

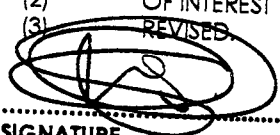
REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

2/08/2016

CASE NO: 62475/2013

| | |
|--|---------------------------------|
| (1) | REPORTABLE: NO |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED |
|  | |
| SIGNATURE | ...02/08/2016... DATE |

JOHANNES MOKOENA

PLAINTIFF

AND

MINISTER OF POLICE

DEFENDANT

JUDGMENT

THOBANE AJ,

INTRODUCTION

- [1] On 25 September 2012, the plaintiff, a police officer, was unlawfully arrested and detained by members of the SAPS. The day before, he had taken approximately 17 police dockets home in his private vehicle so he could work on them. It was daily practice that he would leave home early and drive to work to park his motor vehicle. He would then make use of a state vehicle during the day. His wife would go to the police station and using a spare key, take the vehicle to travel to work. On the day of the incident that gave rise to the suit, it was not different. Plaintiff travelled to the police station and parked his motor vehicle. A colleague of his Mr Adriaan Mawelele (Mawelele), requested plaintiff to accompany him to a murder scene which was situated between KwaMhlanga and Bronkhorstspuit. He left with his colleague and the 17 dockets were left inside the motor vehicle, which was parked at the police station.
- [2] While at the murder scene he received a call from a Colonel Vukeya (Vukeya) who summoned him to the R25 road near Bronkhorstspuit where his motor vehicle, which at the time was driven by his wife, had been stopped at a roadblock and the 17 dockets found after the vehicle was searched. He proceeded with Mawelele to the R25 where the roadblock was and on arrival approached his wife who was parked on the side of the road. The roadblock was manned by members of the SAPS as well as traffic police. He was then asked why were the dockets in his vehicle and when he tried to explain that he was a police officer and that he had placed the dockets there, he was assaulted by approximately 10 to 15 policemen who slapped him, hit him with fists, kicked him, hand cuffed him and placed him at the back of the police van. He was transported to the Bronkhorstspuit police station where he was charged with "interfering with police official duties" and kept in a cell. He was released five hours later.

[3] The above facts were not contested by the defendant who conceded 100% liability. The matter is proceeding before me only on quantum.

[4] In the particulars of claim, the plaintiff prays for compensation as follows;

Claim 1 Unlawful arrest and detention

| | |
|---|---------------------------|
| Legal expenses | R10 000-00 |
| Future hospital or medical treatment | R100 000-00 |
| Past and future loss of earnings and earning capacity | R200 000-00 |
| General damages | <u>R200 000-00</u> |
| Total | <u>R510 000-00</u> |

Claim 2 Assault

| | |
|---|---------------------------|
| Future hospital or medical treatment | R200 000-00 |
| Past and future loss of earnings and earning capacity | R200 000-00 |
| General damages | <u>R250 000-00</u> |
| Total | <u>R650 000-00</u> |

EVIDENCE

[5] The plaintiff testified in support of his claim and led evidence of five other witnesses namely, his wife, Mawelele and three expert witnesses.

5.1. Plaintiff testified that he was treated in the most appalling manner by the police. He had been summoned to the scene where his wife

was stopped at a roadblock and on arrival was assaulted for no apparent reason. He was hit on his chest with fists and open hands. His arms were twisted causing severe pain on both shoulders. He was wearing a tie and was strangled therewith. He was further pushed towards the police van, while he was being assaulted, and he fell. In this process he injured his right thumb. His wife was only three meters away from him when he was assaulted. He described the conduct of the police as "showing off and unprofessional." They knew he was a policeman when they were assaulting him in the described manner. His colleague Mawebele tried to intervene but was threatened with arrest. Plaintiff was shoved into a police van and transported to Bronkhorstspuit police station where he was kept in a police cell until his release on warning five hours later. The following day he appeared in court and as he put it, the matter was not put on the roll. In reality the prosecutor declined to prosecute.

- 5.2. Following the incident he is afflicted by chronic pain. He struggles to sleep, he is forgetful, he is lethargic and as a result takes a lot of energy drinks. His work performance following the incident declined to an extent that he was forced to become a full time POPCRU shop steward. After the incident he was attended by Dr Mashebe who prescribed pain medication for him. He was a very active person prior the incident and participated in soccer. He stated further that his family was taking strain. Before the incident he was very serious with his work. He used to take dockets home so as to give them proper attention. He lost such motivation. Not only did he lose motivation he also lost strength in his arms. He is of the view that he is too weak to keep up with the rigors of detective work which require that force be used from time to time when effecting an arrest.

