

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NUMBER: 2016/8525

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

A handwritten signature in black ink, appearing to read "J. M. M.", is written over a horizontal line.

13 May 2020

DATE

SIGNATURE

In the matter between:-

NAAZNEEN BANU KADUR

First Plaintiff

SHIREEN BANU SHAIK

Second Plaintiff

ZAKIYAH EBRAHIM

Third Plaintiff

JAMEEL EBRAHIM

Fourth Plaintiff

and

THE MINISTER OF POLICE

First Defendant

KGOKARE WILLIAM MALATJIE

Second Defendant

DAVID MALULEKE

Third Defendant

JUDGMENT

FMM SNYMAN (AJ)

Introduction

1. The facts in this matter are shocking. The first plaintiff, her mother (the second plaintiff) and their neighbours (the third and fourth plaintiffs) claim for damages resultant from unlawful arrest, assault and malicious prosecution against the defendants as a result of actions taken by the hands of the second and third defendant (members of the South African Police Service “SAPS”) on Sunday morning, 18 November 2012.
2. This matter came before me undefended: no notice of intention to defend was filed on behalf of any of the three defendants.
3. The matter was set down and has duly been certified ready for trial in determination of both merits and *quantum* of the plaintiffs’ claims. All four the plaintiffs claim damages suffered as a result of the actions of the second and third defendant for:
 - 3.1. Unlawful assault;
 - 3.2. Unlawful arrest and detention; and

3.3. Malicious prosecution.

No appearance for defendant

4. Before proceeding with a matter where the defendants are not present, the court has to be satisfied that that the defendants are aware of the matter, that they are aware thereof that the matter may proceed in their absence and that judgment may be given against them in their absence. I deem it sensible for the court in the absence of a notice of intention to defend, to ensure that:

4.1. The prescripts of the Institution of Legal Proceedings Against Certain Organs of State Act, 40 of 2002 have been met, since the first defendant is a state organ;

4.2. Proper service of the summons has been effected on each defendant and that the summons is informative of the consequences should no intention to defend be entered;

4.3. The prescripts of Rule 31 dealing with default judgments has been complied with; and

4.4. It would be in the interest of fairness to both parties and in the interest of justice that the matter proceed.

5. I briefly deal with each of these aspects.

Legal proceedings against state organs

6. Section 3 of the prescripts of the Institution of Legal Proceedings Against Certain Organs of State Act, 40 of 2002 ("the Act") reads as follows:

"3 Notice of intended legal proceedings to be given to organ of state

- (1) *No legal proceedings for the recovery of a debt may be instituted against an organ of state unless-*
- (a) *the creditor has given the organ of state in question notice in writing of his or her or its intention to institute the legal proceedings in question; or*
 - (b) *the organ of state in question has consented in writing to the institution of that legal proceedings-*
 - (i) *without such notice; or*
 - (ii) *upon receipt of a notice which does not comply with all the requirements set out in subsection (2).*
- (2) *A notice must-*
- (a) *within six months from the date on which the debt became due, be served on the organ of state in accordance with section 4 (1); and*
 - (b) *briefly set out-*
 - (i) *the facts giving rise to the debt; and*
 - (ii) *such particulars of such debt as are within the knowledge of the creditor."*

7. The plaintiff's attorney did send a letter to the National Commissioner of the SAPS stipulating the events that aggrieved their client. This letter complied with the formalities laid down in the Act, and was sent within six months from 18 November 2012.

8. The first defendant acknowledged receipt of the letter and responded thereto. I am satisfied that this letter was duly received by the first defendant and that these statutory requirements have been met.

Service on the defendants

9. The summons was issued on 2 June 2015 and proper service in terms of Rule 4(1)(a)(ii)¹ has taken place on the first defendant on 6 January 2016 at 11h00 at the 3rd floor, Wachthuis, 231 Pretorius street, being the principle place of business of the Minister of Police.
10. The summons was not served on the second defendant. The return of service reflects that service was attempted on 10 July 2015 but could not be effected as the second defendant was “off ill” and the date of his return was unknown. No further attempts of service on the second defendant appear to have been made. The plaintiff withdrew the claim against the second defendant in court on the basis that proper service has not taken place.

