



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MTHATHA)**

CASE NO.: 2288/2020

Reportable	Yes
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In the matter between:

NTSIKELELO BENNEDICT KALIPA

Plaintiff

and

MINISTER OF POLICE

Defendant

Summary:

Delict – assault – Claim for damages arising from assault by police – Court preferring evidence of Plaintiff’s witness over that of Defendant’s witnesses – Plaintiff’s witness found to be reliable and truthful – Plaintiff discharging onus on a balance of probabilities – Assessment of damages – Award to be commensurate with harm suffered – Comparable awards serving only as a guideline.

ORDER

In the result, the following order shall issue:

1. The Defendant is held liable to compensate the Plaintiff in respect of damages arising from the Plaintiff's assault by the members of the SAPS on 15 April 2020.
2. The Defendant is ordered to pay the Plaintiff the sum of R40,000 as and for damages arising from the assault of the Plaintiff on 15 April 2020.
3. The Defendant shall pay interest on the aforesaid amount of R40,000 at the prescribed legal rate from the date of judgment to date of payment.
4. The Defendant is ordered to pay the Plaintiff's costs of suit on scale B as contemplated under Rule 67A read with Rule 69 of the Uniform Rules of Court.

JUDGMENT

NOTYESI AJ

Introduction

[1] The Plaintiff, a male candidate legal practitioner employed by Legal Aid South Africa, has instituted an action against the Defendant ("the Minister") for damages

arising from an alleged assault perpetrated against him on 15 April 2020 by members of the South African Police Service (“SAPS”) attached to the National Intervention Unit (“NIU”), Mthatha.

[2] In his particulars of claim, the Plaintiff quantifies his damages arising from the alleged assault in the sum of R500,000, made up as follows:

2.1 General damages in respect of unlawful

assault:	R350,000
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2.2 Damages for pain and suffering,

degradation and humiliation:	R150,000
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[3] The Plaintiff alleges that he was assaulted by unknown members of the NIU, clad in police uniform, whilst he was at the unit. It is further alleged by the Plaintiff that the assault was unprovoked and that the said members had no lawful justification for assaulting him in the manner that they did. The Plaintiff further alleges that he was struck with open hands and fists and was dragged on the ground, as a result of which he sustained injuries and received medical treatment at Mthatha General Hospital.

[4] The Plaintiff had contended that the SAPS members who assaulted him were, at all material times, acting within the course and scope of their employment with the Minister, who is accordingly vicariously liable for his damages.

[5] The Minister denies that the Plaintiff was assaulted by members of the SAPS as alleged, or at all. Consistent with his denial, the Minister avers that, on the day in question, members of the NIU, Mthatha, who were on duty, had observed unknown

males within the premises of the unit tampering with their colleague's motor vehicle. The said members approached and questioned the individuals regarding the reason for their presence at the unit and their interest in the vehicle. Upon receiving an explanation, which was subsequently confirmed by their colleague, the individuals were released without incident. In the premises, the Minister denies that the Plaintiff was assaulted and, accordingly, denies any liability to compensate the Plaintiff.

[6] It was common cause that the Plaintiff bears the onus and accordingly had the duty to adduce evidence first. It was further agreed that the trial would proceed on both the issues of merits and quantum, without separation.

The Parties

[7] For the sake of convenience, the parties shall be referred to as follows:

- 7.1 The Plaintiff as “the Plaintiff”;
- 7.2 The Defendant as “the Defendant” or “the Minister”;
- 7.3 The National Intervention Unit as “the NIU”;
- 7.4 The South African Police Service as “the SAPS”;
- 7.5 The premises, unit, or base means the Old South African Embassy, Mthatha.

The Issues for Determination

[8] On the pleadings, the issues for determination are:

8.1 Whether the Plaintiff was assaulted by members of SAPS;

8.2 If so, the quantum of damages to which the Plaintiff may be entitled.

The Evidence

[9] The Plaintiff was the first witness to testify in his case. He stated that, on 15 April 2020, he, together with his friend, Mr Bazolile Sihlali, went to the NIU offices to fetch a motor vehicle. The vehicle had been lent to him by Mr Dotwana, a member of SAPS attached to the NIU, Mthatha. At the time, Mr Dotwana was not present at the unit but had instructed them to fetch the vehicle.