5.3. During cross examination it was put to him that he harbored resentment towards the police who previously charged him with misconduct. He stated that he was angry at the police and seeing the police who did this to him go about their businesses made him feel like there was no justice. He was aggrieved at this state of affairs. It was his wish to get further medical attention but he was not a member of a medical scheme and he did not have resources to get further medical attention. That is why he resorted to self medication. A further impediment was that Dr Mashebe wanted to refer him for further medical attention however, all the medical practitioners he contacted refused to take on the plaintiff as a patient for the reason that the SAPS was slow in paying them. It was put to him that the injuries were not as serious as the plaintiff made them out to be that is why in four years since the injury he never went to any doctor or to even a provincial hospital. He stated that he was resilient and was trying to cope with the pain using methods as advised at the ZCC church of which he is a member as well as self medication.

- [6] Adriaan Mawelele testified that he was a police officer with 27 years experience. He confirmed that he was in the company of the plaintiff when they went to the scene where the plaintiff's wife had been stopped at a roadblock. On arrival the plaintiff went to his wife to establish what was going on. A certain Captain Borman shouted in an aggressive manner at the plaintiff and asked him if the car in which the dockets were found belonged to him. The plaintiff informed him that he had been called to the scene by Vukeya and that he wanted to talk to him. Vukeya came and there was an argument between him and the plaintiff. The plaintiff tried to produce his appointment certificate but they would have none of it. There were about 10 police officers who were grabbing

and shoving him. Eventually he managed to show them his appointment certificate. They took away his police issued firearm and they assaulted him. He was then handcuffed and dragged to the police van which was parked nearby, while they were busy assaulting him. He tried to intervene but was threatened with arrest. The plaintiff was thrown at the back of the police van and they drove off. The plaintiff's wife was witnessing the incident as it unfolded. He confirmed that after the incident the work performance of the plaintiff deteriorated to the point where their commander at the time, a Captain Chauke, complained.

- [7] The plaintiff's wife, Thandiwe Masilela testified that she was stopped at a roadblock driving the family vehicle in which the dockets were. She was made to open the boot where the police manning the roadblock found the dockets. She was told to call the plaintiff on her cellphone and when she was talking to him Colonel Vukeya grabbed the cellphone from her and spoke to the plaintiff. The police threatened to charge her. The dockets, which were in a backpack were removed by another police official who was busy stopping vehicles at the roadblock with the dockets on his back. When the plaintiff arrived in the company of Mawelele he came over to her in the car. The police officer who had earlier taken possession of the dockets came over and asked him why he left the dockets in the vehicle. Vukeya also came and they grabbed the plaintiff and started assaulting him. He was further strangled with his tie to a point where it was torn apart. Mawelele tried to intervene but was told he would be charged. The traffic police who were involved in the roadblock were watching and so were passing motorists. The plaintiff was bungled into the back of the police van and taken to the police station. She was also told to drive to the police station and on arrival both of them were charged and detained in separate cells.

[8] The expert witnesses testified as follows;

8.1. Dr. Booyse an Orthopedic Surgeon based at Zuid Afrikaans Clinic in Pretoria, who has been in practice for 54 years, listed his impressive Curriculum Vitae. He stated that on the 20th June 2016 he consulted with and examined the plaintiff. He then produced a report which was admitted into evidence as exhibit "A". He stated that he had observed injury on both shoulders which were brought about by twisting of the arms during the assault. He also observed that there was limited mobility of the arms when an attempt is made to lift them either in front or on the sides. Having examined the shoulders clinically he concluded that the lack of mobility was consistent with full thickness tear of a tendon in the left shoulder and as well a footprint tear in the biceps area. In short, the ligaments in the shoulders were ruptured and the tendons injured. On conducting an MRI arthrogram he confirmed that the disabilities in the shoulder were trauma related. He further diagnosed pain and discomfort in the right thumb as well as lower backache. The sequelae of the thumb injury is that plaintiff has lost 50% lift power in the right hand.

During cross examination he was questioned about whether he would classify the injuries sustained by the plaintiff as minor, moderate or severe. He stated that he can classify them as moderate if with severe there could potentially be loss of life or limb, which was not the case in this matter. According to him the neck injury was between minor and moderate. The shoulder injury was moderate in that the injury could improve with surgery. The thumb injury was between moderate and severe. He further stated that since there was no scientific measure for pain. The person feeling the pain is the only person that can convey the extent thereof. The difficulty in these cases, so he testified, is that some

persons are more tolerant of pain than others. He concluded by stating that the plaintiff was not a candidate for lifelong physiotherapy and that he definitely needed surgery to the thumb and to the shoulders.

