



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 2630/2020

In the matter between

NATHANIEL HENDRICKS

Plaintiff

AND

MINISTER OF POLICE

1st Defendant

MINISTER OF JUSTICE AND

CORRECTIONAL SERVICES

2nd Defendant

Date of Hearing : 22 May 2025

Date of Delivering : 01 October 2025

JUDGMENT

THULARE J

FINDING

- (a) The second defendant is liable for the damages sustained by the plaintiff as a result of the assault on the plaintiff in cell C6D on 8 April 2018 in Goodwood prison.
- (b) The second defendant is liable for the costs on scale B, including the costs of Professor LM Muntingh.

[1] This is an opposed action for damages instituted by the plaintiff against the defendants for damages for personal injuries sustained during an assault whilst the plaintiff was in pre-trial detention in Goodwood Prison. The plaintiff withdrew his claim against the first defendant. The issues of liability and quantum were separated, and the court had to determine liability only. The plaintiff testified in person and led the evidence of an expert witness, Professor Lukas M Muntingh (Muntingh). The defendant led the evidence of two of its officers, Kobese and Simane.

[2] The plaintiff was detained at Goodwood Prison from 18 September 2017 to 26 March 2018. He was a senior member of the 28-prison gang and was on awaiting trial detainee for a serious violent crime, the murder of Thurston Peterson. Upon admission at Goodwood, when offered an election, he had chosen to be placed in a cell with gang members and did not want a cell with non-gang members. This was in line with his stature in the prison gang culture. He was placed in a cell which had three prison gangs, to wit, the 26, 27 and 28 gangs. Plaintiff had been in and out of Goodwood prison throughout his life as a gang member and was aware of prison overcrowding, but still elected to be placed in a cell with alleged dangerous criminals belonging to rival gang members. The main gang inside the cell was the 28, followed by the 26. The gangs inside a cell occupy the space in line with the rank, hierarchy and chain of command. The most junior occupy the space next to

the main entrance, and seniority goes up the deeper you go into the cell. The most senior rank is at the end of the cell. Because of his seniority, he was very close to the end of the cell, which end was occupied by Mabra who belonged to the 28, the same gang as the plaintiff. This put plaintiff closer to the electricity network point where the kettle was boiled and illegally obtained cellphones were charged. There are two parallel authorities in a cell. There are the State authority and the gang authority. Prison gang rules and authority were enforced by violence in the cell and within the prison. As a senior, he participated in the enforcement of rules through violence. He was aware of the conditions associated with his detention in a cell with gang members including the controlled lawlessness in that gangs would exercise unlawful justice for non-compliance with gang rules.

[3] Goodwood prison employed what they called a privilege package system. Employees of the defendant assessed the cell in which plaintiff was detained, C6D and pursuant thereto decided to provide the detainees of the cell with a kettle on 13 March 2018 in accordance with that system. The kettle was provided to allow the inmates to prepare food including noodles, instant cereal porridge or to prepare tea or coffee. Employees of the defendant conducted regular inspections to ensure that the kettle was safe for use. Higher ranking gang members, including the plaintiff, controlled the use of the kettle and cigarettes as well as illegally obtained cellphones and drugs in the cell. In the absence of the legal provision of a kettle, inmates found other mechanisms of boiling water inside a cell and were known to construct what is called a bompie, which is a self-made water boiling appliance. On the date of the incident which gave rise to the claim, there was a disabled person who shared the cell wherein the plaintiff was detained, who used crutches which were kept in the cell for the benefit of the disabled detainee.

[8] On 8 April 2018 members of his own gang, the 28, led by Mabura, attacked the plaintiff whilst detaining him in the same cell. The plaintiff was held onto the bed and his mouth forced open. They poured boiling hot water into his mouth down his throat and onto his face and body. The boiling water was poured from the kettle which the defendant had supplied to the inmates to use and had been kept in the cell. He was also beaten by the metal crutches which were used by a disabled person who was in the cell and who was also a 28-gang member. The plaintiff was also punched with fists. It was members of the rival gang, the 26, who came to help the plaintiff inside the cell and prevented further injuries to him. A fight ensued between these two rival gang members in that cell. Kobese was the first correctional officer to react to what he called chaos in the cell and called for reinforcements. Upon arrival of reinforcements and the master key Kobese entered the cell and removed the plaintiff, who was already injured. Prison officials brought the fight to an end. Plaintiff was taken to the prison hospital for nursing and transferred to Karl Bremmer hospital for treatment. He was thereafter transferred to Tygerberg hospital for further treatment where he remained until 30 April 2018 and then transferred back to the prison hospital. Simane explained that the provision of a kettle in terms of the privilege package system was done on humanitarian grounds. A detainee makes a request, and the request is considered by the prison authorities. Once granted, the kettle becomes the responsibility of the detainee who requested it. Simane could not assist the court on the specifics around the request and its consideration on the specific kettle under consideration.

