

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED:

CASE NO: 2020/42404

DATE: 6 August 2025

In the matter between:

M[...], K[...]

Plaintiff

and

MINISTER OF POLICE

Defendant

Coram: M Van Nieuwenhuizen, AJ

Heard on: 5-7 May 2025 and 2 June 2025

Delivered: 6 August 2025

JUDGMENT

M VAN NIEUWENHUIZEN, AJ:

INTRODUCTION

[1] This is a delictual action for loss of support and general damages (emotional shock, grief and trauma), which the plaintiff instituted against the defendant. It is alleged that members of the South African Police Services caused the death of I[...] B[...], a Nigerian citizen, who is the father of the plaintiff's child namely K[...] I[...] M[...] ("K[...]") born on the 11th of May 2018. At the time of the deceased's death K[...] was not yet born. The plaintiff has instituted this action both in her personal capacity and in her representative capacity as the mother and natural guardian of the minor child.

[2] Such killing is alleged to have been committed by the members of the South African Police Services on the 10th of October 2017, at his place of residence whilst acting within the course and scope of their employment with the Minister of Police. Consequently it is alleged that the defendant is vicariously liable.

COMMON CAUSE

[3] The following is common cause between the parties:

- [3.1] The date of the incident;
- [3.2] The place where the incident happened;
- [3.3] The identity of the deceased;
- [3.4] Jurisdiction;
- [3.5] *Locus standi* of the plaintiff;
- [3.6] That the police are members of the defendant who were on duty on the day of the incident;
- [3.7] The death of the deceased;
- [3.8] The search was conducted without a warrant.

ISSUES IN DISPUTE

[4] The matter proceeded on both the merits and quantum. The onus is on the plaintiff to prove the following:

- [4.1] That the members of the South African Police Services caused the death of I[...] B[...] by asphyxia or suffocation;

[4.2] That the deceased was supporting the plaintiff financially prior to his death or loss of support caused by the death of the deceased;

[4.3] That the plaintiff and her child K[...] have suffered general damages (emotional shock, grief and trauma) caused by the death of the deceased;

[4.4] Quantum

[5] The issue regarding paternity of K[...] became common cause at the commencement of the trial.

PLEADINGS

[6] The plaintiff's pleadings are *inter alia* as follows:

[6.1] The plaintiff was in a relationship with I[...] B[...] who was killed by members of the police through suffocation;

[6.2] When the deceased passed on the plaintiff was pregnant with the child of the deceased;

[6.3] The police officers were performing their duties under the employment of the defendant.

[7] The deceased, had he not been killed, would have been legally obliged to support the minor child.

[8] The deceased was gainfully employed by CHI Game, Shop & Restaurant at the time of his death earning an amount of R9 000,00 per month.

[9] As a result of the wrongful actions of the members of the South African Police Services, the plaintiff and her minor child have suffered general damages (shock, grief and emotional trauma).

[10] The defendant filed a plea, but the defence was later withdrawn on record. Therefore, there is no version of the defendant. The defendant's plea referred to a

police shootout and that the death of the deceased was caused by shooting and that he was contributorily negligent. It was apparent that the incorrect plea was delivered that had no bearing on the facts of this case.

THE EVIDENCE OF THE PLAINTIFF

[11] The plaintiff, Mr Muzi Happyness Mandlazi (social worker) and Dr Marumo gave *viva voce* evidence. Mr Mandlazi and Dr Marumo were qualified as experts. Further, the plaintiff relied on the following reports:

- [11.1] The postmortem report;
- [11.2] The social worker's report;
- [11.3] The actuarial report.

[12] Ms M[...] testified that:

- [12.1] At the time of the death of the deceased she was in a relationship/partnership with the deceased;
- [12.2] They were not permanently staying together but the deceased was spending more time at her place and had the intention to move in with her;
- [12.3] She called the deceased and the phone was answered by a friend of the deceased (Emmanuel) who asked her to come to her workplace;
- [12.4] She started receiving messages of condolences for the passing of her boyfriend/partner;
- [12.5] She later found out that her boyfriend was killed by the Police through suffocation.