- 8.2. Elton Bloye runs a Neuropsychology and Medico-Legal Practice in Johannesburg. He put his credentials on record and stated that he interviewed the plaintiff about the incident and recorded the sequelae, his behaviour, observations, cognitive test results detailing the trauma, depression and pain associated therewith. He prepared a report which was entered into evidence and marked exhibit "B". According to him the plaintiff has psychological symptoms of chronic pain to his soft tissue. He observed that there was lack of motivation and that the plaintiff was irritable. In his expert opinion the plaintiff exhibited classic symptoms of post traumatic stress disorder which he can describe as mild to moderate. He also noted that the plaintiff has unresolved anger issues towards the SAPS which have their origins from a previous incident. He further observed that at times there was an element of symptom exaggeration. What was presented to him, so he testified, was much more severe than what was contained in the J88 medico-legal report. He confirmed that the plaintiff was withdrawn in his association with the police because of anger and fear. He has lost his amenities of life as a result his quality of life has been negatively impacted upon. In his view plaintiff will benefit from medical treatment as his ability to use both hands pain free is not there.

During cross examination he stated that the test he conducted to establish if the plaintiff was faking the extent of the injury were inconclusive. He stated that the plaintiff would not be able to function optimally at the station where he was held or where the

police officers who were involved in the assault were stationed. He further stated that the plaintiff practices avoidance measures to external stimuli. He was referred to a report by Dr Booyse, exhibit "A" in terms of which the injuries were described as mild to moderate. He stated that this was congruent with minor to severe and he agreed with such characterization.

- 8.3. Dr Fine, a Specialist Psychiatrist with 40 years experience, testified that on the 20th June 2016 he consulted with the plaintiff and interviewed him. In his report, which was admitted into evidence as exhibit "C", and the purpose of which was to ascertain if plaintiff suffered from psychiatric sequelae from the incident, he sketched the background of the plaintiff, his account of the incident as well as his physical and emotional state. He concluded that the plaintiff suffered from post traumatic stress disorder. He stated that the symptoms that the plaintiff presented were chronic and were causing considerable emotional distress and pain. He recommended that the plaintiff undergo medical treatment as well as psychotherapy.

ANALYSIS

- [9] In ***Minister of Safety and Security v Seymour 2006 (6) SA 320 (SCA)*** at paragraph [20] it was stated that:

"[20] Money can never be more than a crude solatium for the deprivation of what in truth can never be restored and there is no empirical measure for the loss. The awards I have referred to reflect no discernable pattern other than that our courts are not extravagant in compensating the loss. It needs also to be kept in mind when making such awards that there are many legitimate

calls upon the public purse to ensure that other rights that are no less important also receive protection."

- [10] In ***Minister of Safety and Security v M Tyulu*** 2009 (5) SA 85 (SCA) Bosielo JA said the following at paragraph [26] of the judgment:

"In the assessment of damages for unlawful arrest and detention, it is important to bear in mind that the primary purpose is not to enrich the aggrieved party but to offer him or her some much-needed solatium for his or her injured feelings. It is therefore crucial that serious attempts be made to ensure that the damages awarded are commensurate with the injury inflicted. However, our courts should be astute to ensure that the awards they make for such infractions reflect the importance of the right to personal liberty and the seriousness with which any arbitrary deprivation of personal liberty is viewed in our law. I readily concede that it is impossible to determine an award of damages for this kind of injuria with any kind of mathematical accuracy. Although it is always helpful to have regard to awards made in previous cases to serve as a guide, such an approach if slavishly followed can prove to be treacherous. The correct approach is to have regard to all the facts of the particular case and to determine the quantum on such facts".

