

**IN THE HIGH COURT OF SOUTH AFRICA**

**(GAUTENG DIVISION, PRETORIA)**

**CASE NO: 15535/2015**



**DATE OF JUDGMENT:**

(1) REPORTABLE: YES/NO  
(2) OF INTEREST TO OTHER JUDGES:  
YES/NO  
(3) REVISED. *Moore*  
15 December 2016

In the matter between:-

**NTSHADI MATHULE MATHEBULA**

**Plaintiff**

and

**THE MINISTER OF POLICE**

**Defendant**

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**JUDGEMENT**

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**KOOVERJIE AJ:**

1.

- 1.1 The matter is based on a claim for damages arising from the alleged assault and unlawful detention of the Plaintiff by members of the Defendant.
- 1.2 The Plaintiff claims to have suffered injuries at the hands of certain Police officers who were acting within the course and scope of their employment.
- 1.3 The issue of merits and quantum have been separated by agreement between the parties.
- 1.4 The issue for determination for this Court is whether the Plaintiff has proven on the balance of probabilities that she was indeed assaulted and detained by the officers of the Defendant and whether she had sustained injuries as a result of their actions.
- 1.5 The Plaintiff's evidence is based on her testimony and no other witnesses corroborated her evidence or were called to testify.

2.

The following Police officers testified at the hearing namely, Lieutenant Colonel Senwedi (Senwedi), Captain Mogapi (Mogapi), Captain Mahongwe (Mahongwe) and Constable Lentsela (Lentsela). The salient common cause facts are the following in this matter:

- 2.1 On Sunday, the 8<sup>th</sup> June 2014, at approximately 12.30pm, the Plaintiff went to the Mafikeng Police Station to have certain documents certified. At the time she was accompanied by her two children who were 4 and 5 years old respectively.
- 2.2 She waited for her turn in the queue in order to be assisted. Lentsela assisted her at the counter. This Police officer was not dressed in uniform nor did she have a badge. Lentsela advised the Plaintiff that only 10 documents could be certified at a time on weekends by virtue of the Station's Policy.
- 2.3 On the Plaintiff version, she testified to the following:
- 2.3.1 The Plaintiff was not satisfied that this was a genuine explanation and demanded to see the Station Commander and thereafter asked to see the second in charge when Lentsela advised her that the Station Commander was not on duty. At this point in time Lentsela became abrupt and rude towards her.
- 2.3.2 Since she was not in uniform the Plaintiff thought it fit to take a picture of Lentsela in order to identify her to the Station Commander.
- 2.3.3 Lentsela became quite upset and confronted the Plaintiff in respect of her photo being taken by the Plaintiff. Lentsela immediately went to the other side of the counter where the public normally stood and shouted

at the Plaintiff that she had no right to take a photo. She then pushed the Plaintiff, grabbed her on her chest and her shoulders and pushed her against the wall. She then dragged the Plaintiff behind the counter and demanded that her picture be deleted. At this point in time, the children of the Plaintiff began crying.

2.3.4 Thereafter, a male Police officer (Mogapi) came and requested Lentsela and the Plaintiff to resolve the issue in a private room. They all proceeded to a room behind the counter area. It was Lentsela, Captain Mogapi, the Plaintiff and the children that had gone into the room at that stage.

2.3.5 Captain Mogapi was prepared to certify the documents and asked Lentsela for it. Lentsela refused to give him the documents unless the Plaintiff deleted her photo from her cellphone. The male officer then left the room and closed the door behind him.

2.3.6 Thereafter Lentsela started pushing her and attempted to remove the cellphone from the Plaintiff's clothing. The phone then fell and was damaged.

2.3.7 The Plaintiff at this point was terrified and started knocking the chair on the floor in order to create a noise so that someone would open the door upon hearing the noise.

2.3.8 Shortly thereafter, another female Police officer wearing a two star badge came into the room and also threatened the Plaintiff. At this point the Plaintiff realised that she was in danger, and she then pushed them out of the way and ran out of the room. She left without her children and her documents.