¹ Rule 4 of the Uniform Rules of Court reads as follows: “**4 Service**

(1)(a) *Service of any process of the court directed to the sheriff and subject to the provisions of paragraph (aA) any document initiating application proceedings shall be effected by the sheriff in one or other of the following manners:*

(i)...

(ii) *by leaving a copy thereof at the place of residence or business of the said person, guardian, tutor, curator or the like with the person apparently in charge of the premises at the time of delivery, being a person apparently not less than sixteen years of age. For the purposes of this paragraph when a building, other than an hotel, boarding-house, hostel or similar residential building, is occupied by more than one person or family, ‘residence’ or ‘place of business’ means that portion of the building occupied by the person upon whom service is to be effected...”*

11. The summons was duly served on the third defendant personally by the sheriff on 15 July 2015 at 10h08 at Booyens Police Station.
12. The summons duly states that judgment may be given in their absence should the defendants fail to enter an appearance to defend the matter.

I am satisfied that the first and third defendant were informed of the consequences in failing to defend the matter.

Rule 31 default judgments

13. Rule 31 of the Uniform Rules of Court regulates the process in which a judgment by default can be given.²
14. The plaintiffs acted well within their rights to set the matter down to proceed without giving any notice to the defendants, as stipulated in Rule 31(2)(a) and Rule(4) of the Uniform Rules of Court and by virtue of the defendants failing to enter appearance to defend the matter.

² Rule 31 reads as follows:

"31 Judgment on confession and by default and rescission of judgments

(1)...

(2) (a) Whenever in an action the claim or, if there is more than one claim, any of the claims is not for a debt or liquidated demand and a defendant is in default of delivery of notice of intention to defend or of a plea, the plaintiff may set the action down as provided in subrule (4) for default judgment and the court may, after hearing evidence, grant judgment against the defendant or make such order as it deems fit.

...

(4) The proceedings referred to in subrules (2) and (3) shall be set down for hearing upon not less than five days' notice to the party in default: Provided that no notice of set down shall be given to any party in default of delivery of notice of intention to defend."

(own emphasis)

15. Put differently: having failed to deliver a notice of intention to defend, the plaintiffs had no legal duty to inform the defendants that the matter has been set down for hearing.

Interest of fairness and justice

16. This is the third time that this matter is before court. The first time was on 29 September 2017 where the matter was referred to open court for the hearing of evidence on damages by my brother Justice Maoala.
17. The second time was on 26 June 2018 when the matter was removed by my brother Acting Justice Chohan. I am informed by counsel for the plaintiff that it had to be removed as no court was available for the hearing of evidence.
18. The cause of action arose in 2012 already and the plaintiff has been waiting for her day in court from 2015, when summons was issued.
19. I have satisfied myself that the matter may proceed on a default basis as there was compliance with the Uniform Rules of Court as well as the applicable legislation and regulations.
20. I find that it is in the interest of fairness and justice to both parties that the matter proceed to finality.

The facts of the matter

21. On Sunday morning 18 November 2012 the first plaintiff woke up at 5am and commenced with her daily routine. She washed, studied her Bible (the Qu'ran) spent time in her morning prayer. At about 7am she went to the kitchen to boil water for tea to drink with her mother. She put on some music and went to her mother's (the second plaintiff's) room.
22. Both the first and second plaintiffs are devout Muslim woman and after waking up, washing, they individually spend time in prayer and reading the Qu'ran before commencing their day. After their morning devotionals and just after 7am the first plaintiff took her and her mother's tea and sat on her mother's bed as was their normal Sunday routine. They heard a knock at the window.
23. The first plaintiff looked out the bedroom window and saw a man in a police uniform. She and her mother were expecting the Police, as there was an altercation the previous night between them and their neighbours about a parking spot in the complex where they resided. The altercation ended up in the neighbours shoving each other, which ended up in a charge of assault being brought by the second plaintiff against their neighbour.

