

(Western Cape Division, Cape Town)

**REPORTABLE**

**CASE NO. 2081/12**

In the matter between:

**RICARDO WEPENER**

**Plaintiff**

**and**

**THE MINISTER OF CORRECTIONAL SERVICES**

**Defendant**

**JUDGMENT DELIVERED ON 12 MAY 2022**

**MANTAME J**

*Introduction*

[1] In this matter, the plaintiff claims damages in the amount of R1 000 000.00 (*“one million rand”*), as a result of an alleged assault by the members (officials) of the defendant who were on duty at Brandvlei Correctional Facility and / or Centre on 8 February 2009. As a consequence thereof, the plaintiff sustained some injuries which entitled him to some heads of damages.

[2] In its defence, the defendant contended that in a situation that was precipitated by the plaintiff and his fellow inmates, the members of the defendant acted in an emergency situation to defuse the unrest and thereby used minimum force with certain equipment lawfully issued out by the defendant to settle down the situation. The defendant denied that its members assaulted the plaintiff. According to

the defendant their officials acted in self-defence in protecting the interest and the administration of Brandvlei Correctional Facility, its inmates and its employees against a dangerous situation created by the plaintiff and his fellow inmates. The members of the defendant believed that a situation of actual danger and / or eminent danger existed and no excessive force was used.

[3] The merits and quantum were separated. The matter served before this Court only for the determination of the merits. Due to the nature of the defendant's defence, it was agreed between the parties that the defendant has a duty to begin.

### *Background Facts*

[4] Mr Cameron Romero Pekeur (*"Mr Pekeur"*) testified that the precursor to the incident was that one of the offenders, Quinton Dlwengu (*"Mr Dlwengu"*) brought a notice to his attention indicating that one of the inmates Russel Fillies (*"Mr Fillies"*) has to be unlocked for a visit. When Mr Pekeur left his station in front of the school to room or cell 4 to unlock Mr Fillies, it appears that Mr Pekeur and his colleague were being monitored by the plaintiff, Dino Daniels (*"Mr Daniels"*), Mr Dlwengu (who worked at the office with the officials) and other inmates. The plaintiff called "up", that is, their gang instruction to stab. It is common cause that the plaintiff, arrived at that prison a 26 gang member.

[5] When they arrived at room or cell 4 to unlock Mr Fillies, and as Mr King unlocked the gate / the grille, the inmates inside the room immediately forced the grille open. The plaintiff, Mr Daniels and Mr Dawie Williams, (*"Mr Williams"*) who were outside the cells for exercise immediately attacked and stabbed Mr Pekeur. While Mr Pekeur was on the ground, Mr Williams sat on top of Mr Pekeur and stabbed him on several occasions with a knife until it got stuck on Mr Pekeur's arm. Mr Pekeur stated that he sustained forty-two (42) stab wounds.

[6] During that commotion, the plaintiff, Mr Fillies and Mark September (*"Mr September"*) pursued Mr George Simon Paulse (*"Mr Paulse"*), who was with Mr Pekeur and assaulted and stabbed him while he was running towards the window of section 6. The plaintiff stabbed Mr Paulse on several occasions while he begged for

mercy. Since they had the dog with them, Mr Paulse was hit by his tonfa and they used the same tonfa to hit the dogs. Mr Van Deventer who was with the other officials ultimately came to Mr Paulse's rescue and they managed to escape through the gate to the office in section 4. At all times, the plaintiff followed them with an outburst of profanity and insults. The incident was a huge set back on Mr Paulse and his family, as it impacted them physically and psychologically. Mr Paulse's hand remained half paralysed and the therapy session he undertook to rehabilitate his hand did not work. This incident negatively impacted Mr Paulse's life entirely as he could not play cricket anymore.

[7] Mr Paulse stated that the plaintiff said he stabbed him because of what he did to him in December 2008 and he was going to kill him. He knew the plaintiff and Mr Daniels as they were previously Bible studies students in a course he was a spiritual co-ordinator for approximately six (6) months having been recommended by Mr Pekeur and Group of Hope. The plaintiff and Mr Daniels' attendance at Bible School was terminated as it transpired that they were active in gang activities.

