



**IN THE HIGH COURT OF SOUTH AFRICA
[EASTERN CAPE DIVISION, MTHATHA]**

CASE NO. 1445/2019

In the matter between:

MAVA MATOMELA

PLAINTIFF

and

MINISTER OF POLICE

DEFENDANT

JUDGEMENT

MTSHABE AJ

A. INTRODUCTION

- [1] Mava Matomela (the Plaintiff) instituted an action for delictual damages against the Defendant, arising from unlawful and wrongfully assault, without any cause by shooting the Plaintiff on 10 August 2018.
- [2] On 19 February 2025, when the matter appeared before me, the parties made an application for separation of merits from quantum. The application was made in terms of rule 33(4) of the Uniform Rules of Court.

[3] I, accordingly, granted an order that the issue of merits shall be dealt with first and be separated from quantum, which I postponed it *sine die* to be determining in future.

[4] This judgement therefore deals with issue of liability on merits only.

[5] On 1st November 2023 the parties signed a Joint Practice Note. Paragraph 4 thereof, deals with the issues for determination and they are:

“5.1 *It is recorded by the parties that both merits and quantum remain outstanding for determination by the court.*

5.1.1 *On the merits, the court will be called upon determine;*

5.1.2 *Whether there was any negligent conduct by the police involving Plaintiff as specified in the summons;*

5.1.3 *The cause of the complained, this action whether the Plaintiff suffered as the result of the negligent conduct of the Defendant and/or her employees.*

5.2 *On quantum the court will be called upon to determine;*

5.2.1 **General damages**, *what is a fair and equitable award in the Plaintiff's circumstances, taking into account the previous awards, hospitalisation, duration, nature and sequelae of the injuries sustained and expert medico legal reports filed;*

5.2.2 **Loss of income** *and whether the Plaintiff has suffered both past and future loss of earnings, taking into account the basis for the claim as constituted in the particulars and expert medico-legal reports filled in this regard.*

5.2.3 ***Future medical expenses*** and whether the Plaintiff qualifies to be compensated taking into account the expert medico-legal reports filed in this regard.

5.2.4 ***Cost of suit.***”

B. PLEADINGS

[6] The Plaintiff pleaded the following allegations in his Amended Particulars of Claim:

6.1 “On or about 10 August 2018, on the route between Vela Private School and Mthatha Dam, the Plaintiff was negligently shot at with live ammunition by the members of South African Police Services on the chest.

6.2 The Plaintiff was a passenger in the minibus taxi.

6.3 One of the South African Police Services Member who fired shots recklessly, negligently and randomly was Mr Mhlalendlini, the police station attached to the member is unknown and the moment and other Police members who were on duty on that day attending the scene are unknown to the Plaintiff.

6.4 As consequence of the assault by South African Police member, the Plaintiff sustained the following injuries:

6.4.1 Wound on the chest;

6.4.2 Pain and suffering.”

[7] The Defendant admitted that the Plaintiff was shot, however Defendant avers that neither the members of the South African Police Services nor

Mhlalendlini shot the Plaintiff. The Defendant averse that the Plaintiff must have been shot by the suspect.

[8] In paragraph 5 of the Defendant's Amended Plea, the following appears:

“ Save to admit that on the alleged day and or near Pola Park , Mthatha, there was car chase and a shootout between the Police driven in a Police vehicle and a suspect driven in a white Polo vehicle and that the Plaintiff may have been a passenger in taxi that was in the vicinity of the scene, the Defendant denies that the Police and/or Mhlalendlini shot at the Plaintiff and that Mhlalendlini was part of the Police crew that was involved in the case, the Plaintiff is put to proof thereof. The Defendant averse that Plaintiff must have been shot by the suspect.”

C. COMMON CAUSE FACTS

[9] In the pleadings and during the trial, the following facts appeared to be common cause between the parties:

- 9.1 On 10th August 2018 the members of South African Police were chasing a white Polo at the time being driven by an unknown person, who has since passed on.
- 9.2 The Plaintiff was shot by a bullet as he was inside a taxi near or at Polla Park, Mthatha.
- 9.3 Plaintiff because of the shooting by either the members of the Police or a suspect sustained injuries as reflected J88 which was completed by medical doctor.
- 9.4 On the day in question the members of the South African Police Services were acting within the course and scope of their employment with the Defendant, and they were furthering the interests of the Defendant.