[13] As a result of the brutal killing of the deceased the minor child has no father to support him. The deceased also gave the plaintiff an amount of R1 500,00 per month for a period prior to his passing as she was unemployed.

[14] Dr Marumo testified that:

- [14.1] He examined the body of the deceased, whom according to the police consumed drugs at the time of the incident and had an

epileptic fit;

[14.2] His instruction was to determine the cause of death of the deceased;

[14.3] After the examination, he concluded that the deceased died of lack of oxygen supply to the brain, which was as a result of suffocation;

[14.4] The toxicology report revealed that there were no drugs detected in the bowel, blood, liver or stomach of the deceased.

[15] Dr Marumo made the following chief postmortem findings with regards to the deceased in his medico-legal postmortem examination / report:

“The postmortem examination was performed on an adult black male Nigerian national and found that the deceased died possibly due to asphyxia. Postmortem examination also found the abrasions around the wrist and lower back which are possibly caused by handcuffs. The (sic) were many other small abrasions which are caused when the body was moved around after his death but none of this (sic) abrasions will have caused his death.”

[16] The defendant did not call any expert witnesses to challenge this finding.

[17] Mr Mandlazi (social worker) testified *inter alia* the following with reference to his report:

[17.1] The sudden death of her partner had a profound impact on K[...]’s life, both emotionally and financially;

[17.2] At the time of the incident she was pregnant which further intensified her trauma;

[17.3] Following the death of the deceased, K[...] was solely responsible for arranging and covering all funeral expenses, as the deceased was originally from Nigeria and had no immediate family present in South Africa. This responsibility placed an enormous financial and emotional burden on her.

[18] As a result of the trauma and financial strain, K[...] was forced to discontinue her college studies, abruptly ending her educational aspirations. Compounding her challenges, her child was born with several complications, including a diagnosis of autism. The ongoing medical and developmental needs of her child has placed additional pressure on her limited resources.

[19] Currently, K[...] survives primarily on social grant support to provide for herself and her child. The loss of her partner has caused long-term trauma, disrupting her educational, financial and emotional stability. The deceased's death also devastated future plans, as the deceased had intended to marry K [...], deepening her sense of loss and grief.

[20] Overall, the traumatic event has resulted in severe, lasting impacts on K[...]’s mental health, financial situation, and quality of life, necessitating continued psychological and economic support.

[21] The trauma experienced by K[...] has been profound and has had far-reaching effects on multiple aspects of her life:

[21.1] Emotional and psychological impact

- K[...] continues to suffer from severe emotional distress, including symptoms of depression, anxiety and post-traumatic stress disorder (“PTSD”);
- She experiences persistent grief, flashbacks, emotional numbness and overwhelming sadness related to the sudden and violent loss of her partner;
- The traumatic event has led to a significant loss of trust in institutions, particularly law enforcement, further complicating her recovery process.

[21.2] Educational and career impact

- K[...] was forced to abandon her college education due to the financial and emotional strain following the incident. The loss of educational opportunities has limited her ability to achieve financial independence and career advancement;

[21.3] Financial impact

- Following the death of her partner, who was the primary breadwinner, K[...] faces severe financial hardship;
- She now relies solely on social grants for survival which barely cover her and her child's basic living expenses. The financial burden was intensified by having to independently cover funeral costs with no external family support.

[21.4] Social and family impact

- K[...] experiences significant social withdrawal and isolation, struggling to maintain previous relationships and support networks. The birth of a child with autism has introduced additional caregiving responsibilities, further increasing her emotional and physical stress levels.

[21.5] Long-term life impact

- The death of her partner destroyed plans for marriage and building a stable family life, leaving a lasting sense of loss and emotional void. The trauma is viewed by K[...] as a "*lifetime trauma*", deeply embedded in her identity and day to day existence. Her future outlook remains uncertain, marked by continuous emotional struggle and financial insecurity.

