



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

CASE NO.: 4970/2021

In the matter between:

MAYIBUYE GCINIKHAAYA MANDELA

Plaintiff

and

MINISTER OF POLICE

Defendant

JUDGMENT

MHAMBI AJ

Introduction

[1] This action concerns a delictual claim resulting from the plaintiff's alleged unlawful assault by police officials. The plaintiff, Mr Mayibuye Gcinikhaya

Mandela, claims against the defendant, the Minister of Police, damages arising from the said unlawful assault.

[2] In the particulars of claim, the plaintiff alleges that on 08 May 2021, at or near Mqhekezeni Administrative area, Mthatha, he was assaulted by police members employed by the defendant without any legal justification.

[3] The Minister of Police is sued in a vicarious capacity on the basis that, during the alleged assault, the police officers were acting within the scope and course of employment with the defendant.

[4] During the hearing of this matter, an application for the separation of issues in terms of rule 33(4) was made without opposition by the defendant. Consequently, this court granted an order separating the issue of liability from quantum in terms of Rule 33(4). The matter, therefore, proceeded only on merits.

[5] The issue for determination is whether the plaintiff was assaulted by the members of the police as alleged in the particulars of claim and in his evidence.

[6] The defendant denies that the plaintiff was assaulted by the members of the police, and pleads that, in the event the plaintiff suffered injuries, it was not as a result of the alleged assault by members of the police. Other than that denial, no

version is put by the defendant in its plea; henceforth, no evidence was led for the defendant.

[7] The following issues are common cause between the parties: -

7.1 The plaintiff was assaulted on 08 May 2021;

7.2 The plaintiff sustained injuries as depicted in J88 and the medical records;

7.3 The plaintiff visited Mbekweni Clinic and Mthatha General Hospital for medical attention;

7.4 The plaintiff laid a charge of assault as per CAS 51/05/2021, at Madeira Police Station, Mthatha.

[8] The issues relating to onus and duty to begin were not in dispute; counsel for both parties agreed that the plaintiff bears the *onus* and the duty to begin.

[9] *Maboso v Felix*¹ is clear to say:- in delictual claims based on assault, the *onus* of proving that the assault occurred rests on the claimant. Once the commission of assault is proved at the trial, the defendant is saddled with a duty to satisfy the court that the assault upon the plaintiff was justified.

¹ Maboso v Felix 1981 (3) SA 865 (A) at 874.

[10] Mr Mandela was the only witness for the plaintiff. He testified that: On 08 May 2021, near or at Mqhekezweni Administrative Area, he was assaulted by members of the police. According to him, he was the fourth occupant in the bakkie driven by Mr Mthayi. The time was about 20:00 at night.

[11] As they were travelling, they were stopped by the police who demanded to search them. The plaintiff was seated at the back of the bakkie. He was instructed to disembark from the bakkie, and the police asked him to lie down. The plaintiff refused to lie down, saying that the ground was wet and muddy as it was raining on that day.

[12] He tripped and fell, and according to him, the police started to assault him with a stick and kicked him with booted feet. This assault, according to the plaintiff, took more than 05 minutes, and after the assault, the police ordered them to leave. Plaintiff testified that as a result of the assault, he was injured.

[13] From his evidence, he noticed the police visibility at Mqhekezweni throughout that week. They, the police, were mostly stationed in a tent near Mqhekezweni School. They were frequently patrolling the locality during the day and at night, according to his observations.

[14] From his evidence, the police were travelling with many Police marked motor vehicles, including bakkies and sedans. However, he noticed a police force-

marked motor vehicle, which he described as a Land Cruiser bakkie with registration letters and numbers B[...].

[15] He testified that he easily identified the police by the uniform they were wearing, a blue-like colour, according to him, it was the normal police uniform colour with the police coat of arms. The motor vehicles driven on the scene were marked with the South African Police Service Coat of Arms, but he could not identify the name of the police station written on the motor vehicles. But the police marked motor vehicles had blue lamps fitted on them.

[16] He further testified that due to fear of further police attack or assault, even though he was injured, he asked Mr Mthayi to take him to the medical centre on 09 May 2021. On 09 May 2021, he sought medical attention at Mbekweni Clinic, Viedgesville, Mthatha.

[17] On the same day, 10 May 2021, the plaintiff went to Mthatha General Hospital, where he was advised to open a case and obtain a J88 form.

