




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

JUDGMENT

Case No.: 2073/2022

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED YES/NO
<u>06 JULY 2026</u>	
DATE	SIGNATURE

In the matter between:

GININZA FIKILE ANGEL

PLAINTIFF

And

THE MINISTER OF POLICE

DEFENDANT

JUDGEMENT

NGWENYA AJ

1. On the 07th of February 2022 at Barberton Community Clinic, there was a community protest. The South African Police Service (“SAPS”) was called in to maintain peace and order and to prevent loss of life and property.
2. The Plaintiff was shot by the SAPS four times with rubber bullets on her back. She was further arrested and detained for four days. She is now suing the Minister of Police for unlawful arrest, detention and assault.
3. She is claiming the sum of R1 000 000.00 for deprivation of liberty, discomfort, humiliation, degradation and injury to her good name as well as infringement of her privacy under the claim for unlawful arrest and detention.
4. She is further claiming R2 500 000.00 for impairment of dignity, pain and suffering, discomfort, contumelia, loss of amenities of life, psychological trauma and adverse effects on her health under the claim for assault.

Defendant’s testimony – Warrant officer Mnisi

5. As per the law of procedure in claims for unlawful arrest, the Defendant testified first. Its only witness was Warrant officer Mnisi. Warrant officer Mnisi testified as follows:

- 5.1 He has been a warrant officer for 22 years. He has been trained as a Public Order Officer. His training included skills on how to handle a rioting community.
- 5.2 He is stationed at Barberton. However, at the time of the incident he was based in Hazyview.
- 5.3 He was deployed in Barberton to deal with the community protest. When he and other members arrived in the area, they observed a lot of community members outside the Barberton Community Clinic Health Centre.

- 5.4 He and his team noticed that the entrance to the clinic was barricaded with stones and burning tyres.
- 5.5 They tried to speak sense to the community, but the latter did not want to cooperate and threw stones and bottles towards his team.
- 5.6 In response, his team used stun grenades and rubber bullets to disperse the crowd.
- 5.7 According to him, the team succeeded in dispersing the crowd, and also succeeded in preventing damage to the clinic.
- 5.8 When asked why they used rubber bullets, he testified that they were confronted with stones and bottles and therefore, had to disperse the crowd and prevent the burning down of the clinic.
- 5.9 When asked where were the rubber bullets directed at, he testified that they were directed at the entire crowd.
- 5.10 Significantly, when asked why the Plaintiff was shot at the back. He responded that he did not know.
- 5.11 He was further asked the question whether a dispersing crowd remained a threat or not, he said no as the crowd can disperse but then regroup.
- 5.12 When asked whether he saw the Plaintiff when the crowd was dispersing, he said no because it was at night.
- 5.13 When asked about when was the first time he saw the Plaintiff, he testified that he found her where she was laying down injured, and concluded that she was one of the protesters.
- 5.14 When asked about the procedure when a suspect is injured. He testified that he called an ambulance to transport the Plaintiff to hospital.

- 5.15 He further testified that he did not handcuff the Plaintiff, but only explained her rights and put her in the police van while waiting for the ambulance.
- 5.16 The ambulance arrived after 12 midnight and the Plaintiff was taken to the hospital. The incident happened on Friday evening and the Plaintiff was hospitalised until the following Thursday.
- 5.17 When asked as to why the Plaintiff was handcuffed and placed under police guard at the hospital. He testified that it was to prevent the Plaintiff from escaping from police custody or preventing people from aiding and abetting an escape.
- 5.18 He testified that the Plaintiff could not be brought to Court because the roads to the Courts were barricaded.
- 5.19 The Court asked warrant officer Mnisi whether the Plaintiff was a threat or not. He testified that he could not say that she was a threat.
- 5.20 Follow up questioning by counsel was why he arrested her when she was laying on the ground. He testified that he was convinced that the Plaintiff was one of the people that fled from the protest.
6. Under cross examination he testified as follows:
- 6.1 It was put to him that the Plaintiff was not part of the protesters. He answered that he believed she was.
- 6.2 It was further put to him that the arrest, detention and assault was unlawful. He disputed the proposition.
- 6.3 It was put to him that the SAPS acted negligently and excessively and that the shooting was unnecessary. He responded that they had to

disperse the crowd because it was throwing stones and bottles and wanted to burn down the clinic.

- 6.4 When asked what the purpose of an arrest is, he responded that the purpose is to bring the Plaintiff to Court to explain why she was found committing an offence. Counsel then put to him that the Plaintiff was not brought to Court. He responded by saying that he could not comment as he had handed the Plaintiff to the Charge Office.
- 6.5 It was further put to him that the Plaintiff testified that she was shot at close range. He responded that he had no comment.
- 6.6 He was then asked about the standard procedure when using rubber bullets. He responded that they have to first shoot down to the ground so that the bullet ricochets to the crowd. A follow up question from counsel was: from what distance? He responded that between five to ten meters. He further mentioned that they are permitted to shoot within that distance, but pointing the firearm to the ground.
- 6.7 When it was put to him that the Plaintiff was shot directly. He said yes, it is possible especially when a person falls to the ground.
- 6.8 It was put to him that the Plaintiff will testify that she was shot while on the ground and far from the protest. He responded that he could not comment as he merely arrested the Plaintiff. He further agreed that rubber bullets can cause harm when shot at close range.
- 6.9 It was further put to him that the Plaintiff will testify that she was not a threat. He disputed that and said the Plaintiff was not shot at her house.
- 6.10 When he was asked exactly where the Plaintiff was shot, whether it was at the clinic or somewhere else. He responded that he had no comment.