24. The first and second plaintiffs expected that the Police where there to investigate the charge of assault laid the previous night and the first plaintiff unlocked the security gate at the front door to let the male police official in. Unexpectedly, the second defendant ("Malatji") immediately and without any introduction, violently grabbed the first plaintiff by her shoulders and shoved her down the hall until her back hit the wall. He was shouting at her in most incomprehensible sentences, such as "You made a disturbance", "I am here to take you" and "I am going to kill you". The second defendant started shaking the first plaintiff violently and her head hit the wall several times. She could smell alcohol on his breath and reverberating from his body.
25. Whilst banging her head against the wall with one hand on her shoulder, Malatji started fondling the first plaintiff and touching her inappropriately with the other hand. The first plaintiff was in her pyjamas, not wearing any underwear. Her pyjamas consisted of a sleeveless t-shirt and a knee-length bottom short also made of t-shirt material. The first plaintiff is very slight of build and her pyjamas were very loose. Having her head banged repeatedly, she shouted for help and whilst trying to keep Malatji's hands off her, the first plaintiff fell unconscious. She regained consciousness while Malatji was grabbing her by her feet and dragging her outside. She scrambled in trying to get hold of anything to resist being pulled by her feet, but to no avail. She could not get her hands under her to prevent her head from banging down the three steps at the front door. She screamed out loud

for him to stop, and for anyone to come and help her. This assault occurred slightly after 7am.

26. The second plaintiff ran from her room when she heard the commotion and saw Malatji banging her child against the wall repeatedly, screaming he will kill her. She had time to quickly throw a bathroom robe over her pyjamas. She tried to inform Malatji that he has it wrong: they are the victims, they are the complainants in the disturbance charge of the previous night. She saw her child lose consciousness and then saw how Malatji grabbed her by her ankles and dragged her out of the house. She tried her best to get him off of her daughter, but both these slight women were no hindrance to a man the size of Malatji. The ladies weighed a mere 50 kg and 55 kg respectively, their combined weight no doubt being less than the weight of Malatji alone. Malatji is of sturdy built and clearly a strong man.

27. After dragging her, Malatji straddled the first plaintiff on the ground and placed both his hands around her neck suffocating her. The first plaintiff was now laying in the paved parking area outside her flat, on her back, with Malatji sitting on her with his legs straddling her. The first plaintiff screamed as if her life depended on it. On all accounts, her life indeed did depend on it. She repeatedly lost consciousness. She testified that she believed that she was going to be raped and murdered. During this brutal attack by his colleague, the third defendant ("Maluleke"), stood by Malatji ostensibly as his bodyguard.

Maluleka prevented the second plaintiff and physically held her away when she tried to get Malatji off of her daughter. Maluleke violently grabbed the second plaintiff and threw her to the ground repeatedly. The commotion was clearly audible and visible and the occupants of the complex were looking out of their windows and standing outside their doors, prompted by the screams of the first and second plaintiff. There was approximately 14 people bearing witness to these assaults.

28. A video recording of the ordeal was made by a neighbour who resides in the complex and it clearly shows how Malatji straddled the first plaintiff. It shows his left leg bent and pushed down on the first plaintiff's torso. It also clearly shows both of his hands around her neck, aggressively strangling and shaking her. The video further shows the second plaintiff approaching, screaming to Malatji to stop it, and shows Maluleke grabbing the second plaintiff and violently throwing her to the ground. Both of these officers were in full police uniform. The video was handed in as evidence and it was revolting to see two strong men in Police uniform brutally attacking these two vulnerable women.
29. Her mother shouted at the first plaintiff that she should scratch Malatji with her nails to defend herself. The first plaintiff used her nails and scratched Malatji's face. The first plaintiff's nails broke Malatji's skin and Malatji's blood started dripping on the first plaintiff. Despite being scratched, Malatji kept on strangling the first plaintiff.

