



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

Case No.: 2705/2021

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED YES/NO
[REDACTED]	
06/02/2026	
DATE	SIGNATURE

In the matter between:

KHOZA AUBREY PATRICK

PLAINTIFF

And

MINISTER OF POLICE

DEFENDANT

JUDGMENT

NGWENYA AJ

INTRODUCTION

[1] The Plaintiff is suing the Defendant for alleged unlawful arrest, detention and assault with a firearm.

[2] The incident allegedly took place on the 28th of August 2020.

[3] The heads of damages are categorised as follows:

3.1 Unlawful arrest and detention R 100 000.00

3.2 Unlawfully inflicting a deadly wound/shooting/assault R3 600 000.00

[4] In the alternative, the Plaintiff is claiming general damages in the amount of R 4 000 000.00 (Four Million)

THE EVIDENCE

Defendant's version

[5] As is trite, in matters of unlawful arrest and detention, the Defendant has the onus of proof. Accordingly, the Defendant testified first. In that regard, it called Sergeant Makamu.

[6] Sergeant Makamu testified that he and his colleagues received intelligence from intelligence officers regarding a stolen silver hatchback. The information was received via a phone call on the 10111 hotline.

[7] As they responded to the call and were driving along the R40 road, they observed the wanted vehicle. As the wanted vehicle approached the roundabout, it turned left, then drove a short distance and stopped abruptly. The driver alighted and took off.

[8] As they approached, a gunshot went off, and according to Sergeant Makamu's observation, the gunshot came from the passenger's side of the vehicle. His colleague, Mr Nkosi, who was approaching the wanted vehicle from the driver's side, was shot on his hand.

[9] The passenger tried to run away and escape through the driver's side as they caught him while he was seated in the driver's seat. The police, including

Sergeant Makamu, retaliated and shot back, and removed the passenger who was seated in the driver's seat.

[10] According to Sergeant Makamu, the passenger was found with a 9mm pistol with two rounds of ammunition.

[11] He further mentioned that when they searched the vehicle, they found a passenger in the back of the vehicle who was shot and injured.

[12] When questioned whether the vehicle matched the wanted vehicle, he responded, 'Yes, it was.'

[13] The Court then asked him the following questions:

13.1 What time was it? He stated that it was getting dark around 6 pm in August.

13.2 How many vehicles were there, and were they marked? He stated that some were marked and others were not.

13.3 Whether the cars had blue lights and whether sirens were on. He stated that the vehicles lacked blue lights or sirens.

[14] Under cross-examination, he testified as follows:

14.1 When questioned, why the police investigation diary at page 245 of the bundle stated that the vehicle was used in the commission of a crime and was not stolen. He responded that he did not know why it was recorded that way. He was also referred to the cover of the case docket at page 277, which recorded the charge as possession of a stolen vehicle.

- 14.2 When asked why the Plaintiff was not charged with attempted murder if indeed he shot Sergeant Nkosi. He responded that he did not know and that the detectives, not he or his team, charged the Plaintiff.
- 14.3 He was also questioned why they did not announce their presence through sirens to indicate that they were Police officers. He responded that the suspects shot first.
- 14.4 It was put to him that the Plaintiff will testify that there was no firearm in the wanted vehicle. He stated that it was untrue because the firearm was booked under SAP13.
- 14.5 It was put to him that in his statement at page 243 of the bundle, he stated that the firearm was a revolver, not a 9mm pistol, as he had testified in examination in chief. He responded that they found a revolver, which later turned out to be a toy gun and a 9mm pistol.
- 14.6 When it was put to him that the docket does not record the 9mm pistol and the 2 rounds of ammunition. He responded that it was untrue.
- 14.7 It was put to him that the charges were conflicting, as the docket refers to the commission of a crime through the vehicle, and his testimony is that the vehicle was stolen and that there was possession of a firearm. He responded that the charge is that of a stolen vehicle.
- 14.8 It was put to him that the reason the charges are conflicting is that the Police are seeking to frame the plaintiff. He did not respond to this proposition.
- 14.9 He was asked whether the Plaintiff was under arrest in the hospital. He responded that 'yes, he was under arrest'.
- 14.10 He was asked whether the Plaintiff was cuffed at the hospital. He responded 'no'.

14.11 Counsel for the Plaintiff put to him that the Plaintiff was cuffed to the bed. He responded that that was not correct.

