlled fire.

[24] When he came out of the bushes she could not see injuries from where she was standing, but he was limping. She could later see a wound on his leg, she could not say how big, but one had to take care of it otherwise it would go septic. The fence

injury was just an abrasion around the knee. When he scaled the fence the fence caught his leg, he tripped and landed with his knee on a rock or stone. That caused the abrasion. He also had a long mark which stretched on the inside of his right thigh. His lower back and waist was also painful and he had to go for physiotherapy once a week.

[25] They did go to the police station to report her shocking of the ear and the destruction of property. She did not agree with her husband that they did not go to the police to report it, because she did not have proper papers.

Sibongile Florence Mkhonto testified

[26] She was a tenant in the house of the plaintiff. She confirmed that the plaintiff was earning a living by supplying water tanks and ploughing. He also did panel beating and when prompted recalled he also did building.

[27] On the first occasion the people arrived at the home and they asked where the plaintiff was and they answered that he was at work. The people were, despite saying they would kill him, talking nicely to them. She testified the mother's place is two hours walking away but if one hurried then one hour. On the second occasion they came with vans and she and the girlfriend of the plaintiff warned the plaintiff that it was the same people of the first occasion. He left the house and approached them, but never spoke. They told him to stop, but he did not, he fled. The shooting happened before he fled. She admitted there was a small amount of water, a stream, four paces from the grass side. The stream is dirty. The first shot was fired from two paces from the plaintiff. They had never identified themselves as police officers and the shooting continued while he was running into the veldt. They could not find him and borrowed a match and set the veldt alight. When he came out of the veldt he was naked. She saw him being assaulted with a grass cutter. He was limping and they were pulling him by his genitals. She saw him at hospital walking on crutches and a bandage around his head.

[28] Lindiwe Mnisi testified that the plaintiff is her son. His source of income was derived from being "sort of a farmer". He was planting and selling water to the community. He would also sometimes assist a local panel beater. On being prompted she added that he sometimes helped with building. She testified that her son was kind and helpful and he attends church.

[29] She received a call informing her that social workers attended her son's house and that they wanted to kill him. She instructed her son and his girlfriend to come to her house. It takes about two hours to get from their house to her house. They stayed over for two nights and then they left to go and investigate what was going on.

[30] She then received a call saying the social workers are back with guns. As she was preparing to leave her house she received another call informing her that her son had been stripped naked. She ran while crying to her son's house. It took her an hour and some minutes to get there.

[31] When she arrived there she saw community members and her son lying face down on his stomach. People with grass cutters and tyre strips pushed her away from her son. She had clothes with her for her son. The people took the clothes, but she did not know what happened to the clothes as they would not allow her to approach her son.

[32] He was badly injured, so much so that he could not lift his head. His body was full of blood and his head was swollen. She saw no mud. She asked her son what he had done and he said he had done nothing wrong. She then apparently fainted and did not see him again until his release.

[33] Only when prompted she said the veldt was burning, she saw flames. She knows social workers do not have guns and that they deal with social problems.

The defendant's version

[34] The Minister called Gugulethu Desmond Mlambo a sergeant in the SAPS with 21 years experience. He was the investigating officer in the matter where Linda Zakele Siwane was the complainant. The charge was one of robbery of two cell phones and R80.00 cash. The suspect was identified by the complainant as the plaintiff.

[35] He on at least three times went to look for the plaintiff at his home but could not find him because he would run away to a veldt. He managed to escape because his house was angled at such a way that he could see when their cars were approaching. There was also a stream and this stream would broaden with rain to the size of the witness box, 3-4 metres, but would be narrower if no rain. He confirmed that the photographer depicted the scene where the plaintiff would run to and where he was arrested.

[36] On the first occasion he went to the plaintiff's house he called the complainant to show him where the plaintiff stayed as he did not know the complainant or the suspect. He and three other police officials accompanied by the complainant went to his house. They were not uniformed. They were armed as they wanted to execute an arrest. A police officer who had passed on went into the house and reported that the suspect was not at home. Four other times other police officers went to his house and reported he was not there.

