IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 14/22926

In the matter between:

ZIMELE MAXWELL NDOBE **PLAINTIFF**

and

THE MINISTER OF POLICE **DEFENDANT**

Summary: Members of the South African Police Services (SAPS), seized a motor vehicle belonging to the plaintiff and kept it under their care and registered it in SAPS 13 register. Plaintiff was charged with a criminal offence. In due course, charges against the Plaintiff were withdrawn. That notwithstanding, members of the SAPS continued to keep the motor vehicle registered in SAPS 13 in their custody. Seven months later, the vehicle was damaged by fire that gutted the police impound.

The Plaintiff instituted this action seeking to hold the Minister of Police liable for the damages *(consequential* loss) he suffered following the loss of the motor vehicle. The issue of liability was conceded. What this

Court was required to determine was the quantum of damages. The Minister is factually and legally the cause of the loss suffered by the Plaintiff. This Court is satisfied that the Plaintiff lost income and continued to lose income into the future after the loss of the vehicle. Held: (1) The Minister is liable to pay the Plaintiff's proven damages for the loss of income. Held: (2) The Minister is to pay all the costs associated with this action.

JUDGMENT

MOSHOANA, J

Introduction

[1] When members of the South African Police Services (SAPS) seize goods pursuant to an arrest, within the contemplation of section 23 of the Criminal Procedure Act (CPA)[1], the SAPS attracts a legal duty of care with regard to the seized goods. This becomes so because if no criminal proceedings are instituted the seized goods must be returned to the person from whom it was seized. When the SAPS loses the seized goods, the SAPS breaches a legal duty of care, which entitles the looser to a delictual claim as a consequence of the loss.

[2] In this case, the Minister has admitted a breach of the legal duty and liability towards the plaintiff's proven damages. In seeking to prove his damages, the plaintiff led his own testimony and that of two other witnesses. One of the witness tendered opinion evidence. Surprisingly, the Minister chose not to lead oral evidence. This despite a denial that the plaintiff suffered

[1] Act 51 of 1977 as amended.

past and future loss of income consequent upon the loss of his motor vehicle.

Background facts and evidence

[3] It is worth mentioning upfront that this Court is faced with one uncontested version. The Plaintiff, Mr Maxwell Ndobe (Ndobe), is a man born in 1980 who conducted an informal business of a shop colloquially referred to as a *Spaza* shop and a transportation outfit. After completing grade 11, Ndobe gained employment as a general worker at Pick-it-Up in Johannesburg from 2006 up and until 2007. Whilst so employed, he purchased a 1 ton Nissan Bakkie with registration letters and numbers [....] (Bakkie). From 2007 up to and including 2011, he was employed at a Mine as a general worker until when he was dismissed for incapacity.

[4] Owing to his unemployed status, he invigorated his supplementary small business that has been running since the acquisition of the Bakkie. The Bakkie was the asset he used to conduct the two business, *viz; Spaza* and the transportation outfit. On 29 January 2012, Ndobe was arrested for possession of dagga and members of the SAPS seized the Bakkie that was allegedly transporting the dagga during the arrest. The Bakkie was registered and kept in SAP13 register. On 31 January 2012, Ndobe appeared before a magistrate in Ficksburg and was admitted into bail and released from custody. On 17 September 2012, charges against him were withdrawn. As expected, the SAPS were to release the Bakkie back to his possession. At that time, when the charges were withdrawn, the Bakkie was kept away from him for a period of almost 9 months. The Bakkie was not returned to him despite his incessant demand for its return.

[5] In April 2013, Ndobe was informed that the Bakkie was damaged and lost at the impound where the Bakkie was kept, as the place was gutted by fire. As a result, on or about 14 March 2014, Ndobe instituted the present action seeking payment of the material damages to the Bakkie and past and future loss of profit. Ultimately, on or about 04 April 2018, the Defendant,

Minister of Police, through the office of the State Attorney conceded the merits of the claim and requested that the action be determined on the remaining issue of quantum.[2] Additionally, the parties held a pre- trial conference and emerged with an agreement that this Court has to decide the following: (a) the amount of damages to be awarded for the value of Ndobe's motor vehicle, which was damaged whilst being impounded by the defendant; and (b) whether the plaintiff has proven his claim for loss of income. If so, what is the amount to be awarded for the Ndobe's purported loss of income.