2.3.9 As she ran out a male officer approached her and he verbally abused her. She then ran to the car, she called her husband, who then took her to see a doctor.

2.4 Under cross examination she confirmed that only Lentsela physically abused her whilst other Police officers verbally abused her. She persisted with her version that she was accosted by Lentsela in the public area before they had gone into the room and that she was further detained by Lentsela and the other female officer in the said room. She sustained injuries which caused bruises on her upper arm and she was emotionally traumatised. She only noticed these bruises a day later. She also admitted that she refused to delete the photo because Lentsela had become arrogant and abusive.

### 3.

Lentsela's testimony essentially was as follows:

3.1 On the day in question she was not dressed in her Police uniform however, members of the public could identify her as a Police officer. She had called

Captain Mogapi when the Plaintiff insisted to see the second in charge. Whilst certifying the documents, the Plaintiff took a picture of Lentsela with her cellphone. Lentsela confronted the Plaintiff as to why she was taking her photo without her permission. The Plaintiff ignored Lentsela and when Captain Mogapi came to the counter, he then asked Lentsela and the Plaintiff to resolve the issues in another room. Lentsela, Mogapi, the Plaintiff and the children then proceeded to this room. Mogapi attempted to resolve the issue between the Plaintiff and Lentsela but was not successful. The Plaintiff insisted on seeing the Station Commander. He then stepped out to make a call to the Station Commander. Lentsela thereafter was alone with the Plaintiff and claimed that the Plaintiff was verbally abusing her by calling her “useless” and threatened her by stating that “she will show her who the Plaintiff is when she sees her on the streets.” At this stage the Plaintiff also demanded her documents from Lentsela. Lentsela refused to give them to her. The Plaintiff picked up the cap stand and attempted to hit Lentsela with it. At this moment Senwedi entered the room and witnessed the Plaintiff holding the cap stand.

- 3.2 Lentsela specifically denied trying to grab the cellphone from the Plaintiff and also denied that the cellphone fell on the floor. Lentsela also denied that the door was closed and that the Plaintiff was prevented from leaving the room.

#### 4.

Mogapi’s testimony is summarised as follows:

- 4.1 He testified that Lentsela had called him to come to the counter as the Plaintiff insisted on seeing him. He confirmed that Lentsela was standing on her side of the counter and the Plaintiff was on the other side where the public normally stands. Mogapi noted that the Plaintiff was upset and overheard the Plaintiff threatening to take the matter further with Lentsela. Mogapi requested the Plaintiff and Lentsela to proceed to a private room in order to resolve the issues.
- 4.2 In the room Mogapi advised the Plaintiff that he was the Commander on shift at the time and she should address the complaint to him. Since she persisted on seeing the Station Commander he then left the room to contact the Station Commander. When he returned after making the call, he found that the Plaintiff had already left. In his evidence he testified that at no stage had he verbally or physically abused her and moreover there was no indication of her being “pushed, shoved or handled” by any Police officer.
- 4.3 In cross examination, Mogapi confirmed that the Plaintiff was speaking loudly and made threats to Lentsela. He also confirmed that both Lentsela and the Plaintiff were upset with each other. He stated that he never asked the Plaintiff to delete the photo from her cellphone. He also stated that the Plaintiff refused to give him an opportunity to resolve the issue. He was aware, however, that the documents needed to be certified and that Lentsela was holding on to them.

5.

Senwedi's evidence was to the effect that he was at the time in the operational room and he heard noises coming from another room. He stepped out and proceeded to the other room where he found Lentsela and the Plaintiff. At that time the Plaintiff had the cap stand in her hand. He then intervened and he took the cap stand from the Plaintiff. When he inquired what the issue was and the Plaintiff did not respond and left the room with her children. At no stage had he ever assaulted or detained or verbally abused the Plaintiff. He recalled that the Plaintiff was threatening Lentsela to the effect that she "will sort her out". He saw Lentsela holding a brown envelope in her hands.

6.

