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Circulate to Regional Magistrates	NO

**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MMABATHO**

CASE NO: 1089/2022

In the matter between:-

STEPHANUS JANSEN VAN VUUREN

Plaintiff

and

THE MINISTER OF POLICE

Defendant

This judgment is handed down by electronic circulation to the legal representatives of the parties via e-mail. The date of the judgment is deemed to be 23 March 2026.

JUDGMENT

FMM REID J

[1] This is a claim for damages suffered by the plaintiff as a result of an unlawful arrest and detention on 25 February 2016, as well as a claim for damages suffered in an assault whilst in police custody during 25 and

26 February 2016. The plaintiff is an adult male born on 8 February 1976 and he was 40 years old at the time of the arrest and detention. [2] The merits of the claims arising from the arrest and detention were conceded by the defendant (Minister of Police – SAPS) in favour of the plaintiff. This concession to the merits was made an order of court on 26 October 2017 and reads as follows:

“The defendant shall be liable to pay to the plaintiff such amount as the plaintiff might be able to prove in respect of the plaintiff’s damages suffered subsequent upon the plaintiff’s unlawful arrest on the 25th day of February 2016 at 13h00 and the Plaintiff’s subsequent detention until the 26th day of February 2016 at 10h30.”

[3] The following are issues in dispute:

- 3.1. The *quantum* for damages suffered as a result of the unlawful arrest
and detention.
- 3.2. Whether the plaintiff was assaulted during his police custody.
- 3.3. If so, the *quantum* for damages suffered as a result of the assault.

[4] The particulars of claim sets out the claim as follows:

“8. As a result of the wrongful arrest and detention of the plaintiff by the said police officers and the assault of the plaintiff as described in paragraph 7 thereof, the plaintiff experienced:

- 8.1 Contumelia;*
- 8.2 Deprivation of freedom and discomfort;*
- 8.3 Emotional shock;*
- 8.4 Loss of earnings and earning ability;*
- 8.5 Future medical expenses;*

- 8.6 *Suffered loss of the enjoyment and amenities of life.*
- 9. *As a result of the foregoing, the plaintiff suffered, and will suffer the following damages:*
 - 9.1 *Estimated loss of earnings and earning capacity R2,000,000.00.*
 - 9.2 *Future medical expenses R800,000.*
 - 9.3 *General damages in respect of suffering and discomfort, emotional shock and trauma, loss of amenities of life and a non-pecuniary aspect of a disability R400,000.*
- TOTAL: R3,200,000.00”.*

- [5] During 2022 and prior to the trial commencing, the plaintiff amended its particulars of claim to include the assault during the arrest and detention.
- [6] The trial has a long and fragmented history, with multiple postponements. The evidence presented to this Court includes the plaintiff's personal testimony, as well as expert medical evidence of the injuries suffered in orthopaedic, neurological and psychological fields. Both the plaintiff and defendant presented expert evidence on the financial impact (by means of industrial psychologists and actuaries) suffered by the plaintiff. The defendant denies that the plaintiff suffered any damages and denies that the plaintiff was assaulted whilst in police custody.
- [7] The defendant relies on the plaintiff's pre-existing condition of spondylosis (age-related wear and tear) and claims that (a) no assault has been proven, and (b) if an assault has been proven, there is no causal link between the arrest, detention and alleged assault with the injuries suffered on the basis that spondylosis was the cause of the injuries. The defendant denies that the plaintiff suffered any loss of income, on the

basis that the plaintiff was not employed at the time that the arrest occurred.

- [8] The following was evidence that were tendered during the hearing of the matter.

Plaintiff: Mr. Stephanus Jansen van Vuuren

- [9] Mr. van Vuuren gave a detailed and emotional account of the events of 25 February 2016. He voluntarily visited the police station to give a statement about a theft case that was opened against him by his former employer. At the police station he unexpectedly was arrested for theft. After being placed in detention, he was assaulted in a police holding cell by two co-detainees. After the assault, he was moved to another cell with about 14 other detainees.

- [10] I will refer to the arrest and detention (and alleged assault) as “the incident”.