[9] The parties agree on the existence and applicability of this standing order. The second defendant denied violation of the standing order. The standing order reads:

1.12 It must be ensured that prisoners do not illegally misuse electrical plugs/tapping of power. Electrical appliances/equipment used for the preparation of food must not be allowed.

Muntingh has a PhD in law and a Masters in Sociology. He has for a number of years been involved in research around criminal justice reform and has written a number of peer reviewed material on prison and prison conditions in South Africa and in Africa including on pre-trial detention, number prison gangs and prisoners' rights. I accept that Muntingh is an expert, amongst others, on pre-trial detention. I also accept his observation, citing the Geneva-based *Association for the Prevention of Torture*, that the duty of a state includes that prison authorities have a positive obligation to prevent violence amongst the detainees they are responsible for and that this responsibility includes the duty of care and the adoption of preventative measures to reduce the risk of violence as well as to protect the most vulnerable detainees. Prison officials have an obligation to prevent inter-prisoner violence. If they fail to exercise due diligence to prevent inter-prisoner violence, they should be considered authors, complicit or otherwise responsible for acquiescing in such violence.

[10] I am persuaded by the observations of Muntingh with specific reference to boiling water and electrical equipment in cells. The use of boiling water by prisoners was not an extra-ordinarily unknown phenomenon to the prison authorities. Muntingh points out that boiling water has been noted to be used as a weapon by prisoners and that its impact as a weapon was significantly intensified

by mixing sugar into the boiling water which will raise the temperature and sustaining a higher temperature for longer, resulting in more severe injuries [Suzy Gidson, Inmate Throws Boiling Water and Sugar Over Fellow Prisoner, *LeicestershireLive* 28 January 2019; Mawhinney Ja et al, Does Prison Napalm Work? Measuring the Coolong Temperature of Sugar Solution Burns in a Porcine Model, *Burns: Journal of the International Society for Burn Injuries*, 20 September 2021}. Muntingh noted that from the Northern Territories of Australia, it was reported that prison officials wanted a ban on boiling water imposed after one of their colleagues was attacked by a prisoner with boiling water [Prison Officers Want Kettle Ban (ABC News (Australia, 7 December 2011).

[11] The kettle which was in cell C6D contemporaneous with the detention of the plaintiff in that cell, was in the cell in contravention of the Standing Order 2, Chapter 6, section 1.12. As Muntingh observed, the provision of the Standing Order does not enable an explicit deviation. Muntingh suggests two motivations for the prohibition of cooking equipment including a kettle, in a cell. The first is that it may enable unsafe if not illegal connections to electricity points such as plugs and light fittings. His opinion is that these connections may place the prison's electrical system at risk of frequent short circuits. The second is that boiling water poses a significant risk in a communal cell, be that by accident or intent to both staff and prisoners. Muntingh noted that awaiting trial detainees are classified as maximum security and that to allow a high-risk item like a kettle into a population that has not undergone a thorough risk assessment as provided for in section 38 of the Correctional Services Act, 1998 (Act No. 111 of 1998) (the CSA) would be to invite risk. Muntingh made reference to Regulation 26A(2) of the Regulations issued in terms of the CSA, The Regulation reads as follows:

26A Food and Drinks

(2) Food that needs preparation is not allowed and preserved or canned food may not be brought into the remand detention facility or the correctional centre, as the case may be.

The reasons for the provision of the kettle to enable the remand detainees to prepare tea or coffee or instant meals was clearly in contravention of the Regulation. The presence of food that needed preparation in Cell C6D was not allowed by the Regulation.

The Privilege Package System

[12] The second defendant did not plead this privilege package system. It became a defence which the second defendant elected to develop during the trial. It is impermissible for a party to plead one defence and then seek to establish a different case at trial and it is equally impermissible for the court to have recourse to issues falling outside the pleadings when deciding a case [*Minister of Safety and Security v Slabbert* [2010] 2 All SA 474 (SCA) at 475]. Ordinarily this should be the end of reliance on the privilege package system. In the light of the importance of the issue, I deem it appropriate to make some further comments. The Procedure Manual on Privilege System for Remand Detainees sets out its purpose as follows:

1. Purpose

The Amenities Programme for Remand Detainees and related procedures are aimed at ensuring that remand detainees have access to their rights along with prescribed privileges during their detention and that DCS personnel have their guidelines on the implementation of these Remand Detention Facilities.

The CSA defines amenities as follows

1 Definitions

'**amenities**' means recreational and other activities, diversions or privileges which are granted to inmates in addition to what they are entitled to as of right and in terms of this Act, and includes-

- (a) exercise;
- (b) contact with the community;
- (c) reading material;
- (d) recreation; and
- (e) incentive schemes;

As regards food, the Manual provides that no food that needs further preparation may be received or allowed. The Manual has express provisions which deals with provisions which were intended to make life more pleasant or comfortable for remand detainees, including private music instruments, written or telephonic communication, visits, exercise and the use of recreational facilities.