Captain Mahongwe's testimony was essentially to the effect that she had no interaction with the Plaintiff. At the time in question, she was also behind the counter near Lentsela and assisting other members of the public. She further stated that she overheard Lentsela explaining the policy regarding the certification of the documents on weekends. An argument ensued between Lentsela and the Plaintiff after the Plaintiff took a photo of Lentsela. Mogapi had come to the counter and appealed to Lentsela and the Plaintiff to resolve the issues privately in a room behind the counters. She did not witness anything that happened inside the room but she had seen the Plaintiff leaving the room. She also noted at one stage that Mogapi had also left the room. She had never entered the room at any stage.



## 7.

Counsel for the Plaintiff requested the Court to consider the improbabilities in the defence's evidence. The following submissions were made on behalf of the Plaintiff, namely that;

- 7.1 Independent facts support the version of the Plaintiff that she was indeed assaulted. The J88 document confirms that the Plaintiff's clothing was "roughened" and that the Plaintiff was suffering from dizziness and headaches following her assault.
- 7.2 No medical professional would include any details in their reports or in their statements if those observations were not made by them independently.
- 7.3 Furthermore, the medical report which was prepared a month after the assault also confirmed the psychological status of the Plaintiff arising from the abuse that she had suffered in respect of this incident.
- 7.4 The fact that there was no mention of bruising in the report set out by Dr Tshabala does not mean that she did not sustain bruises. The Plaintiff had testified that she noticed the bruising a day after the incident.
- 7.5 The defence's version is implausible on the following basis:

7.5.1 It is very unlikely for a civilian like the Plaintiff to even consider attacking a Police officer in the surroundings of other Police officials;

7.5.2 The evidence of the defence showed that Lentsela was certainly upset with the Plaintiff and she had demanded that her photo be deleted from the cellphone. It was in fact the aggressive reaction of Lentsela in respect of the photo that sparked the altercation. It was Lentsela who was aggressive and not the Plaintiff.

7.5.3 Lentsela's wants the Court to believe that she never touched the Plaintiff's body and that she allowed the Plaintiff to leave without any further intervention on her part is highly improbable.

7.5.4 The Plaintiff's intention was to speak to the Station Commander and it is highly unlikely that she would have left the Police station without doing so and more specifically without taking her original documentation.

7.6 It is on this basis that the Plaintiff's version is more probable. Lentsela certainly took the law into her own hands. She took advantage of the Plaintiff who was alone in the room with her. She certainly searched the Plaintiff and removed the cellphone, thus damaging the cellphone. She further threatened and refused to allow the Plaintiff to exit the room and did so with the assistance of another Police officer.

8.

Counsel for the defence pointed out following the discrepancies and contradictions in the Plaintiff's evidence. It was these material contradictions and differing versions from the pleadings which point to her testimony being implausible.

9.

9.1 During cross examination the Plaintiff confirmed that she was physically assaulted by Lentsela only and not the other Police officers. This was not in accordance with the pleadings as counsel had pointed out. In her pleadings she refers to "Police officers" who also assaulted her.

9.2 In her evidence she further stated that the cellphone was damaged, however, if one has regard to the pleadings namely:

9.2.1 In the letter of demand, the following is stated:

*"..... the cellphone was broken during the struggle";*

9.2.2 In the particulars of claim, the following was stated:

" .....at which point the aforementioned member of the SAPS searched the Plaintiff forcefully, removed her cellphone and then damaged the device beyond recognition."

9.2.3 In the Plaintiff's evidence, she did not testify that the cellphone was damaged beyond recognition but instead indicated that the screen was cracked. In her statement, she makes reference to the following:

*“.....my cellphone fell from my hand to the floor and when I picked it up I immediately discovered that it got cracked on the top left hand corner.”*

9.2.4 In her reply to request for further particulars, in paragraph 17 thereof it was alleged that:

*“the screen of the phone was shattered.”*

9.3 The Plaintiff's version was not corroborated by any other witness. There was no reason why she could not have called the husband, particularly as he was the first person who had seen her after the alleged assault and detention. There is also no reason why the evidence of her children as well as the treating doctor should not have been taken into consideration.

10.