[10] According to the Plaintiff, Mr Dotwana had left the vehicle at the NIU premises, which is his workplace. The Plaintiff testified that they arrived at the premises at approximately 15h30, where they were checked in by the security guards at the gate. Following the check-in, one security officer escorted them to an office where they found a police officer to whom they introduced themselves and explained the purpose of their visit. The police officer then telephoned Mr Dotwana to confirm that he had authorised the Plaintiff to fetch the vehicle. Mr Dotwana confirmed that he had granted permission.

[11] Following this confirmation, the police officer escorted them to the vehicle. They attempted to start it, but it would not start. The police officer arranged jump-start cables, yet the vehicle still failed to start. The Plaintiff and his companion then attempted to push-start the vehicle several times, without success.

[12] According to the Plaintiff, the police officer who had been assisting them had to end his duty shift. He took back his jump-start cables and left the Plaintiff and his companion with the vehicle. No other police officers were present after he left.

[13] The Plaintiff further testified that he tried all possible methods to start the vehicle, all of which failed. Realising the vehicle would not start, he requested assistance from his friend, Warrant Officer Tywalana, to bring his own, more powerful jump-start cables. Shortly thereafter, Warrant Officer Tywalana arrived with his child. They attempted to start the vehicle using the jump-start cables and also tried push-starting it, but remained unsuccessful.

[14] According to the Plaintiff, at approximately 18h30, while still attempting to start the vehicle, several NIU members clad in police uniform arrived in a seven-seater Hyundai microbus. They began shouting at the Plaintiff and his companion before their vehicle had come to a stop, demanding to know what they were doing with their colleague's vehicle. Four police members immediately alighted from the microbus and ordered them to lie face down. The police shouted multiple questions simultaneously. The Plaintiff requested that the questions be asked one at a time so that he could answer appropriately.

[15] The police began swearing at the Plaintiff and then assaulted him with open hands and fists. He attempted to explain that he had permission from Mr Dotwana to take the vehicle, but the police did not listen and continued to assault him. The assault continued until the Plaintiff fell to the ground, where he was further kicked, dragged, and removed from the NIU premises.

[16] The Plaintiff testified that the assault occurred in the presence of his friends, Warrant Officer Tywalana and Mr Sihlali, as well as Warrant Officer Tywalana's child. As a result of the assault, he felt humiliated, degraded, and that his dignity was impaired. Later that day, he opened a criminal case against the members of the NIU.

[17] On 16 April 2020, the Plaintiff returned to the NIU premises to fetch Mr Dotwana's vehicle. Following guidance from Mr Dotwana, he was then able to start the vehicle successfully.

[18] On the same day, he attended Mthatha General Hospital, where a doctor confirmed that he sustained an injury to his left eye. The doctor completed a J88 form, which the Plaintiff submitted as an exhibit. The Plaintiff later withdrew the criminal case he had opened against the members of SAPS, citing the inconvenience of travelling between Limpopo and Mthatha as he intended to relocate to Limpopo.

[19] Warrant Officer Tywalana also testified for the Plaintiff. He is a friend of the Plaintiff and that he is employed as a member of the SAPS attached to the Vehicle Theft Unit. Regarding the Plaintiff's case, he stated that, on 15 April 2020, he received a call from the Plaintiff requesting assistance at the NIU premises at the Old South African Embassy to start a motor vehicle. He then fetched his jump-start cables and drove to the premises with his son.

[20] Upon arrival, he found the Plaintiff and his friend attempting to start the vehicle. He assisted them, but the vehicle would not start. While they were still trying, a number of uniformed police officers arrived in a seven-seater Hyundai microbus,

shouting and asking who they were and what they were doing with their colleague's vehicle.

[21] Warrant Officer Tywalana testified that the Plaintiff explained that he had permission from Mr Dotwana to take the vehicle. The police ignored the explanation, continued shouting, and hurled insults. He witnessed one police officer begin assaulting the Plaintiff, calling him "silly".