[22] Several unresolved issues remain between K[...] and the relevant parties involved in the traumatic event. There has been a lack of accountability – there has been no formal acknowledgment, accountability, or justice regarding the actions of the police officers allegedly responsible for the deceased's death. This has intensified K[...]’s sense of injustice and hindered her emotional healing.

[23] Absence of legal closure – no legal proceedings, investigations or compensatory actions have been finalised concerning the circumstances of the death. The absence of a legal resolution continues to contribute to K[...]’s prolonged trauma.

[24] K[...] has received no formal support from any Government institutions, law enforcement bodies, or other official agencies following the traumatic incident, leaving her feeling abandoned and mistrustful towards police services.

[25] Due to the deceased being a foreign national without local family support, K[...] was left solely responsible for all post-death arrangements, creating unresolved emotional and financial burdens. K[...] has been unable to achieve emotional closure regarding the loss of her partner, as the circumstances surrounding his death remain clouded by unanswered questions and perceived injustices.

[26] Mr Mandlazi recommends *inter alia* further counselling for K[...] and ongoing monitoring and evaluation.

[27] Mr Mandlazi concludes as follows:

“The trauma inflicted on the family due to the wrongful actions of the SAPS members underscores the critical need for immediate and effective responses addressing the physical, emotional, and legal repercussions is paramount to the family’s recovery and restoring their sense of safety and justice.

These recommendations aim to address the immediate needs of the affected family, ensure accountability for the wrongful actions, and promote systemic changes to prevent similar incidences in future. By taking a comprehensive and multifaceted approach, the family can be assisted to recover from this traumatic experience and work towards a safer and more just community.”

[28] With regards to the minor child, Mr Mandlazi recommends in his report as follows:

“Implement TF/CBT to help the child process and manage trauma related thoughts and emotions.

Play therapy: the use of play therapy to create a safe and expressive environment for the child to explore and articulate feelings.”

[29] Mr Mandlazi concludes that the trauma experienced by the family has had devastating and multifaceted impacts, effecting their emotional, psychological, physical, social, and economic wellbeing. The long-term consequences of these traumatic events are likely to be severe if comprehensive and sustained intervention is not provided. The family requires urgent support to address these impacts,

stabilise their situation, and begin the healing process to prevent further deterioration of their overall wellbeing.

[30] Much of this evidence has been unchallenged by the defendant and no expert has been called or qualified on behalf of the defendant to gainsay what Mr Mandlazi testified. His evidence remains unchallenged in significant respects.

Defendant's evidence

[31] On the 10th of October 2017 at approximately 10h00 eight police officers involved in the matter were on duty, performing crime prevention operations in the Vanderbijlpark area. These police officers were divided into three different vehicles. In a Ford Ranger there was Captain Arends, Warrant Officer Mamasela, Constable Khoza and Sergeant Tenteza. In the second vehicle there was Sergeant Mkhuma and Sergeant Van der Walt and in the third vehicle was Sergeant Ngwane and Constable Ngwenya.

[32] Sergeant Van der Walt informed the officers that they were selling drugs at 70D Forest Street and that they had to go and search there.

[33] On their arrival at the address they found a short gate that was not locked. They went inside the house and found four males. The police then introduced themselves as police officers, whilst they were in full uniform. They told the people in the house the reason for why they were there and they requested permission to search. They then split the searching of the rooms. One male was inside a room alone, who was later discovered to be I[...] B[...], the deceased. The police officers deny having played any part in the death of the deceased or having caused the death of the deceased.

[34] Warrant Officer Mkhuma

[34.1] Warrant Officer Mkhuma testified that he was on duty with Constable Ngwenya when they received information that there were drugs being sold at Vanderbijlpark.

[34.2] On arrival, he went to the room of the deceased and searched there.

[34.3] After having found dagga in the room, they then handcuffed the deceased from behind.

[34.4] When they were leaving the house, the deceased asked for water and he gave him water.

[34.5] Immediately after that the deceased fell on his head and started to fit. He does not know what happened after that.

[35] Sergeant Ngwane

[35.1] Sergeant Ngwane testified that on his arrival he entered the house from the front door and went to give back up to Warrant Officer Mkhuma as he was searching alone.

