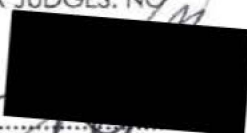




IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO:59487/2023

|                                                                                   |                                 |
|-----------------------------------------------------------------------------------|---------------------------------|
| (1)                                                                               | REPORTABLE: NO                  |
| (2)                                                                               | OF INTEREST TO OTHER JUDGES: NO |
| (3)                                                                               | REVISED.                        |
|  |                                 |
| DATE 15/09/2025                                                                   |                                 |
| LENYAI J                                                                          |                                 |

TEBOGO FLORINA MARY MAHLANGU

First Plaintiff

FANNIE DANIEL MAHLANGU

Second Plaintiff

And

MINISTER OF POLICE

First Defendant

RICHARD TOBANE

Second Defendant

*Delivered: This judgment is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading to Caselines. The date and time of hand-down is deemed to be 14:00 on 15 September 2025.*

## JUDGMENT

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### LENYAI J

- [1] In this matter the Court is required to adjudicate on a special plea of non-joinder raised by the first defendant.
- [2] The plaintiffs brought an action against the defendants arising from an incident where the first plaintiff's sons Kgaogelo and Bonolo Mahlangu were assaulted by the second defendant and three men namely, Billy Zondi, Joshua Makgatho and Godfrey George Mnisi. Kgaogelo Mahlangu succumbed to his injuries and passed on the same day, and his brother Bonolo was admitted to hospital. All the four men were convicted for murder and attempted murder and are serving their respective sentences except for Billy Zondi who has since passed away.
- [3] Initially the State Attorney defended the matter on behalf of both defendants but later withdrew as attorneys of record for the second defendant.
- [4] The plaintiffs instituted action against the defendants with the first plaintiff initially being Bonolo Mahlangu, who was then substituted by his mother, Mrs Mahlangu after his death recently. The claim of the first plaintiff is in respect of the following:
- 4.1 Past hospital and medical expenses incurred;
  - 4.2 General damages for the unlawful arrest and detention
- [5] The second plaintiff who is the father, also sought damages for himself in respect of the following:
- 5.1 Emotional shock suffered;

## 5.2 Funeral Expenses incurred.

- [6] The first defendant raised a special plea that the plaintiffs have failed to join, Joshua Makgatho, Godfrey Mnisi and the estate of the late Billy Zondi as parties to the action, since they have a direct and substantial interest in the order which the Court is likely to make in the event that they succeed with their claim.
- [7] The basis of this special plea is that the four have all been found guilty of the murder of Kgaogelo Mahlangu and the attempted murder of Bonolo Mahlangu, and on this basis they are all liable for any damages that the Plaintiffs have suffered.
- [8] The plaintiffs argued that they are not seeking anything from, Joshua Makgatho, Godfrey Mnisi and the estate of the late Billy Zondi. They submit that non joinder arises where another party has a direct and substantial interest in the matter, which is determined by the relief sought. A party can only be said to have direct and substantial interest in the matter if the relief sought cannot be sustained and carried into effect without prejudicing their interest.
- [9] The plaintiffs submit that they are only seeking relief against the two defendants and not against the three convicted persons, and therefore the relief sought does not impact on the three convicted persons and as a result they do not have a direct and substantial interest in the main legal action.
- [10] The plaintiffs also argued that they are entitled to choose their defendant from a group of wrong doers.
- [11] It is trite that a plaintiff can elect to sue only one of several potential defendants who contributed to the harm, a principle known as "*choosing your defendant*". I

am of the view that the plaintiffs have acted well within their rights in choosing the defendants and nothing impedes them to do so.

- [12] In the matter of **Gordon v Department of Health, Kwa-Zulu Natal [2008] ZASCA 99; 2008 (6) SA 522 (SCA)** at para 9 the court stated that:

*"if the order of judgment sought cannot be sustained and carried into effect without necessarily prejudicing the interests' of a party or parties not joined to the proceedings, then that party or parties have a legal interest in the matter and must be joined."*

- [13] Turning to the matter before the court, I am of the view that the relief sought against the defendants can be sustained and carried into effect without necessarily prejudicing the interests of the three convicted persons referred to by the first defendant, and as a result they do not have a direct and substantial interest in the matter and there is no need to join them.

- [14] Under the circumstances the following order is made:

1. The special plea of non-joinder is dismissed with costs on scale B.



MMD LENYAI J

JUDGE OF THE HIGH COURT  
GAUTENG DIVISION, PRETORIA

### **Appearances**

|                        |   |                 |
|------------------------|---|-----------------|
| Counsel for Plaintiffs | : | Adv F Kabini    |
| Instructed by          | : | Mongwadi Mohale |

|                             |   |                          |
|-----------------------------|---|--------------------------|
| Counsel for First Defendant | : | Adv DD Mosoma            |
| Instructed by               | : | State Attorney, Pretoria |