



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION – MAHIKENG**

CASE NO: 2200/2018

In the matter between:

**KEYAOLEBOGA CHRISTOPHER
NTHEBOLANG**

PLAINTIFF

and

MINISTER OF POLICE

DEFENDANT

This judgment was handed down electronically by circulation to the parties' representatives via email and released to SAFLII. The date and time for hand-down is deemed to be **15h00 on 10 January 2025**.

ORDER

- (i) The defendant is to pay the plaintiff an amount of R100.000.00.

- (ii) Interest on the aforesaid sum at the legally permissible rate from date of issue of summons to date of final payment.
- (iii) The defendant is ordered to pay the costs of suit on a party – and – party basis on the High Court Scale “B”, to be taxed.

JUDGMENT

REDDY J

Introduction

- [1] This judgment is dispositive of the quantum portion of the trial. Mr Keyaoleboga Christopher Nthebolang (“the plaintiff”) issued summons against the defendant, claiming delictual damages for bodily injuries he sustained after being shot with rubber bullets by a member/s of the South African Police Services (“SAPS”), who at that time was acting within the scope and ambit of their official duties as such. The action was defended.
- [2] On 11 August 2022 Mahlangu AJ delivered judgment on the merits of the plaintiff’s action. Mahlangu AJ found that the defendant is liable to compensate the plaintiff for 100% of his proven or agreed damages arising from his unlawful assault. Furthermore, the defendant pays costs of this action on a party and party scale. On

18 October 2023, the parties settled the future medical expenses. What falls to be decided is the plaintiff's claim for general damages.

- [3] For the purpose of the determination of quantum for general damages the parties agreed that reports compiled by experts appointed by the plaintiff, being Dr Hoffman a Plastic, Reconstructive and Cosmetic Surgeon, Ms Moyra Tsambos a Clinical Psychologist and Dr Kgabo a Psychiatrist be admitted as evidence without the need to lead any further evidence thereon.

Background facts

- [4] The plaintiff was the only witness who testified on quantum. On the morning of 4 September 2018, the plaintiff travelled by motor vehicle from his place of abode on route to Vryburg. In his company was his uncle's son. At Vryburg, the plaintiff intended to purchase medication for his sheep.
- [5] On arrival at Vryburg, he parked next to a bottle store as he wanted to greet a friend. Resultantly, he alighted from his motor vehicle. Furthermore, his intended road of travel was barricaded by members of the South African Police Service, ("the SAPS"), as there was active community protest. It was noticeable that as part of the occurring protest, members of the community were burning tyres. The SAPS maintained a presence whilst this protest was taking place.

- [6] The members SAPS commenced with the discharging of firearms. This caused people to flee in the direction of the village, away from the plaintiff. Members of the SAPS pursued the fleeing people whilst simultaneously continuing with the discharging of firearms. Immediately on hearing the discharge of the firearms, the plaintiff ran in the direction of his motor vehicle. As he was about to enter his motor vehicle, experienced excruciating pain on his left flank and behind his right knee. This caused him to fall to the ground. However, he dragged himself into his motor vehicle and drove to the Joe Morolong Hospital.
- [7] On arrival at the Joe Morolong Hospital, he was conscious. The plaintiff was assessed and stabilised. On examination he presented with rubber bullet wounds to the left flank and knee. This was cleaned and dressed in the emergency room. The plaintiff was discharged on the same day with medication to take home and a follow up appointment scheduled.
- [8] In respect of the expert reports, the following succinct findings can be extrapolated from the joint minutes:
- (i) The incident has contributed to making him an emotional and defenceless person.
 - (ii) The plaintiff portrays residual cognitive deficits, intense anger, hopelessness, sadness, debilitating fears of the unknown and severe anxiety as recorded in our respective assessments.

- (iii) The plaintiff's experience of self-loathing, anguish, bitterness, emotional pain and distress, also contributes to fluctuations in his day to day cognitive functioning.
 - (iv) The plaintiff's quality of life has been severely compromised and he has suffered a significant forfeiture of amenities of life, social failures and a diminished sense of self-worth.
- [9] In terms of the joint minutes by psychiatrist, the plaintiff "has post-traumatic stress disorder".

Submissions by plaintiff

- [10] *Adv Maree* contends that because of the assault by members of the SAPS the plaintiff experienced excruciating physical pain and emotional trauma. The emotional injuries have a direct and negative impact on the plaintiff's quality of life.
- [11] To bolster his submissions on an appropriate amount for compensation for general damages *Adv Maree* referred to *Bapela and Another v Minister of Police* (10196/12) [2013] ZAGPJHC 256 (16 October 2013). *Adv Maree* underscored that in *Bapela* the plaintiff was assaulted by being shot with a rubber bullet on his left hand. The injury resulted in significant reduced functioning of his left hand. Moreover, the plaintiff suffered from emotional trauma and was diagnosed with major depressive and post-traumatic stress disorder. In 2013, the plaintiff was awarded R150 000.00 for

general damages. The current value calculated by using Kock CPI values as of 2022 would be an award of R229 910.96.