[8] The plaintiff, when he stabbed Mr Paulse, Mr Noble opened the window and tried to talk to the plaintiff to stop him in his actions. The plaintiff told Mr Noble that he wanted to kill Mr Paulse. At that time the sirens were on. The plaintiff stabbed him eighteen (18) times. The plaintiff, after the incident was not apologetic. Mr Paulse confirmed Mr Pekeur's testimony that the plaintiff, Mr Daniels and the other three (3) inmates called the "up" code word when they entered the cell.

[9] Mr Benhardus Lambertas Matthee (*"Mr Matthee"*) testified that he was at the Correctional Facility during the time of the incident, but worked in Section 3. On the morning of the incident at about 8:00 am he was phoned by the personnel officer and was asked him to collect a bakkie to transport the inmate/s to hospital. He left the Correctional Facility with the late Mrs June to Eben Donges Hospital Worcester at about 9:00 am. He remained at the hospital the whole day and was back at the facility at about 18:00 in the evening when he signed back the vehicle. A trip sheet was referred to as proof in that regard.

[10] Mr Matthee did not have any knowledge about the incident that happened at the Correctional Facility on that day. He denied the allegations in the pleadings that he and other correctional officials assaulted the plaintiff.

[11] Mr Arthur Adam Triskey (*“Mr Triskey”*) testified that he was on duty on the day of the incident with Mr Cameron Pekeur, Mr George Paulse, Mr Van Deventer, Mr Arthur King, Mr Isodore Abrahams, Mr Vorster and one member called Doffel. After the inmates were done with exercise, they were given a name of the inmate who had a visitor. They all moved to room 4 to collect the said inmate.

[12] When they arrived at room 4, Mr Daniels grabbed Mr Pekeur, and when he tried to come to his assistance, the plaintiff stabbed him at the back of his neck about two (2) times. He tried to use his tonfa to ward off the attack. Within no time as he moved closer to the grille, he was surrounded by about ten (10) inmates who attacked him. In all, he sustained about seven (7) stab wounds. He managed to break away from the attack but the plaintiff followed him shouting the words, *“Today we are killing you.”* He was thereafter taken to hospital. He had no knowledge of the alleged assault of the inmates on the said day.

[13] Mr Randall Hearne (*“Mr Hearne”*) at the time of the incident he was the co-ordinator of Group of Hope. This was a community organisation that was established by the prisoners to assist HIV positive children from the communities. On the day in question, he was stationed at Section 6. Mr Noble who was in charge of the unit came running and screaming, *“We need to go and assist in Section 4, because there is a problem there.”* He immediately went to the office to get a tonfa.

[14] While at the office, the window behind him broke. When he went to investigate what happened to the window, he saw the plaintiff, Mr Daniels and Mr Fillies in front of him assaulting someone. When the person turned, it transpired that it was Mr Paulse. Mr Fillies had a tonfa in his hand, the plaintiff and Mr Daniels had knives in their hands. He immediately started shouting at them to stop. The plaintiff shouted back to him and said:

*“Hou dop hoe steek ons jou broer vrek hier vandag (just see how I am stabbing your brother to death today).”*

[15] At that moment, Mr Paulse was tired and could not fight back, he pleaded to him for help as he could not take the stabbing anymore. Mr Fillies was beating Mr Paulse with a tonfa, the plaintiff and Mr Daniels were stabbing him. Mr Hearne could see how the blood came out as they stabbed Mr Paulse. As he was inside the office, he handed his keys to Mr Paulse and asked him to hit them with or fight them off as it was a big bunch of keys. At that point Mr Paulse had nothing in his hands to fight them off. Shortly after that the siren went off, the inmates retreated immediately. It was then that Mr Paulse managed to get out of danger. He came to see Mr Paulse again when he was the driver of the ambulance that took the officials that were assaulted and stabbed by the inmates to hospital. That day was hectic as he worked a double-shift and he later on took the inmates to hospital.

[16] Mr Peter Adrian Hendry ("*Mr Hendry*") was working in Section 1 on the day of the incident. He overheard over the radio, Mr Kriel who worked at Section 4 shouting for help as there was a stabbing incident in their section. They immediately locked up all the inmates and the three (3) of them with a dog handler proceeded to Section 4. When they arrived, there was a scuffle at the gate between the officials and the inmates. In his efforts to assist, he went up the steps to assist the officials, to close the door as the inmates were pulling the door from inside. During that scuffle, Mr Sitera's dog bit him in his leg. But ultimately the door was closed. He had to seek medical assistance for his injuries. All the officials that were injured were later on taken to hospital. Mr Hendry denied that he knew nor assaulted the plaintiff as the plaintiff pleaded. He was nowhere near cells 3, 4 or 5 after his injury. His activity on that day ended when they tried to close the grille of the gate and after having been bitten by the dog, he was taken by the ambulance to hospital. He was not involved in any assault of the inmates.

