

REPUBLIC OF SOUTH AFRICA



SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO. 2011/23229

DELETE WHICHEVER IS NOT APPLICABLE1. REPORTABLE: ~~YES~~/NO2. OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

3. REVISED.

23/10/12

DATE

SIGNATURE

In the matter between:

SIBANDA, PRINCE

First Plaintiff

NGWENYA, NOMUSA

Second Plaintiff

and

THE MINISTER OF POLICE

First Defendant

NDLOVU, ALFRED

Second Defendant

JUDGMENT

NICHOLLS, J

- [1] This is a damages claim against the Minister of Police as the 1st defendant and Alfred Ndlovu ("Ndlovu"), a sergeant in the police service acting in the course and scope of his employment with the 1st defendant, as the 2nd defendant.
- [2] The 1st plaintiff, Prince Sibanda, ("Sibanda") has instituted two claims, one for unlawful arrest and detention and the second for damages as a result of being shot in both legs by Ndlovu. The 2nd plaintiff, Nomsa Ngwenya ("Ngwenya"), claims for an assault on her person and for loss of support on behalf of her minor son, due to the death of the late Mgcina Sibanda ("the deceased").
- [3] The deceased was the brother of Sibanda to whom Ngwenya says she was married in terms of customary law. At the time of the incident, on 19 February 2011, she was 8 and half months pregnant and has since given birth to a son. It is alleged that the deceased was assaulted and thrown out of the bedroom windows by members of the 1st defendant. He later died of the injuries sustained.
- [4] The defendants admit the arrest and detention of the Sibanda but plead that it was a lawful arrest in terms of section 40(1)(b) of Act 51 of 1977 for the offences of defeating the ends of justice and aiding and assisting a fugitive to escape. In respect of the shooting of Sibanda it is denied that the shooting was unlawful and it is pleaded

that it constituted the use of reasonable force necessary to arrest him. In respect of Ngwenya's claim that she was assaulted, the defendants deny this. In respect of the claim for loss of support they plead that the deceased fell to his death while attempting to escape.

The background facts

[5] The incident giving rise to the claims took place in the early hours of 12 February 2011 at the flat occupied by the two plaintiffs and the deceased and situated on the fourth floor, 406 Mirlan Court, Berea ("the flat"). Various unsuccessful attempts were made to conduct an inspection in loco. From the evidence it seems as though the front door opens on to a passage. On the left side as one enters there is a bedroom which was occupied by Sibanda. On the other side is a sitting room in which the deceased and Ngwenya were sleeping.

[6] During the latter stages of the trial the parties managed to gain access to the entrance of the flat and the back of the building where it is alleged that the deceased was thrown out. The photographs taken of the front entrance to flat 406 show a wooden front door situated in the corner. Approximately two meters in front of the wooden door is a metal burglar door. The area between the front door and the burglar door on the left is a brick wall. The

area on the right hand side consists of metal bars, effectively creating a cage-like effect in front of the wooden door. On the other side of the metal bars on the left are the stairs.

- [7] Many of the facts are common cause or undisputed. At the time of the incident the police, under the command of Ndlovu, were conducting an operation in order to arrest suspects involved with armed robbery, cash heists and other serious and violent crimes. Ndlovu testified that he has been with Crime intelligence since 2006, primarily dealing with cash heists and violent crime syndicate. He was one of policemen in the so-called "Jeppe massacre" where police were fired upon, and some killed, by criminals when they entered the house in which the armed robbers were hiding out.
- [8] The events unfolded as follows. On 18 February 2011 as a result of information received from an informer, Ndlovu's unit arrested a woman suspected of being involved in various armed robberies cross the country, more specifically cases in Kempton Park, Booysens and Tembisa. She confirmed information already known to the police and had knowledge of the whereabouts of some of the perpetrators. She told the police that different groups were responsible for the various robberies but that the same firearms would rotate amongst the groups. She

further informed them that some of the suspects lived in a flat on the fourth floor of Mirlan Court but she did not know the exact flat number.