[22] Warrant Officer Tywalana further testified that the Plaintiff was dragged by his feet.

[23] Both witnesses were cross-examined. During cross-examination, there were apparent contradictions. Whilst the Plaintiff had insisted that he was dragged on the ground, his witness, Tywalana, had insisted that the Plaintiff was dragged by his feet. The Plaintiff had also suggested that he was assaulted multiple times by the members of the SAPS. The witness testified that the Plaintiff was assaulted once. I shall later revert to these aspects.

The Minister's Case

[24] On behalf of the Minister, two witnesses, Warrant Officer Gobidolo and Warrant Officer Kanku, gave evidence. Warrant Officer Gobidolo stated that he reported for duty at 14h00 together with Warrant Officers Kanku, Mfihlo, Ngombane, and Mtwana. They were conducting patrols in the Mthatha area in a seven-seater Hyundai microbus, driven by Warrant Officer Kanku.

[25] They returned to the NIU premises at the Old South African Embassy at approximately 20h00. Upon entering the gate, they observed a group of men standing around Mr Dotwana's vehicle, whose bonnet was open and not in its parking spot. Warrant Officer Kanku drove closer and stopped a few metres away. Warrant Officer Gobidolo alighted and questioned the man standing on the driver's side of the vehicle. Other NIU members also asked questions.

[26] Warrant Officer Gobidolo then telephoned Mr Dotwana from the OPS room to confirm whether he had authorised the men to take the vehicle. Upon confirmation, he returned to the vehicle, but the men were already driving away. He denied witnessing any assault on the Plaintiff.

[27] Warrant Officer Kanku confirmed the sequence of events, including patrol duties, the vehicle details, and returning to the unit at 20h00. He observed the group around Mr Dotwana's vehicle, noting that one man was seated inside the vehicle and others were standing nearby.

[28] Warrant Officer Kanku testified that Warrant Officer Gobidolo approached the group, while other police members also alighted and asked the men who they were and what they were doing. One man replied that Mr Dotwana was his friend and that he had permission to take the vehicle.

[29] Warrant Officer Kanku further testified that Warrant Officer Mtwla ordered the men to leave and close the gate, and then contacted Mr Dotwana to confirm permission. Following confirmation, the men were allowed to take the vehicle. He disputed that the Plaintiff was assaulted.

[30] Both witnesses were extensively cross-examined. There were several contradictions in their evidence. Warrant Officer Gobidolo conceded, during questioning by the court, that at a certain stage, he had left the scene and attended to the OPS room, where he was to make a call to Mr Dotwana. These aspects shall be addressed later.

Contentions of the Parties

[31] Mr *Madlanga*, counsel for the Plaintiff, correctly submitted that assault constitutes an infringement of a person's bodily integrity. In this regard, he relied on section 12(2) of the Constitution, which guarantees the right to bodily and psychological integrity. Ms *Qikila*, who appeared for the Minister, properly conceded both the legal principle and the applicability of the constitutional provisions. Both parties submitted that assault consists of an unlawful and intentional act or omission (a) which results in another person's bodily integrity, being directly or indirectly impaired, or (b) which inspires a belief in another person that such impairment of her bodily integrity is immediately to take place.¹

[32] Mr *Madlanga* submitted that the pushing or dragging of the Plaintiff, as testified to, would constitute an assault. In support of this submission, he relied on *Gardiner and Lansdown, South African Criminal Law and Procedure (vol 2, p 1010)*², where it is stated:

¹ C R Snyman: Criminal Law, Sixth Edition, Page 447.

² Gardiner and Lansdown, South African Criminal Law and Procedure (vol 2, p 1010)

‘Assault is the act of intentionally and unlawfully applying force to the person of another, directly or indirectly, or attempting or threatening by any act to apply that force, if the person making the threat causes the other to believe that he has the ability to effect his purpose.’

[33] Mr *Madlanga* also referred this Court to the authority of *S v YG 2018 (1) SACR 64 (GJ)*³, where it is said that:

‘All it requires is the unlawful and intentional application of force to the person of another. Pushing, or slaps on the buttocks, would fall within the definition.’