[17] Ronald Gerald Botes ("*Mr Botes*") testified that on the day of the incident, Mr Dlwengu, who was the inmate who worked at the offices at the time, gave a request slip to the officials for them to unlock the inmate Russel Fillies who had a visitor from the cells. Mr Fillies occupied room 4. Mr Botes at the time was the section head. The members indeed walked to room 4 to fetch the inmate.

[18] When they opened the gate of the cell, there was a scuffle between the inmates and the officials. He observed the inmate Mr Williams stabbing Mr Pekeur. As the officer in charge, he cleared the way and asked the inmates who were in front of the public phones to go inside the courtyard. He then proceeded to call the head of the centre, but could not pick up his cellphone. He proceeded to call the member in charge of safety, Mr Ismael Samuels (*“Mr Samuels”*) to set off the siren – so as to alert all the members in other units of the danger they were facing. As the alarm went off, he observed the plaintiff and Mr Williams chasing and stabbing Mr Pekeur. They were joined by Mr Fillies and Mr Daniels. After the siren went off they quickly disappeared around the corner. So he called Mr Paulse to the office. Mr Pekeur also had blood all over his body and was walking slowly. Mr Pekeur was the last to come to the office as he walked from the far end of the office. As the officials approached, Mr Daniels, Mr Williams and the plaintiff were attacking Mr Paulse who was already on the ground. When they approached from the office, the plaintiff was swearing at them.

[19] Mr Botes testified further about the incident of 27 December 2018. On that morning, the head of centre called him and Mr Pekeur and asked that the two (2) inmates, that is, Andile Gimeme (*“Mr Gimeme / Boy-Boy”*) and another who he forgot his name should be locked up in the single cells as they were active in gang related activities. However, they explained the reasons to them later on. One inmate occupied room 3 and another room 4. They then advised other members about the decision of the head of centre. The head of section, Mr Botes was left at the office doing some administrative work. Mr Pekeur collected the first inmate in room 4 and brought him to the office. He informed him that they received an instruction to lock him up in the single cell as he was engaged with gang activities. In fact, they were informed that he and Mr Gimeme were promoting other inmates to be No 1’s (this is the senior rank of the gang members). These two (2) inmates were said to be the ones with the utmost authority in that Correctional Facility. The inmate assured them that *“the section currently is very quiet, but if, I will willingly go to the single cells, but I can assure you now that there will never be peace in that section again ever.”* However, they proceeded to lock this inmate up in single cells. When Mr Pekeur and other members returned from single cells, they went to fetch Mr Gimeme. This inmate asked them to fetch him at the back of the cell if they intended to move him

out of the cell. He vowed not come out voluntarily. Mr Pekeur reported this to Mr Botes who relayed it to Mr Moses (the head of centre).

[20] Mr Moses and Mr Samuels (security officer in charge) came out to room 3 to talk to Mr Gimeme. As they engaged with Mr Gimeme at the door, the plaintiff and another inmate called Richard stood with Mr Gimeme at the front part of the cell. Mr Moses asked Mr Gimeme to come out willingly and his response was that: *"if you're going to come here today, one of your members will die."* Mr Moses then called the members of the Emergency Support Team ("*EST*") to come and handle the situation. It was stated that the EST members are usually called to assist when the situation is out of hand. The EST members shot the teargas canister inside the cell and they opened the grille for all the inmates to come out. All the inmates came out running. The plaintiff and Mr Gimeme were put down and taken to single cells. Mr Gimeme was thereafter transferred to another centre, but the plaintiff remained. This decision was taken due to the fact that the plaintiff was standing next to Mr Gimeme who was the first in charge in the gang activities, the plaintiff was assumed to be the second in charge since he stood next to him. However, the plaintiff was returned back to his normal cell after some days.

