

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**



Case number: 64816/2013

Date: 16 August 2016

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: ~~YES~~/NO
- (2) OF INTEREST TO OTHERS JUDGES: ~~YES~~/NO
- (3) REVISED

.....
DATE SIGNATURE

In the matter between:

R N M

PLAINTIFF

And

T T

FIRST DEFENDANT

L F M

SECOND DEFENDANT

JUDGMENT

PRETORIUS J.

- (1) The plaintiff is a 36 year old female who is claiming an amount of R1 million in respect of damages she suffered when the defendants assaulted her on 7 October 2012. The two defendants are two females.
- (2) The defendants pleaded to the particulars of claim and pleaded that the claim be dismissed with costs. On 8 October 2015 the notice of set down was served on the defendants' attorneys, informing the defendants that the matter would be heard on the trial roll on 2 August 2016. The defendants did not appear to defend the matter on 2 August 2016 and the trial commenced on an unopposed basis.
- (3) The plaintiff's attorney served a notice in terms of Rule 35(9) on the defendants' attorney on 11 February 2016, informing the defendants' attorney that the plaintiff intended to use the video footage, taken during the incident, as evidence at the trial. The defendants did not note any objection to the video footage being used at trial.
- (4) The plaintiff's evidence was that on the morning of 7 October 2012 at approximately 05h30 she woke up at the second defendant's husband's house where she had gone to bed with the second defendant's husband. She admitted to having an affair with the

second defendant's husband, X. At the time she was naked, except for a panty. She heard the garage door opening and X ran out to check what was happening. She then heard the voices of two women. The two defendants then entered the bedroom. The first defendant grabbed the plaintiff by her hair and insulted and assaulted her.

- (5) X held the second defendant back, whilst the first defendant was hitting the plaintiff with open hands and dragged her outside by pulling her by her breast. X told her to go to the vehicle parked outside, but the defendants grabbed the car keys from X.
- (6) After running to another house, the defendants pursued her and tore off her panty, which left her completely naked. The first defendant got hold of a sjambok and started hitting the plaintiff with the sjambok all over her body, whilst the second defendant was taking photos of the assault on the plaintiff. The second defendant fetched the car and the plaintiff was placed in the car, still being assaulted by the defendants. The second defendant was driving the car and the plaintiff was taken to X's mother who told the defendants to take the plaintiff back, to fetch her clothes, which they did. This assault lasted until 09h00.
- (7) The plaintiff's evidence was that she was badly affected by this incident and had to go for counselling. She is presently scared to be seen in public as she experiences people whispering about her and

laughing at her. The plaintiff was further humiliated as photos of the assault on her, being naked, were published on the front page of the Daily Sun newspaper on 31 October 2012.

- (8) The court watched the video of the assault. It is clear that it was not only a brutal assault by sjambok, but it was extremely humiliating as the plaintiff was chased down the street without any clothes and then forced into a car, while still being assaulted. There were several people on the street watching the plaintiff being assaulted, forced into the car, naked and driven away. The evidence shows that the second defendant, X's wife, did not assault the plaintiff to the same extent as the first defendant. The first defendant was vicious and relentless in her assault and humiliation of the plaintiff.
- (9) The plaintiff was an honest witness, who was humiliated and ashamed to testify in open court to such an extent that she was unable to watch the whole video, but only identified it as the video taken at the time. She was an impressive witness and I do not hesitate to accept her evidence, which was further corroborated by the contents of the video.
- (10) There was no reason for the two defendants' actions against the plaintiff. The duration of this very public ordeal was at least three hours and was further aggravated by the publication on the front page of the Daily Sun and the video that was placed on social media.

- (11) The amount of quantum in a matter like this is in the discretion of the court, who has to make a value judgment. In **Minister of Safety and Security v Seymour**¹ the court held:

“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 discernible pattern other than that our courts are not extravagant in compensating the loss.”

- (12) In **Minister of Safety and Security v Tyulu**² it is set out that:

“...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.”

- (13) In the present matter the assault and nakedness in public were very serious, but to add insult to injury, the whole incident was rehashed and appeared on the front page of the Daily Sun newspaper three weeks after the incident had taken place and was distributed through social media. It was evident that the plaintiff was still suffering from this humiliation when giving evidence, some four years after the incident had taken place.

¹ 2006(6) SA 320 (SCA) at paragraph 20

² 2009(5) SA 85 (SCA) at paragraph 26

(14) I agree with Mr de Klerk, counsel for the plaintiff that the first defendant was the person who had inflicted the worst humiliation by hitting the plaintiff with the sjambok, even whilst loading her naked body into the second defendant's car. The second defendant was also threatening the plaintiff and refused to let the plaintiff dress and drove her in her naked state to X's parents' house. She was, however, not the main perpetrator.

(15) I have considered all the facts, the evidence as presented by the plaintiff and the video footage and can come to no other conclusion but that the plaintiff suffered humiliation, pain and indignity at the hands of the two defendants. The defendants close not to defend the matter at trial and therefor I have to decide what is a fair, reasonable and adequate *solatium* in these circumstances. I have taken note of Holmes J's *dictum* in **Pitt v Economic Insurance Co Ltd**³:

"However, no better system for assessing damages has yet been evolved, and the Court has to do the best it can with the material available, even if, in the result, its award might be described as an informed guess. I have only to add that the Court must take care to see that its award is fair to both sides - it must give just compensation to the plaintiff, but must not pour our largesse from the horn of plenty at the

³ 1957(3) SA 284 (D) at 287 E-F

defendant's expense." (Court emphasis)

And Brand AJ in **De Jongh v Du Pisanie NO⁴**:

"Konserwatisme by die toekenning van algemene skadevergoeding het sy oorsprong in 'n behoefte dat daar ook teenoor die verweerder billikheid moet geskied en nie in die suinigheid van die gemeenskap teenoor die eiser nie"

(Court emphasis)

(16) I have also considered awards made in comparable cases and take note of Mr De Klerk's, counsel for the plaintiff, argument as to what should be fair in these circumstances.

(17) In the result I make the following order:

1. The first defendant is ordered to pay the plaintiff damages in an amount of R150 000;
2. The first defendant is ordered to pay interest on the amount of R150 000 at the rate of 9% *a tempore morae*;
3. The second defendant is ordered to pay the plaintiff damages in the amount of R15 000;
4. The second defendant is ordered to pay interest on the amount of R15 000 at the rate of 9% *a tempore morae*;
5. Costs of suit, the one to pay, the other to be absolved.

⁴ 2005 (5) SA 457 (SCA) at 476 D-E

Judge C Pretorius

Case number : 64816/2013

Matter heard on : 2 August 2016

For the Plaintiff : Adv P De Klerk

Instructed by : Roets & Van Rensburg Inc.

For the Defendants : No appearance

Instructed by :

Date of Judgment : 16 August 2016