



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA**

CASE NO: 4211/2022

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

 19 Mar. 26
SIGNATURE DATE

ELLIOT FRANK SOLOMONS

PLAINTIFF

and

THE MINISTER OF POLICE

DEFENDANT

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email. The date and time for hand-down is deemed to be 19 March 2026 at 10:00.

JUDGMENT

Nobanda AJ

Introduction

[1] Plaintiff issued summons against the Minister of Police (“the defendant”) claiming damages against the defendant in his capacity as an employer grounded on the basis of vicarious liability for the alleged acts/conduct of the defendant’s employees, the members of the South African Police Services (“the police officers”) for unlawful detention, unlawful search of the plaintiff’s property and assault. The plaintiff claims a total amount of R890 000.00 made up as follows:

1.1	unlawful arrest and search	R 80 000.00
1.2	assault and torture	R 750 000.00
1.3	unlawful detention	R 60 000.00

[2] The defendant is defending the action. In his plea, the defendant raised a special plea to the effect that the plaintiff failed to comply with the provisions of sections 5 (1)(b) (ii) and section 2(2) of the State Liability Act,¹ as amended, in that the plaintiff failed to serve the process on the National and Provincial Commissioner of Police, the Head of Department, and the office of the State’s Attorney. In addition, the defendant pleaded over bare denials to the plaintiff’s claim.

[3] The plaintiff’s case proceeded on both the issues as to liability (merits) and the quantum of damages claimed. The defendant did not persist with the

¹ State Liability Act 20 of 1957.

special plea that he had initially raised. The plaintiff testified in his stead and called one other witness, the plaintiff's wife. The defendant did not call any witnesses and closed his case after the plaintiff's case.

Summary of Evidence

[4] The plaintiff testified that on or about 14 July 2022 and at around 01h00 in the morning, he was awoken by approximately eight police officers who had entered his bedroom. The police officers dragged him out of bed, threw him to the floor and proceeded to handcuff his hands behind his back. They then demanded that he produce a firearm. As he had a licenced revolver, he indicated with his head that it was under the pillow where he had been sleeping. The police officers proceeded to retrieve the firearm, whereinafter, they told him that they were seeking a rifle and not that revolver. He denied possessing any rifle, which prompted the police officers to order him to kneel. Whilst kneeling, one of the police officers placed his knee on his back, causing him to lean forward and placed a Shoprite groceries plastic bag over his head, covering his face and strangled him with it, admonishing him and telling him that he will produce the rifle. Consequently, he passed out from being suffocated with the plastic bag.

[5] They waited for him to come to, whereinafter they repeated the process. Yet, only this time, after filling that plastic bag with water, whilst it had covered his face, in order to drown him. He reiterated that he did not possess a rifle. He

passed out again from the attempts to drown him. After removing the plastic bag, they began a violent search of his room whilst other police officers searched other parts of the house. They disruptively turned over his bedroom, flipped over the mattress including its base. The police officers then tore the mattress base open to search inside it.

[6] Thereafter, they took him to his tavern, which is adjacent to the house. Inside the tavern, they threw him to the floor, ordered him to lie there, whilst also searching the tavern. They asked him again where the rifle was and he repeatedly told them that he did not own one. They then poured water over him and started electrocuting him using an electrical extension cord. They were also kicking him with booted feet in the process. Then one of the police officers hit him on his forehead with the butt of a firearm. He started bleeding from a cut. To stop the beatings and torture, he ended up implicating one of his friends, alleging that the rifle was at his place. That gave him relief as they took him into one of the police double-cab vans to that friend's place.

[7] On arrival, they started assaulting the friend, telling him that the plaintiff had confessed that the rifle was in his possession. His friend denied it. Then one of the police officers asked him if he didn't say that the rifle was at his friend's place, to which he confessed that he only said so because he wanted the beatings and torture to stop. They then left the friend's place, took him to some open veld where they uncuffed him. They released him to walk back home

after threatening to kill him if he ever related the incident to anyone. Then they left.