- [9] The woman initially led the police to a house in Louis Botha Avenue where suspects were arrested. These suspects then led them to a house in Berea where firearms were found hidden in the ceiling of the house and a further two suspects were arrested.
- [10] The police had in their possession a photo album with photographs of the various suspects that had been extracted from the cctv footage at the scenes of the crime. The suspects arrested in the house in Berea gave the police more specific information as to three other suspects whom they reported were to be found at flat number 406 Mirlan Court. They described the suspects as Mngcini, Nduna and Mkhululi. Mngcini was apparently a reference to the deceased and Nduna a reference to the first plaintiff.
- [11] Pursuant to this information a large police convoy then proceeded to Mirlan Court with the suspects from the Berea house to point out the flat. Ndlovu had requested back-up from the Booysens police station so the reaction unit were also present.

- [12] Ndlovu readily conceded that he conducted the operation with military precision. Approximately ten policemen went up to the fourth floor. The suspects were taken up to identify the place and were then taken down again by Constable Masalesa. Ndlovu deployed some police to concentrate on the window at the side of the flat facing the steps and about three or four were deployed at the metal gate. He himself was lying on his stomach on the floor behind the metal burglar gate with an R5 rifle pointed at the front wooden door. He was using this particular firearm for its accuracy and increased penetration in the event of counter fire.
- [13] From approximately 1am the police tried to gain entry by knocking at the burglar gate and calling out that they were police. They continued attempting to get the occupants to open the door. Although they could hear movement inside the flat, no-one responded in any way whatsoever. Ndlovu then asked one of the policemen to fetch a crow bar from the car to break open the burglar gate.
- [14] After approximately forty five minutes Ndlovu heard the noise of the front door opening and a heavily pregnant woman emerged. This was Ngwenya. He instructed her to leave the front door open and to sit along the side of the wall, to his left. While Ngwenya was sitting on the floor the police continued trying to break down the burglar gate

when a male emerged in the passage from a door on the right of the front door. This was Sibanda emerging from his bedroom.

[15] Ngwenya said that she was asleep in bed with the deceased when she heard banging on the door and went to open. She thought it was Sibanda knocking on the door as it was customary for him to come home late. When she opened the wooden door she saw police at the security gate. They instructed her to put her hands up and to open the security gate. She was unable to fetch the key because as she approached the gate Ndlovu grabbed her shoulder and pushed her roughly against the bars of the gate.

[16] It is common cause that Ndlovu commanded Sibanda to put his hands up and move towards him both in English and in Zulu. Whether or not Sibanda obeyed this instruction is disputed. Ndlovu's version is that Sibanda did not obey this instruction and tried to dive back into the room from whence he had come. Ndlovu then shot him in the left knee and then the right knee in order to immobilise him. Ndlovu said he feared that Sibanda would go inside and get weapons to launch a counter attack. Sibanda screamed and tried to crawl back into the room. Ndlovu told him to come out and crawl towards the gate and that he would shoot him if he went back in. Ndlovu fired a

warning shot above his head. Only thereafter did Sibanda crawl towards them where he was instructed to lie down next to Ngwenya.

[17] Sibanda and Ngwenya both disputed this version and testified that Sibanda put his hands up and started approaching the police but before he could reach them Ndlovu fired shots. Ngwenya said that Sibanda put up his hands but before he could come towards the police, Ndlovu grabbed her arm, pressed her down and started shooting.

[18] Sibanda testified that he was asleep in the bedroom after returning from the car wash where he works at approximately 11pm. In his statement he said that he was drunk and although he denied this in his evidence he conceded he had had a few drinks but was not drunk. In the early hours of the morning he heard sounds from outside. He got out of bed wearing only his t-shirt and boxer pants and went to investigate. When he opened his bedroom he saw a number of policemen on the other side of the security gate of the flat. One of the policemen was lying on his stomach pointing a firearm at him.