[21] As far as Mr Botes' knowledge is concerned when Mr Gimeme was previously transferred from Drakenstein Correctional Facility to their facility, he became a No 1 after stabbing someone in that facility. The stabbing incident in the previous facility gave him a higher rank. For the plaintiff and one Richard to be promoted to No 1 rank, they had to stab someone. That information was gathered from Mr Gimeme's case file during the transfer process. As the plaintiff suggested that he was earmarked to be transferred to Kokstad, Mr Botes stated an A-group inmate cannot be transferred to a maximum prison like Kokstad without the proper processes having taken place. For an inmate to be transferred there, he must be a C-group. For that process to take place, an inmate is required to come before the Case Management Committee ("*CMC*") for evaluation. After that incident, Mr Lionel Adams from the Regional Office asked him and Mr Pekeur to identify inmates in that unit who were firebrands and / trouble makers. They were requested to compile a list so that they could be downgraded. Such was done, and a list of inmates who were due to be downgraded was furnished to Mr Hearne. The negative incidents that were

gathered from the inmates' casefiles were also provided to CMC. The plaintiff's name formed part of the list. However, the plaintiff appeared before CMC and the CMC found that there was not sufficient evidence to downgrade him to the C-group. When the incident took place on 8 February 2009, he knew that he remained an A-group. His alleged pending transfer to Kokstad was unfounded.

[22] It was Mr Botes' evidence that the plaintiff was an active gang member when this incident occurred. He was housed at room 4 and that is where all the gang members are locked and room 2 was reserved for inactive or non-gang members. At no stage did he request to be move to room 2 due to his inactivity in gang activities. His further evidence was that, at the time this incident happened, Mr Botes was a CMC member at the unit and responsible for the complaints of the inmates. If the plaintiff was aggrieved by an allegation that he was due for transfer to Kokstad Maximum Centre, he should have approached him and discussed such allegation with him as a responsible official. He found it strange that Mr Pekeur is alleged to have told him that he was amongst the inmates earmarked for Kokstad. That was not the procedure for downgrading inmates.

[23] However, on the fateful day of 9 February 2009, he observed the plaintiff, Mr Fillies and Mr Daniels running towards Mr Pekeur and stabbed him. Mr Botes disputed that he was present when the plaintiff was allegedly assaulted by the officials and bitten by Mr Sitera's dog. After the assault of the officials by the inmates, he went to Mr Horn's office for debriefing. He did not witness any assault of the plaintiff or any other inmate by the members of the Correctional Facility. He heard about such incident after it had long occurred. He was aware that seven (7) inmates were subsequently charged with attempted murder and were sentenced to seven (7) years direct imprisonment. However, he was not aware about the details leading to such an offence.

[24] Mr Arthur James King ("*Mr King*") testified that on the morning of the incident, a request for an inmate who had a visitor was made. He and his colleagues moved to room 4 to get the inmate. Mr King had the cell keys and when he moved to open the grille, the inmates from inside the cell grabbed the grille and attempted to open it from inside. As it was opened already, he attempted to close it again. At that stage,



he heard a struggle behind him. As he tried to look back the inmates got hold of the grille and opened it. He immediately decided to retreat. As he went back, he noticed three or four inmates who stabbed Mr Pekeur. He identified the three inmates with their nicknames, and it was "*King*", "*Tubby*" and "*Kat*". The plaintiff was identified as "*Kat*."

[25] The inmates inside the cell came out in numbers and started assaulting his colleagues that were in his company. He ran for his safety as the inmates wanted to attack him. He ran to the opposite side of the section. When he ran back to the office, the inmates stabbed him on his back. All the injured officials were later on taken to hospital. This incident was too traumatic for him as it was the first to happen in his career as a correctional official.

[26] Alrico Sinclair Cupido ("*Mr Cupido*") a spiritual, moral development co-ordinator ("*SMDC*") testified that he is responsible for the spiritual upliftment of all the inmates under the defendant's care. He ensures that they practice their beliefs in a safe environment. On the day of the incident he was off-duty, but on standby list. At the time he was stationed at medium correctional centre.

[27] On that day, he knocked off from his second-watch duty at 8:00 in morning and went to church. While still in church, he received a message that he must return back immediately to the management area. As he arrived, he was advised that an incident occurred. As a member of the EST he was called in to stabilise the situation. Mr Cupido at the time, was the team leader of EST.

