REPUBLIC OF SOUTH AFRICA

SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO 2007/26594

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

29/5/2010

In the matter between -

LAMOLA, MICHAEL PLAINTIFF

and

THE MINISTER OF SAFETY AND SECURITY DEFENDANT

JUDGMENT

SUTHERLAND J

[1] This is a matter solely about the appropriate quantum of damages to award to the plaintiff, Michael Lamola arising from an unlawful shooting, arrest and detention. An earlier Trial, before Moshidi J, resulted in a finding of liability by the defendant. The quantification of damages was separated from that trial. This trial begins where the trial before Moshidi J left off. The concluding paragraphs in that judgment stated:

> "[38] ... the plaintiff has indeed succeeded in proving...that his **prosecution was malicious**. The police, in particular Sgt Maloba, admittedly acting within the course and scope of his employment with the defendant, **instituted the criminal proceedings** against the plaintiff, **with malice** and without reasonable and probable cause. The plaintiff was acquitted after a full criminal trial. For the sake if completeness, the **shooting of the plaintiff by the clearly inexperienced constable Lefading, was not only intentional and unlawful** but also undoubtedly premature in the circumstances. Similarly, and inevitably, the **resultant arrest of the plaintiff**, without a warrant, and his **subsequent detention were unlawful.** The detention, in particular from 1 April or 3 April 2005 to 27 March 2006 could have been avoided. I also find it particularly aggravating that constable Lefading admits that he shot the plaintiff without uttering a word or warning. Further aggravating is the subsequent deliberate **neglect of the plaintiff's constitutional rights** and the conduct of Inspector Nkwenyeka in taking a defective warning statement from the injured plaintiff, who was still in pain and incoherent, and signing the statement on behalf of the plaintiff.

[39] I make the following order:

(1) The defendant shall be liable to pay the plaintiff all such damages which the plaintiff may arise ... out of the **unlawful shooting and arrest** of the plaintiff ... and the **subsequent detention and malicious prosecution** of the plaintiff.

(2) ..."

[2] Pursuant thereto, the plaintiff sued for awards of damages under these heads, with costs on the attorney and client scale:

As a result of the wounding:

1.	Pain and suffering, inconvenience and discomfort, disability, disfigurement, loss of the amenities of life, shock and psychological harm	R300 000.00
2.	Contumelia	R100 000.00
3.	Future loss of earnings and earning capacity	R419 749.00
4.	Future medical expenses	R244 769.00

As a result of the arrest and detention:	
5. Deprivation of liberty	R200 000.00
6. Inconvenience and discomfort	R 50 000.00
7. Contumelia	R 50 000.00
As a result of the malicious prosecution:	
8. Contumelia, deprivation of freedom and discomfort	R100 000.00
TOTAL	R1 464 518.00

[3] An issue arose about whether or not the plaintiff could procure an award for past and accrued loss of earnings. Paragraph 9.3 of the claim was phrased as quoted above in paragraph [3] of this judgment. Although averments in paragraph 8.9 of the claim unmistakeably, albeit inelegantly, assert both past and future loss in respect of earnings, the prayer is, indeed, awkwardly framed. The sum claimed is a total of both sums as addressed in the pleadings and in the report of the actuary, Jacobson, which was incorporated into the claim by reference. During argument an amendment was moved to have paragraph 9.3 read "*past loss of earnings and future loss of earning capacity*". The defendant objected on the grounds that the defendant was taken by surprise. However, because the averments referred to above plainly contradict that contention and because extensive evidence was led on the facts pertinent to a claim for past loss of earnings the objection was unsound.

[4] I allow the amendment on the basis that the pleadings were brought into alignment with the evidence and the absence of any prejudice to the defendant.

[5] At the outset it is necessary to state that the fragmented articulation of the damages claims, as set out above, is unhelpful. Although no individual head is unfounded, the overlapping of the elements that constitute some of the heads make it impractical to try to assess distinct awards for ring-fenced categories. Contumelia pervades the entire sweep of the proven misconduct by the police. The detention is germane to his pain and suffering under several heads. The claim for malicious prosecution addresses indistinguishably the self-same sequelae of the arrest and detention and can be subsumed under general damages in an appropriate amount.