[18] On the same day, 10 May 2021, the plaintiff went to Madeira Police Station to open a case of assault against the Police officers, and he was given a J88 form.

[19] On 11 May 2021, the plaintiff went to Mthatha General Hospital, and he was examined and given some medication. The J88 form was also filled in by the Doctor who examined the plaintiff.

[20] On 12 May 2021, the plaintiff noticed in the local newspaper that his ordeal with the Police was published.

[21] It was his evidence that, on that night, he slept at Mr Mthayi's homestead, where, upon arrival, he asked Mr Mthayi to take pictures of his injured face and body, and evidence of substance like mud covering his face.

[22] The following documents were admitted as evidence without objection(s).

- (a) Photos depicting the plaintiff with an injured face and covered in some parts of the face with mud.
- (b) J88 depicts the injuries sustained by the plaintiff.
- (c) Medical records from Mbekweni Clinic, dated 07 May 2021.
- (d) Medical records from Mthatha General Hospital, dated 10 May 2021.
- (e) Police docket content and face, under Madeira Police Station, Mthatha, CAS 51/05/2021, reflecting the assault charge opened by the plaintiff against the police.

[23] Mr Mdeyide, Counsel for the plaintiff, contended that:-

[24] The plaintiff has unequivocally identified his assailants as police officers, and there is no evidence to dispute that except what was put to the plaintiff during cross-examination.

[25] He submitted that on the issue of identity, the court must take into account that,

25.1 There was a light from the motor vehicle;

25.2 The incident did not happen quickly, and that can be gleaned from the fact that the assault is said to have spanned more than 5 minutes, and prior to that, the police were searching the plaintiff's companions;

25.3 The scene was stationary, not moving.

25.4 The police officers were seen by the plaintiff during the day performing patrol duties around the locality;

25.5 The police were in police uniform, carrying guns;

25.6 They were using a marked police vehicle;

25.7 The cars had a blue lamp;

25.8 They were using a Toyota vehicle with Reg. No and letters B[...]

[26] The defendant had no version put to the plaintiff, both in the plea and during cross-examination. Despite intense cross-examination, the plaintiff was clear and satisfactory to say he was assaulted by the police officials, and he was adamant by his identification with the police uniform and coat of arms in the uniform and the marked Police motor vehicles.

[27] Mr Mandela further mentioned in his version that despite some security companies having identical uniform as that of the police, he was certain about police identification, and that the police whom he identified wore the uniform he had identified as “**police uniform**”.

[28] Mr Dotwana, counsel for the defendant, contended that the identification of the police by the plaintiff has flaws to the extent that, in the particulars of claim, he described the motor vehicle as a bakkie with registration letters and numbers B[...]. During his evidence in chief, Mr Mandela described the marked police motor vehicle as a Toyota Hilux. In the statement, Mr Mandela made to the police, he described the marked police motor vehicle as a Toyota Land Cruiser with registration Letters and Numbers 898 with no recollection of letters.

[29] Mr Dotwana further contended that in his evidence in court, Mr Mandela described the marked police vehicles as Toyota Hilux with registration letters and numbers B[...].

[30] Mr Mandela justified the inconsistency relating to the motor vehicle registration as follows: when he reported the matter to the police, he was still in shock, which could be the reason for missing the correct digits and whether the marked motor vehicle was a Toyota Land Cruiser or Hilux.

[31] Mr Dotwana finally contended that due to the flaws in the evidence of the plaintiff, his version regarding the motor vehicle description falls to be rejected.

[32] Regard had to be given to the evidence of the plaintiff; two issues require consideration: first, the plaintiff is a single witness; secondly, whether his evidence is competent and credible for this Court to accept it.

[33] In relation to the plaintiff as a single witness, the Civil Proceedings Act² establishes the legal sufficiency of evidence of a single witness. It states that judgment may be given in any civil proceedings entirely on evidence of any single competent and credible witness.

² Civil Proceedings Act, Section 16, of Act 25 of 1965

[34] In *S v Miggel*³, in relation to the evidence of a single witness, the court held that:

“It is settled law that the evidence of a single witness must be approached with caution. In the normal course of events, the evidence of a single witness will only be accepted if it is in every important respect satisfactory or if there is corroboration for that evidence. (See S v Sauls and Others 1981 (3) SA 172 (A) at 180E - G; S v Letsedi 1963 (2) SA 471 (A) at 473F; R v Mokoena 1956 (3) SA 81 (A) at 85 - 6.) The corroboration that is required is confirmatory evidential material outside the evidence that is being corroborated. (S v Khumalo en Andere 1991 (4) SA 310 (A) at 328A - B.) The corroboration does not necessarily need to link the accused with the crime.”