[28] Part of the region's contingency plan in the entire Western Cape was to conduct random searches which were done by the EST. On 27 December 2008 Mr Cupido testified that it was the Brandvlei Correctional Facility's turn to conduct random searches. The searches are normally conducted at night. He could recall that on the said night the team was split into two and he took charge of Section 3 and the other team went to Section 4. After the search, the inmates were counted back to the cell. The EST thereafter withdrew from the centre. To his knowledge, there were no assaults or complaints that emanated from that search that were filed thereafter.

[29] On 27 December 2008, he was not on duty, but on standby. When he arrived at the place of the incident, that is unit 4, room 3 he was briefed by Mr Pekeur that certain inmate(s) were resisting their transfer to another section. He then assessed the situation and informed the inmates that he was giving them a certain amount of time to move out voluntarily. If they still resisted, he would apply the necessary force to move them out from the cell. He returned back to the cell to plead with the inmates to move for about two (2) times and thereby extending time and the movement did not happen. His attention was caught by one inmate called “*Gruwelik*” (Mervyn Samuels) who was sitting on the third bed swearing at them that if they came inside the cell, they must be prepared to die (“*Julle vrek vandag as julle hier in kom*”). At that moment, he had a sharp object in his hand. Since they refused to come out of the cell, he decided to shoot rounds of teargas through the window. He shot about four (4) rounds. Mr Cupido described a round to be about 250ml – 300ml. The first round did not go off. He loaded second round and aimed it to the back of the cell. Instead, the inmates put a blanket on it so that it may not have any effect. The wet blanket prevented it from exploding and / or vapouring inside the cell. He shot a third round at the back of the cell that exploded on this occasion and he went to the front to shoot the fourth round through the window. In total, two (2) rounds of effective teargas were shot by Mr Cupido inside the cell. That is when the inmates started moving out of the cell. The officials proceeded to unlock the gate and instructed he inmates to come out with their hands above their heads. The identified inmates who were identified to move to the single cells were advised to remove the clothing for search and later they were taken to the medical official on duty for the routine check-up. After the search they were supplied with clean clothes and blankets. Mr Cupido could not recall whether the plaintiff was amongst those who were identified to move cells. He then withdrew from this operation and reported the process he undertook to the head of centre.

[30] On 08 February 2009, when he arrived at the Correctional Centre, Mr Cupido was briefed by other members on what had occurred and they proceeded to Section 4 where the incident occurred. He found the situation chaotic and was advised that the inmates were not searched yet. That meant that they were still in possession of knives that were used to stab the officials. Some of the inmates were outside the cell

and some inside. On Mr Cupido's arrival, Mr Horn and other officials were in the process of locking them in the cells. After they were all locked up, the inmates were ordered to come out in a row for the search. For the safety of the officials, the inmates were asked to undress with their hands above their heads. This was to make sure that the inmates do not come out with weapons and / or knives on their bodies to harm the officials.

[31] The officials instructed the inmates to come out in a queue. As they got out of the cell, some of the officials started searching the cell. Mr Cupido, all along did not recall or witness any assault by himself or other officials to the plaintiff on that particular day. Since the weather was extremely hot, and the temperature was between 38 – 40 degrees, there was a hosepipe that was plugged at the outside tap which was used by the inmates to drink water or to wash their faces or cool themselves down. Mr Cupido disputed that they used electrical shocks on the inmates. Although some of the officials were issued with shock shields on that day, it was ordinarily part of their equipment for protection purposes and for ground control. The purpose of which was to assist when the inmates on the ground were uncontrollable. He was not aware that Mr Fuza who was a correctional officer at their establishment at the time stopped the alleged assault of the plaintiff and other inmates as the plaintiff alleged.

[32] It was Mr Cupido's testimony that when he entered the gate leading to Section 4 on 8 February 2009, the ground was full of blood. Mr Horn briefed him about the incident and that although there was a stabbing incident, the knives or sharpened objects were not recovered after the inmates were searched. He did not witness the plaintiff or any other inmate being assaulted by tonfas and / or batons. He was not aware that the plaintiff was bitten by Mr Geel or Mr Sitera's dog and had no knowledge that both his arms were broken. In any event, it was his testimony that no batons are issued by the establishment anymore and are not part of their equipment. The batons were issued in the olden days. He described the baton as a hardened piece of plastic material that was used to either defend oneself or used on difficult inmates.