[37] The next time they went was on a tracing operation. They were more than 10 members of the SAPS. The complainant was also present. They were using unmarked vehicles and were in plain clothes. They parked the cars on the top of the slope with the house being on the bottom of the slope. They had planned that some

vehicles would park close to the house and others would cross the stream. In order to cross the stream they would have to use an alternative route and their purpose was to cut off the plaintiff as he always ran to the stream. He was one of the members close to the stream. Community members had also come out and they helped them by shouting to which direction he was running. The plaintiff went into the stream which was full of mud and he disappeared in the mud. They could not see him for more than 30 minutes and they decided not to get in the mud so they called Constable Sibiya from the dog unit for search and rescue.

[38] When the dog arrived he rose out of the mud. He had camouflaged himself with mud and grass. He was extremely dirty and he was smelling very bad.

[39] He did not know of visits with social workers because the police do not work with social workers. He did not hear shots and he saw no fire. He could not see injuries on the plaintiff's body because he was totally covered in mud and stinking. One could not even "handle" him. He did not see him being naked because of the mud and from his arrest he went straight to the van so nobody could have stripped him.

[40] Inside the van were Lieutenant Mangane and Colonel Boluse, both who are now on pension. He saw no assault and the van did not stop until it reached the police station.

[41] The community members were helping them because they were saying they are tired of Mbongeni because he is abusing them by robbing them. He had previously robbed a female person of her cell phone, necklace and cash.

[42] As far as he could recall there was another suspect for this matter, Leslie Mdiba and they could not find him. The court told them to find that suspect and he then applied for a J50.

[43] He explained that if there were abrasions on his hands and his body and on his leg, he did not know if the social workers hurt him or if he was hurt when he was running away or in the mud.

[44] He confirmed he was a diligent police officer, was promoted and knows much about policing. He would only shoot at a suspect if his life or somebody else's life was in danger.

[45] He denied that they carried grass cutters, he did not know what kind of grass cutters was referred to. He could not remember a day that an armed policeman would also carry a grass cutter and a tyre strip. He reiterated that the plaintiff was so full of mud that he did not know if he was clothed or not, but he did not see anybody undress him. His eyes could not scan under the mud of the plaintiff. They did not put him in the van due to the mud, he was instructed to get in the van and he did. He denied that they stopped on the way to the police station with him and told him to run away. He said he was always running away after they had caught him why would they tell him to run away.

[46] He denied that people in Tonga were kidnapping people as in his 21 years he had never seen such a docket or heard that. But, if the plaintiff was scared why did he not come to the police and report it. He did not run away because he did not know who they were, he ran away because he did not want to be arrested.

[47] Desmond Mathebula testified that he has 20 years' service in the SAPS with his current rank that of Sergeant. On the day of the arrest of the plaintiff he was still

getting out of his vehicle when he saw a man running away. The plaintiff jumped into the stream. He was 14 paces from him when he emerged from the stream after the dog found him. The dog had sniffed his clothes and then found him.

[48] When he came out of the stream he was black from the mud. If anybody touched the plaintiff that person would have been very dirty. He recalled that the plaintiff was naked.

[49] It was the first time he visited the premises but he stayed in the vicinity and his uncle is the neighbour to the plaintiff.

[50] He denied that in that area people were being kidnapped and that is why the plaintiff fled. He thought he fled because he knew he was going to be arrested. He denied that he heard or saw any shots being fired or that he saw the plaintiff being assaulted. He did not see grass cutters, tyre strips or knopkieries.

Decision on the merits

[51] From the evidence it is common cause that members of the SAPS lawfully arrested the plaintiff on 23 July 2013. It was not denied that it was done by means of a tracing operation; it was corroborated with the common cause fact that there were many vehicles and many members of the SAPS effecting many traces. From this common cause fact the only probable inference is that the previous attempts to arrest the plaintiff were unsuccessful. This Court can accept the evidence of Sergeant Mlambo that there were previous attempts as this at least one attempt was corroborated by the plaintiff and their lodger. It is also common cause that he was never found at the house when the police was looking for him.