[6] I interpose to mention that Ndobe, for reasons that do not require further edification in this judgment, jettisoned his claim for the material damages of the Bakkie. What remains for determination are two questions, namely; (a) has Ndobe proven his loss of income, and (b) what amount is to be awarded?

[7] In support of his case, Ndobe tendered the evidence of Mr Lawrence Nkosi. He confirmed that Ndobe owned the Bakkie, which he used to conduct the *Spaza* and transport goods for his customers. Nkosi himself was a customer at the *Spaza* shop. In cross-examination, he testified that Ndobe used to load goods for people at outlying areas like Matatiele, but he stopped doing so after the Bakkie was taken away from him.

[8] The gist of Ndobe's testimony is that the purpose of purchasing the Bakkie in 2006 was to transport goods, buy items and sell them using it and to look after himself once he stops formal employment so as to generate income. Whilst in employment, he used the Bakkie to generate extra income. He amassed clientele for the goods transportation business. In addition, he started the *Spaza* business. The *Spaza* business had ran for two months and generated around R6000.00 in that period. In relation to the *Spaza* business, he later testified that he managed to run it in the absence of the Bakkie until 2020. Based on this evidence, the loss of income attached to the *Spaza* business has correctly been abandoned. I interpose and state that for the

[2] Letter dated 04 April 2018, under the hand of State Attorney Letsoko M.O.

purposes of this judgment, the loss in relation to the *Spaza* business will not be determined. He testified further that the transportation business netted around R8000.00 for two months. He listed his clientele and indicated the estimated income he generated from each. He listed about five customers. It is not necessary for the purposes of this judgment to enumerate them.

[9] It suffices to state that cumulatively, he was receiving about R23 500.00 from those listed clienteles. He testified that he has since lost contact with his clientele and did not know their whereabouts. Ndobe was not challenged that he received money from his clientele owing to the services he offered them using the Bakkie. Instead, contradictions were sought to be extracted using hearsay evidence, as recorded in a report, the defendant refused to admit during pre-trial meeting.

[10] When challenged about proof of generating any income, he contended that as proof, he managed to buy assets, build a house and maintained his family whilst he had the Bakkie. He further testified that he relied on his memory aided by the hearsay version introduced by the defendant's counsel to testify about the average income he received from the transportation business. He contended further that members of the SAPS did not know that he had any business.

[11] On 17 July 2019, Mr Nqapela, a qualified Industrial Psychologist, produced a psycho-legal report in respect of Ndobe. He confirmed the contents of that report to be true and correct. He testified about the informal sector of the so-called 'township' business; and highlighted that the goods transportation business is big in the townships and often operates without keeping formal records. He himself is a consumer of the transportation services in his other life as a Disco Jockey (DJ). In his professional view, an income of R8000.00 is very low and placed at a conservative bar. Generally, such businesses as that of Ndobe expand over a period of time. The business of Ndobe had a growth potential, he further

testified. His crucial

testimony of R8000 being a conservative figure and the transportation business being big in the township was not challenged in cross-examination.

[12] For reasons best known to the defendant and its legal team, no testimony was led to controvert the version of Ndobe and his witnesses.

Argument

[13] Both counsel furnished this Court with a set of helpful written submissions. Mr Van Onselen, who appeared for Ndobe submitted that Ndobe succeeded in proving the loss of income claim in respect of the transportation business. He submitted further that this Court, guided by the calculations by G W Jacobson Consulting Actuaries, (Jacobson) must award Ndobe fair and reasonable damages.