D. DISPUTED FACTS

- [10] The Defendant disputes the version of the Plaintiff that he was shot by the members of Mthatha Police Services, including Mhlalendlini. This denial appears in the Defendant's Plea.
- [11] The Defendant further disputes that Mhlalendlini was part of the members of South African Police Services who were chasing the suspect on the day in question.
- [12] Accordingly, the Defendant disputes and denies that he is liable for the shooting of the Plaintiff on the day in question.

E. EVIDENCE OF THE PLAINTIFF

- [13] The Plaintiff testified in person, and he did not call any other witness. I must mention that during cross examinations Mr Bembe, Counsel for the Defendant, informed the court that if the Plaintiff does not call the Doctor who completed J88 he will call the doctor.¹ Both the Plaintiff and Defendant did not call the Doctor who completed J88.
- [14] The Plaintiff testified that, on 10 August 2018, he was working on a company called Max Hiltty Enterprises. This is the company that offered him learnership program after he has done N2, N3, and N4 studies at TVET College Cicira.
- [15] He informed the Court that after completing his learnership, he got employment at Welkom as a security guard and that is where is currently working. He joined the security company in 2019 after the bullet was taken out of his body.

¹ Page 51, transcribed record date 19 February 2025, line 1-10

[16] On page 24 of the record dated 19 February 2024, under evidence in chief, the Plaintiff testified that on Friday, the 10th August 2018 he was from his home to work, and he boarded a taxi at about 6H30.

[17] According to him, when the taxi was next to Joe Slovo on the road leading to Vela, they saw, that is the passengers in the taxi police. According to him the police they saw where were standing with their feet and they were waiting for Polo vehicle which was coming and running down the street.

[18] On page 25 of the record, the Plaintiff informed the court that the taxi he reported joined the road that is coming from Mthatha Dam towards the Mthatha bypass. He informed the court that the Polo passed the taxi and went to the direction the taxi was coming from. That Polo was chased according to the Plaintiff by the Police were on foot and whilst they were on foot they fired the shots as they were chasing the taxi. One of the bullets went through the window and entered through the window. That bullet hit the Plaintiff on the chest and then it went through his armpit, and it remained in the arm.

[19] In paragraph 29 of the transcribed record, when the Plaintiff was giving evidence in chief the following:

“Ms Mantyi: So the Polo was already passed the taxi?”

Mr Matomela: It already passed the taxi.

Ms Mantyi: When the bullet hit you?

Mr Matomela: Yes, when the bullet hit me, the Polo had already passed our taxi M’Lord.

Ms Mantyi: What happened after that?

Mr Matomela: Then the bullet hit the window, and it went through that window, and it hit me on the chest up to the stage where it went under my armpit and it landed on my arm and remained there, M’Lord.

Ms Mantyi: Didn’t the taxi stop?

Mr Matomela: Then the taxi driver stopped his vehicle, M’Lord. Other passengers alighted from the taxi. When I tried to alight from the taxi, I could not. And the driver went around then assisted me M’Lord. And he took me to

the front seat, M'Lord, in this taxi. Then the two police officers came wanted to investigate what has happened.

Mr Matomela: The driver then told them that the Police that I happened to be shot, M'Lord and they suggested that they are going to phone the ambulance M'Lord".

[20] The Plaintiff testified that the ambulance could not arrived, his boss/employer Mr Nyaba arrived at the scene. He took him to the hospital by his motor vehicle.

[21] Important, is what appears on page 33 of the record when the Plaintiff was giving evidence in chief:

"Ms Mantyi: What happened to the Polo driver?

Mr Matomela: I had after I had already been shot that they shot him, M'Lord that is the driver of the polo.

Ms Mantyi: The police denies that Mr Mhlalendlini was part of the crew that was involved in the chase. And yet there is name of the police called Mhlalendlini and the phone numbers.

Mr Matomela: That is correct, M'Lord. Mr Nyaba took his particulars from them, all their particulars and they gave him permission to take me to the hospital, M'Lord.

Ms Mantyi: Did he take the particulars of one police or all of them?

Mr Matomela: He took only one name of the police, M'Lord not all of them.

Ms Mantyi: Is there anything that you can say Mava of what happened that day?

Mr Matomela: No, that is all M'Lord.

Ms Mantyi: That is all M-Lord".