[34] Mr *Madlanga* correctly conceded that the Court is faced with two mutually destructive versions. He urged the Court to accept the Plaintiff’s version, submitting that it is supported by the probabilities. He contended that the Plaintiff’s evidence was consistent, credible, and reliable. In this regard, he relied on *National Employers’ General Insurance v Jagers 1984 (4) SA 437 (E)* at 440E,⁴ where it was stated:

‘Where the onus rests on the plaintiff as in the present case, and where there are two mutually destructive stories, the plaintiff can only succeed if he satisfies the court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the other version advanced by the defendant is therefore false or mistaken and falls to be rejected.’

[35] I agree with the legal principles advanced by Mr *Madlanga*. However, whether the Plaintiff and his witness were credible and reliable is an issue to be determined by this Court. I shall revert to this aspect.

³ *S v YG 2018 (1) SACR 64 (GJ)* at para 74.

⁴ *National Employers’ General Insurance v Jagers 1984 (4) SA 437 (E)* at 440E.

[36] Ms *Qikila*, on the other hand, urged the Court to apply the approach set out in *Stellenbosch Farmers' Winery Group Ltd and Another v Martell et CIE and Others*⁵, which requires a threefold enquiry into credibility, reliability, and probabilities. She submitted that the Plaintiff's witnesses were not credible due to material contradictions and that their evidence was unreliable. She further contended that the probabilities do not favour the Plaintiff's version. In particular, she criticised Warrant Officer Tywalana as a biased witness due to his alleged friendship with the Plaintiff. This submission requires careful scrutiny.

[37] Ms *Qikila* further submitted that, for the Plaintiff to succeed, the Court must be satisfied that his version is probably true. She argued that, given his lack of credibility, the Plaintiff has failed to discharge the onus resting upon him and that the claim ought to fail.

Legal Framework

[38] The parties correctly set out the definition of assault. Even in the absence of physical force, an assault may be committed where there is a threat of immediate personal violence that induces a reasonable belief that such a threat will be carried out. The definition itself presents no difficulty.

⁵ *Stellenbosch Farmers' Winery Group Ltd and Another v Martell et CIE and Others* 2003 (1) SA 11 (SCA) para [5] at 14I – 15D.

[39] The central issue concerns the mutually destructive versions presented by the parties. In *National Employers' Mutual General Insurance Association v Gany*,⁶ it was held:

‘Where there are two stories mutually destructive, before the onus is discharged, the court must be satisfied that the story of the litigant upon whom the onus rests is true and the other is false.’

[40] Mr Madlanga correctly referred this Court to the authority of *The National Employers' General Insurance v Jagers*,⁷ where a foundation was laid as follows:

‘It seems to me, with respect, that in any civil case, as in any criminal case, the onus can ordinarily only be discharged by adducing credible evidence to support the case of the party on whom the onus rests. In a civil case the onus is obviously not as heavy as it is in criminal cases, but nevertheless where the onus rests on the Plaintiff as in the present case, and where there are two mutually destructive stories, he can only succeed if he satisfies the Court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the other version advanced by the Defendant is therefore false or mistaken and falls to be rejected. In deciding whether that evidence is true or not the Court will weigh up and test the Plaintiff's allegations against the general probabilities. The estimate of the credibility of a witness will therefore be inextricably bound up with a consideration of the probabilities of the case and, if the balance of probabilities favours the Plaintiff, then the Court will accept his version as being probably true. If, however, the probabilities are evenly balanced in the sense that they do not favour the Plaintiff's case any more than they do the Defendant's, the Plaintiff can only succeed if the Court nevertheless believes him and is satisfied that his evidence is true and that the Defendant's version is false.’

⁶ *National Employers' Mutual General Insurance Association v Gany* 1931 AD 187 at 199.

⁷ *The National Employers' General Insurance v Jagers* – supra at footnote 4.