[14] It was argued on behalf of the defendant, by Mr Mashaba, that Ndobe has failed to prove his loss, on the basis that his evidence was not of value without that of an expert. Mashaba continued and argued further that Ndobe has failed to establish the causation test (factual and legal). He also argued that the SAPS did not foresee, at the time when they impounded the Bakkie, that it would be lost in a fire accident. Therefore, on application of the legal causation leg, the damages suffered by Ndobe were remote and not foreseeable. He averred further that, as a result, Ndobe has failed to prove any loss. In the alternative, he argued that should the Court find that Ndobe has proven the damages, a high contingency of 50% should be applied, instead of 15-30% suggested by Jacobson. This Court debated at length with Mashaba but he remained dutifully firm that Ndobe is not entitled to any damages award since he failed to prove same.

Analysis

[15] As indicated above, two issues merit determination in this trial. Firstly, (a) whether Ndobe has proved loss of income in respect of the transportation business; and (b) what will be a fair and reasonable award for such a loss? The issue of costs would naturally follow the results. Before I deal with those issues, I must confirm the following trite legal principles. Where a Court is faced with one version, as it is the case in this matter, a Court is bound to accept that version as being true and correct, since there is no countervailing version. Absent conflicting versions a Court may not engage in the exercise suggested in the much celebrated *Stellenbosch Farmers' Winery Group Ltd v Martell et Cie SA and Others*[3] case. In *Ex Parle Minister of Justice: In re V v Jacobson and Levy*[4] the Court stated the following:

> *'Prima facie* evidence in its usual sense is used to mean *prima facie* proof of an issue, the burden of proving which is upon the party giving evidence. In the absence of further evidence from the other side, the *prima facie* proof becomes conclusive proof and the party giving it discharges his *onus.'* (Emphasis added).

[16] In *Francois v Van Zyl* [5]*,* Molahlehi J aptly concluded thus:

> "[14] It is equally trite that the defendant can avoid liability by adducing evidence showing no negligence on his or her part. Failure to adduce such evidence presents the risk that the defendant may be held liable for damages suffered by the plaintiff."
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> [Emphasis added].

[17] The defendant was duly and dextrously represented by a senior counsel who should and must have appreciated the risk of not leading countervailing testimony. Even in an instance where the learned counsel may have held a

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[3] Stellenbosch Farmers' Winery Group Ltd v Martell et Cie SA and Others 2003 (1) SA 11 (SCA).
[4] Ex Parte Minister of Justice: In re V v Jacobson and Levy 1931 AD 466.
[5] Francois v Van Zyl (Unreported judgment) (26612/2011) [2021] ZAGPJHC (29 March 2021); 2021 JDR 2566(GJ) para 14.

view that Ndobe did not present a *prima facie* case, an application for absolution from the instance would have been launched shortly after the close of Ndobe's case. Failure to cross- examine a witness(es) is fatal to a party who is legally represented.[6] Contradictions are not a basis to reject the testimony of a witness in its entirety.[7]

Did Ndobe prove loss of income in respect of the transportation business?

[18] In civil matters, the standard of proof is that of preponderance of probabilities. Differently put, do the probabilities favour a conclusion that Ndobe proved a loss consequent upon the loss of undoubtedly an income-generating asset- the Bakkie? The testimony of Ndobe that he generated income using the Bakkie remained uncontested. The fact that he gave contradictory evidence with regard to the estimated amounts does not detract from the uncontested testimony that he conducted a business using the Bakkie and earned on average some money. It must follow as day follows night that once the Bakkie is lost, symbiotically, the revenue that was generated by the Bakkie will axiomatically be lost. Cardinal testimony of Nqapela was not contested, which was to the effect that the transportation business is big in the townships and that Ndobe had the potential to have grown exponentially. His version that an amount of R8000.00 is on the conservative side and actually low remained uncontested. Some 89 years ago, the Cape Provincial Division in *Mossel Bay Divisional Council v Oosthuizen*[8] upheld a claim for loss of income arising from the loss of use of a taxi. In that case, the Court stated that a taxi-driver should adduce evidence as to his average daily income. In the instance, Ndobe adduced evidence as to his average income from the transportation business and such evidence has not been controverted. That evidence stubbornly stands.