- [12] *Adv Maree* placed much reliance on *Louw v Minister of Police* (317/2019) ZANWHC 233 (12 October 2023), where the plaintiff was shot three (3) times with rubber bullets on her lower legs resulting in the plaintiff being hospitalised for five (5) days. Furthermore, the plaintiff was diagnosed with post-traumatic stress disorder. In 2023, the plaintiff was awarded R300 000.00 for general damages.
- [13] *Adv Maree* submitted that considering the seriousness of the plaintiff's physical and emotional injuries an amount of R250 000.00 will be fair and reasonable. In so far as interest is concerned, the contention ran that interest be granted from the date of demand or the date of summons. To reinforce this contention reference was made to section 2A(2)(a) of the Prescribed Rate of Interest Act 55 of 1975. *Motladile v Minister of Police* (414/ 2022) [2023] ZASCA 94, 2023 (2) SACR 274 (SCA) (12 June 2023), *Mmadu v Minister of Police* (3058/2019) [2024]. With respect of costs, the submission was that the defendant pays the plaintiff's taxed or agreed costs including the costs of counsel on scale B of the Rules.

Submissions by defendant

- [14] Adv Nyoka asserted that the plaintiff, a singular witness was an unimpressive witness. Simply put, the contradictions, inconsistencies and improbabilities diminished the weight of the plaintiff's evidence and ultimately should have an impact on the award for general damages. To this end, the diminished credibility of the plaintiff is illustrated by the following contentions:

"3.3 The Plaintiff during evidence stated that he "does not know how he was shot as the police officers and community members did not come to the direction of where he was standing.

3.4. He also stated that he drove himself to the police station and hospital. Thereafter he still went to his lawyer. He was not admitted in hospital but was just treated and released to go home.

3.5. The plaintiff confirmed that when he suffered injuries he was unemployed but a year later he was able to secure employment in 2019 and he is to date still employed in the same company. He is even a supervisor at work.

3.6. I submit that his evidence as witness should be weighed against factors which militate against his credibility. "

- [15] Against the backdrop of the plaintiff's impugned credibility Adv Njoka accentuated that the plaintiff was employed since 2019 and was even holding a supervisory position. To this end, the plaintiff has not suffered loss of competitiveness and is and will be able to compete at work despite his injuries.

[16] *Adv Nyoka* emphasised an award that be made in favour of the plaintiff should be fair and reasonable to all parties taking due cognizance of public policy. Notwithstanding, striving to attain what is required in terms of the legal epithet of fair and reasonable, a court's discretion should be influenced by sympathy for the plaintiff notwithstanding the distressing facts of the case. In the final analysis 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 vital that serious attempts be made to ensure that damages that are awarded are commensurate with the injury inflicted. *Minister of Safety and Security v Tyulu, Pitt v Economic Insurance Co Ltd* 1957 (3) SA 284 (D) at 287, *Oosthuizen and Another v Minister of Police* (408/18[2023] ZANWHC 56(16 May 2023) and *Hulley v Cox* 1923 AD 234 at 246.

[17] Founded on these contentions *Adv Nyoka* concluded that this Court should award an amount not exceeding R30 000 in respect of general damages, with each party to pay its own costs.

The law

[18] In *Mashigo v Road Accident Fund* (2120/2014) [2018] ZAGGPPHC 539) the court summarised the approach to be adopted by a trial court when assessing general or non-patrimonial damages as follows:

“[10] A claim for general or non-patrimonial damages requires an assessment of the plaintiff's pain and suffering, disfigurement, permanent disability, and loss of amenities of life and attaching a monetary value thereto. The exercise is, by its very nature; both difficult and discretionary with wide-ranging

permutations. As will be illustrated herein later, it is very difficult if not impossible to find a case on all four with the one to be decided. The oft-quoted same of Southern Insurance Association v Bailey NO 1984 (1) SA 98 AD confirmed that even the Supreme Court of Appeal had difficulty in laying down rules as to how the problem of an award for general damages should be approached. The accepted approach is the 'flexible one' described in Sandler v Wholesale Coal Supplier Ltd 1941 AD 1941 at 199, namely; the submissions were 'The amount to be awarded as compensation can only be determined by broadest general considerations and the figure arrived at must necessarily be uncertain, depending on the Judge's view of what is fair in all the circumstances of the case.'

- [19] In *Road Accident Fund v Marunga* 2003(5) SA 164 (SCA) the court held:

"This court has repeatedly stated that in cases which the question of general damages comprising pain and suffering, disfigurement, permanent disability and loss of amenities of life arises, a trial court in considering all the facts and circumstances of the case, the court has a wide discretion to award what it considers to be fair and adequate compensation to the injured party."

- [20] The assessment of the quantum of general damages is a comparative exercise of prior cases on bodily injuries. Relating this process, Potgieter JA in *Protea Assurance Co. Ltd* 1971 (1) SA 530 (A) at 530-536 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 to become a fetter upon the Court's general discretion in such matters..."

- [21] Past awards provide a guide only. Courts are expected to exercise a 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* 1957 (3) SA 284 (N) 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 it must not pour out largesse from the horn of plenty at the defendant’s expense”.