[41] In *Stellenbosch Farmers' Winery Group Ltd and Another v Martell et CIE and Others*,⁸ the court set out what must be employed in the assessment of evidence:

‘On the central issue, as to what the parties actually decided, there are two irreconcilable versions. So too, on a number of peripheral areas of dispute which may have a bearing on the probabilities. The technique generally employed by courts in resolving factual disputes of this nature may conveniently be summarised as follows. To come to a conclusion on the disputed issues, a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities. As to (a), the court’s finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness; candour and demeanour in the witness box; (ii) his bias, latent and blatant; (iii) internal contradictions in his evidence; (iv) external contradictions with what was pleaded or put on his behalf; or with established fact or with his own extracurial statements or actions; (v) the probability or improbability of particular aspects of his version; (vi) the calibre and cogency or his performance compared to that of other witnesses testifying about the same incident or events. As to (b), a witness’s reliability will depend, apart from the factors mentioned under (a)(ii), (iv) and (v) above, on (i) the opportunities he had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to (c), this necessitates an analysis and evaluation of the probability or improbability of each party’s version on each of the disputed issues. In the light of its assessment of (a), (b), and (c), the court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it. The hard case, which will doubtless be the rare one, occurs when a court’s credibility findings compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors are equipoised, probabilities prevail.’

⁸ *Stellenbosch Farmers' Winery Group Ltd and Another v Martell et CIE and Others* 2003 (1) SA 11 (SCA) para [5] *supra*.

[42] More significantly, the rule of trial is that where probabilities are evenly balanced in that the evidence of the main witnesses on either side is found to be equally credible or equally incredible, the party that bears the onus loses and the determination of the contested issues is ruled in favour of the party who does not bear the onus.⁹ Where probabilities are evenly balanced, the party bearing the onus must fail.

Analysis and Evaluation of Evidence

[43] In his particulars of claim, the Plaintiff alleged the following injuries:

- a bruise to the eye; and
- a bruise to the waist.

[44] The J88 reflects only an injury to the eye, with no mention of any injury to the waist. The Plaintiff testified that he was dragged along the ground; however, his own witness stated that he was dragged by his feet. These contradictions were not satisfactorily explained. A further inconsistency arises from the Plaintiff's police statement, in which he stated that he arrived at approximately 15h30, whereas in his testimony, he stated that he arrived at 14h30.

[45] When confronted with these discrepancies, the Plaintiff was evasive and inconsistent, at one stage suggesting that 14h30 and 15h30 were the same. This is clearly incorrect. In my view, the Plaintiff exaggerated his version and was not a reliable witness. I therefore disagree with the submission that he was credible.

⁹ Mbangi v Minister of Safety and Security; case number 891/2006 Para [17.4] at p 44.

[46] Warrant Officer Tywalana gave straightforward and satisfactory evidence. He attended the scene to assist the Plaintiff and did not claim to have been assaulted. He testified independently and observed the Plaintiff being assaulted once. His evidence was consistent and is, in material respects, corroborated. I find him to be an honest and reliable witness. I reject the submission that he was biased.

[47] Warrant Officer Gobidolo was an unsatisfactory witness. He was evasive and contradicted himself. Although he stated that he was in the OPS office and could not observe events outside, he nevertheless insisted that no assault occurred. His evidence is unreliable.

[48] Warrant Officer Kanku's evidence also contained contradictions and was inconsistent with that of other witnesses. His version that the Plaintiff returned to the premises is improbable. His evidence was vague and unsatisfactory.

[49] It is common cause that the Plaintiff and his companions were at the NIU premises attempting to start a vehicle when SAPS members arrived. The officers, unfamiliar with their presence, reacted aggressively, shouting and approaching them. The inference that the police were suspicious is justified. Nonetheless, the police elected to distance themselves from the assault of the Plaintiff.

[50] On the strength of Warrant Officer Tywalana's evidence, supported by the J88, I find that the Plaintiff was assaulted once by a member of the SAPS. The Plaintiff sought medical attention the following day, and this evidence was not challenged. More importantly, the version of the Plaintiff that the police were swearing at him and

his companions was never seriously challenged, even during cross-examination. It must be accepted that the police were swearing at the Plaintiff.