[6] I prefer to set the damages agenda thus:

1. General damages for pain and suffering, disability, disfigurement, loss of the amenities of life, inconvenience and discomfort, shock and psychological harm, deprivation of liberty and contumelia.

2. Future medical expenses.

3. Loss of past earnings and of past earning capacity.

4. Loss of future earning capacity.

[7] The Parties agreed that all the medical expert reports be adopted into evidence and accepted as correct without testimony. The reports and joint minutes so adopted and to which reference was made were:

a. D. Bizos - Gastroenterologist

b. M. Peverett - Occupational therapist

c. T. Gama – Occupational therapist

d. G. Jacobson - Actuary

e. I .Kramer- Actuary.

[8] The injuries consisted of a gunshot wound through the left side wall of the chest, at the 8th intercostal space in the posterior auxiliary line. Internal damage was caused by the penetrating bullet. Both the diaphragm and the liver were lacerated and internal bleeding occurred. In the emergency surgery that followed, a drain was inserted after a medial laparotomy was performed to clear the abdomen of free fluids. He was left with scarring at the sites of the bullet wounds, the drain and the abdominal incision. In due course he developed two incisional hernias that are significantly prominent in addition to the permanent unsightly scarring. Serious pain was experienced throughout the wounding and the subsequent medical treatment. He was hospitalised for two weeks, whereupon he was taken to police lock-up for two months

while still recuperating. Thereafter he was held in a prison awaiting trial for another 9 months.

[9] The plaintiff testified. Two other witnesses were called by the defendant. Ms Gama, the Occupational Therapist to address a point of credibility of the plaintiff and Mr Thabang Melatu, an employee of Workforce, a labour broker that employed the plaintiff between 2003 and 2009 to address the details of his employment history.

[10] The critical facts about the injuries sustained and the duration of detention is common cause. What was controversial on the facts were –

(1) whether or not the plaintiff was employed at the time of the shooting and arrest, and by implication whether or not the detention deprived him from working and of earning; and

(2) whether or not the plaintiff's unemployment since August 2009 was causally linked to the wounding, or to some other cause.

[11] As to the quantification of the damages, there was no consensus at all, nor was there consensus as to the factors to be taken into account and what relative weight ought to be attributed to such factors.

[12] The primary debate related to the plaintiff's employment history and the explanation for its interruptions and termination. It is convenient to address that topic discretely.

[13] The plaintiff's version is that:

1. He worked for Workforce from 2003 in a permanent capacity. This was interrupted by his wounding and arrest on 2 April 2005. On his release on 27 March 2006, he returned to Workforce. His job had been given to another.

2. He worked briefly for another outfit, and when Workforce could offer him a "contract" position, he resumed his relationship in October 2006. By use of the term "contract" it was meant that the job was precarious in that he would be engaged only when Workforce had a client to whom he could be deployed. When such client contracts ended he would be retained only if another called for his services.

3. The work was that of a forklift driver on the apron of OR Tambo airport. Contrary to the pretensions of that title, the job function did not consist of merely perching oneself in the cockpit and steering the device about. It also required him, in rotation with other crew members on shift, to physically handle air freight and pick up the cargo and place it on the pallets before the forklift came into play.

4. He worked on this basis until August 2009. Throughout the period he suffered pain and discomfort from the wounds owing to the activity of shifting weighty objects. Regularly he could not do the shifting and work mates had to step in to do so, on his behalf. These stresses and the consequent pain caused him to be frequently absent. He was also jeered by co-workers for his physical limitations.

