



**IN THE HIGH COURT OF SOUTH AFRICA, MPUMALANGA DIVISION,
(MBOMBELA MAIN SEAT)**

Case No.: 408/2023

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED **YES/NO**

13 NOVEMBER 2025
DATE

NGWENYA AJ
SIGNATURE

In the application between:

MXOLISI MAPHANGA

PLAINTIFF

And

MINISTER OF POLICE

DEFENDANT

JUDGMENT

NGWENYA AJ

[1] The Plaintiff is suing the Defendant for the alleged unlawful shooting that took place on the 10th June 2022.

[2] In his particulars of claim ("POC"), the Plaintiff alleges that :

“On or about the 10th June 2022 at or near White House Tavern in Mashonamini Trust at Kabokweni at about 23:45, was in the company of Bheki Manikela and other various people, the Plaintiff was unlawfully and intentionally shot from behind through the back right thigh during a raid by members of the South African Police Services due to the Plaintiff being mistaken for a suspect apparently being pursued by the police officers.”

[3] He further alleges that, as a result of the unlawful conduct of the Defendant, he suffered the following damages:

3.1	Pain and discomfort:	R 200 000.00
3.2	Scarring and disfigurement:	R 100 000.00
3.3	Loss of amenities to life:	R 800 000.00
3.4	Loss of earnings	R1 000 000.00

[4] He therefore claims a total of R2 100 000.00.

[5] The Plaintiff's particulars of claim were served on the Defendant on the 31st of January 2023 and also on the State attorney on the 01st of February 2023.

[6] The Defendant filed its notice of intention to defend on February 8, 2023, and failed to file a plea.

[7] On March 6, 2023, the Plaintiff delivered a notice of bar on the Defendant. The latter failed to file its plea despite the notice of bar.

[8] As a result, this matter was heard unopposed.

[9] At the hearing of the action, the Plaintiff made an application in terms of Rule 38(2) for the admission of expert evidence by way of affidavits. The Plaintiff testified in person.

[10] The Plaintiff's testimony in brief is as follows:

- 10.1 He is 28 years old.
- 10.2 Not married.
- 10.3 No children.
- 10.4 His highest educational grade is grade 6.
- 10.5 On June 10, 2022, at 12:00 midnight, he was at the Tavern called White House in Mashonemini. He was wearing a maroon jersey.
- 10.6 He was shot by a police man who uttered the words that he shot the wrong guy. He was shot in the knee, and the people around him were perplexed as to why he was shot. He further testified that he was hospitalised for 1 month.

[11] I was referred to the clinical records on page 191. According to the clinical records:

- 11.1 The Plaintiff was admitted to Themba Hospital on the 11th June 2022 at 00:15. The Plaintiff was brought in by the SAPS.
- 11.2 The medical staff observed that he had sustained a gunshot wound to the right thigh and that there was an exit and entrance wound.
- 11.3 On the same day, he was attended to and examined by Dr Chimusoro, who made the following finding:
 - 11.3.1 Bullet fragments were projected over the right thigh.
 - 11.3.2 Normal aorta.

- 11.3.3 Intact iliac vessels.
- 11.3.4 Patent femoral arteries.
- 11.3.5 Normal popliteal arteries.
- 11.3.6 Normal trifurcation.
- 11.3.7 Clear dorsalis pedis arteries.
- 11.3.8 No arterial dissection bilaterally.
- 11.3.9 No early venous filling to suggest formation of arteriovenous fistula.
- 11.3.10 No arterial injury.

[12] I now turn to the expert evidence of the orthopaedic surgeon, Dr CK Kousok. The latter examined the Plaintiff on April 19, 2024.

[13] He formed the following opinion and recommendations:

- 13.1 The Plaintiff currently complains of pain worsened by cold weather and on exertion.
- 13.2 The Plaintiff walks with a foot-drop gait as a result of his injury.
- 13.3 Both the tibia and peroneal branches of the sciatic nerves of the right foot are affected.
- 13.4 He recommended pan-talar arthrodesis of the right foot.

[14] Regarding pain and suffering he recorded the following:

- 14.1 The Plaintiff suffered 3 weeks of acute pain.
- 14.2 He still experiences right thigh pain.
- 14.3 He is no longer able to play recreational soccer.
- 14.4 Injuries sustained will not affect natural survival.

[15] Dr Kousok further found that the Plaintiff is not disabled but has impairment of the right lower limb.

[16] Now I turn to consider whether the Defendant is liable for the injuries sustained by the Plaintiff. Considering the uncontroverted evidence of the Plaintiff and the clinical records, I am satisfied that the Plaintiff sustained the injuries mentioned in the clinical records and the report of Dr Kousok is a result of the Defendant's wrongful and unlawful conduct.

[17] I am also satisfied that there is a causal nexus between the damages suffered by the Plaintiff and the wrongful and unlawful conduct of the Defendant.

[18] I am also satisfied that the Plaintiff is entitled to damages. The Plaintiff has claimed an amount of R1 100 000.00 for damages, albeit compartmentalised into pain and discomfort, scarring and disfigurement and loss of amenities to life. All of these constitute general damages.

[19] The award of general damages is a matter of discretion and comparison with previous cases. In *Sitimela v Mphara and Another (21719/2010) [2024] ZAGPJHC 240 (29 February 2024)*, the court awarded an amount of R300 000.00 as damages. The Plaintiff in that matter suffered severe injuries when he was shot by police close to the chest and spent many months in hospital. The Plaintiff in this matter sustained less severe injuries, as per the report of Dr Kousak, and I therefore find that a fair and reasonable amount of damages is R175,000.00.

[20] Regarding loss of earnings, I am not satisfied that the Plaintiff made out a case either in the particulars of the claim or during evidence.

[21] In the premises, I make the following order:

1. The Defendant is liable for 100% of the Plaintiff's damages as suffered as a result of the unlawful shooting that occurred on 10 June 2022.
2. The Defendant shall pay to the Plaintiff an amount of R175 000.00 for general damages as a result of the unlawful shooting that occurred on 10 June 2022.
3. The Defendant pay the proven costs of experts.
4. That the Defendant shall pay to the Plaintiff the party-to-party costs of this action on the High Court Scale B.
5. Absolution from the instance regarding the claim for loss of earnings.



NGWENYA AJ
ACTING JUDGE OF HIGH COURT, MBOMBELA

For the Plaintiff: Adv. SE NHLABATHI
Tel : 013 752 2221
Email Address adv.senhlabathichambers@gmail.com

For the Defendant: State Attorney, Nelspruit
Tel : 013 101 3722
Email Address DFMakamu@justice.gov.za

Date of hearing: 02 June 2025
Date of judgment: 13 November 2025