- [11] In ***Masisi v Minister of Security and Another*** 2011 (2) SACR 262 (GNP) at 267 paragraph [18] Makgoka J held as follows:

"The right to liberty is an individual's most cherished right, and one of the foundational values giving inspiration to an ethos premised on freedom, dignity, honour and security. Its unlawful

*invasion therefore strikes at the very fundament of such ethos. Those with authority to curtail that right must do so with the greatest of circumspection, and sparingly. In **Solomon v Visser and Another 1972 (2) SA 327 (C)**, at 345C-E, it was remarked that, where members of the police transgress in that regard, the victim of abuse is entitled to be compensated in full measure for any humiliation and indignity which result. To this I add that, where an arrest is malicious, the plaintiff is entitled to a higher amount of damages than would be awarded, absent malice."*

- [12] With regard to deprivation of freedom the following was said in **Takawira v Minister of Police (A3039/2011) [2013] ZAGPJHC 138 (11 June 2013)**:

*"29. A delictual claim for damages may also be brought in terms of Section 12(1) (a) of the Constitution. By definition such a claim is based on the unreasonable and unjustifiable infringement of an individual's right not to be arbitrarily deprived of freedom or to be so deprived without just cause. See **Zeeland v Minister of Justice and Constitutional Development & Another, [2008] ZACC 3; 2008 (4) SA 458 (CC)**, at paras 24, 25 and 35....42. It is trite that an enquiry into unlawful detention (as with arrest) seeks to determine the extent to which the various affected rights of personality were impaired and their duration. The enquiry involves both a subjective element based on the emotional effect of the wrong committed to the plaintiff (such as the humiliation or anguish of suffering the injustice, the loss of self-esteem and self-respect) and an objective impairment based on the external effects of the wrong (such as loss of reputation in the eyes of others)."*

- [13] With all the above in mind, a proper figure for compensation must be determined ever mindful of what was stated in ***Minister of Safety and Security v Seymour***, supra, namely;

"[17] The assessment of awards of general damages with reference to awards made in previous cases is fraught with difficulty. The facts of a particular case need to be looked at as a whole and few cases are directly comparable. They are a useful guide to what other courts have considered to be appropriate but they have no higher value than that."

- [14] Counsel for the plaintiff argued that expert evidence in support of quantum had been led and that there was no counter evidence from the defendant side. He submitted that in view of this, there was no reason the court should deviate from the guide provided by the experts. On the other hand, counsel for the defendant referred me to a few decisions some quoted in the Quantum Yearbook and argued that the amounts mentioned in the particulars of claim were grossly exaggerated and further that the plaintiff had over exaggerated his injuries and the resultant pain. I propose to deal briefly with the cases the court was referred to before dealing with the circumstances of this case and what I consider to be fair compensation.

14.1. ***Peterson v Minister of Safety and Security 2011 (6K6)***

QOD 1 (ECG), the plaintiff was at home when about 10 policemen barged into his home and demanded firearms. They did not have a warrant and they proceeded to assault him by hitting him, kicking him and suffocating him with a refuse bag. He was further detained for four days after which

he was released without being charged. The final award was R100 000-00 for the arrest, R150 000-00 for the detention and R150 000-00 for the assault. The plaintiff did not testify in support of judgment, which was by default, but submitted an affidavit. No expert evidence was led.

14.2. In ***Ngema v Minister of Police (05081/2011) [2012]***

ZAGPJHC 104, the plaintiff was arrested by a group of about 8 police officers who proceeded to assault him by pulling him, hitting and kicking him. They then dragged him to the police van causing injury to his hands and knees in the process. He was let go momentarily but was again re-arrested and taken to the police station where he was charged with interference with police duties. He was kept in a cell for less than 3 hours whereafter he was released and told to appear in court the following day. The following day he was told that his case will not be proceeding. The plaintiff sustained small hemorrhage on the eyes, tenderness of neck and right lower chest, 2 small lacerations on the hand and bruising of the knee and leg. There was no evidence led of the sequelae of the incident and or injuries. Oosten J awarded a globular amount of R40 000-00.

14.3. In ***Wagner v Minister of Defence (46923/2010) [2012]***

ZAGPPHC 59, the plaintiff claimed for two incidents. The first being an arrest after the plaintiff had allegedly driven over a foot of a military police officer who had been directing traffic. He was detained for few hours and later that day he was released on bail. He appeared in court a few times and eventually charges were withdrawn against him. The second incident concerned an arrest after he had been caught taking pictures at the military premises. He was taken to the military

police station where he was detained. At the military police station he was grabbed, pushed, throttled and threatened with an assault. A statement was made from the bar that the detention was for a duration of 5 and a half hours. The plaintiff did not testify in the case and there was no evidence of any sequelae arising from the incident. Makgoka J awarded the sum of R40 000-00 for the first incident and R20 000-00 for the second.