[19] There can be no doubt in the mind of this Court that a loss of a Bakkie which was used to generate income will result to a loss of income claim. The

[6] President of the Republic of South Africa and others v SARFU and others 2000 (1) SA 1 (CC).
[7] See S v Mafaladiso en Andere 2003 (1) SACR 583 (SCA).

argument by Mashaba that Ndobe, in the absence of expert testimony failed to prove a loss is better answered with reference to what the erudite Nicholas JA stated in *Southern Insurance Association Ltd v Bailey.*[9] Ndobe testified and he was not challenged that he used to earn on average around R23 500.00 a month from the transportation business. More importantly, he was not challenged when he testified that it was a cash business and as proof of liquidity, he managed to buy assets; build a house and sustained himself and his family. The fact that he kept no records does not of itself transmute into making no profit at all. Nkosi corroborated the fact that Ndobe ran a transportation business. It was never suggested to Ndobe that he ran that business at a loss. In fact, when the uncontested evidence of Nqapela is taken into account, the version that the business ran at a loss will come to naught. The transportation business is big in the township economy, so this Court indisputably heard. The estimation of R8000.00 a month is very low and actually conservative, Nqapela indisputably testified. The evidence of Nqapela must be accepted that most businesses in the townships operate on an informal basis. Even if they may be registered with CIPRO, they often times fail to keep financial records.

[20] On the objective evidence, this Court cannot conclude that even though Ndobe serviced a clientele in the transportation business he made no profit or earned no income out of that outfit. Presence of records assist a party to prove some inflow of cash into the business. Is Ndobe making it up that he used the Bakkie for business purposes? In my view, not. The evidence of Nkosi corroborates that of Ndobe. Above all, there is no countervailing evidence. On the preponderance of probabilities, it must be so that Ndobe generated an income using the Bakkie. A 1 ton Bakkie is undoubtedly a utility vehicle. It is not improbable that it could be used to generate income by ferrying goods and other related material. Ndobe's version that even at the time when he was gainfully employed, he used the Bakkie to generate extra income remained unchallenged. His evidence with regard to the purpose of

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[8] Mossel Bay Divisional Council v Oosthuizen 1933 CPD 509.
[9] Southern Insurance Association Ltd v Bailey 1984 (1) SA 98 (A).

purchasing the Bakkie went unchallenged and most importantly uncontroverted. Undoubtedly, Ndobe was on the uncontested evidence a business man. In a conventional sense, formal businesses are able to demonstrate profit by way of financial records. In an informal sector, a sole proprietor does not require expert testimony to tell a court that he generated some cash from a particular outfit and or undertaking. This Court received objective evidence from Ndobe that he did generate some cash out of the usage of the Bakkie. In the absence of any countervailing evidence, that should be sufficient to prove profit and/or income.

[21] Armed with such uncontested testimony, it shall be remiss of this Court to accept a nude submission that in the absence of expert testimony, no profit was made and as such no loss was suffered. The answer to the question must be that on the uncontested evidence, Ndobe proved on the preponderance of probabilities that he made the average profit, as testified to, and the loss of the Bakkie equated a loss of that profit. Resultantly, Ndobe suffered a loss.

[22] The submission by Mashaba that Ndobe failed on the causation test lacks force and is devoid of merit. Causation seeks to create a chain or link between two events. A party will not succeed unless it can be demonstrated that the negligent act of the defendant caused or materially contributed to the damage complained of. There are two legs to causation. With respect to factual causation, as aptly put in *AK v Minister of Police*[10], the determination thereof is through the evidence tendered at the trial.

[23] Factual causation as the name suggests involves a factual enquiry. The question is whether the allegedly negligent conduct played a part in bringing about the harm in question. A 'but for' test was developed over the years to determine what the cause of a damage is. In this case, there is no dispute that the Bakkie was damaged by fire. The Defendant has conceded that the Bakkie was damaged because of the negligence of the members of the

SAPS. Such concession, as correctly argued by Van Onselen disposes of the leg of factual causation. Had the Bakkie not been damaged as a result of the negligence of the members of the SAPS, Ndobe would not have suffered a loss of income. He would still have his Bakkie to generate some income. It was as a consequence of the loss of the Bakkie that Ndobe lost income. There is a clear link between the negligent loss of the Bakkie and the loss of income.