- [11] The plaintiff described that in the 1st holding cell at the police station, he was aggressively pushed against a wall, which resulted in immediate pain in his lower skull and neck. This aggressive push constituted the assault. He was terrified and cried in fear.

- [12] In the cell, he was provided with no bedding, he was afraid to use the open toilet, and stayed awake all night, terrified of being assaulted again or raped.
- [13] The next day he was taken to court, only to be told there was “no case” against him. He broke down crying in that court, feeling relief but he also experienced profound confusion and anger for the reason of his arrest in the first place.
- [14] He has since suffered from a constant fear of the police, anxiety in public, and has a complete loss of trust in people outside his immediate family. His confidence in the police was destroyed.
- [15] Prior to the incident, he earned R4,800 per month as a mechanic/wheel alignment technician.
- [16] After his release, he was unemployed for a period of 3 years, surviving on odd jobs from his father-in-law (earning approx. R2,000 pm) and selling scrap metal. In 2019, he started working for JBH Holdings as a general farm worker for R3,000 pm. He was later moved to their factory as a supervisor, earning R4,600 pm until February 2024, when his salary was increased to R6,400 pm (paid partly in cash, partly into his bank account).

[17] He had no neck pain or health issues before the arrest. The medical examinations after the incident did establish a prior existing condition of spondylosis of the spine.

[18] Immediately after the alleged assault, he started experiencing headaches, and over time developed persistent pins and needles in his left arm, weakness, and cold fingers. He sought help at clinics and hospitals but was only given pain medication. He felt that his complaints were not taken seriously.

Occupational Therapist: Ms. Helen Elizabeth Robinson

[19] She confirmed the plaintiff's account of the assault and its aftermath. She found that he suffers from PTSD, anxiety, and social withdrawal. Physically, he has significant restrictions in his neck and left shoulder movement. It is unsafe for him to do heavy lifting and he cannot perform any work that has to be executed above his head.

[20] Her key opinion was that the plaintiff is now restricted to light work. Before the incident, he was capable of medium to heavy work. While he is currently employed as a supervisor, any job with physical demands would put him at a disadvantage. She noted that due to his pre-existing degenerative condition (which was asymptomatic), he might have always been restricted to light work, but the injury triggered the pain.

Industrial Psychologist: Ms. Ronel Fouche

[21] Pre-Morbid (“but-for”) Scenario: She postulated that without the arrest and assault, the plaintiff, as a semi-skilled worker, would have continued to work and see inflationary increases. His career ceiling would have been reached between 45 and 48, and he would most probably have retired at 65.

[22] Post-Morbid (Actual) Scenario: She noted that the plaintiff has been underemployed, working in a vulnerable position with below-market wages (e.g., earning less than minimum wage for a period). His earnings have not kept pace with what a semi-skilled worker would typically earn (R87,000 p.a. in 2025 vs. his R55,200 p.a.). She testified to justify the application of higher contingency deductions (to calculate loss) due to his psychological vulnerability, physical limitations, and the stigma attached to the arrest in his community.

[23] The key disagreements that she has with the defendant’s Industrial Psychologist (Ms. Ntsieni) are in relation to the plaintiff’s career ceiling, retirement age, and the extent of his loss. Ms. Fouche stated that she found a clear past and future loss of earning capacity.

Industrial Psychologist (Defendant): Ms. Ntsieni

[24] Her core opinion was that the plaintiff has not suffered a past loss of income. The basis for this opinion is that the employment relationship was

terminated prior to the incident. Therefore, so the argument goes, any subsequent reduction in earnings after the incident, were not caused by the incident but by the termination of the employment relationship.

[25] She agreed with the joint minute of the occupational therapists that the plaintiff is restricted to light work but noted this restriction might have existed even without the assault due to his pre-existing degenerative condition of spondylosis. She deferred to the Occupational Therapist on whether the plaintiff's current occupation (supervisor/wheel alignment) qualifies as light, medium, or heavy work.

[26] She conceded that due to the incident, the plaintiff is a psychologically and physically vulnerable person in the employment market, which would support an argument for higher contingencies on future earnings.