It is common cause that what the Court has before it, are two mutually destructive versions. The Plaintiff was a single witness and it is trite that such evidence must be treated with caution by the Court. In this regard, I take cognisance of the approach in **S v Sauls and Others 1981 (3) SA 172 a AT 180 E – G** namely that:

*“the trial judge will weigh his evidence, consider its merits and demerits and, having done so will decide whether it is trustworthy and whether, despite the fact that there are shortcomings or defects or contradictions in the testimony, he is satisfied that the truth has been told .....”*

11.

Both the Plaintiff and the Defendant referred this Court to the test that is to be applied when considering single witness evidence. It is trite that the evidence must be satisfactory and need not be perfect. There could be certain defects and

shortcomings in the evidence. The proper test is not whether the witness was truthful or reliable in everything that she said, but whether on the balance of probability the essential features of the story which she tells are true.

## 12.

Having considered the evidence, this Court makes the following findings:

- 12.1 There is no doubt that the Plaintiff was upset in respect of the policy regarding the certification of her documents and there is further no doubt that she confronted Lentsela in respect of this. Her demeanour in demanding to see the Station Commander and then the second in charge further demonstrated her insistent attitude. It was this attitude which caused Lentsela to become upset with the Plaintiff. Lentsela would also not have remained calm, especially after being insulted by the Plaintiff at the counter as well as in the room. Mahongwe testified that the two were already arguing at the counter.
- 12.2 The inference that this Court is able to draw is that both women were upset with each other and there was in all probability an unpleasant exchange of words between them.
- 12.3 What further aggravated the situation was that Lentsela refused to hand over the original documents to the Plaintiff which angered the Plaintiff more.

12.4 Furthermore, the Court finds it highly unlikely that Lentsela would have gone to the other side of the counter and in full view of the public attacked and assaulted the Plaintiff. It is more probable that if there was an assault it would have happened in the room, out of the view of the public. If such assault had taken place in the public eye, the Plaintiff should have at least presented such corroborating evidence from a member of the public who witnessed this assault.

12.5 Captain Mogapi appeared to be a credible witness and the Court is satisfied with his testimony particularly to the effect; that he had tried to settle the dispute between the parties, that both parties were visibly upset with each other; that Lentsela had the envelope containing the Plaintiff's original documents; that he had attempted to resolve the matter but the Plaintiff had not given him an opportunity and demanded to see the Station Commander and that he had left the room in order to contact the Station Commander. He never witnessed any verbal or physical abuse on the part of Lentsela. He also confirmed that when he came to the counter initially, the Plaintiff was already at that stage insulting Lentsela.

12.6 I however do find it improbable that he was not aware that Lentsela had demanded that her photo be removed from the Plaintiff's cellphone or that Lentsela had not made this demand in the room before him. His evidence that he had offered to certify the Plaintiff's documents is corroborated by the Plaintiff. The problem was that Lentsela refused to hand over the documents to the Plaintiff.

13.

- 13.1 The point of dispute turns on what had actually transpired between the time Mogapi left the room to the time the Plaintiff left the room. The two questions remain: was the Plaintiff assaulted by Lentsela and secondly was the door closed which caused the Plaintiff to be detained?
- 13.2 Captain Mogapi in his evidence testified that in the event that the Plaintiff was assaulted by Lentsela he would certainly have had knowledge thereof and he would have had to ensure that the relevant procedures are followed when an officer assaults a member of the public.
- 13.3 There was no reason for this Court to doubt Senwedi's testimony particularly that he was on the day in question on duty and was in the building. When questioned as to why his name was not on the register, his response was that he was in the crime prevention group, which has a separate register and such register was not discovered. Furthermore, Senwedi was identified as one of the Police officers who assaulted the Plaintiff (as per her reply to the request for further particulars).
- 13.4 Senwedi testified that when he approached the room the door was open and he found the Plaintiff holding the cap stand and attempted to assault Lentsela. When he confronted her, she ran out.

13.5 This is in accordance with the Plaintiff's testimony, that as she ran out there was another Police officer who verbally abused her. Senwedi also further confirmed that he did not notice any visible injuries to the Plaintiff's body nor had he seen Lentsela assaulting the Plaintiff at any stage. He further confirmed that he saw the Plaintiff pointing fingers at Lentsela and insulting her.