[8] He walked back home still wearing the shorts he had been sleeping in, with nary a covering for his upper body. It was around 03h00 - 04h00 am that he walked a few kilometres before he got home. Thereafter, he went to the hospital to get treatment as his hands were swollen and he had cuts around his wrists from the handcuffs. He also had a cut on his forehead and scrapes on his right knee from being thrown to the rough plastered floor of the tavern and from struggling to breathe as a result of being suffocated and electrocuted.

[9] When he got to the hospital and related what happened to him, he was told to first go open a case with the police, bring a case number and only then would he receive treatment and obtain a J88 form completed by the treating doctor. He went to the police station, opened a case and went back to the hospital, where he was treated by a doctor who also completed a medico-legal report.

[10] As a result of that incident, the plaintiff explained that he no longer stays in the house where he used to live with both of his elderly parents. He now merely visits the place to check up on his parents. He had moved to stay with his sister for a period of approximately one year, whilst building another house to live in with his family, a wife and four children.

[11] He explained that he is still traumatised by the incident, especially when he sees police officers and when he sees the scars that are still visible around his wrists and forehead. He has nightmares of that incident, which have negatively affected his sleeping pattern. He related that the pain he felt on that day when they electrocuted him was a pain that he had never experienced before. He described it as pain that felt as if someone was cutting him in half.

[12] He testified that the incident had negatively changed his life. He felt he had lost his dignity, especially when he was assaulted in his wife's presence.

[13] The plaintiff's wife confirmed that the incident took place and corroborated the plaintiff's evidence in all material respects. She testified that she opened the door in the early hours of that morning after hearing the rough and rapid knocking on the door by people who identified themselves as police officers. She confirmed the strangulation of the plaintiff with the use of a plastic bag, whereafter, she was told to wait outside. As a result, she did not witness the subsequent continuation of the assault and torture. She nevertheless confirmed the departure of the police officers with the plaintiff and his return in the early hours of that morning.

Submissions by the parties' legal representatives

[14] Mr Slabber submitted on behalf of the plaintiff that the plaintiff discharged the onus that rested on him and proved that he was assaulted, tortured, detained and his home unlawfully searched by members of the defendant on the day of the incident and accordingly, that the defendant was liable for the damages suffered by the plaintiff as pleaded.

[15] The defendant's legal representative, Ms Dlamini, argued on the other hand that there was no proof that the people who were involved in that incident were police officers. Furthermore, she argued that the plaintiff contradicted himself when he denied or retracted that part of his statement that he had made to the police, alleging that he did not know whether or not those people who attacked him were police officers.

[16] It was pointed out to Ms Dlamini that that was the only contradiction, if one may call it that, that the plaintiff had made, which in any event, was immaterial as the plaintiff's *viva voce* evidence that they were police officers was corroborated by the plaintiff's wife. The plaintiff's wife described that they were wearing police uniforms with bulletproof vests that read "police". They also wore shoulder flashes denoting their ranks and drove in marked police motor vehicles. Other than that, other parts of the plaintiff's statement were consistent with his evidence in chief and what was recorded by the doctor in the medico-legal report the doctor filled out on that day in the hospital.

[17] Accordingly, I am satisfied that the plaintiff has proved, on a balance of probabilities, that the persons involved in this incident were police officers.

[18] There was no dispute by Ms Dlamini, correctly so in my view, that the plaintiff was assaulted and tortured as testified to by the plaintiff. Furthermore, that the plaintiff's premises were searched without a warrant or the consent of the plaintiff; and that the plaintiff was detained as argued by Mr Slabber.

[19] Accordingly, I also find that the plaintiff has proved on a balance of probabilities that he was assaulted, tortured, and detained as alleged and that his premises were unlawfully searched, as testified to by the plaintiff. In the light thereof, the plaintiff is entitled to the damages as claimed.

Quantum

[20] Mr Slabber, submitted that the plaintiff should be awarded a global figure of between R500 000.00 and R570 000.00, having regard to the comparable case of *Ndlovu v Minister of Police*,² where the plaintiff was similarly assaulted and electrocuted after his arrest. The plaintiff was awarded an amount of R286 836.00 for the assault, amongst other damages awarded, not relevant *in casu*.

² *Ndlovu v Minister of Police* - 2018 JDR 2034 (GJ).