14.4. In ***Lamola v Minister of Safety and Security (2007/26594)*** [2012] ZAGPJHC 120, the plaintiff was shot, arrested, detained and maliciously prosecuted. He sustained serious injuries as a result of the bullet wound. He was hospitalized for two weeks then he was in police lock up for a further two months. He was also kept in custody awaiting trial for 9 months. In his claim he split general damages three ways, for the assault, the arrest and detention as well as the malicious prosecution. The total claimed amount for general damages was R800 000-00. He further claimed future medical expenses, loss of earnings and loss of future earning capacity. Although he had claimed the total amount of R1.4 million he was awarded R1 million. Sutherland J took the approach that, in the circumstances of that case, the general damages not be split up. Counsel for the defendant submitted that such an approach should like wise be adopted in *casu*. He relied on the dicta, below, by Sutherland J namely;

"[5] At the outset it is necessary to state that the fragmented articulation of the damages claims, as set out above, is unhelpful. Although no individual head is unfounded, the overlapping of the

elements that constitute some of the heads make it impractical to try to assess distinct awards for ring-fenced categories. Contumelia pervades the entire sweep of the proven misconduct by the police. The detention is germane to his pain and suffering under several heads. The claim for malicious prosecution addresses indistinguishably the self-same sequelae of the arrest and detention and can be subsumed under general damages in an appropriate amount."

No two cases are ever the same. It is when the court exercises its discretion that a preferred approach can be adopted. It is clear from the above dicta that Sutherland J was constrained, in the circumstances of the case before him, to make a proper determination about a suitable award for general damages, hence his comments. Save for the approach to be adopted, this case does not have compatible features to the determination of damages in *casu*.

- [15] The SCA confirmed, on appeal, an award of R50 000-00 granted in the Cape High Court in the matter of ***Minister of Safety and Security & another v Swart (194/11) [2012] ZASCA 16 (22 March 2012)***. The facts of the case, in so far as the arrest and detention is concerned, have some similarities to this matter. Swart was a policeman who was arrested by a senior officer, a police Captain, allegedly for driving a motor vehicle while under the influence of intoxicating liquor. He was forcibly bungled to the back of a police van and taken to the police station where he was detained. The police station where he was detained was the station where he was based. He spent four and a half

hours in custody. The following day blood results revealed that his blood alcohol volume was within legal limits. The prosecutor issues a *nolle prosequi* certificate. The court highlighted a few aggravating aspects of the experience as follows;

"The respondent is a police officer, a sergeant of some 16 years' standing, with both the second appellant and Nel being his subordinates. They were all stationed at the same police station. The manner in which he was physically manhandled and thrown into the police van was truly demeaning. This happened in front of his son and his commanding officer. Whilst at the charge office, he was taunted and ridiculed in the presence of junior officers. The fact that some police officers were asking who was going to have the privilege of taking the respondent to the cells makes the whole arrest and detention even more demeaning. Clearly his dignity and reputation was gravely impaired. He spent four and a half hours in detention for no good reason."

- [16] Mothle J in ***Ngobeni v Minister of Police***, case no. 49069/2013, a judgment delivered in this court on 09/02/2016, granted an award of R49 000-00 for the arrest, detention and assault of the plaintiff. In that matter the plaintiff was a trainee Metro Police officer who was arrested and assaulted by about 10 members of the SAPS. All this took place in full view of members of the public. He was transported in a police vehicle to the police station where he was detained in a holding cell. He was released three hours later when there was intervention by a senior Metro Police officer. Although he sustained injuries, they were minor and there was no evidence of any sequelae arising therefrom. The merits were not contested.

THE ARREST

[17] The arrest of the plaintiff was undoubtedly a violent one. The defendant conceded the merits in total. The recount of the arrest by the plaintiff supported by both his wife and his colleague with whom he was on the day must therefore stand. The version is that he was swamped by between ten and fifteen policemen who assaulted him. He was pulled and pushed and forcibly thrown to the back of a police van. In that process he fell and injured his right thumb. He was further strangled with his tie to a point where the tie was torn. Both his arms were twisted. All this took place one to three meters away from his wife and his colleague. There were traffic police officers who were watching this, there were also passing motorists who had a full view.

THE DETENTION

[18] The plaintiff together with his wife were detained in separate cells at the Bronkhorstspuit Police Station. This is the same police station where the plaintiff was based and where his wife had earlier that day fetched the family vehicle in which the dockets were. It would have been extremely embarrassing for the plaintiff to be detained at the police station where he was based and where no doubt he would have previously detained many a suspect. What I found lacking in the testimony of the plaintiff, is his description of the conditions in which he was held and how they impacted on him. I am however prepared to assume, in his favor, that the conditions were not so favorable. The fact that he was aware that his wife was detained in a separate cell at the same police station would have brought on more anxiety and discontent to him.