[22] Under cross examination, the Plaintiff is insisted that the bullet that hit the window and entered the chest and it protruded to the armpit until it went on his arm was fired by the police not the suspect as he was shot after the Polo has passed the taxi.

[23] He agreed with Mr Bembe that on the day in question the police were chasing the suspect driving a motor vehicle, polo. Under cross examination the Plaintiff informed the court that the person who was driving the polo, was not having firearm or rather was not carrying a firearm, he was only driving².

[24] On page 5 of the record dated 20 February 2025 the following appears from line 15:

Mr Bembe: *They will also tell the court that much as the polo shooting at them, they also returned fire.*

Mr Matomela: The driver of the polo, in fact the one who was driving the polo was driving this vehicle, his vehicle, he was not shooting. It was the police who were behind him the ones that they were firing at this polo and the polo turned to the direction where they were coming from.

Mr Bembe: You were already shot at that time?

Mr Matomela: No, not yet shot, M'Lord.

Mr Bembe: So what happened to the Golf, did you see the Polo? You say he turned, and he drove away, what happened to it? Did you see?

Mr Matomela: It turned with a high speed and the Polo; and the police just shot me and the bullet entered by my chest M'Lord. Then they just passed, and they continue chasing it and I had been already shot at that stage. And they chase it, and I heard been shot at that stage, M'Lord".

[25] On page 9 of the transcribe record dated 20 February 2025 the following appears from line 20:

Mr Bembe: *Ok, thank you. So if you say they were all carrying firearms what would your papers say Mhlalendlini was actual person that you identified? I know you did not draft those papers; I'm not blaming you.*

Mr Matomela: It is because my boss actually requesting him, in fact ask him to give permission for me to be taken to the hospital.

Mr Bembe: Was that Mhlalednlini?

² Transcribed record, dated 20 February 2025, page 3 thereof

Mr Matomela: Yes, he spoke to Hlalendlini, M'Lord

Mr Bembe: Before the incident did you know Hlalendlini?

Mr Matmela: No, M'Lord, I did not know him.

Mr Bembe: I'm not asking the question, Matomela, because the police are going to say, all rather are going to say Hlalendlini was never part of that operation before you were shot and after you were shot.

Mr Matomela: He was present. My boss talked, he talked to him and he gave him his cellphone numbers and he was given and my boss cell phone numbers. Thank you".

- [26] The Plaintiff under cross examination also informed the court that it is the police who fired shot at him because the polo had already passed the spot where he was and when he was shot, according to him by the police insisted that Mr Mhlalendlini was part of the crew at the scene of the incident.

F. DEFENDANT'S EVIDENCE

- [27] The Defendant called Warrant Officer Spengane. He is one of the persons who were present on the day of the incident.
- [28] The testified that on the day in question, when he and his colleagues were going to work, near Embassy they met the Polo in question which was travelling from Mthatha to the direction of Engcobo.
- [29] The driver of their vehicle tried to stop the vehicle, by flickering lights but the vehicle did not stop, hence their (police) motor vehicle made a U-turn and chased the motor vehicle on the R61 towards Engcobo.
- [30] According to Warrant Officer Spengane, the motor vehicle they were chasing, instead of driving towards the Ngcobo, it took a turn, taking the road heading from Mthatha Dam. They followed him and according to Spengane he was firing at them, however the bullets from the driver of the motor vehicle neither struck any of the members of the South African Police Services, nor did they strike their motor vehicle.

[31] Warrant officer Spengane denied that MhlaleIndlini was in the crew on the day in question. His evidence as captured on page 32 of the record dated 20 February 2025 is that Mr Mhlalendlini was in the office and was not part of the crew. He informed the Court that he does not remember that there were police who going on foot except those were in the motor vehicle.

[32] He did see a taxi that was station on the road near where the incident occurred, however, their motor vehicle and himself did not go to the taxi to investigate what was going on inside the taxi. He informed the court that the suspect was shot by the police and unfortunately he passed on.

[33] On page 37 of the transcribe record dated 20 February 2025 the following under evidence in chief appears:

“Mr Bembe: So during your presence were there any exhibits that were collected in the area?”

Mr Spengane: The firearm that person was using was recovered.

Mr Bembe: “Any empty cartridges?”

Mr Spengane: I do not have any knowledge about cartridges.