30. In addition to the video, photographs that were handed in as exhibits, clearly show the brutal bruises around the first plaintiff's neck, her arms and her wrists. There appears to be absolutely no reason for two uniformed police officials to attack two woman with so much force. When Maluleke saw that one of the neighbours are taking a video with his cellular phone, the video shows where Maluleke's hand moves in the direction of his fire-arm in his holster, whilst Maluleke walks towards the videographer. The video then stops abruptly.
31. This video was taken by a neighbour who did not testify at the trial. The video was identified by the first, second, third and fourth plaintiffs as an accurate portrayal of the events. I allowed the video evidence on the grounds of relevance.
32. The third and fourth plaintiffs, a married couple and neighbours of the first and second plaintiffs, approached Malatji and Makubela during the assaults in an effort to assist the first and second plaintiffs. The fourth plaintiff testified that he has never seen any man assault any woman the manner in which Malatji and Makubela assaulted the first and second plaintiffs. He testified that: *"Had they not been police officials, I surely would have raised my hand against them to protect the women."*
33. It appears that Malatji and Makubela then called in assistance, and several more police officers arrived at the scene in vehicles sounding

with alarms. The first, second, third and fourth plaintiffs were all handcuffed. The steel handcuffs on each of them were tightened to cause maximum pain and discomfort. All the plaintiffs asked whether the handcuffs might be slightly loosened, as it felt to them that their blood flow to their hands are being cut off. Their requests were refused.

34. The first plaintiff was placed in a police van separate from the other three plaintiffs. The first plaintiff begged the police officials to allow her to dress, or at least to get her clothes, as she was still in her pyjamas. At that stage, her pyjamas were in tatters as it was torn in the struggle with Malatji. The police officers refused. The first plaintiff begged the police officers to allow her to get a scarf to at least cover her head. Being a devout Muslim, it is utmost impure behaviour to be seen in public without being properly clothed. Aside from the robe, it is unacceptable for Muslim woman to appear in public without your head being covered in public, or to be barefoot in public. Both the first plaintiff and the second plaintiff were without their head dress and without shoes and the members of the Police refused that they obtain any clothing to cover themselves. This is a serious infringement of the first and second plaintiff's religious principles.

35. An unknown police man targeted the police van in which the second, third and fourth plaintiffs were placed and through the window a type of gas was released. It appears that it might have been teargas. There

was no ventilation in the van. The second plaintiff fainted more than once in the back of the police van. The third plaintiff removed her scarf and placed it in front of the second plaintiff's face, to act as a form of mask, as she was scared that the second plaintiff might not be breathing and she was scared that the second plaintiff was going to die as the second plaintiff suffers from diabetes. This fear was so real that the third plaintiff recited the death prayer over the second defendant's unconscious body in the back of the police van.

36. The four plaintiffs were taken to the Booysens Police Station. The first plaintiff was kept separate from the other three. The first plaintiff was arrested for assaulting a police officer with the intent to do grievous bodily harm. Malatji was the complainant. The assault was the scratching of Malatji's face with the first plaintiff's nails, whilst he straddled her. At a later stage, the second plaintiff was also charged for assaulting a police officer with the intent to do grievous bodily harm.
37. The third and fourth defendants were charged with interfering with the execution of justice and theft of a police vehicle's keys. These criminal trials, as well as those of the first and second plaintiffs, proceeded for the better part of a year and disrupted all the plaintiffs' lives. All the plaintiffs were found not guilty on all the charges.
38. At the police station the second, third and fourth defendants were instructed to stand in the hallway of the station. They were still in steel

handcuffs. They were not placed in police cells. When the second plaintiff sat on a chair, she was scolded and told that she does not deserve to sit on a chair as she is part of the Taliban. After a long time standing, they were forced to sit on the tiled floor. Their evidence was that the police members would walk past them and curse at them, called them derogative names and would make fun of them. They would also be taunted by police members asking questions such as “so what are you going to do now?” and “you do not belong in our country” and they were called names such as “Taliban”. They were being humiliated to the extreme.