[51] The fact that a criminal case was opened on the same day, although later withdrawn, lends support to the Plaintiff's general evidence.

[52] On the totality of the evidence, I find that the Plaintiff was indeed assaulted. The conduct of the police, including shouting, swearing, and physical aggression, supports this conclusion. The Minister is accordingly liable for the Plaintiff's proven damages.

Quantum

[53] Having found liability, I turn to the assessment of damages. An assault constitutes a serious infringement of constitutional rights, including dignity and bodily integrity.

[54] Section 10 of the Constitution protects human dignity, while Section 12 guarantees freedom from violence. The assault infringed these rights.

[55] In *Peterson v Minister of Safety and Security*,¹⁰ the Court confirmed that damages must be assessed *ex aequo et bono*, having regard to factors such as the nature of the infringement and the circumstances of the case:

‘The correct approach to the assessment of damages for unlawful arrest and detention was summarised by Erasmus J in *Ntshingana v Minister of Safety and Security and another*¹¹ as follows:

¹⁰ *Peterson v Minister of Safety and Security* [2009] ZAECHGHC 65 para 15.

“The satisfaction in damages to which plaintiff is entitled falls to be considered on the basis of the extent and nature of the violation of his personality (*corpus, fama and dignitas*). As no fixed or sliding scale exists for the computation of such damages, the Court is required to make an estimate *ex aequo et bono*. The authors of Visser and Potgieter’s *Law of Damages*, 2nd ed, 475 have extracted from our case law factors which can play a role in the exercise:”

“The circumstances under which the deprivation of liberty took place; the presence or absence of improper motive or malice on the part of the defendant; the harsh conduct of the defendants; the duration and nature (eg solitary confinement) of the deprivation of liberty; the status, standing, age and health of the plaintiff; the extent of the publicity given to the deprivation of liberty; the presence or absence of an apology or satisfactory explanation of the events by the defendants; awards in previous comparable cases; the fact that in addition to physical freedom, other personality interests such as honour and good name have been infringed, the high value of the right to physical liberty; the effect of inflation; and the fact that the *actio injuriarum* also has a punitive function.”

[56] In *Minister of Safety and Security v Tyulu*,¹² it was emphasised that damages serve as a solatium and must be commensurate with the injury suffered, without resulting in unjust enrichment. It was stated that:

“In the assessment of damages for unlawful arrest and detention, it is important to bear in mind that the primary purpose is not to enrich the aggrieved party but to offer him or her some much-needed solatium for his or her injured feelings. It is therefore crucial that serious attempts be made to ensure that the damages awarded are commensurate with the injury inflicted. However, our courts should be astute to ensure that the awards they make for such infractions reflect the importance of the right to personal liberty and the seriousness with

¹¹ Ntshingana v Minister of Safety and Security and another, unreported judgment of the Makhanda High Court, Case No 1639/01 (14 October 2003) para 28.

¹² Minister of Safety and Security v Tyulu 2009 (5) SA 85 (SCA); 2009 (2) SACR 282 (SCA); [2009] 4 All SA 38 (SCA).

which any arbitrary deprivation of personal liberty is viewed in our law. I readily concede that it is impossible to determine an award of damages for this kind of *injuria* with any kind of mathematical accuracy. Although it is always helpful to have regard to awards made in previous cases to serve as a guide, such an approach, if slavishly followed, can prove to be treacherous. The correct approach is to have regard to all the facts of the particular case and to determine the *quantum* of damages on such facts (*Minister of Safety and Security v Seymour* 2006 (6) SA 320(SCA) at 325 para 17; *Rudolph and Others v Minister of Safety and Security and Another* 2009 (5) SA 94(SCA) [2009] ZASCA 39) paras 26-29).”