- 6.11 When it was put to him that he is speculating that the Plaintiff was part of the protest. He responded that he did not see the Plaintiff prior to the injury.
- 6.12 It was put to him that the assertion that she was part of the protesting crowd is speculation. He responded that he was sure that she was part of the protesting crowd.
- 6.13 It was put to him that the Plaintiff was shot 450 meters from the scene. He conceded, but qualified it by saying that she might have ran from the vicinity of the protest and collapsed.
- 6.14 It was further put to him that the Plaintiff was not part of the protest and that she was going in a different direction to see a friend. He said no she was found hiding.
- 6.15 It was further put to him that the Plaintiff will testify that he shot her. He responded that that is not true because during the inspection in loco, she said something different. For instance, she said she was shot by Officers who came from different directions.
- 6.16 When the Court put it to him that the Plaintiff was still shot by the SAPS. He said he had no comment.
- 6.17 He was further shown that the J88 indicated that there was a 3 centimetre deep wound and 5 centimetre deep wound on the buttocks of the Plaintiff and that four rubber bullets were removed.
- 6.18 A follow up question was: what was the distance when the rubber bullets were fired? He responded that it was 10 metres.
- 6.19 When he was asked whether persons who turned their backs are still a threat or not . He said no, but insisted that it is possible that when they turned their backs the SAPS was already firing shots.

- 6.20 It was put to him that it is unlawful to shoot at a fleeing suspect, he conceded, but further said there were many suspects, and they would not know at what point the Plaintiff turned around to flee.
- 6.21 When asked whether the Plaintiff was armed when they found her. He said no.
- 6.22 When he was asked whether other protesters were armed or not. He said they were armed with bottles and stones, and that he did not see the Plaintiff as they were throwing stones at them.
- 6.23 It was put to him that as the Plaintiff was not found armed, she was not a threat. He responded that that is not true. But later conceded that she could not be a threat as she was laying down.

7. In re-examination he testified as follows:

- 7.1 He was asked whether it is necessary to see a perpetrator throwing stones in a violent situation. He said yes, but the incident in question happened at night.
- 7.2 When asked what the risk was. He said the risk was towards the clinic.
- 7.3 When asked what offence the Plaintiff was suspected to have committed when she was arrested. He said public violence and damage to property and traffic violation.
- 7.4 When asked what made him arrest the Plaintiff. He said because of the rubber bullets injuries, he concluded that she was part of the protesters.
- 7.5 When asked whether the Plaintiff was found far from the incident or not. He responded that she was found where the other group of protesters ran towards.

- 7.6 When asked whether it is easy or difficult to determine whether she was an active participant or not . He said it was not difficult because of her injuries.
- 7.7 When asked whether police shot down as per procedure. He said he could not comment.
- 7.8 When asked whether it is possible that four ricocheting bullets can hit one person. He said it is possible because the bullet casing may contain three or four balls.
- 7.9 When asked whether he shot the Plaintiff or not. He said no, the Plaintiff does not know him because he only saw her during the arrest.
- 7.10 When asked whether the threat had been eliminated. He said no because others may not have stopped or have fled the scene.

Plaintiff's testimony – Gininza Fikile Angel

8. Under examination in chief, the Plaintiff testified as follows:

- 8.1 She is a farm worker and a traditional healer.
- 8.2 She was shot by the SAPS on the 07th of February 2020.
- 8.3 She was going to a traditional healer's ceremony and had to pass by a friend's place. As they were walking between house passages, the SAPS came behind them between trees in the nearby houses and started shooting and she fell in a bushy area.
- 8.4 While she was still laying on the ground the SAPS came and shot at her at close range. When she asked the SAPS Officer why she was being shot, the latter said she was part of the protest. She informed the SAPS

Officer that she was not part of the protest and that she was going to her friend's place. However, the SAPS Officer continued to fire shots against her body.

8.5 Thereafter, the SAPS Officer picked her up and walked behind her. He took her to the SAPS van and the van made many rounds in the township before she was taken to the station where she was charged at around 23:40.

8.6 At the station, the SAPS Officer started writing a statement and told her that she was being arrested.

8.7 Because she was bleeding profusely she was then taken to the hospital in the morning around 08:00.

8.8 At the station, she was handcuffed and was further handcuffed in hospital for four days. After four days, she was told that there is no case against her and that she should go home. She was at the hospital from the 08th of February 2020 to the 13th of February 2020, and she did not appear in Court.