5. After the most recent contract ended in August 2009, he lost heart and abandoned such work. He has not worked since.

[14] The plaintiff produced payslips to corroborate his employment history and rates of pay. However, he could produce only a few slips prior to 2006. He was severely criticised for the failure to produce a payslip to show that he was employed, as

alleged, immediately before his arrest on 2 April 2005. The relevant facts proven established the following:

1. He was in possession of his regular payslips prior to incarceration. On his release and return to his old lodgings, he discovered that his belongings had been discarded. He retrieved some that had not been rained on or blown away by wind. When he approached his employer in 2006, at the behest of his attorneys, to procure duplicate payslips he was told that they could not be given. Crucially, he did not have nor could he get a copy of the March 2005 payslip. What he had was formally discovered and the contents of those documents corroborate his version.

2. However, the post 2006 employment history shows regular but intermittent employment. He concedes as much. Upon this premise the defendant contended that the plaintiff had failed to prove that he was indeed in employment immediately before his arrest and thus, his claim for loss of earnings for the year in detention would have to fail.

3. The evidence reveals, however, quite enough to prove his case on this point. He gave a plausible explanation for the lack of documentary corroboration. To rebut that explanation, Mr Melatu was called; his

testimony supported that of the plaintiff. Melatu is the only person with access to the data base of employees. The data base begins from January 2006. The records before than were not loaded and Melatu does not know if they exist any longer. The policy is to keep only the last five years of records. Melatu began work at Workforce during 2007 and self evidently, if the plaintiff queried his payslips in 2006, they would not have met. The plaintiff's version is unrebutted.

4. Is there any reason to doubt the veracity of his assertion? - A question to be posed in the context of all the facts adduced. Counsel for defendant put to the plaintiff that in the trial before Moshidi J he was asked if he was working on the day of his arrest, to which he answered 'no'. The purpose of the challenge was to substantiate the contention that he was not in employment by reference to such concession made in the earlier trial. The plaintiff agreed that the question and answer had been exchanged, but said further, that he referred to the fact that on that fateful day he was off duty and going about other errands.

5. If the defendant had wished to impeach the plaintiff, self evidently it could only do so by producing a transcript which might contradict his

explanation. No transcript was produced. The plaintiff's evidence stands uncontradicted.

6. It was plain that the idea of impeaching the credibility of the plaintiff arose very late and the defendant had not, in preparing for the trial taken the trouble to procure a transcript. The defendant's counsel was left without a proper foundation to pursue this line of cross examination.

7. In any event, much of the huffing and puffing over this aspect of the case omits to accord weight to the pattern of employment clearly demonstrated by the proven facts. On the probabilities alone he probably was employed. Moreover, his evidence is that before arrest he was in permanent employment. That statement stands uncontradicted.

[15] In the result, it has been satisfactorily proven that the plaintiff was indeed in employment in April 2005 with Workforce and that but for the police conduct, he would have continued to be so employed indefinitely and throughout the period of his incarceration.

[16] The next controversy to resolve is why the plaintiff ceased to work after August 2006. His version is that the strain and pain of the packing and the humiliation he experienced from the sneers of his co-workers for being 'scrap' made him lose heart.

[17] The probability of that being true is amply borne out by the medical evidence.

[18] He ceased to work at the end of August 2009. About eight months later he was examined by Dr D Bizos, a specialist gastroenterologist. His report is undisputed. The plaintiff presented with visible scarring at the site of the wounds. Also he had a long scar across the abdomen revealing a surgical scar at the site at which the surgeon had cut him open to repair the internal lesions caused by the bullet to the intercostal muscles and to the liver. Over this line of the surgical scar were two huge hernias which had later developed.

[19] Dr Bizos reports that acute tenderness remained in this area, and the condition was so poor that he recommended a revision of the surgery to repair of the hernias which would relieve much of the chronic pain being felt by the plaintiff. He also reported the risk of bowel obstruction as a knock- on consequence of the condition. Of particular importance, Dr Bizos opines that the plaintiff must refrain from any lifting

that might cause further strain, and that even with the repair of hernias he will never be fit to fetch and carry any substantial weights.

[20] This opinion is further corroborated by the opinions of both occupational therapists, Moorland and Eksteen. Tests performed resulted in the joint opinion that the maximum weight he might prudently pick up occasionally is 15 kg. This weight range is a far cry from the weights he would have had to shift from air freight cargo or passenger luggage.

