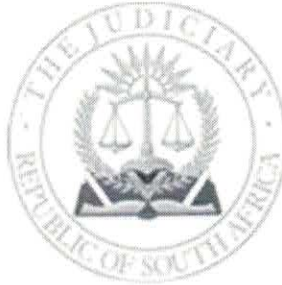


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, PRETORIA

CASE NO: 32853/2016

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO	
(2) OF INTEREST TO OTHER JUDGES: YES/NO	
(3) REVISED :	
25/3/2020	
DATE	SIGNATURE

In the matter between:

BOY MAHLANGU

Plaintiff

and

THE MINISTER OF POLICE

Defendant

JUDGMENT

SENYATSI J:

- [1] The Plaintiff sues the Defendant for assault by the members of the South African Police Services (SAPS) and seeks payment of R350 000 for damages suffered as a result of the said assault.

- [2] In his particulars of claim the Plaintiff alleges the perpetrators of the assault were at the time employed by the Defendant and that the unlawful acts were committed during the course of their employment and whilst in the execution of their duties.
- [3] The assault is said to have occurred on 12 April 2015 and the police officer who carried out the assault was Mahlangu. The Plaintiff alleges that this name was on the name tag of the officer who assaulted him.
- [4] The action is defended by the Defendant who denies that such assault took place or that he has no knowledge of such an assault.
- [5] At the commencement of the trial, the issues for determination were whether the plaintiff was assaulted by the members of the SAPS and in the event of an affirmative finding, the quantum was postponed *sine die* for future determination.
- [6] The Plaintiff testified that he was at Monthari Tavern in Siyabuswa on the 12 April 2015 at around 4:00 AM. The members of the SAPS entered the tavern. He was ordered to stand up against the wall by one of the members of the SAPS.
- [7] He was slapped on the face by a police officer when he attempted to look at the face of the officer who ordered him to stand against the wall.
- [8] After obliging as ordered by the police officer, he was searched by the police. Money and a cellphone were found in his person. When he attempted to look at the face of the police officer as he was being searched, he was slapped on the face with an open hand. He alleges that he was also kicked from behind. He injured his eye and his right knee.
- [9] The Plaintiff testified that he reported the assault to the local police station in Siyabuswa. He was given a J88 form to fill up on 13 April 2015 by the police. The form was completed by Dr Masango.

- [10] During the cross examination it became evident that the J88 form was completed by Dr Masango on 22 May 2015.
- [11] The Plaintiff remained adamant that he saw Dr Masango on 13 April 2015 and not 22 May 2015.
- [12] However on being pressed under cross examination he conceded that he took a long time before he saw Dr Masango for medical attention.
- [13] When the police gave the Plaintiff the J88 form, it was with the intention that he would return same to the police to investigate the assault. The J88 form was never returned to the police.
- [14] The second witness to testify on behalf of the Plaintiff was Dr Masango.
- [15] Dr Masango is a qualified health practitioner with Bsc and MBChB medical degrees. He obtained his degrees in 2004 and was registered as a medical doctor in 2007. He practices independently and has been in practice since 2007 to date.
- [16] He stated that he saw the Plaintiff on 13 April 2015. According to him the date of 22 May 2015 indicated on the J88 form was a date of review.
- [17] His evidence was that he examined the Plaintiff and was satisfied that the Plaintiff had sustained injuries consistent with the assault as alleged by the Plaintiff.
- [18] He stated that due to the pressure of his practice he accidentally filled the 22nd May 2015 instead of the 13 April 2015.
- [19] The third witness to testify for the Plaintiff was Micah Joseph Makhuba. He was a barman at Monthari tavern on 12 April 2015 when the police came to the tavern. He was asked by one of the SAPS members about the owner of a car parked outside but no description of the car was provided.

- [20] Mr Makhuba could not assist the police. One of the police members ordered the tavern patrons to stand still. He alleges that the police started assaulting the customers and left thereafter.
- [21] After the police left, the witness went outside the tavern. He met the Plaintiff who was bleeding from the right hand side of the eye. He was advised by the Plaintiff that he was assaulted by the police.
- [22] The Plaintiff closed his case.
- [23] The Defendant called Sergeant Andries Mahlangu to testify its behalf; Sgt Mahlangu is based at Siyabuswa police station. He was on duty on 12 April 2015.
- [24] Siyabuswa is divided into four sectors for policing purposes. The police have a 12 hour shift system. Each group of police officers are responsible for their own sector when conducting police patrol. The police unit can overlap in patrolling the sectors especially if another unit calls for back-up.
- [25] He denied that there was an assault on 12 April 2015. He could not dispute that police officers may have gone to Monthari tavern. He relied on the SAPS (OB) which records what the police do. There was no record of the assault as alleged by the Plaintiff on 12 April 2015.
- [26] He conceded that the police do not record everything in the OB. He could not explain why the complaint by the Plaintiff was not recorded in the OB. He did not dispute that the Plaintiff came to the police station.
- [27] The Defendant closed his case without calling more witnesses.
- [28] It is trite that the Plaintiff bears the onus of proof on a preponderance of probabilities in civil cases. The Plaintiff needs to prove that the assault did take place and that it was carried out by members of the SAPS.

- [29] As to what the discharge of that onus on the balance of probabilities, a lot has been said by our courts on this approach. In *Maitland of Kensington Bus Co (Pty) Ltd v Jennings*¹; Davis J had this to say:

“... And in a civil case the onus is less heavy. For judgment to be given for the plaintiff the Court must be satisfied that sufficient reliance can be placed on his story for there to exist a strong probability that his version is the true one.”

- [30] In *Hodgkin v Fourie*² the Court stated as follows:

“At the close of the case for one side upon whom the onus lies, the question which the judicial officer has to put to himself is: Is there evidence on which a reasonable man may find for that side.”

- [31] In the instant case, the Plaintiff's evidence has not been consistent. He avers that he reported the assault at Siyabuswa police station on 13 April 2015. He was given a J88 form to complete and obviously returned for further investigations.
- [32] That J88 form is only handed to Dr Masango on 22 May 2015. Although Dr Masango states that he made a mistake by putting the 22 May 2015 as the date of examination of the alleged injuries. He wants this Court to believe that in fact the true date of examination was the 13 April 2015 as averred by the Plaintiff.
- [33] The version by Dr Masango is highly improbable. The version that is possibly true is that Dr Masango was consulted on 22 May 2015 as the Plaintiff conceded under cross-examination that he took an inordinate amount of time to take the J88 form to Dr Masango.

¹ 1940 CPD 489 at 492

² 1930 TPD (740) at 743

- [34] It is evident that when the Plaintiff went to Dr Masango to complete the J88 form, it was after more than one month. We have not been provided with the evidence, if any on what medical care was received by the Plaintiff.
- [35] The evidence of Makhuba was not helpful. He did not see the assault allegedly meted out on the Plaintiff he was simply told by the Plaintiff that the police did it.
- [36] Even without any version being offered by the Defendant, I am not satisfied that the Plaintiff has discharged the onus that the police assaulted him as alleged.
- [37] As a consequence his claim must fail.

ORDER:

- [38] The following order is made:
(a) The Plaintiff's claim is dismissed with costs.



SENYATSI ML
Judge of the High Court of South Africa
Gauteng Local Division, Johannesburg

Date leave to appeal application heard: 19 November 2019

Date of Judgment: 25 March 2020

Plaintiff Counsel: Adv. H. Mpe

Instructed by: Gildenhuys Malatji Inc

Defendant Counsel: Adv T.L. Chokwe

Instructed by: The State Attorney