[35] In relation to the credibility and reliability of the plaintiff's evidence, in which there are contradictions, in dealing with a disputed issue of whether the plaintiff was assaulted by the police officials or whether the contradiction relates to the identification of the alleged marked police motor vehicle, I will deal with the matter as the principle held by the Supreme Court of Appeal.

[36] Due to the flaws in the respective cross-examinations, this matter has to be decided based on the contradictory versions between the plaintiff and the

³ 2007 (1) SACR 675 (C) at 678A-B.

defendant. I will do so in line with the principle articulated in *Stellenbosch Farmers' Winery Group Ltd. and Another v Martell & Cie SA and Others*⁴:

“.....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’s 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 of 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

⁴ 2003 (1) SA 11 (SCA) para 5.

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.”

[37] In my assessment, Mr Mandela was a credible witness; his evidence was clear and satisfactory in all material respects.

[38] The shortcomings in it, including the contradictions criticised by the Counsel for the defendant, do not render it incredible; I find it trustworthy.

[39] Evidence of a single witness need not be flawless and beyond criticism⁵I am satisfied that his evidence is the truth, the whole truth and nothing but the truth.

[40] In relation to Mr Mandela’s identification of the police officials, from his evidence, he clearly identified the police as there was lighting from the motor vehicles, which was visible enough for him to observe the occurrences at the scene. He had the opportunity to observe, and he had time to observe as there was an altercation between the police officials and him, including Mr Mthayi. The scene was not a moving one; everything happened in one place. His evidence regarding the police official’s identification corroborates the reply by his attorneys to the request for further particulars, delivered by the defendant’s attorney. The request

⁵ S v Souls 1981 (3) SA 172 (A) 180 E-G

for further particulars by the defendant's attorney is dated 13 April 2025; the reply thereto is dated 22 April 2026.

[41] Both documents deal mostly with how the plaintiff identified and observed the police officials as assailants in the alleged assault.

[42] In relation to identification, the following was held in *S v Mthethwa*:⁶

“Because of the fallibility of human observation, evidence of identification is approached by the Courts with some caution. It is not enough for the identifying witness to be honest the reliability of his observation must also be tested. This depends on various factors, such as lighting, visibility and eyesight, the proximity of the witness; his opportunity for observation, both as to time and situation; the extent of his prior knowledge of the accused; the mobility of the scene; corroboration; suggestibility; the accused's face, voice, built, gait and dress; the result of identification parades, if any; and of course, the evidence by or on behalf of the accused. The list is not exhaustive. These factors, or such of them as are applicable” in a particular case, are not individually decisive, but must be weighed one against the other, in light of the totality of the evidence, and the probabilities”.

[43] In applying the identification principle as held in *Mthethwa*, I am satisfied that the plaintiff has discharged the onus to prove that he was indeed assaulted by the members of the police on 08 May 2021.

⁶ *S v Mthethwa*, 1972(3) SA 766 (A)

[44] I now have to deal with the veracity of the conduct by the members of the police towards the plaintiff. I do so hereunder.

Assault

[45] Assault is recognised in the law of delicts as *actio iniuriaum*. It is defined as an infringement of the right to bodily integrity (physical and psychological)⁷. In *Minister of Justice v Hofmeyer*,⁸ the court stated:

“One of an individual's absolute rights of personality is his right to bodily integrity. The interest concerned is sometimes described as being one in *corpus*, but it has several facets. It embraces not merely the right of protection against direct or indirect physical aggression or the right against false imprisonment. It comprehends also a mental element.”

45.1 The definition of assault is the same under both civil law and criminal law. In criminal law, assault is defined as the offence consisting of unlawfully and intentionally applying force, directly or indirectly, to the person of another, or inspiring a belief in another person that force is immediately to be applied to them⁹.

⁷ JC Van der Walt and JR Midgley Principles of Delicts, 3ed at 111 para 78

⁸ Minister of Justice v Hofmeyer [1993] ZASCA 40; 1993 (3) SA 131 (A) at 145H-1.