[24] The uncontested evidence perspicuously established this on a preponderance of probabilities. Mashaba rightly conceded that the SAPS had a legal duty to take care of the asset kept in the impound. He further conceded that the SAPS failed in that duty. Having failed in that legal duty, wrongfulness, which is tied to the hip with factual causation, naturally arise. It will be a sad day when Courts conclude that a wrongdoer shall not be liable to some form of damages simply because there are no financial records to back the receiving of an income. In *AK* case, the learned Tlaletsi AJ writing for the majority stated the law as follows:

> "[109] The Minister misconceived the test for causation. The test for causation is whether, but for the negligent conduct, the applicant would have suffered the harm...

The Supreme Court of Appeal held in *Van Duivenboden* that:

> "[A] plaintiff is not required to establish a causal link with certainty, but only to establish that the wrongful conduct was probably a cause of the loss, which calls for a sensible retrospective analysis of what would probably have occurred, based upon the evidence and what can be expected to occur in the ordinary course of human affairs rather metaphysics."' (Emphasis added).

[25] Seeking to rely on the legal causation leg, Mashaba, with respect, incongruously argued that the members of the SAPS would not have

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[10] AK v Minister of Police (Unreported judgment) (CCT 94/20) ZACC 14 (5 April 2022).

foreseen that when the Bakkie was 'lawfully' seized it would subsequently be damaged and cause Ndobe a loss. For that reason, the damages were too remote, so went the submission. With considerable regret, I do not agree. A basic rule of negligence law is that a negligent person will not be held liable for unforeseeable consequences of their negligence. The foreseeability does not arise at a point where there is no negligence. When the members of the SAPS seized the Bakkie, they were not acting negligently. They were acting within the prism of section 23 of the CPA. All things being equal, once the criminal proceedings are terminated, a seized property may be returned. The point of negligence is when the fire broke out. If the fire broke out as a result of the negligent conduct of the SAPS as conceded, the foreseeability commenced at that time of the fire. When the fire broke out it could not have been unforeseeable that the fire will damage goods kept at the impound. Those goods included the Bakkie. It is so that once a person is held to have behaved negligently, that person can in theory at least be held liable for foreseeable consequences of that negligence even if the consequences were of a very low probability.

[26] The determination of legal causation was admirably perfected by the Constitutional Court. This Court can do no better than what was said in *Mashongwa v Passenger Rail Agency of South Africa*[11] and approved in *AK* case. This Court was not appraised of the circumstances of the fire outbreak. Foreseeability must, as it should, commence at the time of the fire and not of the arrest and seizure. What would have cost the SAPS to avoid the fire outbreak, this Court is not appraised. It is only the SAPS that would have exposed that evidence. Since negligence is conceded, it must follow that legal causation has been established. In *AK,* the Court made it clear that what is required is a sufficient connection between the negligent act and the harm suffered. It was never the case of the defendant that something else *(novus actus interveniens)* other than the fire which on the conceded case

[11] Mashongwa v Passenger Rail Agency of South Africa 2016 (3) SA 528 (CC).

negligently arose, caused the damage to the Bakkie. Thus, there is sufficient connection between the negligently caused fire and the loss. In *H L & H Timber Products*[12], Nienaber JA had this to say about a fire situation:

> "... the failure to contain a fire when, in the absence of countervailing considerations adduced by him, he was under legal duty, by virtue of his ownership or control of the property, to prevent it from escaping onto a neighbouring property thereby causing loss to others..." (Emphasis added).