[57] Comparable awards serve only as a guide. In *Protea Assurance Ltd v Lamb*,¹³ it was held:

‘In assessing general damages for bodily injuries, the process of comparison with comparable cases does not take the form of a meticulous examination of awards made in other cases in order to fix the amount of compensation; nor should the process be allowed so to dominate the enquiry as to become a fetter upon the Court’s general discretion in such matters. Comparable cases, when available, should rather be used to afford some guidance, in a general way, towards assisting the Court in arriving at an award which is not substantially out of general accord with previous awards in broadly similar cases, regard being had to all the factors which are considered to be relevant in the assessment of general damages. At the same time, it may be permissible in an appropriate case, to test any assessment arrived at upon this basis by reference to the general pattern of previous awards in cases where the injuries and their sequelae may have been either more serious or less than those in the case under consideration.’

[58] In *Duarte v Minister of Police*,¹⁴ an award of R60,000 was made for assault involving a blow to the eye.

¹³ *Protea Assurance Ltd v Lamb* 1971 (1) SA 530 A referenced in *Mantashe v Minister of Police*, unreported judgment, case no: 3104/2016 by Cengani-Mbakaza AJ.

[59] In *Martins v The Minister of Police*,¹⁵ the court awarded R25,000 for assault.

[60] In *Marwana v Minister of Police*,¹⁶ an award of R90,000 was made where more extensive injuries were sustained.

[61] In *Buntu v Minister of Police*¹⁷, the court considered the fact that the Plaintiff was subjected to excruciating pain when a police officer held him by his testicles. It also considered the injuries to his eye, which required him to be given analgesics and painkillers at the hospital. In this case, Plaintiff was awarded an amount of R80,000. I disagree with Mr *Madlanga* in his comparison of this case with the facts of the present case.

[62] In the present matter, the assault was limited to a single incident and constitutes common assault. The conduct of the police, while unjustified, occurred in circumstances where they were suspicious of the Plaintiff's presence at their unit. There was no evidence on the severity of the assault or the effects of the assault. There is no evidence that the Plaintiff was treated at the hospital, other than the completion of the J88.

[63] Taking into account all relevant factors, including the limited nature of the assault, the lack of medical evidence regarding severity, and the exaggeration in the Plaintiff's version, I consider an award of R40,000 to be fair and reasonable.

Conclusion

¹⁴ *Duarte v Minister of Police* (2013/34042) [2013] ZAGP JHC51.

¹⁵ *Martins v Minister of Police* (1400/2011) [2013] ZAECPEHC 27 (4 June 2013).

¹⁶ *Marwana v Minister of Police* 2012 JDR 1444 (ECP), unreported judgment by Tshiki J.

¹⁷ *Buntu v Minister of Police* 2014 JDR 2581 (GJ), judgment by Gauteng Local Division of Makume J.

[64] To sum up, the Plaintiff's claim must succeed. He has proved on a balance of probabilities that he was assaulted by the members of the SAPS whilst acting within their course and scope of their employment with the Minister.

[65] Having considered the facts and the submissions of the parties, damages will be awarded in the amount of R40,000. I cannot think of any reason, and none has been suggested, as to why the costs should not, as a general rule, follow the result. The costs shall be borne by the Minister. The costs should include all costs reserved, including costs of counsel on scale B.

Order

[66] In the result, the following order shall issue:

1. The Defendant is held liable to compensate the Plaintiff in respect of damages arising from the Plaintiff's assault by the members of the SAPS on 15 April 2020.
2. The Defendant is ordered to pay the Plaintiff the sum of R40,000 as and for damages arising from the assault of the Plaintiff on 15 April 2020.
3. The Defendant shall pay interest on the aforesaid amount of R40,000 at the prescribed legal rate from the date of judgment to date of payment.
4. The Defendant is ordered to pay the Plaintiff's costs of suit on scale B as contemplated under Rule 67A read with Rule 69 of the Uniform Rules of Court.

M NOTYESI

ACTING JUDGE OF THE HIGH COURT, EASTERN CAPE DIVISION

APPEARANCES:

Counsel for the Plaintiff : Mr Madlanga

Instructed by : G Nontswabo Inc Attorneys
Mthatha

Counsel for the Defendant : Ms Qikila

Instructed by : The State Attorney
Mthatha

Heard on : 14 March 2026

Judgment Delivered on : 14 April 2026