[15] Under examination in chief, he testified as follows:

15.1 When he was asked how many vehicles they were travelling in. He stated that it was 4 vehicles.

15.2 When asked whether the vehicles were marked. He responded that 3 were marked.

Plaintiff's version

[16] The Plaintiff testified that he got a lift from the wanted vehicle. Upon entering the vehicle, there were 2 occupants; the vehicle was a 2-door sedan, and he had to sit in the rear.

[17] The vehicle travelled a short distance, and the driver applied the handbrake and stated that he intended to obtain a spare wheel. He then exited the vehicle and began running.

[18] As he watched the driver running, he heard a gunshot and felt a burning sensation in his right arm and chest.

[19] When asked whether the remaining occupants in the vehicle shot at the Police, he responded 'no'.

[20] After the shooting, he heard a loudspeaker saying 'police, police, police'.

[21] He came out of the vehicle and lifted his hands up, and as he was lying down, a police officer forced him to hold a gun and kicked open his legs.

[22] He was cable tied, and as he was lying on the floor, he heard another gunshot and then asked the police to call the ambulance, as he was in pain. Another police officer came and put danger tape around the scene.

[23] A police officer with gloves wanted to take the gun, but discovered that it was a toy gun.

[24] He was handcuffed to the ambulance bed, and the police escorted the ambulance.

[25] When asked how much time he spent in the hospital, he said he spent 3 days under police guard.

[26] When asked whether the police explained his rights. He responded that they told him that the vehicle was stolen.

[27] When asked what happened when he was released from the hospital. He stated that he was taken to the police station and placed in custody.

[28] He stated that he was charged on the same day and that his rights were not read to him, but that he was informed of the charge against him.

[29] He testified that he spent one night at the police station, and that the condition of the cell was not good, and that he slept on the floor. He further stated that he was released by court officials without being prosecuted.

[30] He said the bullet hit him on the right arm and grazed his chest. He explained that his hand does not function properly.

[31] He said that he was employed at McDonald's, and he is no longer working as the doctor told him his hand is now disabled, and he is now receiving a pension or an old age grant.

[32] Under cross-examination, he was asked to comment on the testimony of the defendant's witness. He said that he does not agree that there was a firearm in the vehicle and that the occupants fired shots at the police.

[33] He said the witness was lying in some respects.

[34] When questioned about the discrepancy in his employment, he stated that, at the time of the incident, he was at home due to the lockdown, but was still receiving a salary. He was referred to his warning statement at page 236, where he states he is unemployed, and to page 10 of his pleadings, where he states he worked at a mine.

[35] He reiterated that he was employed by McDonald's; even when pressed about the conflicting accounts, he maintained that he was employed by McDonald's.

[36] He testified that when he asked for a lift, he wanted to go to town to buy drinks for his kid's birthday and his own alcohol.

[37] He reiterated that when the police wanted him to hold the gun, he refused, and when he refused, the policemen rubbed it against his thigh. When he was asked why the police were doing that, he stated they wanted to print his fingerprints on it.

[38] He testified that the other men who were in the vehicle did not have guns and that he did not see any.

[39] Regarding the gun which the police wanted to put in his hand, he said that he did not know where it came from, but the police brought it. He denied that there were other shots other than those that came from the police.

[40] When asked about the version of Sergeant Makamu that his colleague, Mr Nkosi, was shot, he said that there is no proof, as the witness did not testify to that effect.

[41] He further testified that he questioned why he was detained at the hospital, and the police could not answer him.

[42] When he was asked whether he agreed that the police approached the vehicle because it was suspected of being stolen. He stated that he understood this was the police and, when instructed, complied.

Evaluation

[43] The Defendant's version is probable from the submissions about the phone call of a suspected stolen motor vehicle up to the point where the shooting begins. I find it reasonable for the police to pursue the vehicle because it matched the description provided in the 10111 call.

[44] However, I find it unnecessary to have fired at the vehicle's occupants. According to Sergeant Makamu's evidence, the driver of the vehicle stopped and started running. Therefore, there is no indication that the driver or the occupants were a threat to the police officials.

[45] The evidence of gunshots originating from the wanted vehicle is untrue, as there were no bullets found in the vehicle. The SAP13 or the docket refers to a revolver which turned out to be a toy, and I believe the Plaintiff, when he said this was planted by the police. I say so because Sergeant Nkosi, who was allegedly shot on the hand, did not come to testify, nor was a J88 confirming his injuries provided during the trial.