THE INJURIES

[19] The expert witnesses called by the plaintiff detailed the injuries sustained. While these may appear to be insignificant, the sequelae thereof, according to the experts is massive. No evidence was led on behalf of the defendant. The line of questioning of counsel for the defendant as well as submissions to the experts suggests that they took issue with the extent to which the plaintiff seems to have been immobilized by the injuries which to them seem minor. In this regard it was argued that the plaintiff was exaggerating the extent of the injuries. The experts detailed the post traumatic stress disorder from which the plaintiff was suffering. The orthopedic surgeon, Dr Booyse detailed the test conducted by him as well as his observation about the extent to which the plaintiff was afflicted by pain. He was unmoved during cross examination about the postulation that the plaintiff was exaggerating his pain. Nothing was forthcoming to counter his stance. The same can be said of the testimony of the clinical psychologist Bloye. Although much was made by defendant's counsel about the fact that he stated on numerous occasions in his report that there may be an element of exaggeration, in the end he stated that there was no conclusion to the effect that the plaintiff was exaggerating the extent of the pain he was afflicted by. There is no basis for this court to deviate, significantly, from the recommendations of the experts, ever aware of what was said in **Schneider NO and Others v AA Another 2010 (5) SA 203 (WCC)** Davis J quoting: **Zeffertt, Paizes & Skeen The South African Law of Evidence at 330**, citing the English judgment of **National Justice Compania Naviera SA v Prudential Assurance Co Ltd (The 'Ikarian Reefer')** [1993] 2 Lloyd's Rep 68 at 81, set out duties of an expert

witness thus:

- "(1) Expert evidence presented to the court should be, and should be seen to be, the independent product of the expert, uninfluenced as to form or content by the exigencies of litigation.*
- (2) An expert witness should provide independent assistance to the court by way of objective, unbiased opinion in relation to matters within his expertise...An expert witness should never assume the role of an advocate.*
- (3) An expert witness should state the facts or assumptions upon which his opinion is based. He should not omit to consider material facts which could detract from his concluded opinions.*
- (4) An expert witness should make it clear when a particular question or issue falls outside his expertise.*
- (5) If an expert opinion is not properly researched because he considers that insufficient data is available, then this must be stated with an indication that the opinion is no more than a provisional ones."*

Throughout the testimony of the experts, I did gain the impression that they went beyond their duties. The dicta by Davis J is therefore apposite;

"In short, an expert comes to court to give the court the benefit of his or her expertise. Agreed, an expert is called by a particular party, presumably because the conclusion of the expert, using his or her expertise, is in favour of the line of argument of the particular party. But that does not absolve the expert from providing the court with as objective and

unbiased opinion, based on his or her expertise, as possible or a particular case. An expert is not a hired gun who dispenses his or her expertise for the purposes of a particular case. An expert does not assume the role of the advocate, nor gives evidence which goes beyond the logic which is dictated by the scientific knowledge which that expert claims to possess."

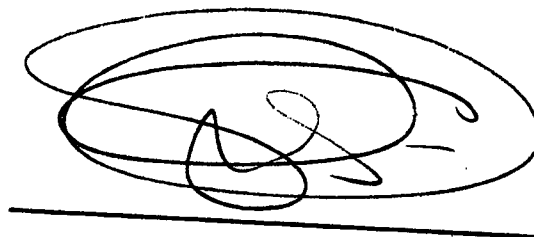
[20] All the experts make provision in their reports, for future medical treatment that the plaintiff requires. The legal expenses pertaining to the plaintiff have been proven. It is also my considered view, and this came across convincingly during the testimony of Dr Booyse, that the plaintiff will require repair surgery to particularly the shoulders and the right thumb. He will further require both psychiatric treatment as well as psychotherapy. I see no reason why the general damages, in line with the submission by defendant's counsel, should not be considered together. These would encompass pain and suffering, loss of amenities of life, deprivation of freedom and/or liberty, psychological harm and contumelia.

[21] The award due to the plaintiff can be summarized as follows;

| | |
|-------------------------|-------------|
| Legal Expenses | R2 000-00 |
| General Damages | R100 000-00 |
| Future Medical Expenses | R250 000-00 |

[22] Accordingly, judgment is granted in favor of the plaintiff against the defendant for;

- 21.1. Payment of the sum of R352 000-00;
- 21.2. Costs of suit on a party and party scale.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, is positioned above a solid horizontal line.

SA THOBANE
ACTING JUDGE OF THE HIGH COURT