[19] The policemen shouted at him to put up his hands. He obeyed. He was then ordered to take three steps towards

the police. Before he could reach the police, three shots went off, two of which struck him on each leg in the region of his knees.

[20] After Sibanda had been shot the police managed to force the burglar gate open, entered the flat and started searching room by room. Nothing incriminating was found. Ndlovu says he looked out of the window but saw no-one. The police outside then shouted that one of the suspects had fallen to the ground. Ndlovu and the others ran out to check who had fallen. The photograph album was produced and there was a discussion about whether this person appeared therein. According to Ngwenya, Ndlovu insisted that the police should say that the deceased appeared in the photograph album as Ndlovu knew he was "now in trouble".

[21] After the search Sibanda alleged that one of the policemen said "I must cover myself" or words to that effect. Sibanda said he did not know what was meant by this statement. It was also at this time when he heard one of the policemen referring to a man who had died trying to escape through the window.

[22] According to Ndlovu, Sibanda was then placed under arrest for the robbery in Booysens as well as defeating the

ends of justice because of the lengthy delay that had been taken in opening the door. He conceded that Sibanda, or Nduna as he had been identified by the other suspect, did not appear in the photos. He explained that the robberies under investigation were carried out by a far greater number of people than those that are caught on the cctv footage at the scene. There are inevitably others who have attended planning meetings or are placed in the vicinity to reconnoitre or for the getaway who would not appear on the photos collected from the cctv footage.

- [23] The statement of the Investigating Officer of the Booyens armed robbery matter, Constable Mpai was put to Ndlovu. In this statement she said that she did not know how the first plaintiff was linked to the armed robbery. She states that:

"I went through the statement and I did not understand the charge that the suspect (Prince Sibanda) is arrested on and I took the docket to court where only the two that received their particulars were placed on the court roll. I took the video to Pretoria for the photo album and cannot say that Prince Sibanda is appearing on a footage or involved in a robbery"

Ndlovu's response to this statement is that he believed it to be reckless and just because Sibanda did not appear in the photographs taken from the cctv footage does not mean that he was not involved in the robberies.

- [24] Soon after finding the deceased's body Sibanda was taken to the Charlotte Maxeke Hospital. He remained there under police guard until he was discharged on 6 March 2011. He was taken straight to the Hillbrow Police station where he spent the night. The following day when he went to court charges were withdrawn. He spent a total of 17 days in detention of which 16 were spent in hospital.
- [25] The defendants called Constable Joseph Nkosi who was stationed at Booysens on the night of the incident and sent to assist the second defendant in arresting armed robbery suspects. He not only contradicted the second defendant in many respects but also contradicted his own statement made on 19 February 2011. In his evidence he said he was part of the police team that went to the fourth floor of Mirlan Court. He then proceeded to give an account of what he had seen taking place there. In his statement made four days after the incident he said he remained on the first floor with the suspects who had pointed out the flat and did not go to the fourth floor. According to the statement he heard what was going on on the fourth floor but was not present and only went to the fourth floor after the deceased had fallen and when another policeman had relieved him from guarding the suspects. He was either on the first floor as his statement says when the main incident took place on the 4th floor, or was on the fourth

floor. This contradiction makes him an unreliable witness and no weight can be attached to his evidence.

Assault on Ngwenya

[26] The alleged assault on Ngwenya takes two forms, being pushed against the burglar bars by Ndlovu before Sibanda was shot and being kicked in the head two or three times by unknown policemen when she and Sibanda were lying together on the floor. As to the first assault Ngwenya said that as she was approaching the burglar gate, Ndlovu who was outside the burglar gate pushed her against the bars. He was about to hit her but before he could do so one of the other policemen reprimanded him. She said that Ndlovu was still holding the gun in one hand but was unable to say which hand was used to assault her.