Orthopaedic Surgeon (Plaintiff): Dr. Collen Eric Barlin

[27] He confirmed the plaintiff has pre-existing cervical spondylosis. Critically, he stated that while the condition pre-existed the assault, the plaintiff was asymptomatic before it. The trauma of the assault aggravated the preexisting condition, bringing the pain and symptoms to the fore.

[28] He was highly critical of the defence expert's attempt to apportion the injury (e.g., 85% due to pre-existing condition), calling it a "guess" and

"thumb-suck." He argued that since the plaintiff had no pain before, there should not be any apportionment of damages.

[29] He stated his initial cost estimates for future treatment were too conservative. He believed the plaintiff will need physiotherapy, medication, and possibly surgery, as his condition had not improved six years after the incident.

Neurosurgeon (Defendant): Dr. Tshepo Kao Peter Moja

[30] Dr. Moja's testimony was central to the medical dispute. His evidence shifted significantly under cross-examination.

[31] In his evidence in chief, he based his report on "objective evidence" and viewed the plaintiff's version of the assault as "subjective." He found no neurological deficit.

[32] Under cross-examination the witness made concessions, such as these described. He testified that, in the event that this Court accepts that the assault factually occurred, he would have to change/amend his report.

[33] He acknowledged discrepancies in the record regarding when the plaintiff first sought medical help (a week vs. 5 months after the incident), which impacted his analysis.

[34] Ultimately, he conceded that if the assault has occurred, the assault

could have aggravated or triggered the spondylosis suffered by the plaintiff.

Neurosurgeon (Plaintiff): Dr. Delsi Bungu Poati

[35] Dr. Poati was called specifically to critique Dr. Moja's methodology. Dr. Poati strongly criticized Dr. Moja for dismissing the patient's complaints. He argued that a doctor must base a diagnosis on the patient's history and presentation and cannot simply disregard a complaint like an assault or pain because there is no "visible" injury.

[36] He reiterated his findings of decreased range of motion in the left upper limb, a finding he noted was consistent with Drs. Barlin and Williams, but notably absent in Dr. Moja's report. The commonality in the decreased range of motion in the left upper limb, he argued, supported the conclusion that the assault had a physical impact on the body of the plaintiff.

Actuary (Plaintiff): Mr. Gerhardus Jacobus du Toit

[37] He presented calculations for loss of earnings and future medical expenses based on the joint minutes and reports from the plaintiff's experts.

[38] The witness explained the difference between his calculations and the defendant's actuary (Mr. Strydom), noting that a key variable is the choice of Life Table (which affects the present value of future loss). His figures were generally more favourable to the plaintiff.

[39] He stated that if this Court accepts the postulations of the plaintiff's industrial psychologist (Ms. Fouche), then his calculations would be correct.

Actuary (Defendant): Mr. Antonie Christoffel Strydom

[40] His May 2022 and March 2025 reports were based on the instructions and postulations from the defendant's experts, particularly Ms. Ntsieni.

[41] He stated that, based on those instructions, his calculation showed no direct past or future loss of income. Any potential loss, in his view, would have to be accounted for through higher contingency deductions.

[42] He acknowledged that his calculations would be incorrect if this Court found the underlying postulations (from Ms. Ntsieni) to be incorrect.

Legal framework

[43] The core factual dispute revolves around whether the plaintiff was assaulted in custody. Furthermore, the causal link between the incident

and the plaintiff's alleged loss of income, and the subsequent calculation of damages are also in dispute.

[44] The plaintiff's counsel, Adv Hatting, argues for a substantial award based on the evidence of their experts and the application of the *talem qualem* rule (the "thin skull" rule). This rule entails that a wrongdoer must take their victim as they find them, and a defendant cannot mitigate its damage due to a pre-existing weakness or vulnerability to limit liability for damages.

[45] The defendant's counsel, Adv Magano, contends that the plaintiff has failed to prove the assault. She further submits that, should this Court find that an assault has occurred, any loss of income was not caused by the incident but by the prior termination of the employment relationship.