- [22] Eksteen J in *Ambrose v Road Accident Fund* 2011 (6C4) QOD 13 (ECP) at [48] also had this to say:

“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)).”

- [23] *Adv Njoka* did not refer this Court to any comparable cases for consideration, whilst *Adv Maree* placed much store on *Baleka* and *Louw*. In *Louw* the plaintiff whilst driving through the streets of Coldridge noticed a burning tyre. She then proceeded to the home of her father. After parking her car, the plaintiff walked with her son to a shop. On route she met a friend, Sally who joined them. The plaintiff observed a group of boys standing on the road. Several

unsuccessful attempts were made to contact members of the South African Police, ("the SAPS"), *via* cell phone. While standing there, they saw a police van emerging. Those on the street started to flee to evade the SAPS. A police officer alighted from the police van and started to discharge his firearm.

[24] The plaintiff was shot twice on her right lower leg and once on the left lower leg, whilst leaning against a palisade fence. After the shooting she went to the police station to lay a charge. Hereafter, she went to Joe Morolong Hospital to receive treatment for her injuries. At the hospital, she was seen and examined by a doctor. However, her wound was merely cleansed, and she was referred to a local clinic to have the wound dressed.

[25] Unfortunately, her wound did not show any signs of improvement. For this reason, the plaintiff again consulted with a private doctor who referred her for admission to a hospital. The plaintiff was subsequently admitted for five (5) days, from the 01 to the 05 May 2018, at the Vryburg Private Hospital.

[26] Whilst the plaintiff in *Louw* was also shot innocently, the other facts are distinguishable. First, she was shot three times. Second, she was admitted to hospital for five (5) days.

[27] In *Baleka*, on 19 August 2011 there was a huge service delivery protest march in Tembisa, Ekurhuleni. The protest march was well attended. The major road which links Tembisa and surrounding

areas was blocked with rocks, scrap metal and burning tyres. There was a heavy contingency of law enforcement both from the South African Police Services and the Ekurhuleni Metro Police. The first plaintiff was shot twice on the hand with rubber bullets; the first plaintiff was detained in the hospital for several days; the second plaintiff was in the company of police for a period of twenty-five minutes and later dropped at her house. Dr Wouter for the defendant examined the first plaintiff on 4 February 2013. He diagnosed him with significantly reduced function of the non-dominant hand. This conclusion was corroborated by Prof Biddulph for the first plaintiff. The latter expert recommended open reduction and internal fixation of the fourth metacarpal and bone graft. Once more, the facts in *Baleka* are distinguishable.

- [28] In *Minister of Safety and Security v Seymor* 2006 (6) SA 320 (SCA) the court held:

“The assessment of awards of courts damages with reference to awards made in previous cases is brought with difficulties. The facts of a particular case need to be looked at as a whole and few cases are directly comparable. They are a useful guide to what other courts have considered to be appropriate, but they have no higher value than that...”

- [29] This approach was also confirmed by the Constitutional Court in *Mahlangu and Another v Minister of Police* 2021 (7) BCLR 698 (CC) where it was held that the awarding of damages in such a case, is intended to deter and prevent future infringements of human rights, by an organ of state. Moreover, the apex court reiterated that the award of damages constitutes a goodwill gesture

for the successful plaintiff and not intended to try and rectify the wrong that has been committed.

[30] The perception that awards in actions of this nature are a compensation structure should not be fueled. The legal metaphor that aptly deserves consideration is that each case is decided on its own exigencies. Crucial factors that must be considered, fundamental to an award for general damages would be (i) the length of the pain (i) during the assault, (ii) during recuperation and (iii) possible future treatment.

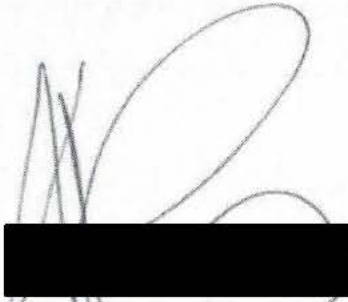
[31] In respect of costs, there is no basis to deviate from the general proposition that costs follow the result. Notwithstanding the award falling within the domain of the Magistrates Court, the plaintiff was justified in approaching the High Court. Accordingly, I will order costs on the High Court scale.

Order

[31] I accordingly make the following order:

- (i) The defendant is to pay the plaintiff and amount of R100.000.00
- (ii) Interest on the aforesaid sum at the legally prescribed rate from date of issue of summons to date of final payment.

- (iii) The defendant is ordered to pay the costs of suit on a party – and – party basis on the High Court Scale "B", to be taxed.

A handwritten signature in dark ink, consisting of a large, stylized 'A' followed by a large, loopy 'R' and 'E'.

A REDDY
JUDGE OF THE HIGH COURT OF
SOUTH AFRICA ,NORTH WEST DIVISION,
MAHIKENG

APPEARANCES

Date of Hearing:	15 October 2024
Date written heads submitted by plaintiff:	25 October 2024
Date written heads submitted by defendant	29 October 2024
Date of Judgment:	10 January 2025
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