[21] In *Poswa v Minister of Safety and Security*,³ the plaintiff was awarded a globular figure for general damages arising from the assault and torture with their sequelae in the amount of R353 697.00. In *Fisa v Minister of Police*,⁴ on appeal, the plaintiff was awarded an amount of R473 895.00 for general damages arising from the assault and torture.

[22] Mr Slabber submitted that the facts in *Fisa (supra)* are more similar to the facts *in casu*. Further, that the plaintiff *in casu* should be awarded more because the assault took place in the sanctity of the plaintiff's home where the plaintiff was supposed to feel safe.

[23] Ms Dlamini, on the other hand, submitted that the amount proposed by Mr Slabber was unreasonably high, having regard to the amounts awarded in the cases relied upon by the plaintiff. Ms Dlamini contended that the court should bear in mind that the award is not to make the plaintiff rich but is given as *solatium* for the damages suffered as a result of the incident. Ms Dlamini relied, in this regard, on the Supreme Court of Appeal case of *S v Tyulu* ⁵, and to that end, Ms Dlamini submitted that a global figure of R150 000.00 would be a fair and reasonable amount.

³ *Poswa v Minister of Safety and Security* 2011 JDR 1260 (ECP)

⁴ *Fisa v Minister of Police* - 2016 JDR 0769 (ECGEL)

⁵ *Minister of Safety and Security v Tyulu* 2009 (2) SACR 282 (SCA) para 26.

[24] Ms Dlamini also sought to argue that the plaintiff did not have expert reports for the damages claimed and as such, submitted that there is no proof that the plaintiff suffered the damages claimed. Ms Dlamini's argument appeared to suggest that the court would not be in a good position to award this type of damages in the absence of expert opinions.

[25] There is no legal basis for Ms Dlamini's contention. The court is in a position to award this type of damages, which it often does, based solely on the plaintiff's testimony. It is trite that the amount of general damages to be awarded is within the discretion of the court, taking into account comparable cases to assist the court in coming to a fair and reasonable amount, bearing in mind the particular facts of the case before it. Hence, the amounts awarded in those cases do not bind the court in exercising its discretion on awarding the amount as to it seems meet. Accordingly, Ms Dlamini's submission in this regard is baseless.

[26] The plaintiff must have endured a harrowing night on that day. Considering the period for which the plaintiff was detained, which is between three to four hours, most of which entailed the assault and torture of the plaintiff. In addition, the plaintiff had to endure the invasion of his privacy by the unlawful search of his home at the early hours of the morning, whilst the plaintiff was asleep with his wife, where he lived with his elderly parents. Thereafter, driven around at that time, wearing only a short trouser/ pyjama without a top, dropped

off in some veld and told to walk back home, approximately 1,5km away, must have been a very traumatic day for the plaintiff.

[27] The physical scars on the plaintiff's forehead are still visible, approximately four years later, and the emotional trauma could be detected from the plaintiff's voice as he recounted that ordeal in every minute detail, including the pain he felt when he was electrocuted, describing it as feeling like someone was cutting him in half. The nightmares that the plaintiff explained he was still having about that day which to some extent, were confirmed by his wife that the plaintiff is restless at night and that his sleeping pattern had changed as he now wakes up multiple times a night.

[28] It is true that no amount of money can compensate the plaintiff for the trauma that he went through that night and the aftereffects that he experiences even now. I agree with Ms Dlamini that the amount to be awarded is *solatium* for the injury caused to the plaintiff and not to make the plaintiff rich, as was held in *Tyulu*. However, the award should nevertheless reflect that the court considers what happened to the plaintiff that night to be serious and that it acknowledges his pain and suffering.

[29] To that end, the following order is made:

- (1) The defendant is vicariously liable for the actions of his members on that day, to wit, the police officers.

- (2) The defendant to pay the plaintiff a globular figure for all heads of the damages claimed by the plaintiff in the amount of R480 000.00.
- (3) The defendant pay the plaintiff's costs of suit at High Court Scale, B.


PL NOBANDA
ACTING JUDGE OF HIGH COURT,
MPUMALANGA, MBOMBELA

Appearances:

Counsel for the Plaintiff: Mr Slabber
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Date of hearing: 05 June 2025
Date of judgment: 19 March 2026