[21] Manifestly, the plaintiff is unfit to safely perform the full range of duties of a so called forklift driver on the OR Tambo Airport apron.

[22] Against this evidence, the defendant advanced the contention that the real reason he stopped work had nothing to do with the consequences of the gunshot wound. The basis for this view was, primarily, a statement recorded by Ms Gama, the defendant's industrial psychologist, in her report. She saw him on 20 September 2011, about two years after he ceased to work. In paragraph 7.2 of her report she states:

> " ... Upon release he said he went back to the agency [Workforce] that had previously found him a job and managed to secure a job as a forklift driver. He reportedly worked in this capacity on a contract basis from 2006-2009. *He communicated that his contract was terminated probably as to his HIV status because he was frequently starting to get sick and was contravening the terms of*

> *his contract due to absenteeism.* Michael reported that he has been unemployed ever since then and is no longer looking for a job as he feels he would not be able to cope..." (Emphasis added)

[23] Other evidence showed that, according to the plaintiff, and unrebutted, he was diagnosed with HIV in November 2005, some two or so months after his last 'contract' job ended. He was ignorant of that condition before then. When Gama's note was put to him he denied having said so. The interview was some seven months prior to the trial. They had spoken to one another in a blend of Sesotho and Sepedi. The plaintiff is Sesotho speaking, Ms Gama is Isizulu speaking.

[24] Was there a miscommunication? That contention was advanced by the counsel for plaintiff. Ms Gama's report was completed about two weeks after the interview. No original notes were presented. He was argued that, at best, the remark was speculative, a point readily conceded by Ms Gama who explained that the data she notes during interviews is derived from a conversational milieu, in which, although questions are posed, there was no rigid structured interrogation.

[25] It has to be appreciated that expert medical examiners do frequently get some details wrong or, in the course of later reconstruction in order to write a report, telescope bits of information to produce inadvertent distortions of what they recall being told. It is not improbable that such an incident occurred here. In addition, the

other evidence, both objective and from the testimony of the plaintiff, as addressed above, is quite inconsistent with the plaintiff believing or saying his contract was terminated for absenteeism owing to HIV related illness. In the context of the body of evidence adduced, I find that the remarks are probably not an accurate report of what the plaintiff sought to communicate.

[26] Independently of those considerations the defendant argues that the very fact that he held down the job for nearly three years, albeit intermittently, shows that he could perform and that necessarily another reason must exist for his ceasing to work. It is a wholly proper question to pose and a proper explanation needs to be forthcoming to explain how his version can be reconciled with the common cause facts about his working over that time.

[27] There is precisely such an explanation. His hernias are witnesses in their own right: the badges of strain and pain and suffering from inappropriate labouring by a man with a compromised gut, to which must be added his admitted absences, called by him "bunking" when he could not face going to work. These absences occurred throughout the whole period and not just in the latter period. On top of that is the corroborating medical evidence of the condition he was in, to which must be added the unrebutted evidence that his workmates did a disproportionate share of the heavy lifting which, on the probabilities, helped him to keep, not lose, the job.

[28] In the result, it has been proven that but for the sequelae of the wounding, the plaintiff would not have stopped work.

[29] Can he resume work and what might he earn? Two related questions arise; the first relates to the recommended future medical treatment, and the second relates to what condition that might produce relative to his ability to do work consistent with such post–treatment condition.

[30] The recommended future treatment is for definite surgery to repair the hernias, a provision for the risk of a bowel obstruction, and definite psychological therapy to address his depression. There can be no real debate about the surgery recommended. There was a faint protest raised about a provision for the risk of bowel surgery; however, there is no sound reason to exclude it.

[31] The Psychotherapy recommended by Dr Fine is premised on the notion that his depression and current psychoses emanate from the experience of being shot, detained, partly crippled and the consequences these factors have had on his life, hard as it was to begin with, profoundly wrecked.

