



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA**

CASE NO:1928/2023

- (1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED **YES/NO**

18 June 2025
DATE


SIGNATURE

In the matter between:

LWAZI MDLULI

PLAINTIFF

and

MINISTER OF POLICE

DEFENDANT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 10:00 on 18 June 2025.

JUDGMENT

Moleleki AJ

[1] The Plaintiff's claim against the Defendant is for damages arising from his unlawful arrest and detention in the amount of R1 000 000 (one million rand) and for unlawful assault in the amount of R1 000 000 (one million rand). The Defendant is the Minister of Police, who is sued in his capacity as the Minister responsible for the conduct of the members of the South African Police Service (the SAPS). The Plaintiff's claim against the Defendant was brought on the basis that members of the SAPS were acting within the course and scope of their employment with the Defendant.

[2] The matter for determination is whether the Defendant is liable for the unlawful assault of the Plaintiff and for the quantum of damages on the unlawful arrest, detention and assault. Initially, the Defendant had resisted the Plaintiff's claim for unlawful arrest, detention and assault. On the day of the hearing of the matter the Defendant conceded liability for unlawful arrest and detention.

[3] On 28 January 2023 at approximately 14h00 at or near Newscom Trust, Mpumalanga, whilst he was travelling in his motor vehicle with his wife and daughter, the Plaintiff was stopped by members of the SAPS from Kabokweni Police Station, on allegations that he had committed robbery and attempted murder.

[4] Only the Plaintiff testified during the hearing of the matter. He testified that the police officers blocked his motor vehicle. He was forced to alight from his motor vehicle, pushed to the ground and was assaulted several times on the face with open hands by four police officers. Whilst on the ground, he was trampled upon with booted feet. The Plaintiff was taken to the motor vehicle where a firearm had been placed by one of the police officers. He was instructed to touch the firearm with his hands, but he refused. The police officers continued to assault him with open hands for refusing to touch the firearm. Two other police officers arrived at the scene.

[5] The police officers placed the Plaintiff inside the police vehicle, leaving the Plaintiff's wife and daughter behind. They drove with the Plaintiff to his house where he was instructed to produce a firearm. He informed the police officers that there was no firearm at his home. The police officers assaulted him once again. He was pushed

to the ground and his hands were cuffed to the back together with his feet. His face was covered with a plastic bag. When the plastic bag was ultimately removed, water was poured into one of his ears and he was slapped several times with an open hand on the ear. Thereafter, he was taken to the police cells at Pienaar police station. The following day, other police officers assaulted him whilst he was in the cells, alleging that he broke into the house of one of the police officers and stole a firearm. One of them kicked him on the back and stomach. His fingerprints were taken.

[6] According to the Plaintiff, he sustained the following injuries: lacerations on his hands caused by the handcuffs, a swollen right ear from being slapped after water was poured therein, and pains on his body. The Plaintiff was taken to court the Monday following his arrest. However, he was released from the cells without having appeared before a Magistrate. The following day, on the Tuesday, he went to Temba hospital where he was examined by a doctor and medication was dispensed for him.

[7] The Plaintiff stated that it humiliated him to have been assaulted in the presence of his wife and 15-year-old daughter. The assault took place in public, and members of the community had gathered and took pictures and videos of the incident. Those pictures were posted on Facebook, thus injuring his dignity.

[8] On the conditions of the cells, he testified that, whilst in custody, he had to take a cold shower, and he did not have toiletries. The cells were filthy. The sponge and blankets that were provided for him to sleep on were not clean. He was detained with five other inmates and there was no privacy when one had to use ablution facilities as there is no partitioning. Although he was provided with meals, they were not of the same standard that he was used to at home, they were not sufficient and only two meals were served per day. He on the other hand is used to having three meals per day.

Assault

[9] Assault is recognized in the law of delict as *actio iniuriarum*. It is defined as an infringement of the right to bodily integrity (physical and psychological).¹ In *Minister of Justice v Hofmeyer*² the court stated:

“One of an individual’s absolute rights of personality is his right to bodily integrity. The interest concerned is sometimes described as being one in *corpus*, but it has several facets. It embraces not merely the right of protection against direct or indirect physical aggression or the right against false imprisonment. It comprehends also a mental element.”

[10] The definition of assault is the same under both civil law and criminal law. In criminal law, assault is defined as the offence consisting of unlawfully and intentionally applying force, directly or indirectly, to the person of another; or inspiring a belief in another person that force is immediately to be applied to them.³

[11] In its plea, the Defendant denied all the material facts alleged in the particulars of claim without setting out the material facts upon which the denial was based. Instead, the Defendant merely called upon the Plaintiff to prove his case.