39. The second plaintiff testified that when she saw her daughter (the first plaintiff) at the police station she was utterly shocked. The first plaintiff's pyjamas were torn and tattered to such an extent that her breasts and buttocks as well as most intimate parts were not covered and visible. The first plaintiff could not even cover herself as her hands were cuffed together. She was crying inconsolably and could barely stand. Around her neck and arms thick bruises started to show.
40. None of the plaintiffs were detained overnight and were released on bail during the evening of Sunday 18 November 2012.
41. The first and second plaintiff had severe difficulties recalling these events during evidence. It is clear that the incident had an extremely scarring emotional impact on both.

42. For any woman it will be the most degrading and humiliating experience and exposure: being dragged from your house, your pyjamas torn to such an extent that you are indecently exposed and that you have no privacy, being helpless as you are handcuffed. Over and above the extreme humiliation that any person would feel when violated to such an extent, the first and second plaintiff as devout Muslim woman had the added encroachment to one of the core principles in her religion and belief, being dressed modest and fully covered.
43. This ordeal left the first and second plaintiffs with severe emotional scars. To this day, both of them are suffering from depression and receive therapy. The first plaintiff uses Biral, a natural calming agent and the second plaintiff uses prescription medication to keep her depression in check. Both the first and second plaintiff had to receive and (on an *ad hoc* basis) are still receiving psychological assistance.
44. The second plaintiff has lost all her trust in the police, to such an extent that when she had to report a burglary, she refused to go to the police station as she was afraid of what they might do to her. She rather suffered the loss and not claim from insurance, as opposed to going to the police station and report the burglary. The second plaintiff has also caused a vehicle collision, as she “froze” in traffic when she heard

police sirens. It is clear that the incident had a severe emotional impact (in addition to the physical impact) on the first and second plaintiffs.

45. No expert reports served before me in relation to the mental health of the first and second plaintiffs. I accept their evidence that they suffer from depression and use medication and therapy to deal with the events of 18 November 2012.
46. The onus rests on the plaintiffs to prove that they were assaulted, unlawfully arrested and maliciously prosecuted. Irrespective of whether the matter was defended or not, the plaintiffs each has to prove his / her individual claims on a balance of probabilities.
47. The evidence before me support the claim that the four plaintiffs were unlawfully arrested and maliciously prosecuted. The evidence also support the claim that the first and second plaintiffs were assaulted. The video clearly shows how the first plaintiff attempted to protect herself by scratching the second defendants face, and her mother attempted to protect her child by trying to drag Malatji off of the body of the first plaintiff. The video also clearly shows how Maluleke pushes and drags the second plaintiff. The photographs, as well as the J88 report completed by the medical practitioner in the medico-legal examination, were all in support of the oral evidence of the assault on the two women.

48. The first and second plaintiff attempted to open charges of assault against the second and third defendant, but to no avail. The first and second plaintiffs also laid a complaint by the Independent Complaints Directorate (ICD) of the SAPS, but similarly no response was received.
49. I accordingly find that the first, second, third and fourth plaintiffs were unlawfully assaulted, arrested and maliciously prosecuted.

Quantum

Special damages: legal fees

50. All four plaintiffs claim special damages of the legal fees they had to incur for legal representation in the charges brought against them where Malatji and Maluleke were the complainants:

50.1. Against the first plaintiff the charge of assault with the intent to do grievous bodily harm; and

50.2. Against the second to fourth plaintiffs the charges of interference with justice and theft of a state owned vehicle key.