[27] Ndlovu denies this incident and says that this would have been impossible while he was holding an R5 rifle in both hands poised to fire. It is not clear how Ndlovu could have assaulted Ngwenya in the manner described while he was lying on the ground holding an R5 rifle and she was standing. His evidence that he was lying on the floor with his R5 rifle pointed at the wooden door is supported by Sibanda. Ngwenya's version falls to be rejected.

[28] In respect of the kicks in the head, Ngwenya's version is that she was kicked two or three times in the head before being ordered to lie partially on top of Sibanda who was also kicked in the head. Sibanda testified that at that stage the police were "busy harassing" Ngwenya. He could not say why she was kicked, who kicked her or how many times. In contrast to Ngwenya's evidence Sibanda's evidence is that she was kicked while in a seated position. He made no mention of having been kicked himself although Ngwenya was insistent that Sibanda too was kicked but must have forgotten. On her own version the kicks were not hard and it was unnecessary for her to see a doctor. In view of the discrepancies between her and Sibanda's evidence on this aspect I remain unconvinced that the assaults as described by Ngwenya took place.

[29] In addition if one has regard to the statements made to the police in March 2011, Ngwenya seems to have a tendency to exaggerate. For example in her statement made less than a month after the incident she said that police threatened to stab Sibanda in his gunshot wound. No mention was made of this in her evidence in chief. In the statement she further accused the police of stealing R5700 in cash from her at the time. In her evidence in chief no mention was made of the theft until her statement was put to her under cross-examination. She then stated that R3500 had been stolen from her. No reasonable

explanation was provided for this discrepancy or why this information had been omitted in evidence in chief.

- [30] In the circumstances I am of the view that Ngwenya has not discharged the onus of proving that she was assaulted and her claim in this regard falls to be dismissed.

Dependant's claim for loss of support

- [31] There is no evidence whatsoever that the deceased was thrown out of the window by the police. While she was lying on the floor at the burglar bars Ngwenya allegedly saw the deceased through the burglar bars and the wooden doors. Her evidence was that the police told him if he did not come out they were going to shoot. She did not see him again. Ndlovu did not see the deceased in the house at all that evening.

- [32] Sibanda and Ngwenya both testified that there was no ledge on the window and it would have been impossible for the deceased to have escaped via the window. However both of them spoke of policemen shouting that there was someone hanging outside the window who had fallen. According to Ngwenya, when she had gone to bed with the deceased he was wearing a track suit. When she saw him in the doorway after the police arrived he was wearing a white T-shirt. The photographs depict him

having fallen to the ground wearing pants and a jacket. From this one can assume that he had dressed in order to leave the flat.

[33] It is common cause that the deceased did not fall from the window of the flat but fell below the window of one of the other flats. From the photographs it appears that the window he fell from was the one in the opposite corner a considerable distance from flat 406. How the deceased fell to his death some distance from his own flat is unknown but there was no suggestion by any witness that he was pushed by police from the window of his flat as pleaded.

[34] It was argued by counsel for Ngwenya that the police should nonetheless be held liable because of their use of excessive force. This, it is argued, terrified and traumatised the deceased to such an extent that he either jumped out the window or fell while attempting to flee. I am urged to award damages to Ngwenya on the basis that if the police operation had not taken place the deceased would not have fallen to his death.

[35] For delictual liability to arise there has to be both factual and legal causation. The requirement of a causal connection between the alleged wrongful conduct and the plaintiff's harm is encapsulated in the judgment of *Corbett*

CJ in International Shipping Company (Pty) Ltd vs Bentley
 1990(1) SA 680 (A) at 700E as follows:

“As has previously been pointed out by this Court, in the law of delict causation involves two distinct enquiries. The first is a factual one and relates to the question as to whether the defendant's wrongful act was a cause of the plaintiff's loss. This has been referred to as ‘factual causation’. The enquiry as to factual causation is generally conducted by applying the so-called ‘but-for’ test, which is designed to determine whether a postulated cause can be identified as a causa sine qua non of the loss in question.... If the wrongful act is shown in this way not to be a causa sine qua non of the loss suffered, then no legal liability can arise. On the other hand, demonstration that the wrongful act was a causa sine qua non of the loss does not necessarily result in legal liability. The second enquiry then arises, viz whether the wrongful act is linked sufficiently closely or directly to the loss for legal liability to ensue or whether, as it is said, the loss is too remote. This is basically a juridical problem in the solution of which considerations of policy may play a part. This is sometimes called ‘legal causation’”.