[32] To counter this opinion of Dr Fine, the argument is advanced that his condition is not attributable to the wounding and its sequelae but to the fact that he has HIV, has recently contracted TB of the spine, and that he is inconsolate owing to the death of his last girlfriend from AIDS. Doubtless any one of the occurrences might make one depressed. His present home life seems stable. His uncle cares for his needs and he is properly fed and housed. He is on ARV medicines and presents outwardly as a normal healthy person. Despite his vulnerabilities he is not without an expectation of living with HIV or AIDS for a long time. His attitude towards taking prudent care of himself is mature and careful. The death of loved one is usually followed by a period of grieving and sadness and there is no evidence that this factor is of an enduring nature. On the body of evidence adduced, the diagnosis of the cause of his depression, by Dr Fine, is on the probabilities, correct. Moreover, there is no contending opinion to support the defendant's alternative thesis. That Dr Fine is correct will be demonstrated more fully when I deal with the experiences of the plaintiff during his wounding, arrest, hospitalization and detention.

[33] In the result, I am satisfied that the allowances and provisions for future medical treatment consolidated in Jacobson's report are sound estimates and that they should be awarded.

[34] Assuming all of that treatment takes place, the plaintiff will still not be able to perform his old job. He said in Court that if he is fixed up he will go back to that work. He is, of course, in denial; he cannot sustain that labour because he can never be restored to the state he was in on 2 April 2005.

[35] The upshot is that, notwithstanding the future medical treatment, he cannot and will never be fit to do any form of work that requires him to take abdominal strain. However, this does not lead to the conclusion that he cannot do lighter work at substantially the same rates of pay. However, given his other limitations which, as advised by the experts, inhibit him for being a serious contender for a white-collar job, it is manifest that he suffers from a serious competitive disadvantage in the prevailing job market.

[36] In 2012, to put it bluntly, a member of the proletariat who is not physically fit will struggle even more than his able-bodied neighbour to secure any employment, and especially regular employment, the likes of which he once knew. Thus, although he is not technically unemployable, the contingency for failing to secure work owing to his diminished agility and strength must be substantial. Proper allowance for these circumstances must be made. If the premise of the exercise is that he procures employment in any role the chances of being paid less in 2012 or hereafter are slim. The only real question is whether his competitive disadvantage would inhibit from

earning even that. In my estimation that contingency of unemployablity is probably 75%. This estimation is based on a common sense awareness of how few jobs paying the level of wage he could command might not involve some degree of hefting and lugging. Plainly, a sympathetic employer is what he needs to find; a rare breed.

[37] What then are the plaintiff's damages for the loss of earning capacity, and how might this be calculated?

[38] The Actuary Jacobson was asked to calculate a future on two scenarios. A return to work as a forklift driver or a future as a hawker. I am of the view that the hawker scenario can be jettisoned. He was premised on that fact that, ideally, the plaintiff should perform only sedentary work. Anyone who supposes that hawking is an occupation that requires simply lounging about a table on the pavement and mindlessly watching the passing show as custom drifts in from time to time, ought to interrogate the typical hawker. Once he or she has explained where they store their equipment and stock and how they move it to site and set it up each day; how they deal with foul weather, aggressive customers, sneak thieves, and how far they need to walk to collect their wares and carry them to site, the enquirer will be disabused of the notion that hawking is a job for a sedentary gentleman.

[38] As addressed elsewhere there is no sensible prospect of the plaintiff resuming his old job.

[39] The other assumptions and contingencies made by Jacobson are not controversial. The figure he posits for past earnings is R177 707, premised on a job that paid about R100 per day in 2009.

[40] The future earning capacity is posited as R333 578, reduced by a 15% contingency to R283 541. In my view the job market in which the plaintiff competes is such that the 15% contingency more than adequately addresses any compromise. In my view the future loss should be estimated at R283 541.

[41] Although Mr Kramer provided a report and an allusion was made to his producing slightly different figures, it seems to me that no useful point can be made of a comparison, an exercise in which counsel themselves did not indulge.