Onus

[12] In delictual claims based on assault the *onus* of proving that the assault occurred rests on the claimant. Once the commission of assault is proved at the trial, the Defendant is saddled with a duty to satisfy the court that the assault upon the Plaintiff was justified.⁴

[13] The court must determine whether the Plaintiff was assaulted by police officers during his arrest. As stated, the injuries alleged to have been suffered by the Plaintiff in the hands of the police were denied by the Defendant and the Plaintiff was put to the proof thereof.

¹ JC Van der Walt and JR Midgley *Principles of Delict* 3 ed at 111 para 78.

² *Minister of Justice v Hofmeyer* 1993 (3) SA 131 (A) at 145H-I.

³ CR Snyman *Criminal Law* 5 ed at 455.

⁴ *Mabaso v Felix* 1981 (3) SA 865 (A) at 874.

[14] The Plaintiff in paragraph 7 of his Particulars of Claim pleaded his assault claim in the following terms:

“On or about the 28th day of January 2023 subsequent to his arrest, the plaintiff was further unlawfully assaulted and humiliated by members of the South African Police Services while he was handcuffed.”

[15] The Plaintiff's claim was clearly pleaded in a thin manner, and he made basic allegations with regards the assault.

[16] The Plaintiff was a single witness as to the alleged assault. When asked about the injuries he had sustained, he mentioned lacerations on his hands caused by the handcuffs, swollen right ear and pains in the body. His description of the injuries he sustained is at odds with the evidence he gave that he was trampled on the face with booted feet. Based on the evidence he gave, it would have been expected that he would have had injuries on his face. It is improbable that he would not have suffered serious injuries to the face. In as much as it may be accepted that he was assaulted, the difficulty is with regards to the severity of the assault.

[17] The Plaintiff's evidence was riddled with exaggerations. I cannot find that the assault was grievous to the extent testified to by the Plaintiff. It is inexplicable why he would omit to mention any injuries to the face, if there were any. In view of these inconsistencies, it was imperative for the Plaintiff to have produced the medical evidence in order to bolster his version. I am alive to the fact that direct evidence of the assault was led. However, without the medical report, the court is unable to assess the seriousness of the assault, and in its absence, the Plaintiff cannot benefit from it.

Quantum

[18] The next issue for determination is what constitutes a just and equitable compensation to be awarded to the Plaintiff.

[19] The general approach regarding the amount of damages for unlawful arrest and detention was set out by Bosielo AJA (as he then was) in *Minister of Safety and Security v Tyulu*,⁵ as follows:

“In the assessment of damages for unlawful arrest and detention, it is important to bear in mind that the primary purpose is not to enrich the aggrieved party but to offer him or her some much-needed solatium for his or her injured feelings. It is therefore crucial that serious attempts be made to ensure that the damages awarded are commensurate with the injury inflicted. ... The correct approach is to have regard to all the facts of the particular case and to determine the quantum of damages on such facts.”

[20] It must be noted that the facts of each case are decisive in arriving at the appropriate amount of damages and that a comparison of awards made in previous cases must take proper account of this approach.⁶ There are dangers in relying excessively on earlier awards. They should be used only as a useful guide and should not be followed slavishly.

[21] In *Minister of Safety and Security v Seymour*,⁷ Nugent JA remarked that:

“Money can never be more than a crude solatium for the deprivation of what in truth can never be restored and there is no empirical measure for the loss. ... It needs also to be kept in mind when making such awards that there are many legitimate calls upon the public purse to ensure that other rights that are no less important also receive protection.”

[22] In the present matter, it is common cause that the Plaintiff was arrested and detained for two days. He was provided with meals, however, he stated that they were not enough. Although he was given a sponge and blankets to sleep on, they were dirty. There was no privacy in the cell which he had to share with five other detainees. He was released from the cells without having appeared before a Magistrate.

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

⁶ Visser and Potgieter *Law of damages* 2 ed (2003) at 472-474.

⁷ *Minister of Safety and Security v Seymour* 2006 (6) SA 320 (SCA); [2007] 1 All SA 558 (SCA) para 20.

[23] In *Mofokeng and Another v Minister of Police*,⁸ on appeal, the plaintiffs were awarded R90 000.00 each for being detained for two days. In *Lamula and Others v Minister of Police*,⁹ the appellants in that case were awarded amounts of R100 000.00 to R115 000.00 for being detained for five days.

[24] It is an established principle of our law that public policy is informed by the Constitution. The Constitutional Court in *Mahlangu and Another v Minister of Police*¹⁰ stated:

“Our Constitution values freedom, and understandably so when regard is had to how, before the dawn of democracy, freedom for the majority of our people was close to non-existence. The primacy of ‘human dignity, the achievement of equality and the advancement of human rights and freedoms’ is recognised in the founding values contained in s 1 of the Constitution... These constitutional provisions, and the protection in s 12 of the right of freedom and security of the person, are at the heart of public-policy consideration.”