[27] It bares strong emphasis to repeat that this Court was not appraised of the circumstances of the fire outbreak to determine what the SAPS members could and could not do to prevent the loss of the Bakkie. Ndobe only received the sad news and does not and could not tell the Court what actually happened. At best in his particulars of claim, he alleged negligence. Following a bare denial, the allegation was ultimately conceded. In *Bennet v Minister for Community Welfare*[13], Gaudron J had the following to say:

> "...generally speaking, if an injury occurs within an area of foreseeable risk, then in the absence of evidence that the breach had no effect or that the injury would have occurred even if the duty had been performed, it will be taken that the breach of the common law duty of care caused or materially contributed to the injury." Emphasis added.

[28] I plentifully agree with the sentiments of Gaudron J. This Court is not armed with any evidence to show that (a) the damage would have happened even if the members of the SAPS carried out their duty of care or (b) that the fire outbreak had no effect to the damage caused to the Bakkie. Before I deal with the second issue, it suffices to deal with a legal argument of the duty to mitigate damages.

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[12] H L & H Timber Products 2001 (4) SA 814 (SCA).
[13] Bennet v Minister for Community Welfare (1992) 176 CLR 408.

The duty to mitigate a loss

[29] As a departure point, Van Onselen submitted that the issue of mitigation of damages was not pleaded as it ought to have been[14]. On this basis alone, the defendant cannot rely on mitigation of damages. In *Bernadis-Larrat and Another v Custom Capital (Pty) Ltd*[15], the learned Acting Justice Mngadi stated the following, to which this Court makes common cause with:

> "[21] The essence of the mitigation of loss is that the respondent's unreasonable failure to mitigate its damages after the event is a ground for reducing its recovery..
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> [23] The *onus* is on the appellants to prove that the respondent has unreasonably failed to take measures to mitigate its loss. The duty arises only after the respondent has proved that it suffered damages. Where the appellants prove an unreasonable failure to mitigate, it is for the respondent to prove what its damage would have been if it had mitigated, that is, what sum it is entitled to recover from the appellants.[16] (Emphasis added).

[30] The rule about mitigation is in essence a claim based on negligence - neglect to do what a reasonable person would do if placed in the position of a person claiming damages[17]. Ndobe was not a business person of adequate means. The Bakkie was his only source of income. He could not, absent any other source of income, hire another Bakkie in order to mitigate his losses. It was for that reason that he incessantly demanded the return of the Bakkie before the fateful event. He certainly cannot be treated like the businessman contemplated by Clayden J in *Shrog v Valentine*[18]. Nevertheless, the prime

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[14] See Maya v SA Eagle Co Ltd 1990 (2) SA 701 (A) and Amler's Precedents of Pleadings 9th Edition 46.
[15] Bernadis-Larrat and Another v Custom Capital (Pty) Ltd (Unreported case) (AR 368/16) [2017] ZAKZPHC 63 (27 June 2017).
[16] See Krugell v Shield Versekerings Maatskapy BK 1982 (4) SA 95 (T).
[17] Hazis v Transvaal & Delagoa Bay Investment Co Ltd 1939 AD 372 at 388.
[18] Shrog v Valentine 1949 (3) SA 1228 (T).

difficulty for the defendant in this case is that it failed to allege and prove the duty to mitigate. Therefore, *cadit quaesto* for the defendant.

What will be a fair and reasonable amount to award for the loss?

[31] Before this Court lay an uncontested testimony that Ndobe was earning a conservative figure of R8000.00 per month from the transportation business. The calculations by Jacobson are based on this uncontested conservative figure. At this juncture, I must state that there is a marked difference between challenging a testimony and controverting a testimony. In any proceedings, versions put during cross-examination, remain untested versions until repeated in evidence. Similarly, a challenge to the credibility of a witness would remain as such and shall not morph into countervailing testimony. The fact that Ndobe could have contradicted himself about the estimated figures during cross-examination is of no moment, particularly in an instance where no countervailing estimates are placed before Court by way of evidence. From 29 January 2012 up to 31 October 2022, if Ndobe still had the Bakkie he would have continued to earn the said conservative amount. Jacobson in his report factored increases in line with the Consumer Price Index. That led him to arrive at a cumulative loss of R1 310 816. Jacobson took into account unforeseen contingencies and presented three scenarios, namely 15%; 20% and 30% deductions for those unforeseen contingencies.