[13] I am not persuaded that the Manual was the source of authority to provide a kettle to remand detainees in contravention of the Standing Order 2, Chapter 6, section 1.12; Regulation 26A(2) of the Regulations issued in terms of the CSA as well as the Manuals own prohibition on food that need further preparation. In clause 17 the Manual made provision to apply to receive personal and recreational items. The Policy Principle in the Manual in that clause reads:

Affording every RD an opportunity to access prescribed recreational or personal possessions for recreational purpose/activities. RDs to note such considerations will be at own cost and own risk of the items requested.

The Commissioner for Correctional Services cannot issue an instruction that contradicts a Regulation issued by the Minister in Cabinet in terms of the CSA.

The Commissioner cannot legitimately issue an instruction that contradicts his own prior Standing Order without withdrawing the former. The Commissioner cannot issue an instruction that contradicts a Regulation issued in terms of the CSA and his own Standing Order and then pass the risk arising from that illegitimate instruction to a remand detainee. To the extent that the Manual is interpreted to authorize the issue of a kettle in an overcrowded cell full of gangsters awaiting trial for serious violent crimes, where it is known that gangs enforce discipline through violence, that interpretation renders those provisions in the Manual unlawful. The lawful interpretation of the Manual makes no provision for electrical appliances or equipment used for the preparation of food in the cells. The second respondent cannot rely on the lawful interpretation of the Manual for providing the kettle to remand detainees inside a cell. The second defendant cannot use the privilege package system in justifying its provision of the kettle to the detainees in the cell.

[14] There is no record provided by the second respondent that showed that the Head of Goodwood Remand Detention Facility applied their mind, against the background of Regulation 26A(2), the Standing Order 2, Chapter 6 section 1.12 as well as the Manuals prohibition of food that required further preparation, to the request to provide a kettle, if any such request was made at all. Prison officials who testified for the second defendant did not have any knowledge of such application or its path of travel of consideration leading up to the approval. There is no record that the Head of Goodwood Remand Detention Facility applied his mind to the risk of allowing a kettle to facilitate the availability of boiling water in cell C6D, where gangsters detained for allegedly committing serious violent crimes were held, as envisaged in consideration of an application for personal and recreational items in the Manual, clause 17. In the absence of any record or explanation, the inescapable

conclusion is that the provision of the kettle was negligent, with a deliberate disregard of the regulatory framework governing electrical appliances/equipment used for the preparation of food in cells, which is prohibited without any allowance for deviations.

Relief

[15] The kettle is an electrical appliance or equipment which was provided and used for the preparation of food which included tea/coffee, noodles and instant cereals or porridge. The kettle was not lawfully provided to the cell. It was provided in violation of a Regulation issued in terms of the CSA, the Standing Order and the Manual on the Privilege Package System. There was no justification for the provision of the kettle. A barren claim to humanitarian grounds, under the circumstances, is simply not a cut to size. The Privilege Package System cannot impermissibly conflict with the provisions of the Act, Regulations and Standing Orders. The provision of the kettle was inherently dangerous but the second defendant proceeded to provide it outside the regulatory framework and in the absence of an assessment. The second respondent has a duty to take steps that are necessary to ensure the safe custody of every inmate and to maintain security and good order in every correctional centre [section 4(2) of the CSA]. The second defendants provision of the kettle, a prohibited item, to high security risk remand detainees was unlawful. The second defendant did not establish any defence to the risk it had knowledge of and had appreciation of its ambit but was reckless against it. The applicant sustained injury in consequence of that risk. The onus was on the second defendant to prove that provision of the kettle was reasonable and

legitimate [*Mabaso v Felix* 1981 (3) SA 865 (A) at p 876E-F]. From the facts, the provision of crutches to a disabled detainee in the cell was reasonable and legitimate. The second defendant did not set out facts for his defence on the provision of the kettle to be upheld [*Pillay v Krishan and Another* 1946 AD 946 at p 951 to 952]. In the provision of a kettle, which was prohibited for the security risk it posed, the prison officials provided it with the foresight of a reasonable possibility of harm [*Mkhatswa v Minister of Defence* 2000 (1) SA 1104 (SCA) at 1112H]. There was a legal duty on the prison officials to avoid negligently causing remand detainees harm [*Minister of Safety and Security v Van Duiwenboden* [2002] 3 All SA 741 (SCA) at para 12]. The prison officials ought reasonably and practically to have prevented harm to the plaintiff. Failure to do so constituted wrongfulness on the part of the second defendant [*Minister of Justice and Correctional Services v Jahmal* at para 44]. The policy and the legal convictions of the community, even within the context of the advancement of prisoner rights, constitutionally understood, do not regard provision of items that pose a security risk to other inmates as acceptable [*Loureiro v Invula Quality Protection (Pty) Ltd* 2014 SA 398 CC at para 53]. Harm-causing conduct is wrongful. For these reasons the order was made.

DM THULARE

JUDGE OF THE HIGH COURT

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