Summary of the plaintiff's argument

[46] The plaintiff's argument is that the assault factually occurred, its consequences were severe, and the defendant is liable for the full extent of the damages suffered by the plaintiff.

[47] The plaintiff argues that the defendant's failure to file a consequential plea after the 2022 amendment means the assault allegations are deemed admitted in terms of Rule 22(3) of the Uniform Rules of Court.

Furthermore, the plaintiff argues that its uncontested testimony confirms the assault. Rule 22(3) reads as follows:

“(3) Every allegation of fact in the combined summons or declaration which is not stated in the plea to be denied or to be admitted, shall be deemed to be admitted. If any explanation or qualification of any denial is necessary, it shall be stated in the plea.”

[48] In *Erasmus: Superior Court Practice @Juta 3rd Edition* (Vol 1) on RS 28, 2025, D1 Rule 22-15, the following is stated:

“Subrule (3): ‘Shall be deemed to be admitted.’ This subrule makes it clear that every allegation of fact in the combined summons or declaration which is not denied or admitted in the plea, shall be deemed to be admitted. All allegations of fact, whether material or otherwise, in the combined summons or declaration which are not denied in the defendant’s plea or not stated to be not admitted, are therefore in terms of the subrule deemed to be admitted. It has, however, been held that the subrule cannot be applied piecemeal to a party’s averments so as to deprive such a party of a defence which is plainly, though perhaps imprecisely, raised on the pleadings. If a plaintiff is embarrassed by an apparent contradiction arising from the absence of a precisely targeted denial of a particular averment in the particulars of claim, the plaintiff’s remedy lies in a notice to the defendant to cure a vague and embarrassing pleading in terms of Rule 23(1).”

(footnotes omitted)

[49] In *Absa Bank Ltd v I W Blumberg and Wilkinson* 1997 (3) SA 669 (SCA) it was held by the Supreme Court that it would be “artificial” to invoke Rule 22(3) if a party, in a separate paragraph, failed to specifically deny a denial contained in the earlier paragraph. It would be too technical an approach to hold the pleader as admitting allegations which was not specifically dealt with. The plea had to be read in its totality as one composite document.

[50] The defendant filed an application to amend its plea, to include a denial of the assault, after the evidence was led in the trial. This was opposed by the plaintiff.

[51] It is submitted by Adv Hatting that the overriding decision in this matter is the application of the *talem qualem* rule. The *talem qualem* rule (the "Thin Skull" rule) entails the argument that the defendant must take their victim as they find him. Even though the plaintiff had a pre-existing, asymptomatic condition (cervical spondylosis), the defendant is liable for the full extent of the injuries and losses because the assault aggravated this condition. No apportionment for the pre-existing condition should be made. In support of this position, he cites the matter of *Smit v Abrahams* 1994 (4) SA 679 (AD).

[52] The plaintiff urges this Court to accept the evidence of their experts, particularly Dr Fouché (industrial psychologist) and Mr Du Toit (actuary),

arguing they were credible, well-reasoned, and provided a reliable basis for calculating the loss. It is argued that the defendant's industrial psychologist, Ms Ntsieni, was a "vague, unsatisfactory, unreliable and biased witness."

- [53] In relation to general damages, the plaintiff argues for an amount of R350,000 for general damages, citing the serious impact on his freedom in the permanent limitation of the movement of his arms, and the psychological impact as confirmed by the joint minute of the clinical psychologists.

Case Law Referenced by the plaintiff

- [54] As mentioned, *Smit v Abrahams* 1994 (4) SA 679 (AD) deals with the *talem qualem* rule (the "thin skull" rule). The plaintiff uses this to argue that the defendant is liable for the full extent of the damages, despite the plaintiff's pre-existing cervical spondylosis.
- [55] In the matter *Southern Insurance Association Ltd v Bailey NO* 1984 (1) SA 98 (A) it was found that assessing any future loss is speculative and the court must make a reasonable estimate.
- [56] In *Pitt v Economic Insurance Company Ltd* 1957 (3) SA 284 (D) the trite principle is confirmed that an award for general damages must be fair to both sides.