[35.2] He told the deceased why they were searching.

[35.3] He denies that the police were the cause of the death of the deceased.

[35.4] During cross-examination after the evidence had been elicited by the plaintiff Sergeant Ngwane, testified that he saw the deceased taking something from his pants and swallowing it. The deceased fitted thereafter.

[35.5] They were assaulted by Nigerians who were alerted and arrived on the scene. By the time the Nigerians arrived the deceased had already passed away.

[36] This Court feels constrained to say a word about the credibility of the Police witnesses: It bears mentioning that I was not impressed with the witnesses on behalf of the defendant. I got the distinct impression that they were not being frank with this Court. Their evidence mostly consisted of a bare denial and responses such as *"they have no knowledge"*. There were clear lacunas in the evidence and I found them to be unco-operative and not helpful at all.

LEGAL FRAMEWORK

[37] Our Constitution sets out in no uncertain terms that the mandate of the South African Police Services is to, amongst other things, maintain public order and protect the inhabitants of the Republic. This is a constitutional mandate and its importance ought not to be undermined in considering the constitutionality of a provision aimed at achieving that purpose.¹

[38] In terms of section 2 the Constitution, the Constitution of the Republic is declared the supreme law of the Republic. It is further provided that law or conduct inconsistent with it is invalid, whilst the obligations it imposes must be fulfilled.

[39] Section 7 of the Constitution in its relevant parts provides that:

“(1) *This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.*

(2) *The state must respect, protect, promote and fulfil the rights in the Bill of Rights.”*

[40] In the matter of ***Thulagano Edward Mokomele v Minister of Police***² where the facts of that matter relate to the facts in this matter, Snyman J aptly stated that members of the SAPS are tasked with the duty to protect and serve the community members, and there is no excuse for excessive force, and assault by a member of the SAPS towards a member of the public.

[41] In ***Baring Eiendom Bpk v Roux***³ the SCA adopted the following passages in ***National Employers General Insurance Co Ltd v Jagers***:

¹ Section 205(3) of the Constitution, Act 108 of 1996; ***Residents of Industry House, 5 Davies Street, New Doornfontein, Johannesburg and Others v Minister of Police and Others*** [2021] ZACC 37 at para 47

² Unreported Judgment, Case No. 1/2018, North West Division of the High Court of South Africa Mahikeng

³ 2001 (1) All SA 399 (SCA) at para 7

“... where there are two mutually destructive stories [the plaintiff] 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 and mistaken and falls to be rejected. In deciding whether that evidence is true or not, the Court will weigh up and test the plaintiff (sic) 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 of the case and, if the 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, more than they do the defendant’s, the plaintiff can only succeed if the Court nevertheless believes him and is satisfied that the evidence is true and that the defendant’s version is false.”⁴

*This view seems to be in general accordance with the view expressed by Coetzee J in **Koster Ko-operatiewe Landbou Maatskappy Bpk v Suid-Afrikaanse Spoorweë en Hawens** 1974 (4) SA 420 (W) and **African Eagle Assurance Co Ltd v Cainer** 1980 (2) SA 324:*

“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 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.”

⁴ 1984 (4) 437 (A) at 44 OE-44IA; **Engelbrecht v City of Tshwane Metropolitan Municipality** [2023] ZAGPPHC 350, A85/ 2021 (4 May 2023) at para 5 (Full Bench Decision)

EVALUATION

[42] It is trite that a party pursuing a claim in civil litigation has a duty to satisfy the Court on a balance of probabilities.

[43] Having regard to the undisputed facts as pleaded in the particulars of claim as supported by the evidence of Dr Marumo I find that the deceased died as a result of suffocation caused by members of the defendant.

[44] It is the evidence of the plaintiff as conceded by the evidence of the defendant that the deceased, at all material times, was with the police until he passed on, meaning there was no intervening event during the members of the South African Police Services' arrival until his death.

[45] The defendant has failed to plead its case and no version of the defendant was put to the plaintiff's witnesses.