[46] The detention of the Plaintiff was not justified, at least on the next day of hospitalisation, when one would expect the police to have established that the Plaintiff had not committed any offence. It also does not help that the charges allegedly preferred against the Plaintiff were inconsistent. The prosecution also found that there was no case against the Plaintiff; accordingly, he was released on the first day of his appearance before the court.

[47] In the premises, I find that the police failed to prove that there was no probable cause for the assault with a firearm on the Plaintiff and that there was no need for further detention of the Plaintiff from the 29th of August 2020.

Appropriate award

[48] I shall start with the assault. According to the orthopaedic surgeon's report (Dr ND Thikhathali), the following was recorded:

- 48.1 The impairment score for the permanent scars and section 10.2 is a WPI=3%; the impairment score is a WPI=19%.
- 48.2 The patient sustained a serious injury involving the right ulnar nerve and the chest wall. Management of the ulnar nerve injury has resulted in residual weakness and loss of hand function.
- 48.3 These injuries and their outcomes have left serious long-term impairments of the hand with significant loss of functions. Hand function improves following multiple reconstructive procedures, including tendon transfers.
- 48.4 The sustained nerve injury has resulted in serious long-term impairments with loss of hand function in the affected hand.

[49] Both counsel for the Plaintiff and the Defendant referred me to case law to determine the quantum of damages for the assault. In *Minister of Safety and Security v Seymour 2006 (6) SA 320 (SCA)*, the Court held that:

"The assessment of awards of general damages with reference to awards made in previous cases is fraught with difficulty. 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..."

[50] Both counsel referred me to the case of Stimela v Mpara and Another (21719-2010) [2024] ZAGPJHC 240 (29 February 2024).

[51] Plaintiff's counsel, after referencing this case, asked for R600 000.00. On the other hand, counsel for the Defendant, after referencing the same case, asked for an amount of R150 000.00

[52] Having considered this case and other authorities, such as Nthebolang v Minister of Police (2200/2018) [2025] ZANWHC 6 (10 January 2025), in which the Plaintiff suffered rubber-bullet injuries, the Court awarded R100 000.00. The injuries are less serious than those of the plaintiff in this case. However, the Plaintiff's injuries are less severe than those injuries suffered by the Plaintiff in the matter of Stimela v Mphara.

[53] I do agree that the Plaintiff was seriously injured because, according to the orthopaedic surgeon, the Plaintiff suffered a permanent disfigurement and will struggle to do physical work. In the circumstances, I find that a reasonable and fair amount is R395 000.00 (Three Hundred and Ninety-Five Thousand Rand).

[54] Turning to the award for the detention. Again, both counsel referred me to case law, and I find myself aligning with the Defendant's case referred to in its heads of argument in Mdluli v Minister of Police (1928/2023) [2025] ZAMPMBHC 55 (18 June 2025), where the court awarded the Plaintiff R80 000.00 for being detained 5 days. In this case, the Plaintiff was detained for 5 days in police cells. In this matter, the Plaintiff spent the majority of their incarceration in the hospital. I take note that he had to be in the hospital for treatment as well. He was in police custody for only 1 night. In the circumstances, I find that a fair amount is R135 000.00 (One Hundred and Thirty-Five Thousand Rand).

[55] In respect of costs, there is no basis to deviate from the general proposition that costs follow the result.

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

1. The Defendant is to pay the Plaintiff an amount of R395 000.00 for the unlawful assault (shooting);
2. Interest on the aforesaid sum at the legally prescribed rate from the date of issue of the summons to the date of final payment;
3. The Defendant is to pay the Plaintiff an amount of R135 000.00 for unlawful detention;
4. Interest on the aforesaid sum at the legally prescribed rate from the date of issue of the summons to the date of final payment;
5. The Defendant is ordered to pay the costs of the suit on a party-to-party basis on the High Court scale B to be taxed.



NGWENYA AJ
JUDGE OF HIGH COURT, MPUMALANGA DIVISION,
MBOMBELA (MAIN SEAT)

Appearances:

Date of hearing:

05 June 2025

Date of judgment:

06 February 2026

Counsel for the Plaintiff:

Adv. LH Makamu

Instructed by:

Phila Attorneys

59 Marias Street

First floor, Mbombela

Tel :

013 001 0502

Email Address

bhila@btattorneys.co.za

Counsel for the Defendant:
Instructed by:

Adv. LD Maleka
State Attorney
52 Samora Machel Drive
R104 West Acres
Administration Building
3rd floor
Mbombela High Court, Mbombela

Tel :
Email Address:

013 101 3277
MMsiza@justice.gov.za