Mr Bembe: Warrant, we have actually come to the end of our examination in chief that I was conducted for the court, but now is there anything in this regard that you would like the court to know which I did not address on you?

Mr Sipengane: That is all M’Lord.”

G. ANALYSIS OF THE EVIDENCE AND LEGAL PRINCIPLE

[34] I must mention that during the evidence in chief of Warrant Officer Spengane, I did not hear him informing the Court that the police deny that they shot the Plaintiff who was inside the taxi.

[35] The only issue, which in my view I could under the umbrella of two mutually destructive version, is that of the shooting by the driver of the Polo which was being chase by the police. The Plaintiff’s version is that the driver of the polo

did not shoot at all as he was driving the motor vehicle at a fast speed, on the other hand, the version of the Defendant is that the driver of the motor vehicle was shooting at them, however, no bullets hit the motor vehicle of police.

[36] In this regard can only refer to case of **National Employers General Insurance Co Ltd v Jagers**³ where the court stated the following:

*“It seems to me with respect that in any civil case, as in any criminal case, the onus can ordinarily only be discharged by adducing credible evidence to support the case of the Party on whom the onus rests. In a civil case the onus is obviously not as heavy as it is in a criminal case, but never the less where the onus rests in the Plaintiff as in the present case and where the two mutually destructive stories, he can only succeed if he satisfies the court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, that the version advanced by the Defendant is therefore false or that other version is true and accurate and therefore acceptable, and that the other version advanced by the Defendant is therefore falls or mistaken and falls to be a rejected. In deciding whether that evidence is true or not the court will weigh up and test the Plaintiff’s allegations against the general probabilities. The estimate of the credibility of a witness will therefore be in inextricably bound up with a consideration of the probabilities of the case and, if the balance of probabilities favours the Plaintiff, then the court will accept his version as being probable true. If however, the probabilities are evenly balanced in the sense that they do not favour the Plaintiff’s case anymore than they do the Defendant’s, the Plaintiff can only succeed if the court nevertheless believes him and satisfied that his version is true and that the Defendant’s version is false. This view seems to me to in general accordance with the views expressed by Coetzee J in *Koster Ko-Opervatiewe Landboumaatskappy Bpk v Suid-Afrikaanse Sporwee en Haven* ⁴ and *African Eagle Assurance Company Ltd v Cainer*⁵. I would merely stress however that when in such circumstances one talks about a Plaintiff having discharge the*

³ 1984 (4) SA 437 (E) at 440D-441A

⁴ 1974 (4) SA 420 (W) at 427

⁵ 1980 (2) SA 234 (W)

onus which rested upon him on a balance of probabilities one can 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 constitutes separate fields. In fact, as I have pointed out, it is only where a consideration of the probabilities fails to indicate where the truth probable lies, that recourse is heard to an estimate of relative credibility apart from probabilities.”

[37] In assessing a witness’s credibility, a variety of factors must be taken into account by the Court. This aspect was discussed in *Heese v Nel*⁶ : *“Included in the factors which the court would look at in examining credibility or veracity of any witness, are matters such as the general quality of his testimony (which is often the relative condition to be compared with the quality of the evidence of conflicting witnesses), he consistency with the content structure of his evidence and the objective facts, his integrity and candour, his age where this is relevant, his capacity and opportunities to be able to depose to the events he claim to have knowledge of, his personal interest in the outcome of the litigation, his temperament and personality, his intellect, his objectivity, his ability effectively to communicate what intends to say, and the weight to be attached to the relevance of his versions, against background of the pleading.”*

[38] The principles in **Jagers case (supra)**⁷ were also applied in case of *City of Johannesburg Metropolitan Council v Ngoben*⁸ .

[39] In the *Stellenbosch Farmers Winery Group Ltd and another v Martel and Others*⁹ the Court stated the following:

⁶ 1994 1PHF 11 (T) 32

⁷ Jagers Supra

⁸ (2012) JOL 29134 (SCA) at para 51

⁹ 2003 (1) SA 11 (SCA) para 5

“On the central issue as to what the parties actually decided, there are two irreconcilable versions. So, too on a number of preferable areas of dispute which may have a bearing on the probabilities. The technique generally employed by the Courts in resolving the factual disputes of this nature may conveniently be summarized as follows. To conclude on the disputed issues a court must make finding on (a) on the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities. As to (a), the Court’s finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness’s candour and demeanour in the witness box, (ii) his bias, talent and blatant (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established facts or with his own extra curial statements or actions, (v) the probability or improbability of particular aspects of his versions; (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events. As to (b), a witness’s reliability will depend, apart from the factors that have been mentioned under (a) (ii), (iv) and (v) above. On (i) the opportunities he had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to (c), this necessitates an analysis and evaluation of the probability or improbability of each party’s version on each of disputed issues. In the light of its assessment of (a), (b), and (c) the Court will then the final step determine whether the party burden with the onus of proof has succeeded in discharging it. In the hard case which will in darkness be the rare one, occurs when a Court’s credibility findings compel it in one direction and its evaluation of general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors done equipoised probabilities prevail.

- [40] The merits, demerits and the probabilities of the evidence of each of the witnesses, Plaintiff and the Defendant should be examined in the light of the totality of it, if that is done, it comes clear that the evidence of the Defendant, in my view is not credible, is unreliable and highly improbable. It is my view that the evidence of the Plaintiff on probabilities is true and correct. I accept it.

- [41] Further, having regard to the totality of the evidence which served before this court, it is clear that the witness of the Defendant in so far as the issue of the shooting by the driver of the Polo is not honest, credible and reliable. It is rejected.
- [42] Further, during this trial the Defendant informed the court that is going to call the Doctor who completed the J88. That was not done. No explanation was offered by Counsel for the Defendant. Furthermore, and most important is the fact that the Defendant did not call police officer Mhlalendlini, who is alleged to have been present in the scene. It must also be mentioned that inspector or police officer Mhlalendlini is still alive. This came from the evidence of warrant officer Spengane. The Counsel for the Defendant did not give any reasons why he is not going to call Mhlalendlini. If it is correct that Mhlalendlini was not at the scene the important question is how the boss of the Plaintiff could have known about Mhlalendlini and his details, if he was not there.

H. ONUS OF PROOF

- [43] It is trite law that the onus to prove the elements of a claim for delictual damages in this case falls upon the Plaintiff. Further, it is trite law that the standard of in civil cases is on the preponderance of probabilities.
- [44] Dealing with the issue of **onus** the then Appellant Division aptly enunciated the principle as follows:

*“..... The only correct use of the word **ONUS** is that which I believe its true and original sense it means.... the duty, which is cast on a particular litigant, in order to be successful, of finally satisfying the Court, that he is entitled to succeed on his claim, or defence as the case maybe, and not in the sense merely of his duty to adduce evidence to combat the prima facie case made by his opponent¹⁰.*

¹⁰Pillay vs Krishna 1947 AD 946 at 952

I. FAILURE TO CALL WITNESSES

- [45] According to the evidence of the Plaintiff and from the records, it appears that one of the police officers who was present at the scene was Mhlalendlini. Although this is disputed by Warrant Officer Spengane.
- [46] Furthermore the boss of the Plaintiff, who took him to the hospital wrote a note that he spoke to Mhlalendlini and took his details. During the trial Counsel for the Defendant informed the court that he is not going to call Mhlalendlini. He offered no explanation as to why Mhlalendlini, who is alive or from whom there is no explanation why he was not going to be called by the Defendant. This gentlemen in my view should have been called to dispute his presence at the scene.
- [47] It is settled law that a party's failure to call available witnesses in exceptional circumstances may lead to an adverse inference being drawn from such failure against the party concerned. In the circumstances the Defendant's failure to call police officer Mhlalendlini as a witness to testify on such important issues justifies the drawing of an inference that the Defendant knew that police officer Mhlalendlini was present at the scene¹¹. The question whether an adverse inference is to be drawn from failure to call a witness is a question of fact. In this matter I conclude that an adverse inference is justified.

J. TEST FOR NEGLIGENCE

- [48] It needs to be pointed out at the outset that for success of the Plaintiff in this matter the Plaintiff needs to establish that the Defendant acted negligently towards him. The test for negligence was addressed in *Kruger v Coetzee*¹²,

¹¹ Sishongana v Minister of Justice & Constitutional Development & Another 2007 (4) SA 135 (LC) at para 112, Elgin Fireclays Limited v Webb 1947 (4) SA 744 (A) @749 to 750, Munster Estates (Pty) Ltd v Killarney Hills (Pty) 1979 (1) SA 621 (A), Olifant v Shield Insurance Co 1980 (1) SA 903 (C) and Hal obo MML v MEC for Health, Free State 2022 (3) SA 571 (SCA)

¹² 1966 (2) SA 428 (A) at 430E-F

where the proper approach for establishing the existence or otherwise of negligence was formulated by Holmes JA as he then was as follows:

“For the purposes of liability culpa arises if-

(a) A diligent paterfamilias in the position of the Defendant-

(i) Would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss-

(ii) Would take reasonable steps to guard against such occurrence and-

(b) The Defendant failed to take such steps.