- [36] It is argued that the factual cause of the harm was the conduct of the police in that but for their conduct the deceased would still be alive today. In respect of the legal causation it is correctly submitted that the court should take a flexible approach based on policy considerations of fairness and equity.

[37] I cannot agree that the requirements of factual and legal causation have been met. The second plaintiff does not meet the requirements of the first enquiry of factual causation. No direct or even indirect act is alleged to have been directed at the deceased which caused his death. What allegedly happened to Ngwenya is insufficient to cause him to jump to his death. As far as the shooting of Sibanda is concerned there is no evidence that the deceased was still in the flat when it occurred. Sibanda and Ngwenya emerged some 45 minutes after the police had started knocking at the burglar gate and shouting for the occupants to open. The deceased could have fallen to his death before these incidents took place. In any event even if the deceased was present in the flat at the time of the shooting of Sibanda, his death could not reasonably be attributable to this. The reasonable response in such circumstances would be to surrender and not to flee.

[38] The factual connection is in my view too remote. Since there is no factual causation it is unnecessary to consider legal causation. However, even if the deceased fled for fear of being shot himself, the police cannot be held delictually liable if a suspect injures himself while trying to flee during a police operation, without any direct or indirect intervention on their part. Such a finding would be contrary to public policy. Accordingly I find that the second

defendant has proven her claim for loss of support for her minor child.

The arrest and detention of Sibanda

[39] Section 40 (1) (b) provides that a peace officer may arrest without a warrant any person "*whom he reasonably suspects of having committed an offence referred to in Schedule 1, other than the offence of escaping from lawful custody*". Schedule 1 contains the more serious offences such as rape, murder and robbery.

[40] The jurisdictional facts for a defence in terms of section 40(1)(b) are that:

- (i) the arrestor must be a peace officer;
- (ii) the arrestor must harbour a suspicion;
- (iii) the suspicion must be that the arrestee committed a schedule 1 offence; and
- (iv) the suspicion must be reasonable.¹

[41] In *Louw v Minister of Safety and Security*² mention was made of a fifth jurisdictional fact that there must be no less invasive options other than arrest to bring the suspect to court. This notion has been refuted by the Supreme Court of appeal in the case of *Minister of Safety and Security v*

¹ *Duncan v Minister of Law and Order* 1986(2) SA 805 (A)

² 2006(2) SACR 178 (T)

*Sekhoto*³ where it was held that the standard is not breached because an officer exercises discretion in a manner other than that deemed optimal by the court. As was stated by Harms DP in the *Sekhoto* case at page 382:

“A number of choices may be open to him, all of which may fall within the range of rationality. The standard is not perfection, or even optimum, judged from the vantage of hindsight and so long as the discretion is exercised within this range, the standard is not breached.”

[42] If the jurisdictional requirements are satisfied then the peace officer may arrest the suspect, that is to say he has a discretion whether or not to exercise the powers conferred upon him in terms of the section. In essence peace officers are entitled to exercise their discretion as they see fit, provided that they stay within the bounds of rationality. Where the exercise of discretion is questioned, the onus to establish the improper motive of the arrestor will rest on the arrestee⁴.