[52] I reject the version that the members of the police, while armed, told the plaintiff's wife and their lodger that they were social workers. It would serve no purpose, neither would telling them that they were going to kill him. This Court noted with interest that the girlfriend of the plaintiff started her testimony with "police arrive at home saying they are social workers"; she clearly knew it was police officers. It is common cause that he was previously arrested at this house so they knew the procedure. There was an official docket with a complaint of robbery, which of course the plaintiff denied. Later in his evidence he contradicted his prior evidence and admitted that there was a complaint of robbery of a cellphone against him. The initial evidence was false with his concession that there was a previous charge and this new charge. It is common cause that his girlfriend did not tell the police where he was when they approached her the first time. He said he went for a walk, she said he was farming. It is common cause that they fled to their mother's house. Even when taking into account cultural practices the only reasonable inference on the plaintiff's own version is that they were evading the police, knowing it was in fact the police and not armed social workers. I accept the evidence of the defendant that they had attempted to arrest him at least four times and, as already stated, this is corroborated by this tracing operation.

[53] This fleeing from the police is further corroborated by the way the tracing operation of this suspect took place. It is common cause that some vehicles parked close to the house on the hill and others used another route to park close to the stream. If the plaintiff had not habitually run to the veldt and stream to avoid arrest, the members would not have implemented this manner of tactic.

[54] The plaintiff did not make a good impression on the Court. His evidence was at times untruthful and probabilities on how the events took place defies logic or probability. If a police officer was aiming directly at him from 9 paces away the police officer must have been a very bad shot for him not to be hit. The other many shots fired directly at the plaintiff also never struck the plaintiff. The averred bowing of his head as he is running rendering the bullets to miss him is simply improbable; the rest of his body, and even his head, could have been hit. There is no real evidence before

me of any casings found on the scene. He was warned of the approach by the police by his wife and tenant and he fled towards the veldt as was his practice. He did not flee because he was being shot at.

[55] His version that he only entered 8 steps into the veldt and that they could easily have found him is improbable. The police's purpose was to find and arrest him. If he was so easily to be found, they would have found him. Why was it then necessary to call in the help of the dog unit, that is common cause, to find him in the veldt.

[56] It was palpable to this Court that the version of the veldt being burned was untruthful. The mother and the wife and tenant had to be prompted by their counsel to recall this event. This is completely against human nature; if a human being is hiding in a veldt that is set alight one would spontaneously recall that due the gravity thereof, even taking into account that the incident took place $\pm$ 10 years earlier. The plaintiff's version that they sent the dog into the burning fire to search for him was later on in his evidence contradicted by him then testifying that the fire was only on the side of the veldt. He started off by testifying he had burning wounds but later reduced it to a small wound, but persisted his clothes was blackened by the fire. He also said the old lady that gave the police the match could testify. She was never called. I can with confidence reject his version that he hid in a burning veldt. The hospital record does not record a burning wound or scorched clothes.

[57] I can also accept that he was covered in so much mud that he appeared pitch black and was so dirty from it that he could not be "handled" as testified to by the officers for the defendant. The stream is not clean; it was never denied that there are reeds and mud in the stream. The doctor on the hospital record specifically recorded that his clothes were soiled. The explanation for this in cross-examination that the back of the van soiled his clothes was a clear afterthought. He testified that his clothes were soaked by blood, yet the doctor did not note this.

[58] In the particulars of claim the plaintiff is cited as a bricklayer and his claim for loss of income is based thereon. All the witnesses for the plaintiff testified that he planted and sold water and sometimes assisted a panel beater. It was again palpable to the Court that when it struck the plaintiff that his profession was not that on the pleadings he was prompted with "did he build" to all the witnesses who then as an afterthought testified that he sometimes did this. Again this reflects on the truthfulness and reliability of the witnesses.

[59] The next question to be answered is was the plaintiff naked before the community and humiliated as a result of the actions of the members of the SAPS. The plaintiff and his witnesses testified that he was naked after his arrest. His mother testified that she brought him clothes but was denied access to give him the clothes. The plaintiff's version is that he received these clothes because his clothes was soiled with blood. He testified that his clothes were taken off by Sergeant Mlambo. Yet, in cross-examination this was never tested; Sergeant Mlambo was never confronted with that he was the one that stripped the plaintiff of his clothes. He was only asked whether he saw the plaintiff naked and it was put to him that the officers who apprehended the plaintiff had stripped him naked. As this was not tested the court has to accept that Sergeant Mlambo did not strip the plaintiff of his clothes. Sergeant Mlambo said he could not see if the plaintiff was naked because his whole body was covered in thick mud. He did not see anybody undress the plaintiff. Sergeant Mathebula testified that the plaintiff was black and dirty from the mud, but he recalled that the plaintiff was naked.