[46] The defendant failed to call expert witnesses. Therefore, the evidence of the expert witnesses of the plaintiff remained unchallenged.

[47] Consequently, on the merits on a balance of probabilities I find in favour of the plaintiff. Consequently, I find that the members of the South African Police Services caused the death of the deceased.

DAMAGES

Past and future loss of support

[48] The actuarial report was not placed in dispute by the defendant. The defendant agreed to the correctness of the contents of the actuarial report compiled by the plaintiff's actuary.⁵ Quantum was not placed in dispute at all by the

⁵ Para 22, Defendant's Heads of Argument, CaseLines 19-39

defendant. The actuarial report has two scenarios which consists of an 18-year plan and a 21-year plan which is set out as follows:

Scenario 1.1: 10% Future Contingency (Children 18)

Past Loss of Earnings	Khanyisile Mokhoebane	Katleho Mokhoebane	All Dependents
But For the Incident	R 356,654	R 163,925	
Having Regard To the Incident	R 0	R 0	
Gross Loss:	R 356,654	R 163,925	
Less Contingency Deduction (5%)	R 17,833	R 8,196	
Net Value of Past Loss of Support	R 338,821	R 155,729	R 494,550
Future Loss of Earnings			
But For the Incident	R 1,398,131	R 292,714	
Having Regard To the Incident	R 0	R 0	
Gross Loss:	R 1,398,131	R 292,714	
Less Contingency Deduction (10%)	R 139,813	R 29,271	
Net Value of Future Loss of Support	R 1,258,318	R 263,443	R 1,521,761
Total Net Value of Loss of Support	R 1,597,139	R 419,171	R 2,016,310

Scenario 2.1: 10% Future Contingency (Children 21)

Past Loss of Earnings	Khanyisile Mokhoebane	Katleho Mokhoebane	All Dependents
But For the Incident	R 356,654	R 163,925	
Having Regard To the Incident	R 0	R 0	
Gross Loss:	R 356,654	R 163,925	
Less Contingency Deduction (5%)	R 17,833	R 8,196	
Net Value of Past Loss of Support	R 338,821	R 155,729	R 494,550
Future Loss of Earnings			
But For the Incident	R 1,366,902	R 357,897	
Having Regard To the Incident	R 0	R 0	
Gross Loss:	R 1,366,902	R 357,897	
Less Contingency Deduction (10%)	R 136,690	R 35,790	
Net Value of Future Loss of Support	R 1,230,212	R 322,108	R 1,552,319
Total Net Value of Loss of Support	R 1,569,033	R 477,836	R 2,046,869

[49] The difference between the two scenarios is insignificant and the plaintiff has proposed that the amount of loss of support should be the average of the total net values of the loss of support, thus the amount of R2 031 590,00.

General damages

[50] General damages and the quantum of the general damages has also not been placed in dispute.

[51] The assessment of the quantum of general damages is a comparative exercise of prior cases on bodily injuries. Relating to this process, Potgieter JA in **Protea Assurance Co Ltd v Lamb**⁶ said:

“It should be emphasised, however, that this process of comparison does not take the form of a meticulous examination of awards made in other cases in order to fix the amount of compensation; nor should the process be allowed so to dominate the enquiry as to become a fetter upon the Court's general discretion in such matters ...”

[52] Past awards provide a guide only. Courts are expected to exercise judicious discretion to ensure that the award is fair. Fairness encompasses a delicate balance amongst the competing interests at play. Holmes J sounded a warning in **Pitt v Economic Insurance Co Ltd**⁷ that:

“... the Court must take care to see that its award is fair to both sides - it must give just compensation to the plaintiff, but must not pour out largesse from the horn of plenty at the defendant's expense.”