[43] Once an arrest has been effected the peace officer must bring the arrestee before a court as soon as reasonably possible and at least within 48 hours. Once that has been done the authority to detain inherent in the power to arrest

³ 2011(5) SA 367 (SCA)

⁴ *Duncan v Minister of Law and Order* (supra)

has been exhausted. The authority to detain the suspect is then further within the discretion of the court.⁵

[44] In this matter there is no indication that the second defendant was male fides or had any ulterior motive in suspecting the occupants of flat 406 of being involved in serious and violent crimes. The first three jurisdictional facts have accordingly been established. The next question to be determined is whether the suspicion was reasonable.

[45] The test for reasonable suspicion must be justifiable both subjectively and objectively. Would a reasonable man or woman in the same position as the second defendant and possessed of the same information have sufficient grounds for suspecting that the deceased and the first plaintiff were involved in armed robbery and other serious crimes? The answer is a resounding yes. The fact that later there was insufficient evidence to link the 1st plaintiff and the deceased to these crimes does not in any way detract from the reasonable suspicion that the second defendant had at the time.

[46] This suspicion is borne out by Ndlovu's actions before the arrest took place. He had obtained information from the woman who was first arrested that there were suspects in

⁵ *Minister of Safety and Security & Another v Sekhoto* 2011(5) SA 367 (SCA)

Mirlan Court. This information was confirmed by the two other suspects that were arrested in a house on Louis Botha Avenue who were able to provide the exact address of the flat at Mirlan Court. Firearms were found in the roof of that house. The fact that charges were dropped against these two does not assist the plaintiff either. It could mean various things – that they were innocent or that they were guilty but insufficient evidence was available to sustain a conviction. It is common cause that when the police arrived at 406 Mirlan Court they spent a considerable length of time shouting at the entrance of the flat asking to gain entry. The plaintiffs' conduct in not opening up immediately must have added to their suspicions. That the deceased fled must be taken into consideration.

- [47] Notwithstanding the fact that charges were withdrawn at his first court appearance and that the investigating officer in the case of armed robbery could not link the first plaintiff to the crime, all the jurisdictional requirements for a lawful arrest have been met. As pointed by Harms DP in the *Sekhoto* case it is very seldom that a police officer can be criticised for arresting a person suspected of a schedule 1 offence.⁶

⁶ Page 384

- [48] However, that the arrest was lawful does not make the subsequent detention lawful. As soon as it became apparent that Sibanda could not be linked to the Booysens robbery, he should have been released immediately. Instead he spent 16 days under police guard at the hospital and one night in hospital before the charges were finally withdrawn against him. In my view this detention was unlawful and Sibanda should be compensated therefor.
- [49] What cannot be ignored is that Sibanda would have been in hospital in any event. The unlawful detention is inextricably bound up with the shooting of Sibanda and for that reason I intend awarding compensation that will reflect this situation

The shooting of Sibanda

- [50] There is no evidence to corroborate Ndlovu's version that Sibanda was trying to dive back into the bedroom or that his hand were behind his back when he emerged. The bullets penetrated the front of Sibanda's knees which indicates that he was facing Ndlovu at the time of the shooting. On Ndlovu's own evidence he fell straight to the ground once shot and did not fall to the side. Even if I were to accept the version of Ndlovu that Sibanda attempted to jump back into the room there is no lawful

justification for the shooting. Sibanda was unarmed; at no stage was he warned to stop or the police would shoot. It was only after the shooting that Ndlovu told him that he would be shot if he attempted to crawl back into the bedroom and fired a warning shot. According to Ndlovu the police were on high alert and no warning was given as the police "do not operate like that."

- [51] Ndlovu agreed that the diving, if it indeed occurred, was not a threat but rather a tactical move which had the potential of giving Sibanda an advantage over the police. It is difficult to imagine how this could be the case when the entrance to the flat was surrounded by heavily armed policemen all on the lookout for dangerous armed robbers with their weapons pointed to the front door. Even if there had been the third person as speculated by Ndlovu, this would not have created a situation where the police were in danger of being overpowered.