[49] In the case *Tshabalala v Metro Rail*¹³ court held that:

“It is now well-established that a negligent omission, unless wrongful will not give rise to delictual liability. The failure to take a reasonable step to prevent foreseeable harm to another will result in liability only if the failure is wrong. It is the reasonableness or otherwise imposing liability for such a negligent failure that will determine whether it is to be regarded as wrongful. See Trustees, Two Oceans Aquarium Trust v Kantey and Tempo (Pty) Ltd 2006 (3) SA 138 (SCA) at para 11. If it is reasonable to do so, the defendant will be said to have owed the injured party a legal duty to act without negligence that is to say to take such steps as may have been reasonable to advert the harm”.

[50] In the context of delictual damages, the test for determining wrongfulness or otherwise of an omission to act is re-stated in *Van Eeden v Minister of Safety and Security*¹⁴ as follows:

¹³ 2008 (3) SA 142 (SCA) at para 7

¹⁴ 2004 (3) SA 305 (SCA)

“Our common law employs the element of wrongfulness (in addition to the requirements of fault, causation and harm to determine liability for delictual damages caused by an omission). The appropriate test for determining wrongfulness has been settled in long line of decisions of this court. An omission is wrongful if the Defendant is under legal duty to act positively to prevent the harm suffered at the Plaintiff. The test is one of reasonableness. A Defendant is under a legal duty to act positively to prevent harm to the Plaintiff if it is reasonable to expect the Defendant to have taken positive measures to prevent the harm. The court determines whether it is reasonable to have expected the Defendant to have done so by making a value judgement based, inter alia on, upon its perception of legal convictions of the community and in considerations of policy. The question whether a legal duty exists in particular case is thus a conclusion of law depending on consideration of all the circumstances of the case and on the interplay of the many factors which have to be considered. “

- [51] Having regard to the circumstances which the events are unfolded on that particular day at near Vela School, it appears that the police officers fired the shots at the taxi and hit the Plaintiff negligently. Furthermore, I could not find from the record anywhere where captain Spengana denied in his evidence in chief that the police did not hit the taxi with bullet.
- [52] Accordingly, on a balance of probabilities I find that version of the Plaintiff is true and must be accepted. I am satisfied that the evidence of the Plaintiff is true and that of the Defendant is false. As I have indicated above, civil cases are decided on probabilities.
- [53] Applying the test formulated in the case of Kruger v Coetzee (*supra*) to the facts, I find that the police officers saw the reasonable possibility of their conduct causing injury and patrimonial loss to the Plaintiff and failed to take reasonable steps to prevent the harm to the Plaintiff. Further, I am of the view that the police officers could have guarded against the injury suffered by the Plaintiff, and they failed. The actions of the police caused the injury to the Plaintiff.

[54] It follows that the Defendant should be held liable to the Plaintiff for such damages as he in due course may prove or agreed by the parties.

[55] In conclusion, I want to thank Counsel for their thorough research and submissions that I have found to be great assistance in this matter. May I apologize for the delay in delivering this judgement, as such was caused *inter alia*, by the fact that I received transcribed record in August 2025

[56] Accordingly, the following order is made

1. The Defendant is held liable to the Plaintiff for his agreed or proven damages consequent upon his shooting by the members of the Defendant on 10 August 2018.
2. The Defendant is liable to pay the Plaintiff's costs in terms of Rule 67A read with Rule 69(7) of the Uniform Rules of Court, on Scale C.

N.R MTSHABE
ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

For the Plaintiff: Adv P. Mantyi-Mfino
Instructed by: SZ Jojo Incorporated
MTHATHA

For the Defendant: Adv. J. Bembe
Instructed by: The State Attorney
MTHATHA

Heard on: 31 March 2025
Delivered on: 26 August 2025