51. The amount claimed for each plaintiff was an amount of R100,000. The tax invoice presented on the letterhead of the attorney of record did not reflect the amounts which were already paid and which

amounts remained due. The invoices were also not accompanied by receipts indicating the amounts received.

52. The plaintiffs did not provide any details of their payments but only testified broadly that they have a down-payment arrangement and some monies have already been paid. All the payments were made in cash.
53. In argument, the court raised the issue of the best-evidence rule in circumstances where the creditor is an attorney regulated by strict regulations in regard to bookkeeping of trust accounts. This claim for special damages were subsequently withdrawn.

General damages

54. The principle in determining the amount of the award is that the award should be fair to both sides - it must give just compensation to the plaintiff, but not *“not pour out largesse from the horn of plenty at the defendant’s expense”* which was pointed out in **Pitt v Economic Insurance Company Limited** 1975 (3) SA 284 (N) at 287. The awards made in previous cases are a useful guide to what other courts have considered to be appropriate, but the awards itself have no higher value than that of a guideline.

55. The very nature of general damages makes it difficult to exactly assess an appropriate amount. Ultimately the amount awarded is the amount which a court may deem reasonable under the particular circumstances of a specific case.³
56. Even though every case is to be determined on its own merits, an exercise should be undertaken by the court when determining the amount of damages in which the court should compare previous awards on comparable cases, as stated by Potgieter JA in **Protea Assurance Co Ltd v Lamb** 1971 (1) SA 530 (A) at 535H-536B:

'It should be emphasised . . . that this process of comparison does not take the form of a meticulous examination of awards made in other cases in order to fix the amount of compensation; nor should the process be allowed so to dominate the enquiry as to become a fetter upon the court's general discretion in such matters. Comparable cases, when available, should rather be used to afford some guidance, in a general way, towards assisting the court in arriving at an award which is not substantially out of general accord with previous awards in broadly similar cases, regard being had to all the factors which are considered to be relevant in the assessment of general damages. At the same time it may be permissible, in an appropriate case, to test any assessment arrived at upon this basis by reference to the general pattern of previous awards in cases where the injuries and their sequelae may have been either more serious or less than those in the case under consideration.'

³ See: *Sandler v Wholesale Coal Suppliers Ltd* [1941 AD 194](#) at 199; Kloppe: *The Law of Third Party Compensation*, 2nd ed, p 152-158

57. In **Minister of Safety and Security v Seymour** 2006 (6) SA 320 (SCA) a 63 year old businessman were unlawfully arrested and detained for five days. The award granted in the High Court was R500,000 which amount was reduced on appeal to R90,000. The current monetary value of the award is approximately R220,000. In the matter before court, none of the plaintiffs were detained overnight or any prolonged period in the following days. However, the humiliation and infringement on religious principles as suffered by the first and second plaintiffs during the assault, arrest and detainment would, in my view, be justifiably compensated in an amount between R200,000 and R300,000.
58. In **Manase v Minister of Safety and Security and Another** 2003 (1) SA 567 (Ck) the plaintiff was arrested by police for murder and was detained for total of 49 days. The criminal charges were subsequently withdrawn in the High Court. The court found that the arrest, detention and prosecution was wrongful, unlawful and malicious and awarded general damages in the amount of R100,000 (R90,000 of which being for malicious arrest and detention, and R10,000 for malicious prosecution). The current monetary value of the award would be approximately R250,000. In relation to the determination of the quantum, White J held:

“[27] The Court takes a serious view of the malicious arrest and detention of the plaintiff. He was at the time 65 years old, married,

a grandfather and a successful businessman, residing permanently in Keiskammahoek. Not only had he never been in any trouble with the law before, but he must also have been respected in the small village where he lived and conducted his business. The serenity of his life was obviously shattered by the arrest and, as he testified, the detention proved to be a traumatic experience. He was detained for a lengthy period - 49 days - during which time he had to share a cell with criminals. Due to his arrest and detention he has lost the esteem not only of the people in Keiskammahoek, but also of his business associates.”