Quantum

- [52] Dr Dov E Gantz provided a medico-legal report and was called to testify by the plaintiff. According to the report which Dr Gantz confirmed, Sibanda suffered the bullet wound to the right leg above the knee which was a flesh wound. It is well healed and hardly noticeable. However the bullet wound to the left knee resulted in a fractured

femoral condyle, patella and medial tibial plateau. This has caused a limp, inflammation and stiffness of the knee joint. The recommended treatment in the absence of an infection is a knee replacement. Sibanda testified that he cannot bend his left knee and cannot run any longer. He used to play soccer but is no longer able to do so.

[53] There can be no doubt that the injury inflicted on Sibanda as a result of the shooting is a serious one. The left knee requires immediate surgical intervention as he has difficulty with movement. Sibanda has suffered much pain which would be alleviated by a knee replacement. Being 23 years of age at present, it seems likely that he will require more than one knee replacement on this knee taking into account the limited life span of the prosthesis.

[54] Sibanda has claimed R300 000 in respect of the unlawful arrest and detention. The amount of R700 000 had been claimed in respect of the shooting, of which R100 000 is for future medical costs and R600 000 for general damages. As I have indicated the detention and the unlawful shooting are inextricably bound as the period that the first plaintiff spent in hospital as a result of the shooting is, except for one night that he spent at the police cells, for all intents and purposes one and the same. The

all intents and purposes one and the same. The compensation to be awarded for the detention will therefore reflect this.

[55] In assessing the quantum of damages to be awarded, I have had regard to both amounts awarded against the police for unlawful detention⁷ and amounts awarded against the Road Accident Fund for personal injury⁸. Previous awards although helpful can only serve as a rough guide⁹.

[56] Taking into consideration the evidence placed before court and the circumstances under which the first plaintiff obtained the injury I am of the view that it would be fair and equitable to award the first plaintiff a globular amount of R500 000 which is made up of unlawful detention in the sum of R50 000; future medicals in the sum of R100 000 and general damages for the shooting in the amount of R350 000

⁷ *Maphalala v Minister of Law and Order* unreported case of WLD Case 29537/93 given on 10 February 1995; *Manase v Minister of Safety and Security* 2003 (1) SA 567 Ck; *Seria v Minister of Safety and Security* 2005(5) SA 130 (C); *Oliver v Minister of Safety and Security* 2008 (2) SACR 387 (W).

⁸ *Aeschliman v Road Accident Fund* Burchell JM, Gauntlett J, Honey DP. The Quantum of Damages in Bodily and Fatal Cases 1993 Vol 6 page E7-1; *Tys v Guardian National Insurance Company Ltd* Corbett MM, Gauntlett J, Honey DP. The Quantum of Damages in Bodily and Fatal Cases 1993 Vol 4 page E3 17-30; *Fortuin v Road accident Fund* Corbett MM, Gauntlett J, Honey DP. The Quantum of Damages in Bodily and Fatal Cases 1993 Vol 5 page E5 1-8

⁹ *Minister of Safety and Security v Seymour* 2006(6) SA 320 (SCA)

In the result I make the following order:

1. In respect of Claim A and B the defendant is pay to the first plaintiff:
 - 1.1 the sum of R500 000;
 - 1.2 Interest on the above amount at the rate of 15.5 from the date of judgment until the date of payment.
 - 1.3 Costs of suit
2. Claim C is dismissed with costs.



C. HEATON NICHOLLS, J
JUDGE OF THE SOUTH GAUTENG
HIGH COURT – JOHANNESBURG

Appearances:

Counsel for the plaintiff:	Adv. Swanepoel
Plaintiff's Attorneys:	H.C. Makhubele Inc.

Counsel for the defendant:	Adv. Mosenyehi
Defendant's Attorneys:	Office of the State Attorney

Date of hearing:	1 - 3 August 2012
------------------	-------------------

Date of Judgment:	23 October 2012
-------------------	-----------------