[57] In the matter of *Bee v Road Accident Fund* 2018 (4) SA 366 (SCA) it was confirmed by the Supreme Court of Appeal that the proper approach is for the court to evaluate the expert evidence. The Supreme Court of Appeal found specifically that an expert's opinion must be capable of being tested and the court must ultimately decide if it is correct and reliable.

[58] In *R v Turner* [1975] 1 All ER 70, which is an English decision, the principle is established that an expert opinion is valueless if it is based on incorrect facts.

[59] In *Thandani v Minister of Law and Order* 1991 (1) SA 701 (ECD) the principle is used that the plaintiff's uncontested evidence (in this case, specifically on the assault) should be accepted if it is reasonable and not far-fetched.

Summary of the defendant's argument

[60] The defendant's primary argument is that the plaintiff has failed to prove his case on a balance of probabilities. The defendant prays for the action to be dismissed with costs, effectively arguing for an amount of Zero Rand for damages.

- [61] The defendant submits that the plaintiff has failed to prove that he was assaulted. They point to the lack of contemporaneous medical records, the failure to open a police case, and the significant delay (until 2022) in amending the particulars of claim to include the assault. They argue the onus is on the plaintiff to prove that the assault factually occurred on a balance of probabilities and argue that the plaintiff has failed to do so.
- [62] The defendant further argues that even if an assault occurred, the plaintiff's loss of income was not caused by the assault. The defendant contend that the plaintiff lost his job due to a wage dispute with his employer *before* the arrest, and the arrest itself was a result of theft charges laid by that employer. Therefore, the causal link between the unlawful arrest/assault and the loss of income has not been proven.
- [63] The defendant criticizes the plaintiff's case for relying on uncorroborated hearsay, particularly regarding his pre-incident income of R4,800 per month. It is argued for the defendant that no payslips, bank statements, or employer confirmations were provided, making the expert reports, which relied on the plaintiff's *ipse dixit*, inadmissible or of no weight.
- [64] The defendant submits that the court must distinguish fact from speculation. It is argued for the defendant that the plaintiff's experts failed to verify fundamental facts and that their opinions are therefore

"valueless." The defendant points to the conflicting evidence between the neurosurgeons (Dr Poati and Dr Moja) as a reason to reject the plaintiff's claim for a curtailed working life.

Case Law Referenced by the defendant

[65] The matter of *Lee v Minister of Correctional Services* 2013 (2) SA 144 (CC) is the central authority cited by the defendant on the issue of causation. The defendant uses it to argue that the plaintiff must prove a direct causal link between the wrongful act (the alleged assault) and the harm suffered (loss of income).

[66] *M R v Road Accident Fund* (Case no 2457/2017) [2020] ZAFSHC (5 February 2020) is cited for the principle that the court must distinguish between fact and speculation in expert evidence.

[67] With reference to the matter of *Tsufu v Road Accident Fund* (8774/2020) [2024] ZAGPPHC 1234 (27 November 2024) the defendant relies on this recent case to highlight the court's concern when a plaintiff has no medical records to corroborate an injury, questioning how a serious injury can be linked to an incident without such evidence.

[68] The matter of *Mathebula v Road Accident Fund* (82839/18) [2023] ZAGPPHC 1966 (28 November 2023) is used by the defendant to

support the argument that an expert cannot give hearsay evidence, and all facts they rely on must be established through admissible evidence.

[69] *Molaudikgotla Kingsley Mathamelo v RAF* (85369/2019) [2023] ZAGPPHC 1150 (11 September 2023) is used as a key authority in favour of the defendant. The defendant uses this matter to argue that an expert's reliance on the mere say-so (*ipse dixit*) of a plaintiff regarding employment history and income constitutes inadmissible hearsay, especially when the plaintiff themselves has not placed these facts into evidence. The court in *Mathamelo* dismissed the plaintiff's claim for loss of income on this basis.

[70] The matter of *Embling v Two Oceans Aquarium CC* 2012 (6) SA 691 (C) is cited in support of the defendant's belated application to amend its plea denying the assault, on the principle that amendments should be allowed to promote the proper ventilation of disputes.