59. In comparing the Manasa matter and the matter currently before court, similarities are the humiliation and defiling of the first and second plaintiffs’ religion in relation to a respected and successful businessman arrested and detained for a prolonged period. Both Manase and the first and second defendant experienced trauma due to the incident and, to borrow the above phrase eloquently put by my brother White J: *“The serenity of (his-sic) life was obviously shattered.”*
60. The court has traced the following two undermentioned cases in The Quantum of Damages in Bodily and Fatal Cases of Robert Koch Jutastat e-publications, which is of assistance to it in determination of a fair and just *quantum* in the matter before court.
61. In the matter of **Minister of Safety and Security v Raymond Augustine and 3 Others** 2017 (7K3) QOD 13 (SCA) the members of the police executed a raid in terms of which they penetrated the house

of the plaintiff and his family members at night. The family members were forcefully held to the ground and no answers were given to them. It later transpired that the wrong house was raided. The family members of Augustine suffered severe post traumatic stress disorder and anxiety and the first defendant had a heart attack of which he contributes the stress to the incident. In the High Court the plaintiffs were awarded R25,000 each for general damages. This was overturned in the Supreme Court of Appeal for R200,000 and R250,000 individually to each of the four plaintiffs, depending on their unique circumstances. The amount of R200,000 would equal the currency of approximately R250,000 in today's value. The similarity with the matter before court is that the first and second plaintiff were aggressively unrooted from their residence.

62. The tragic circumstances in the matter of **Maart v Minister of Police** 2013 (6K3) QOD 24 (ECP) also provides guidance on a suitable *quantum*. Ms Maart called the assistance of the SAPS to detain her son, who was under the influence of alcohol. In the process of detaining him, her son drew two knives and threatened the police officials. The police officials shot the young man in the head, in front of his mother, Ms Maart. As a result of observing her son's death, at the hands of the policemen summoned by her, the plaintiff suffered severe trauma which forms the basis of her claim for damages. The court awarded a sum of R200,000 damages to the plaintiff. The currency

would amount to R275,000 in today's value. A similarity in the matter is that a mother witnessed violent actions of policemen against her child.

63. In the matter of **Minister of Safety and Security v Tyulu** 2009 (5) SA 85 (SCA) the arrestee was a magistrate arrested for being intoxicated in public. The arrest was executed by people with whom he normally worked, he was manhandled and dragged into a police vehicle. The arrestee was a man of considerable standing in the community and must have been caused serious embarrassment, humiliation and shock, with concomitant mental anguish and stress (as set out in the judgment paragraph [25] at 93B - C.) Damages of R15,000 was awarded for unlawful arrest and detention. The current monetary value of the amount would be approximately R30,000. This is comparable to the damages suffered by the third and fourth plaintiffs.
64. In argument, Mr Bodhania subdivided the various headings of general damages. Counsel conceded that it is not an advisable approach for the court to consider separate amounts for various elements of the damage and calculate damages as a mathematical process. The acceptable manner in which to determine the amount that would be just and fair, was to be guided by the facts of each case individually with all the elements viewed holistic.
65. Mr Bodhania argued on behalf of the plaintiffs that compensation in the amount of R1 million to R1.2 million to the first plaintiff would be a fair

and reasonable amount. On his argument the following factors justify such an amount:

- 65.1. The trauma of being physically exposed to be forced in public in her night-wear and without a head-scarf, robe or shoes in direct conflict with her religious principles, as well as the humiliation to be physically exposed of her most intimate and private body parts;
 - 65.2. The humiliation and depravation of dignity to be arrested, transported in a police van, ordered to stand in the Booysens Police Station corridor in her torn night-wear;
 - 65.3. The trauma of being unlawfully arrested and put through a malicious prosecution for a whole year, where she had to testify about the assault on her, but was accused of assaulting Malatji; and
 - 65.4. The general damages of being ridiculed, harassed and defamed at the Booysens Police Station.
66. It was argued on behalf of the second plaintiff that compensation in the total amount of between R750,000 to R900,000 would be a reasonable amount with the following main factors taken into account:

- 66.1. The humiliation and depravation of dignity to be arrested, transported in a police van, ordered to stand in the Booysens Police Station corridor in her night-wear with gown;
 - 66.2. The second plaintiff is left with severe anxiety due to the unreasonableness and nonsensical nature of the events, and she has and no trust left in the South African Police Service;
 - 66.3. The second plaintiff has had to see her daughter being attacked, humiliated and exposed and she could do nothing to protect her daughter; and
 - 66.4. The second plaintiff lost her employment due to the repercussions of the incident. She was left without an income for 7 months, and cannot perform employment functions the way she had prior to the incident.
67. It was argued on behalf of the third and fourth plaintiffs that compensation in the amount of R600,000 to R800,000 would be reasonable with the main factors as follows:
- 67.1. The third and fourth plaintiffs were subjected to some form of teargas in the back of the police van;
 - 67.2. The third and fourth plaintiffs had their hands cuffed very tight;

67.3. The third and fourth plaintiffs went to assist the first and second plaintiff against the brutality of the second and third defendants, but ended up being arrested and detained; and

67.4. The third and fourth plaintiffs were prosecuted for interference with justice and theft of a state owned vehicle key.

68. For the reasons set out above, I deem the amounts submitted by Mr Bodhanian to be very opportunistic.

69. After considering all the evidence before me, the applicable case law and legal principles, I come to the conclusion that it would be just and fair under the circumstances to award general damages to the first, second, third and fourth plaintiffs for the actions taken by the second and third defendants on 18 November 2012 as follows:

69.1. an amount of R300,000 compensation to the first plaintiff for general damages occurred during the unlawful assault, arrest and detention as well as the malicious prosecution;

69.2. an amount of R250,000 compensation to the second plaintiff for general damages occurred during the unlawful assault, arrest and detention as well as the malicious prosecution;

69.3. an amount of R20,000 compensation to the third plaintiff for general damages occurred during the unlawful assault, arrest and detention;

69.4. an amount of R20,000 compensation to the fourth plaintiff for general damages occurred during the unlawful assault, arrest and detention.

70. The plaintiffs are requested to serve a copy of this judgment together with the video-evidence contained on the flash-drive / memory stick on the Independent Complaints Directorate.

71. The plaintiffs are also requested to send a copy of this judgment to the National and Provincial Commissioners of the South African Police Services.

I consequently make the following order:

1. The first and third defendants (collectively and/or individually) are ordered to pay to the first defendant an amount of R300,000;
2. The first and third defendants (collectively and/or individually) are ordered to pay to the second defendant an amount of R250,000;

3. The first and third defendants (collective and/or individually) are ordered to pay to the third defendant an amount of R20,000;
4. The first and third defendants (collective and/or individually) are ordered to pay to the fourth defendant an amount of R20,000;
5. The plaintiffs' legal representatives are requested to serve a copy of this judgment together with the flash-drive / memory stick on the Independent Complaints Directorate;
6. The plaintiffs' legal representatives are also requested to serve a copy of this judgment to the National and Provincial Commissioners of the South African Police Services; and
7. The first and third defendants are to pay the costs of the plaintiffs on a scale as between party and party.


FMM SNYMAN, AJ
ACTING JUDGE OF THE HIGH COURT

DATE OF HEARING: 20 FEBRUARY 2020
DATE OF JUDGMENT: 13 MAY 2020

JUDGMENT DELIVERED ELECTRONICALLY DUE TO COVID 19 RESTRICTIONS

Appearance for the plaintiff: Adv Bodhania
Instructed by: Yousha Tayob Attorney
Tel: 011 838 3342
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Ref: MLA/0005/YT

No appearance for the defendants