

In the matter between:

**SIBANDA, PRINCE**

**First Plaintiff**

**NGWENYA, NOMUSA**

**Second Plaintiff**

and

**THE MINISTER OF POLICE**

**First Defendant**

**NDLOVU, ALFRED**

**Second Defendant**

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**LEGAL SUMMARY**

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**NICHOLLS J**

The first plaintiff instituted two claims, one for unlawful arrest and detention and the second for damages as a result of being shot in legs by police officer in the scope of his duties. The claim is against the Minister of Police, as an employer, and against the police officer in question in the course and scope of his employment. The defendants pleaded that both the arrest and detention were lawful 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. On shooting the first plaintiff the defendants pleaded that it was lawful and constituted use of reasonable force necessary to effect the arrest of the first plaintiff.

The second plaintiff claimed 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 who died on the scene, on allegations that he was thrown out of the window by the police officers and subsequently died of injuries he suffered thereof). The defendants denied these allegations and pleaded that the deceased fell to his death while attempting to escape.

The counsel for the second plaintiff urged the court to award the damages of the loss of support on the basis that, had it not been for the police operation and their use of excessive

force the deceased would not have jumped out of the window. The court held that for delictual liability to arise there has to be both factual and legal causation. The court held that on this two-step inquiry the second plaintiff's case failed, primarily on the first step. In view of the court there was no factual causation and therefore unnecessary to ask if there was legal causation if factual causation was not proved.

On the claims; unlawful arrest and assault on the person of the second plaintiff the court rejected both the evidence of the first and second plaintiffs respectively, and dismissed these claims.

However, on the claim of wrongful shooting of the first plaintiff, the court rejected the evidence of the police officer that there was necessity to shoot and or the first plaintiff posed a threat to the police or that they used reasonable force necessary to effect the arrest of the first plaintiff. The shooting was therefore held to be unlawful and compensation was awarded for it. Furthermore, on the claim of unlawful detention of the first plaintiff the court held that when the charges against him were dropped there was no justifiable reason to detain him for another 16 days, therefore his detention was unlawful and compensation was awarded for that.