[60] On this evidence I accept that the plaintiff was naked when arrested, but the question is how did this happen. I cannot accept that it was Sergeant Mlambo as this was never tested. Both the members testified that nobody would touch the plaintiff because one would get very dirty and stinky. The uncontested evidence of Sergeant Mathebula was that the dog sniffed the clothes and then went searching for the plaintiff. The Court must thus accept that the plaintiff undressed himself before getting into the stream. Knowing the muddiness and stinkiness of the water this is not improbable.

[61] The plaintiff testified that due to the police assaulting him for three hours with tyre strips and a grass cutter he was severely injured. He testified that he was also kicked. He was hurt on his legs, head and spinal cord. He described it as an orthopaedic injury on the right side of his leg and back. At hospital they only gave attention to his spinal cord and leg. The right hand side of his face and back of his head was swollen. He needed assistance to walk and was in a wheelchair.

[62] His girlfriend testified that he was also beaten with a knopkierie. He did fall while scaling the fence of the neighbour while fleeing and he hurt his knee on a rock or stone. After he came out of the veldt he was limping. His lower back and waist was painful and he had to go for physiotherapy once a week. She later saw a wound on his leg that had to be treated otherwise it would go septic. On his right thigh he had a long "mark".

[63] As part of the record the hospital records were filed. The plaintiff did not call the author of the hospital records. None of the information contained therein was explained to the Court by an expert, nor was I referred to it by counsel for the plaintiff. The only reliance placed thereon by the plaintiff was that the doctor had noted that he was informed that it was assault by the police. This has no evidential value as he obtained this information from the plaintiff and it was not his expert opinion. I accept that the plaintiff had injuries, but two questions needed to be answered; what was the nature and extent of the injuries and did the members of the SAPS cause the injuries.

[64] No medical evidence was placed before this Court as to what could have caused the injuries, i.e. assault, or falling over the fence and landing on a rock or stone, or running away, or while hiding or being emerged in water with rocks. I only know that he was limping and had to go to physio. There were no operations.

[65] From this I can deduce that the injury to his spine and/or leg may have been serious, but I simply don't know. A doctor would need to explain this and if assault caused this. Upon a cursory perusal of the hospital records, notes on p7-58 would need to be explained "A? real or exaggerated." But, can I accept that this injury is from an assault or something else? The plaintiff and his witnesses testify it was from an assault with a grass cutter and tyre strips. One witness went further and included a knopkierie which the others did not. This terrible assault, over three hours, took place in full sight of many community members. Not one of the community members were called. This renders credence to the testimony of the officers that the community was complaining about the plaintiff robbing them and even assisted them in showing where he ran to. The police must have been very brazen to assault a person for three hours in front of many community members. The witnesses for the defendant denied that the plaintiff was assaulted.

[66] When there are two mutually destructive versions, the plaintiff must on a preponderance of probabilities satisfy the Court that his version is true and accurate. I had already found that the credibility of the plaintiff's version with the veldt being lit, the "social workers" attending to his house, him not hiding or fleeing from the police where he was hiding and his profession were not credible and probable. This is not a matter, where the probabilities are evenly balanced, and therefore I cannot find that the plaintiff's evidence is true and the defendant's version is false.¹

[67] If the plaintiff had called the author of the hospital records a court could find on the nature and extent of the injuries and whether the cause could be assault. On just the unreliable evidence of the plaintiff and his witnesses this Court cannot find this. The plaintiff has not on a preponderance of probabilities proved the causal connection between the injuries and the conduct of the members. This Court does not know what caused it; i.e. a grass cutter or booted feet or tyre strips; or from running, falling, hiding? If the plaintiff called the doctor that treated him this could be proved. This

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

evidence is necessary especially as I have found the plaintiff and his witnesses' evidence on most aspects untruthful or improbable.

In view thereof I grant absolution from the instance with costs.



S. POTTERILL

JUDGE OF THE HIGH COURT

CASE NO: 28378/2014

HEARD ON: 10-13 September 2024, 2 December 2024

FOR THE PLAINTIFF: ADV. A. SIBANDA

INSTRUCTED BY: Ganta Attorneys

FOR THE DEFENDANT: ADV. M. BALOYI

INSTRUCTED BY: State Attorney, Pretoria

DATE OF JUDGMENT: 12 February 2025