8.9 She was shot at the back and photos of the back injuries were taken by a friend.

8.10 The injuries have caused her to experience severe pain in winter, and cannot bend easily to lift objects. She further cannot control her urine because of abdominal pain. In addition, the injuries have affected her traditional healer duties as she now needs assistance and must pay the person assisting her.

8.11 The scarring on her body has caused her embarrassment and has affected her love life as partners question her about the scars. Furthermore, the community has lost trust in her as she is seen as a criminal.

- 8.12 Regarding the amount she is claiming, she mentioned that the amount is justified because she has lost strength to perform her duties and cannot perform her duties like before.
- 8.13 When it was put to her that the SAPS contends that she was hiding, she denied that and reiterated that she was going to a friend's place.
9. Under cross examination she testified as follows:
- 9.1 When it was put to her that she had said she was on her way to see a friend and not a ceremony, she said yes, but after picking up the friend they were going to proceed to the ceremony.
- 9.2 She was referred to page 077-56 (Plaintiff's affidavit) and she disavowed it because she said it was not read back to her. She said she was only asked to sign it.
- 9.3 Counsel for the Defendant asked her whether the SAPS emerged from the bushes and she said yes, around the houses where there were mango trees.
- 9.4 When she was asked whether she saw the protest or heard any gunshots, she responded that she did not see anything along the route she was taking and also did not hear any gunshots.
- 9.5 When she was asked whether she heard people running, she said yes, she heard noise and people running on the main road.
- 9.6 When it was put to her that people ran in different directions, she responded that along her direction no-one ran towards that side.
- 9.7 When she was asked at what point did the SAPS start shooting at her, she said, at first, it was from a distance and later at close range. She

further stated that, she was facing the other direction and the person shooting at her was behind. She further mentioned that she was shot at close range, and she asked the person why he was shooting her and instead of responding, the person continued to shoot at her multiple times.

9.8 Her friend ,Ntokozo had escaped. She was then handcuffed and placed in a SAPS van.

9.9 She remained handcuffed at the station while an SAPS Officer was writing a statement, and she was later taken to hospital in a SAPS van and not in an ambulance.

9.10 When it was put to her that there is no indication that she was hospitalised, she said that is not true as there are hospital discharge documents.

9.11 When it was put to her that she was not in hospital for the duration of four days as she claimed. She disputed that.

10. There was no re-examination.

ANALYSIS

11. The Defendant has failed to prove that the assault, arrest and detention was justified for the following reasons:

11.1 Firstly, the defence witness could not dispute that the Plaintiff was shot at close range.

11.2 Secondly, the defence witness could not place the Plaintiff at the vicinity of the violent protest nor did he dispute that the Plaintiff was shot at a place far from the protest. Therefore, there was no probable cause to arrest and detain the Plaintiff.

11.3 Thirdly, the defence witness could not dispute that the Plaintiff was shot at the back , meaning that she was not a threat to property or any person.

11.4 Lastly, he could not dispute that the Plaintiff was not armed with any of the objects described to have been used by the protesting crowd i.e. bottles and stones.

12. Importantly, even if I were to accept that the Plaintiff was part of the protest and was fleeing when she got shot, that does not justify the shooting ,as she was no longer a threat. This is confirmed by the fact that she was shot on the back. In the matter of ***Nkoane v Minister of Police (3920/2020)[2023] ZAFSHC 33(30 January 2023)***, referred to in the Plaintiff's heads of argument, the Court found that a reasonable SAPS Officer would not fire at a fleeing crowd.

13. Accordingly, I find that the assault, arrest and detention was not justified and therefore, unlawful.

QUANTUM

14. The principles relating to quantum are trite and I do not intend to repeat same in this judgment. It is further trite that a court must exercise its discretion in awarding damages, and that the discretion must be exercised judiciously. See ***Minister of Safety and Security v Seymour (295/05) [2006] ZASCA 71***.

15. For the award that I make, I consider the following factors:

15.1 Firstly, that the Plaintiff was shot at close range and on her back.

15.2 Secondly, I consider that she posed no threat to anyone or property.

15.3 Thirdly, I consider that she was handcuffed at the police station and during her hospital stay.

15.4 Fourthly, I consider the fact she was shot far from the rioting crowd.

15.5 Lastly, I consider that the injuries have compromised her life including her love life because of the scarring.


16. In the circumstances, and having considered case law referred to by both parties, I award the sum of R200 000.00 for the unlawful arrest and detention and the sum of R450 000.00 for the unlawful assault.

17. In the circumstances, I make the following order:

(1) The Defendant is ordered to pay the Plaintiff the sum of R650 000.00;

(2) The Defendant is ordered to pay interest at the rate of 7% per annum a tempore mora from date of the judgement to date of final payment;

(3) The Defendant is ordered to pay the Plaintiff's costs on party and party scale C including the cost of counsel.

A


T S NGWENYA AJ
ACTING JUDGE OF HIGH COURT,
MPUMALANGA, MBOMBELA

Date of hearing: 25 February 2026

Date of Judgment: 06 July 2026

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