[42] Thus, I conclude that the two sums mentioned above ought to be awarded in respect of both past and future losses.

[43] In respect of the pain and suffering he experienced from 2 April until the end of his detention and therefore a number of factors are relevant. They are addressed with reference to the plaintiff's actual experience.

[44] The plaintiff's account of the unfolding events is unrebutted. On the night of 2 April 2005, he was innocently on his way to his girlfriend. He was shot. He was removed to a hospital. He suffered pain; on his estimation on a scale of 1-10 at level 10. Post-operatively, his intense pain persisted. For the fortnight he was in hospital he was shackled and under guard. In addition to these discomforts, he endured the embarrassment in front of the other patients of being treated as a criminal. The official rationale for his arrest was that he had tried to rob a policeman of a firearm. It is not unlikely that this allegation reached the ears of the nursing staff and other patients. The shackling was especially humiliating when he clanked his way to the toilet, the clatter of which made it seem as he that "was selling ice cream".

[45] He was not brought before a court until 20 April. He was then detained in a police cell. The conditions there were the usual: an overcrowded small space with an open stinking lavatory, poor food and lice-infested mats upon which to sleep. Ablutions were available in an open air shower; cold water only. His sojourn was during April to June, at a time when temperatures were dropping to freezing on the Highveld. Adequate blankets were in short supply, and only when the cell was not full

with its complement of 12 inmates were there more than two per man, one to lie upon, the second to cover one. Air-conditioning and heating were, in accordance with the customary arrangements, not supplied.

[46] Upon transfer to the prison, the overall physical conditions improved. He was properly fed. However, lice still plagued the cells. Moreover, the inmates with whom he was incarcerated were abusive and intimidating. He was robbed of his money and of his cigarettes. He did not lodge a complaint for fear of the threats against his life should he do so.

[47] He was not raped. In this regard the defendant thought it appropriate to lay emphasis on the absence of this experience to bolster the contention that the conditions of detention were relatively good. Such are the standards expected of a South African prison that a court can be told that the absence of rape can rank as a positive element.

[48] Furthermore, during a great deal of this time, the plaintiff was recuperating from the injuries, and experiencing pain while enduring these hardy conditions. He said he felt like he was "in hell." Just so.

[49] Moreover, he had to attend court from time to time and was put through a trial in which he had to face lying policemen who, not only having shot him recklessly, were now bent on covering up their 'mistake' by falsely concocting an allegation of housebreaking and of an attempted robbery of a firearm.

[50] On top of these circumstances was the inner torment of knowing that the ordeal was wholly undeserved. In addition, his marathon running activities were ended.

[51] According to Dr Fine, the plaintiff reported that he is now hyper-apprehensive when he sees police about, he has nightmares and daydreams about being chased and re-lives the shooting. He is also unsettled in the company of a lot of people and being crowded-in induces anxiety. He cries a lot. The diagnosis is post–traumatic stress disorder and depression.

[52] To counter this assessment, it was argued that the plaintiff's previous experience of imprisonment was relevant to his protestations of humiliation and embarrassment, and that he has exaggerated his anxiety and embarrassment. The factual basis for this view is his conviction, aged 16 years, in 1989, for housebreaking and a sentence of 60 days' imprisonment. For the seventeen years that elapsed before 2 April 2005, he has not been troubled by the law. In my view to bring up this as a factor to 'mitigate' the embarrassment of being made to feel like a criminal because he

had indeed a previous conviction and to mitigate his aversion to the conditions of prison life because was previously imprisoned, is without merit, given these circumstances. The childhood conviction and imprisonment 17 years earlier should carry no weight at all.

[53] The torment experienced was substantial. In assessing how a sum of money can assuage that suffering, together with his physical pain and knock–on suffering that remains ongoing, reference to decided cases for guidance is appropriate. But, as often is said, such comparisons are seldom genuinely helpful because of the intrinsic incomparability of different sets of specific facts. What is important is that the Judge should not allow a sense of revulsion for those responsible to cloud his mind in determining a sum; the exercise is to compensate the victim, not to punish the perpetrators.