[33] It was put to Mr Cupido during cross-examination that the plaintiff was locked at cell 5 after the stabbing incident. Mr Cupido could recall that there was an identification of people that were due to be transferred to single cells and such people were escorted and transferred accordingly after the search. He did not know about the plaintiff being locked up at a particular cell. Mr Cupido disagreed with the suggestion that the plaintiff was further assaulted by the officials in room 3. At that time, room 3 was locked as it burnt down during the previous incident on 27 December 2008. There was no one at the time who occupied that room. He further denied that the cell was unlocked and the beds were removed for purposes of assaulting the 26 gang members. It was further denied by Mr Cupido that after the plaintiff was assaulted he was instructed to go out. He was then hosed down by a hosepipe and shocked and was instructed to go back to the room. Mr Cupido denied that the plaintiff was taken to be examined by a medical official after the assault. He could not recall the process of taking the plaintiff and other inmates to hospital as he was busy with the search of other inmates.

[34] Mr Patrick William Horn (*“Mr Horn”*) testified that he retired from Brandvlei Correctional Facility in 2019. He started at Brandvlei Correctional Facility at an entry level in 1981 as warder and was promoted through the ranks. During the time of his employment he continued with his studies until he obtained a National Degree on Correctional Services Management at Technikon SA. He went further with his studies and obtained a B Tech Degree in Correctional Services Management from UNISA. He worked at both medium and maximum centres in Brandvlei. He also worked as Deputy Head of Centre. In 2007, he started acting as Head of Centre at Brandvlei Maximum Centre. In 2008, the post was advertised and he acquired the permanent appointment as Head of Centre – Brandvlei Maximum Centre.

[35] With his years of experience, he was multifaceted with all the duties in each and every level of the institution as he spent a considerable time in that institution throughout his working life. He was always visible at the Centre and had direct contact with the inmates. He dealt with the complaints and compliments in the prescribed prescripts.

[36] Mr Horn came to know about the plaintiff when he was admitted at the Centre in 2002 and he confirmed that he completed his Grade 12 at the Brandvlei Maximum Centre. He served on the Recreational Committee as a representative of Section 4. The Committee is tasked with the organisation of internal and external sports. The plaintiff also served on the Newspaper Committee where inmates representing their sections collected information, sports news inside the Centre to be published in that newspaper. The Newspaper Committee was trained by the Department's Communications Officer on how to collect news and formulate newspaper clipping. Mr Horn was personally involved in those projects as they were aimed at rehabilitating the inmates.

[37] Mr Horn stated that the plaintiff at some stage attended a pastoral course. It transpired that there were some complications during the duration of the course and he had to be taken off. To his recollection, he was close to finishing the course when his attendance was cancelled. Further, the plaintiff acted as a food handler. It is a fact that the ordinary inmates wore orange clothes, however as a food handler, he wore white clothing. So, he was easily identifiable among the rest. He also assisted with serving food in different sections. The food handlers received payment and they were remunerated according to the prescribed levels.

[38] According to Mr Horn, the plaintiff was well-known in the Correctional Facility. He could recall that in one of his birthdays, the inmates in Section 4 approached him as Head of Centre and requested that they bring a cake for him. Mr Horn approved such a request. He based his approval on good behaviour on his part. It was his opinion that sometimes the government fall short in addressing the needs of the inmates. As sport and recreation committee, the plaintiff organised a sponsorship for takkies that can be used for recreational purposes by the inmates. So these takkies were donated in line with the donation policy of the institution. The plaintiff's positive gesture was acknowledged and appreciated by all at the Centre.

[39] Since the plaintiff and his friends behaved well, he made special concessions for them. For instance, Mr Horn made a special arrangement for Mr Daniels to go to Goodwood Correctional Facility to do paternity tests as he fathered a child shortly after his incarceration. The same applied to Mr Dlwengu, a special concession was

given to him, since inmates in maximum centres are not allowed to attend funerals. Mr Horn arranged with the undertaker to bring Mr Dlwengu's mother's body to Goodwood Correctional Facility for him to pay his last respects to his mother before burial. Similarly, when Mr Dlwengu's brother made a request to see him at Goodwood Correctional Facility, Mr Horn approved that request as no visits are allowed at Maximum Centres during weekend. Mr Dlwengu's brother's work did not allow him to fly down to Cape Town during the week. He could only visit his brother on weekends. As a result thereof, it was convenient for him to visit his brother at Goodwood Correctional Centre. Mr Horn's approval was solely based on the inmates well and / or good behaviour. These concessions were purely made to strengthen family ties.