[32] Mashaba did not have issues with the figures by Jacobson. Equally, this Court in the exercise of its own estimation, it concludes that the amount of R1 310 816 is fair and reasonable to compensate Ndobe for the loss. As it is always the case in matters of this nature, parties quibble over contingencies to be applied over a fair and reasonable award. Mashaba urged this Court to apply a 50% contingency. In support of that urge, he submitted that because the evidence of R8000.00 a month was not satisfactory, a higher contingency deduction was warranted. With considerable regret, I disagree with his submission. As a general approach, contingencies provide the means by which to blend the scientific and the equitable. Such involves a process of

subjective impression or estimation rather than objective calculation.[19] It is not based on the strength of the evidence seeking to prove the loss. Generally, in determining contingency, the court is required to take into account both positive and negative contingencies.[20]

[33] In the circumstances of this case, the positives are that the township business could have boomed to a point that Ndobe earns twice or triple the conservative figure. At the same time, the negatives could have been the decline of the township business, the mechanical breakdown or loss of the Bakkie by other means. Having taken into account all of that, I take a view that a contingency of 30% must be applied. Therefore, the fair and reasonable award would be an amount of R893 859.00.

[34] For all the above reasons, the following order is made:

Order

1. The defendant is liable to compensate the plaintiff, Mr Ndobe, for an amount of R893 859.00.

2. Interest calculated on the capital amount referred to in paragraph 1 above will be payable at a prescribed legal rate after 14 (fourteen) days from the date of this order.

3. The capital amount is payable into the trust bank account of the Plaintiff's attorneys; Dudula Incorporated, Trust Cheque Account, Standard Bank, Account no: [....], Branch Code: 000205, reference: Mr. Y Dudula/MT/N17

4. The Defendant shall pay the Plaintiff's taxed or agreed party and party costs up to date on the High Court scale, which party and party costs shall include, but not limited to:

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[19] See Shield Insurance Company Limited v Booysen 1979 (3) SA 953 (A).

4.1 The reasonable costs in respect of the preparation of the trial bundle, actuarial calculations, medico legal and addendum reports;

4.2 Costs of counsel to date of the order, including the preparation for and trial attendance on 12 and 13 October 2022, the preparation and drafting of the written Heads of Arguments;

4.3 The travelling costs of the Plaintiff to and from all medico legal appointments and consultations;

4.4 The travelling costs of the Plaintiff and witnesses for trial attendance on 12 October 2022;

4.5 Qualifying and or preparation fees and testifying fees, if any, for the trial on 12 October 2022, as allowed by the Taxing Master, of Mr N Nqapela - Industrial Psychologist (report);

4.6 The fair and reasonable fees for obtaining the actuarial calculations of GW / Gerald Jacobson Actuaries;

4.7 Any costs attendant upon the obtaining of the payment of the capital amount referred to above as well as any costs attended upon the obtaining of payment of the taxed costs.

5. The following conditions are to be adhered to in respect of costs:

5.1 The Plaintiff shall, in the event that costs are not agreed upon, serve the notice of taxation on the Defendant's attorneys of record; and

5.2 The Plaintiff shall allow the Defendant 14 (fourteen) Court days to make payment of the taxed costs;

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[20] See Southern Insurance Association Limited v Bailey NO 1984 (1) SA 98 (A).

5.3 No interest will be payable, except in the event of default payment of such costs, in which case interest will be payable at the prescribed legal rate from the date of taxation.

GN MOSHOANA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES:

Counsel for the Plaintiff:	Mr C Van Onselen
Instructed by:	Dudula Inc Attorneys, Johannesburg
Counsel for the Defendant:	Mr G Mashaba SC
Instructed by:	The State Attorney, Pretoria.
Date of the hearing:	12-13 October 2022
Date of judgment:	21 October 2022