[54] Several decisions have been drawn to my attention involving unlawful detention. Quite frankly, there is no pattern of consistency discernible to me. Two points of comparability are what is required: a gunshot wound and a period of detention. The circumstances that are evidenced in these cases are incomparable. What can perhaps be gleaned is that, expressed in 2012 values, damages were awarded for periods of detention ranging from a few hours to 68 days, in sums ranging from R59 467 (*Olivier v Minister of Safety and Security* 2009 (3) SA 434 (W)) to

R127 000 (*Minister of Safety and Security v Seymour* 2006 (6) SA 320 (SCA)), an award reduced on appeal from R500 000.

[55] In respect of wounding by firearm, I have been referred to *April v MSS*; Corbett & Honey: "*Quantum of Damages*" Vol (V) 197 (E), where a factory worker who sustained two wounds in the buttock, spent a six-month period in recovery and had post traumatic stress disorder and depression, was awarded R110 000.

[56] Extrapolating these guides, such as they are, to the thrust of the plaintiff's quantification which is for pain and suffering: R300 000; loss of liberty: R200 000, and contumelia: R100 000, a total of R 600 000, it is plain that the sum claimed *in toto* is excessive.

[57] Avoiding a mechanical breakdown, my sense of the plaintiff's tragedy warrants compensation in a sum of R400 000. In reaching this conclusion, I give weight to several factors: the serious injury and the intense pain; the recuperation in hostile conditions; the unsafe, unsanitary and spartan conditions of his detention, not least of which were the lice and the thuggish cell mates; the duration of the incarceration, being put through a trial initiated maliciously; the permanent suffering; the permanent disability; the forfeiture of his sporting pursuits; the humiliation suffered by the representation of him as a criminal and, more importantly, the humiliation

suffered by him at the hand of his able-bodied acquaintances in a society where a poor man's manhood is his physicality, and the effect of the gross inequity of his predicament on his state of mind resulting in a clinically determinable mental condition.

[58] In the result the awards that are due to the plaintiff are summarised thus:

(1)	General damages	R400 000
(2)	Future medical expenses	R244 769
(3)	Loss of past earnings	R177 707
(4)	Loss of future earning capacity	R233 505

(5) The demand for attorney and client costs was motivated on the grounds that no offer was made by the defendant. That is not an appropriate basis for an order that is condemnatory of the conduct of a litigant.

[59] Accordingly, I make an order as follows:

(1) The Defendant shall pay to the plaintiff the sum of R1 055 981.00, together with interest *a tempore more* from date of judgment until date of payment;

(2) The defendant will pay the Plaintiff's costs.

ROLAND SUTHERLAND

Judge of the South Gauteng High Court, Johannesburg.

4 June 2012.

Hearing:	7- 9 April 2012
Judgment delivered:	4 June 2012
For Plaintiff:	Adv Renate Carstens Wits Legal Aid Clinic Ref: Mr P R Jordi
For Defendant:	Adv Helen Ngomane State Attorney, Johannesburg Ref: Mr H S Linda

REPUBLIC OF SOUTH AFRICA

SOUTH GAUTENG HIGH COURT, JOHANNESBURG

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THE MINISTER OF SAFETY AND SECURITY DEFENDANT

ADDENDUM TO JUDGMENT

PER SUTHERLAND J

Paragraph 2 of the order is varied as follows:

" (2) The defendant will pay the Plaintiff's costs, which costs shall include the costs in respect of all experts who filed reports or testified and the costs of engaging interpreters."

ROLAND SUTHERLAND

Judge of the South Gauteng High Court, Johannesburg.

4 June 2012.

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Judgment delivered:	4 June 2012
For Plaintiff:	Adv Renate Carstens Wits Legal Aid Clinic Ref: Mr P R Jordi
For Defendant:	Adv Helen Ngomane State Attorney, Johannesburg Ref: Mr H S Linda