⁹ CR Snyman Criminal Law 5ed at 455

45.2 In its plea, the Defendant denied all the material facts alleged in the particulars of claim without setting out the material facts upon which the denial was based. Instead, the defendant merely called upon the plaintiff to prove his case.

[46] The question of whether the assault on the plaintiff by members of the police constitutes negligence is dealt with below:-

[47] The test applicable in an action for damages alleged to have been caused by the defendant's negligence has been stated by the Supreme Court of Appeal (SCA) in *Groenewald v Groenewald*,¹⁰ that:

“Indelictual claim of the nature involved in the present case two separate questions arise:

1. Was the defendant at fault?
2. For what consequences caused to the plaintiff in consequences of the defendant's conduct is the defendant liable in damages to the plaintiff? For the purpose of answering the first question the defendant would be held to be at fault as long as the intended to cause harm to the plaintiff, even if he did not intend that the consequences of such conduct would be to cause the kind of harm actually suffered by the plaintiff or ham of that general nature. He would also be held to be at fault if the measurable person in the position of the defendant would have realized that harm to the plaintiff might be caused by such conduct, even if he

¹⁰ 1998 (2) SA 1106 at 1112-J.

would not have realized that the consequences of that conduct would be to cause the plaintiff the very harm he eventually suffered or harm of that general nature”.

[48] In *Sea Harvest Corporation (Pty) Ltd and Another v Duncan Dock Cold Storage (Pty) Ltd*¹¹, Scott JA, writing for the majority of the Court, said:

“A formula for determining negligence which has been quoted with approval and applied by this Court time without measure is that enunciated by Holmes JA in *Kruger v Coetzee* 1966 (2) SA 428 (A) at 430E - F. It reads:

'For the purposes of liability *culpa* arises if -

(a) a *diligens paterfamilias* in the position of the defendant -

- (i) would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss; and
- (ii) would take reasonable steps to guard against such occurrence; and

(b) the defendant failed to take such steps.'

However, in *Mukheiber v Raath and Another* 1999 (3) SA 1065 (SCA) the following was said at 1077E - F:

'The test for *culpa* can, in the light of the development of our law since *Kruger v Coetzee* 1966 (2) SA 428 (A), be stated as follows (see Boberg *The Law of Delict* at 390):

For the purposes of liability *culpa* arises if -

(a) a reasonable person in the position of the defendant –

¹¹ 2000 (1) SA 827 (SCA) para 21.

- (i) would have foreseen harm of the general kind that actually occurred;
 - (ii) would have foreseen the general kind of causal sequence by which that harm occurred;
 - (iii) would have taken steps to guard against it, and
- (b) the defendant failed to take those steps.’

[49] In conclusion, considering all the evidence, this court has no basis to reject the version of the plaintiff. It is more credible and probable. The police officials knew or ought to have known that the assault on the plaintiff would possibly cause an injury or harm, and take reasonable steps to guard against such an injury or harm. They failed to do so; on the evidence before me, the police officers were negligent.

[50] The Police conduct at all times dealing with the plaintiff were invasive of his right to freedom and dignity. This is crucial as the police are, in the daily execution of their duties, involved in instances that have the potential to affect people’s rights to dignity equality and freedom – which are foundational to our democracy. Our people deserve a police service which is steeped in a culture of respect for human rights. This requires them in all their dealings with society whilst executing their

constitutional duties to be guided by respect for human rights and strict observance of the rights to human dignity, equality and freedom¹².

[51] In the result, the claim of the plaintiff should succeed. I see no reason to depart from the ordinary principle that the costs follow the result.

Order

[52] I make the following order:-

1. The defendant is held liable for the damages, as may be proven or agreeable, as a result of the assault of the plaintiff on 08 May 2021.
2. The defendant is directed to pay costs of the plaintiff's suit on Scale B.

M. MHAMBI
ACTING JUDGE OF THE HIGH COURT

¹² Minister of Safety and Security and Another [2016] ZACC 24 para 56

APPEARANCES:

Counsel for the Plaintiff : Mr. A. Mdeyide

Instructed by : Mthayi Attorneys
Mthatha

Counsel for the Defendant : Mr. S. Dotwana

Instructed by : State Attorney
Mthatha

Heard on : 20, 21 May 2026

Judgment Delivered on : 17 June 2026