[40] When Mr Horn resumed his duties as a Head of Centre, the plaintiff was in Group A. It was explained by Mr Horn that when an inmate arrives at the Centre from Court after conviction and sentence he starts at Group C which is the bottom level. Based on his good behaviour, he goes up to Group B and ultimately gets upgraded to Group A. All these groups are entitled to certain privileges. During his tenure in that Centre the plaintiff has never come up with a complaint that he has been treated unfairly or inhumane by the officials or has lost the privileges he was awarded. The plaintiff was housed in Section 4 where all the gang members are housed. For instance, the 26 gang members specialises in money making and smuggling stuff into prison and thereby strengthening the gang; the 27 gang members, stand in for the 26 gang members, the 26 gang members are not allowed to communicate with a 28 gang. The 27 gang members will therefore communicate on their behalf. The 27 gang motto is "*blood in, out with a coffin*," meaning if one wants to become a gang member, by all means he will become a 27 gang member and only if the inmate takes blood (in their language). Once you become a member, you will go out with a coffin. The 27 gang members are the most brutal. Whereas the 28 gang members focus on the internal environment. They go for smuggling food – only a smuggle in a lesser scale. In the 28 gang there are two (2) alternatives, one says if you are fit for work you become a soldier and you should be strong at heart and they give you a knife to work with, the second one do the so-called "*wifey*" duties. From these gangs, the plaintiff belonged to the 26 gang.

[41] Every prison gang adhere to their "*line*" as it is called. In that line the gang members are classified in ranks from a soldier up to a No.1. They have their methods of communication. For instance, when they greet each other "*they take off stimela*." Their rank structure is similar to that of the military structure. If a member has to be promoted to a No 1 – he has to take blood. Reference was made to "Boy-boy" or Mr Gimeme who was a fighting general (in his rank) and he recruited members to that rank.

[42] Mr Horn explained in detail that should the plaintiff felt aggrieved about what was allegedly said by Mr Pekeur that he would be downgraded and sent to Kokstad as a punitive measure, he should have reported that to him or to the Inspecting Judge of Prisons that oversees fair treatment of inmates within Correctional Services. Also, the inmates are normally made aware that they can forward their complaints to a Special Ombudsman for Correctional Services if they are aggrieved about their treatment in the Correctional Facility. It was not necessary for the plaintiff to attack the officials if he felt so aggrieved.

[43] On 27 November 2008, their Centre received a visit from the Regional Head Security, Mr Lionel Adams. He came with about 180 EST members to search the Centre and was in control of the entire operation. It is customary that the Provincial EST team visits all the Correctional Centres to sweep clean the facilities during festive season. Since this was a big group, it was split into two (2) groups. One group searched Section 3 and another Section 4. However, the group that was tasked with Section 4 experienced some problems as the inmates in that section put some dominos pieces inside the lock to block the key.

[44] While the search continued, Mr Horn and Mr Adams were called in to deal with an issue in Section 4. On arrival, the plaintiff and other inmates advised them that they were afraid that the EST members from other Centres were set to assault them. They requested that the local EST members search the section instead. So, should the assault take place, they will know exactly where it came from as they were familiar with the local members.

[45] It was plainly assumed by Section 4 inmates that they would be assaulted by the EST members as the inmates in Section 3 were assaulted by the members five minutes after the operation began. As a consequence thereof, three (3) members from Section 3 lodged complaints to that effect. However, the search was successful as unauthorised objects like knives, cellphones, cellular batteries, money, sim cards and large quantities of dagga were uncovered in that search. Mostly, in his experience, these unauthorised objects are hidden in-between bed holes, on the wall or on the ground. They are entrusted to a particular inmate whom they call a blacksmith. This person is also responsible for making these weapons. If searches are not conducted routinely and properly, at the correctional centre, these weapons could also be smuggled in. At times, when the inmates are made aware of the anticipated search, they hide the sharp objects on their rectums. During the search, Mr Pekeur recorded all the unauthorised items that were found in a register that evening. According to Mr Horn, no inmate was assaulted in Section 4 and in return he received no complaint to that effect.