Findings

[71] Having regard to the evidence provided by the plaintiff in relation to the incident of assault during police custody, the specific evidence of the place on his head where it immediately started to pain, as well as the medical reports in support of the plaintiffs version that the injuries he suffered came to the fore after his police custody, I am satisfied that the plaintiff has factually proven he has been assaulted during his police

custody. The fact that he only sought medical assistance months after the incident, cannot negate the fact that the assault occurred.

[72] The application of Rule 23 is a general application and guideline for the court to follow in the absence of any other evidence to the contrary. It is not cast in stone. The saying is apt that “the Rules are made for the Court, the Court is not made for the Rules”. As such the Rule cannot over-ride the evidence presented to the court.

[73] In the premises, I find that the plaintiff has factually proven that he has been assaulted during his police custody. As such, the defendant is liable for the damages suffered as a result of the injuries.

Evaluation

[74] The plaintiff claims an amount of R500,000 for the unlawful arrest and detention of the plaintiff.

[75] The plaintiff claims R1,500,000 for the injuries suffered as a result of the assault suffered in police custody. The plaintiff suffered Post Traumatic Stress Syndrome (PTSD) and had a mild to severe medical physical outfall of the assault during incarceration.

[76] After hearing the evidence, evaluating the witnesses and the documentary evidence which includes the expert reports, and after considering the necessary case law, I hold the view that it would be just and fair for the plaintiff to be compensated in the amount of R70,000.00 (Seventy Thousand Rand) for the unlawful arrest and detention.

[77] I find that the “thin skull rule” does apply in this instance. The spondylosis that the plaintiff suffers from prior to the assault, was triggered and activated with the assault. The fact that the plaintiff had suffered from spondylosis, cannot minimise the effect of the assault on the medical condition of the plaintiff.

[78] After hearing the evidence, evaluating the witnesses and the documentary evidence which includes the expert reports, and after considering the necessary case law, I find that the plaintiff should be compensated the amount of R1,500,000.00 (One Million Five Hundred Thousand) as *contumelia* for the assault endured whilst in police custody. The plaintiff suffers permanent outfall of the assault. The medical *sequalae* of the plaintiff is not only limited to physical pain but also extends to mental *sequalae* in being diagnosed with PTSD.

[79] I come to the conclusion that it would be fair and reasonable for the defendant to compensate the plaintiff in the amount of R1,570,000.00

(One Million Five Hundred and Seventy Thousand Rand) for the unlawful arrest, detention and assault that occurred in police custody.

Cost

[80] The general principle is that the party that is successful, is entitled to its costs.

[81] On several specific days specific cost orders were made. Those cost orders are applicable to the costs incurred for that specific day.

[82] The legal principles (such as the application of Rule 23, and the application of the “thin skull rule”) are quite intricate and is not often encountered. In addition thereto, the trial spanned a number of days and the action has been instituted in 2016. It has thus been a long and convoluted period of litigation that the parties were involved in.

[83] I hold the view that the plaintiff is entitled to cost on a party and party scale B, which would justify the duration and difficulty level of the matter.

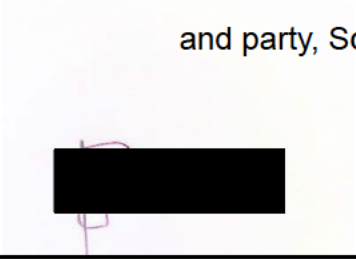
Order

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

- (i) The defendant is to pay to the plaintiff the amount of R1,570,000 (One Million Five Hundred and Seventy Thousand Rand) for damages

suffered as a result of the unlawful arrest, detention and assault that occurred on 25 and 26 February 2016.

- (ii) The defendant is to pay the cost of the plaintiff on a scale of party and party, Scale B.



FMM REID

**JUDGE OF THE HIGH COURT
NORTH WEST DIVISION MAHIKENG**

DATE JUDGMENT RESERVED: 9 DECEMBER 2025

DATE JUDGMENT HANDED DOWN: 23 MARCH 2026

REPRESENTATION

FOR THE PLAINTIFF

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COUNSEL:

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ON INSTRUCTION OF:

**THE STATE ATTORNEY
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