[25] In *Mathunjwa v Minister of Police*¹¹ the court awarded an amount of R90 000 for the unlawful arrest and detention for five days in circumstances where conditions on the first night can be termed to be inhuman and unacceptable and he was denied food. The Appellant slept on the floor and was only provided with a mattress on his second day of detention. He spent the whole night sitting having been given no blanket and mattress.

[26] The period of detention and the conditions of the cells in which the Plaintiff was kept are considered and are distinguishable from those in *Mathunjwa*. In light of all the circumstances, together with awards in related matters, I am of the view that an award of R80 000 is just and equitable.

[27] On the assault, the Plaintiff suffered lacerations to his hands, a swollen ear and pains on his body. Although I have concluded that the Plaintiff’s physical injuries were

⁸ *Mofokeng and Another v Minister of Police* [2015] ZAGPJHC 30.

⁹ *Lamula and Others v Minister of Police* [2013] ZAGPJHC 130.

¹⁰ *Mahlangu and Another v Minister of Police* 2021 (2) SACR 595 (CC).

¹¹ *Mathunjwa v Minister of Police* [2023] ZAGPJHC 12.

not of a serious nature, I am cognisant of the fact that, any form of invasion of a person's physical integrity no matter how trivial, is indefensible in any civilised society particularly by police officers who are enjoined to protect individuals against such invasions of their physical integrity.¹²

[28] In *E.L v Minister of Police and Another*¹³ the court awarded an amount of R80 000 for assault by the police officers which resulted in a fractured 9th rib and hip injury.

[29] In *Mnyamezeli and Another v Mfiki*¹⁴ an amount of R20 000 was awarded for unlawful and wrongful assault, the court having found that the injuries were not of a serious nature. the court was alive to the fact that any form of invasion of a person's physical integrity no matter how minor is indefensible and unacceptable in any civilised society, particularly by persons who are enjoined to protect individuals against such invasions of their physical integrity. In *Gcumisa and Others v Minister of Police*¹⁵ an award of R25 000 was awarded for assault. In *Sofika v Minister of Police*¹⁶ the injuries were found not to be severe and were not supported by any form of medical evidence as the J88 furnished could not be relied upon. The court awarded an amount of R23 000.

[30] In *Jombile v Minister of Police*¹⁷ the court found that the plaintiff did not present any evidence that physical injuries sustained were of a permanent nature. The court awarded an amount of R50 000 for assault. There were several discrepancies between the plaintiff's evidence and his pleaded case. The J88, medical report testified to the soft-tissue injuries. The plaintiff testified that he was attending sessions with a psychiatrist since he was not functioning well. However, no evidence was presented from the psychiatrist as to the prognosis, the duration of the treatment or whether medicine had been prescribed.

¹² *Peterson v Minister of safety and Security* [2009] ZAECGHC 65.

¹³ *E.L v Minister of Police* [2025] ZAGPJHC 148.

¹⁴ *Mnyamezeli and Another v Mfiki* [2010] JOL 26204 (ECM).

¹⁵ *Gcumisa and Others v Minister of Police* [2020] JOL 48615 (KZP).

¹⁶ *Sofika v Minister of Police* [2018] JOL 40138 (ECM).

¹⁷ *Jombile v Minister of Police* [2024] JDR 1126 (GP).

[31] Having regard to all the factors in the case before me, I am of the view that an amount of R30 000 would be fair and equitable.

Costs

[32] The court finds no basis to depart from the normal rule that the successful party is entitled to costs.

Order

[33] In the result, the following order is made:

1 The Defendant is liable to pay the Plaintiff's damages as follows:

1.1 The amount of R80 000.00 in respect of the Plaintiff's unlawful arrest and detention from 28 to 30 January 2023.

1.2 The amount of R30 000.00 in respect of the Plaintiff's unlawful assault by the police officers.

2 The Defendant shall pay interest on the aforesaid amounts at the prescribed legal rate calculated from the date of judgment to the date of final payment.

3 The Defendant is to pay the costs of suit on a party and party basis and on the Magistrates' Court scale



M R MOLELEKI
ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MBOMBELA

Appearances

For the Plaintiff:	R M Segage M.P Maseko Attorneys Inc. 15 Paul Kruger Street 2 nd Floor Office 205 Belmont Villa Building Mbombela
For the Defendant:	Ms N G Mbuyane State Attorney, Mbombela 52 Samora Machel Drive R104 West Acres 3 rd Floor, West Wing Mpumalanga High Court Building Mbombela
Matter heard on:	22 April 2025
Judgment delivered on:	18 June 2025