[53] Eksteen J in the matter between **Ambrose v Road Accident Fund**⁸ also stated the following:

⁶ 1971 (1) SA 530 (A) at 530-536

⁷ 1957 (3) SA 284 (N)

⁸ 2011 (6C4) QOD 13 (ECP) at [48]

“General damages: In assessing an award for general damages the court has a broad discretion to award what it considers to be fair and adequate compensation. The court will generally be guided by awards previously made in comparable cases and will be alive to the tendency for awards to be higher in recent years than was previously the case. (Compare De Jongh v Du Pisanie NO 2005 (5) SA 457 (SCA) 457D-E). In considering previous awards, it is appropriate to have regard to the depreciating value of money due to the ravages of inflation. It would however be inappropriate to escalate such awards by a slavish application of the consumer price index. (See AA Onderlinge Assuransie Assosiasie BPK v Sodoms 1980 (3) SA 134 (A)).”

[54] An award for general damages is considered as *solatium*, i.e. as compensation for the injured party’s pain and suffering, and loss of amenities of life.

[55] The general damages claimable in a case such as the current one are:

[55.1] pain and suffering over the loss of the deceased’s life – on the plaintiff’s part;

[55.2] loss on the plaintiff’s part and on the minor child’s part, of the enjoyment of the amenities of life with the deceased.⁹

[56] In ***Komape v Minister of Basic Education***¹⁰ the Supreme Court of Appeal recognised the claim for pain and suffering in circumstances of grief and bereavement, thus developing the law insofar as claims for emotional shock formed part of a claim for what is traditionally general damages.

[57] In the matter of ***Nkabinde v Minister of Police***¹¹ this Court was faced with a matter where the police shot and killed a father of two minor children and the Court made the following findings:

“[14] Pain and suffering may be physical, mental or both. For example,

⁹ ***Nkabinde v Minister of Police*** (50315/2010) [2024] ZAGPPHC 678 (17 July 2024)

¹⁰ [2020] 1 All SA 651 (SCA); 2020 (2) SA 347 (SCA)

¹¹ (50315/2010) [2024] ZAGPPHC 678 (17 July 2024)

damages may be awarded for psychological or psychiatric injury.

[15] In casu, it was demonstrated that the plaintiff's life totally unravelled consequent to the demise of his wife. He became a drug addict and lost his employment with the attendant failure to be responsible for the upkeep of his children.

...

[17] Having regard to the above and other similar cases, I am satisfied that the interests of justice would be best served by the following award:

17.1 The defendant is ordered to compensate the plaintiff and the two minor children for general damages as follows: In respect of the plaintiff – an amount of R350 000.00. In respect of the children – R300 000.00 per child. Total amount – R950 000.00.”

[58] The plaintiff has addressed me and proposed that I award the amount of R400 000,00 in respect of each of the plaintiff and the minor child totalling the sum of R800 000,00.

[59] Having regard to the abovementioned **Nkabinde** case and other similar cases, I am satisfied that the interests of justice would be best served if I awarded general damages in the amount of R350 000,00 in respect of the plaintiff and R300 000,00 in respect of the minor child.

ORDER

[1] Accordingly, it is ordered that the defendant is to pay damages to the plaintiff in the total sum of R2 681 590,00 as follows:

[1.1] The defendant is ordered to compensate the plaintiff and the minor child for past and future loss of support in the amount of R2 031 590,00.

[1.2] The defendant is ordered to compensate the plaintiff and the minor child for general damages as follows:

1.2.1	In respect of the plaintiff	R350 000,00
1.2.2	In respect of the minor child	R300 000,00

Total R650 000,00

[1.3] The defendant is to pay the plaintiff's costs on a party and party scale at Scale B of Rule 67A of the Uniform Rules of Court (as amended).

M Van Nieuwenhuizen AJ
Acting Judge of the High Court
Johannesburg, Gauteng

Delivered: This judgment was prepared and authored by the Judges whose names are 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 hand-down is deemed to be on 6 August 2025.

HEARD ON:	5-7 May 2025 and 2 June 2025
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DATE OF JUDGMENT:	6 August 2025
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FOR PLAINTIFF:	Advocate B M Khumalo
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INSTRUCTED BY:	H C Makhubele Incorporated
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FOR DEFENDANT:	Advocate M M Mokwena
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INSTRUCTED BY:	The State Attorney
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