13.6 During the Plaintiff's testimony, she identified a female officer with "two stars". When Captain Mahongwe testified she admitted that she had "two stars" and at the time she was on duty. She was also at the counter assisting other members of the public. She overheard the conversation between Lentsela, Captain Mogapi and the Plaintiff and she was also aware that they had gone into the room. However, this Court does not find her written testimony credible in that it was highly improbable that she could be assisting members of the public at the counter and at the same time she was able to overhear the conversation in the room between Lentsela, Mogapi and the Plaintiff. She particularly testified that Captain Mogapi told the Plaintiff to wait for the Station Commander so that the problem could be solved.

13.7 However, the Court finds no evidence that Mahongwe was present in the room with Lentsela and harassing the Plaintiff. Senwedi only found Lentsela and the Plaintiff in the room when he heard the noise.

13.8 Senwedi testified that the door of the said room was open. Mogapi did not testify that the door was closed when he left the room.



13.9 The only evidence immediately after the incident is the J88 report which records the following:

*“The above named young woman presented with history of severe headache and dizziness following being assaulted at the Police Station this day. On examination she was apprehensive with elevated pulse rate.”*

Under conclusion the following was recorded “headache and dizziness.” At this juncture, it must be that the cause of the patient’s condition was communicated to the said doctor when he completed the form, namely that she was assaulted at the Police Station.

13.10 Counsel for the Plaintiff pointed out to the Court that her appearance was considered by the practitioner as “roughened”. The conclusion of her diagnosis was that she had a headache and experienced dizziness. There was no physical examination in respect of any injuries she sustained in this report.

13.11 Although I find it improbable that Lentsela was calm at all times, I find it equally improbable that the Plaintiff was physically assaulted by Lentsela. I also further find it highly improbable that the door was closed at the time and that the Plaintiff was detained. The testimony of Senwedi and Mogapi has a bearing on my findings.

13.12 The further discrepancy which exists concerns the damage to her cellphone. Such damaged cellphone is not an exhibit before this Court. Hence I am not in a position to determine whether the screen was just cracked or whether it was damaged beyond repair.

13.13 In respect of her being accosted in the public area, when asked in the request for further particulars as to the details thereof, it was stated that it is “a matter for evidence.” The Plaintiff’s testimony in respect of this incident was not corroborated by anyone, particularly by an eye witness from the public also standing in the queue. Moreover Mogapi testified that when he was called to the counter, the Plaintiff was standing on the side where the public normally stands.

14.

A day later, the Plaintiff had indeed consulted Dr Tshabala who identified that she was suffering from major depressive disorder and post-traumatic stress disorder. These reports are noted by this Court, but I am not convinced that it was due to the Plaintiff being a victim at the hands of the Police. The entire episode was sparked off by the Plaintiff’s confrontational attitude when entering the Police Station on the day in issue. Despite the presence of many Police officers, the Plaintiff had the confidence to confront Lentsela in the manner she did. On the same token, it is unbecoming for Police officers like Lentsela to have refused to return the original personal documents to the Plaintiff.

15.

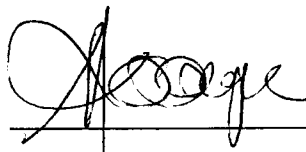
Having considered the evidence before me as well as the pleadings, I make the finding that the Plaintiff failed to prove her case on a balance of probabilities that she

was indeed assaulted and unlawfully detained by the officials of the Defendant during the course and scope of their employment.

16.

I therefore make the following order:

1. The Plaintiff's claim against the Defendant is dismissed with costs.

A handwritten signature in black ink, appearing to read 'H Koooverjie', is written over a horizontal line.

**H KOOVERJIE  
ACTING JUDGE OF THE  
GAUTENG DIVISION**

**APPEARANCES:**

For Plaintiff: Adv B Anderson  
Instructed by: Mokoduo Attorneys

For Defendant: Adv Mothibedi SC  
Instructed by: The State Attorney