[46] On 27 December 2008 Mr Horn was not on duty and Mr Moses was acting in his stead. When he returned to work it was reported to him that an incident happened whereby Boy-boy refused to be transferred to single cells and a teargas was used. It was reported to him that Boy-boy and Michael Juba were promoting inmates to No 1's within the 26 gang. After the teargas was shot inside the cells, the inmates managed to go out and Boy-Boy was transferred on the same day to Helderstroom Correctional Facility. The plaintiff and Boy-boy were locked in the single cells for questioning before Boy-boy was transferred to Helderstroom. According to the report he received, the plaintiff was very vocal and arrogant on that day.

[47] It was also reported to him that cell 3 was burnt down after this incident. It was stated that Boy-Boy, as the leader of 26 gang – protocol dictates that not any other low ranking inmate can stand next to him. In accordance with the gang structure and rules, only a person close to his rank can stand next to him. The packing order is the same as that of the military structure. When the plaintiff was taken out of the single cells to communal cells, he was warned of his involvement into gangster activities. Mr Horn rejected the insinuation that the plaintiff was identified to be transferred to



Kokstad. For an inmate to be transferred to Kokstad he had to be downgraded to Group C. As a Group A he would not have qualified to go to Kokstad. That was known by the plaintiff even on 8 February 2009 when they attacked the officials.

[48] It was Mr Horn's testimony that the attack on Mr Pekeur and other officials on 8 February 2009 was not directed at any anger or any complaint that the plaintiff was allegedly identified to be transferred to Kokstad. If one of the inmates was due for promotion, he had to stab in order to draw blood from the official. That is what happened in this instance.

[49] On the morning of 8 February 2009, he was at work to arrange a transport to take him to the airport as he was scheduled to attend a course in Johannesburg. As he was at the gate leaving the premises, a siren went off. Immediately, he knew something serious has happened and he went back to the Centre. The members started running to the front to collect their safety equipment as it is the standing procedure in emergency situations. He put on the radio and he overheard members screaming that they are being stabbed in Section 4. They all immediately ran to Section 4 to assist.

[50] When he approached Section 4 he observed members who were chased by the inmates. Nearer to the office was Mr Pekeur who was on the ground and being stabbed by an inmate. The situation was disastrous, chaotic and catastrophic. However, they ultimately managed to put the situation under control. The injured officials were immediately taken to hospital. In his recollection, there were about fifty (50) members who responded after the siren went off and there were about one hundred (100) inmates on the ground. The scenario required the members to act swiftly. The members used the necessary force to put the inmates in Cell 5 as some of the inmates were still armed with knives. In this instance, the plaintiff was at the forefront of the attack. As the members were lesser than the inmates they were bound to disarm them as the inmates kept on charging towards them. Even when they managed to put them inside the cell, the plaintiff was the last person to go inside the cell and he demonstrated the utmost resistance and held the grille so that the members could not lock it. The plaintiff, Mr Daniels and Mr Dawie "*Tubby*" Williams were still holding their knives and were charging towards the officials when

they were locked in. As a result of this conundrum, some of the officials and inmates got hurt in the process.

[51] After they were locked inside, it was decided that they should be instructed to undress themselves and their hands above their heads and be lined up to be searched. The officials at the time figured out that their risk was much higher than anticipated as they observed that the inmates had knives and or sharp objects. They opted to calling out one inmate at a time to come out for the search. The whole purpose was to let all the inmates out in order to send them back to their respective cells and also to identify the injured inmates from this commotion to be taken to hospital. Indeed, the members were able to achieve that.

[52] Mr Horn denied that the plaintiff and other inmates were assaulted as they emerged out of the cells. What he could recall was that, when the plaintiff came out of the cell, he was identified as already injured and was referred to the hospital section of the Centre, where he was later referred to Eben Donges Hospital for special care. Mr Horn disagreed with the suggestion that the plaintiff was later locked up in cell 3. Pursuant to the incident on 27 December 2008, cell 3 was badly burnt out and damaged. Due to the state it was, it was locked and not in use. At the time of this incident, the management of the Centre were still awaiting for the refurbishment of the cell. It was not possible for the plaintiff or any inmate to be put inside cell 3 in that state. It is not true that the plaintiff was further assaulted after coming back from the hospital. All the inmates who went to hospital did not come back to the cells. Mr Horn made transport arrangements for all injured inmates to be taken to Eben Donges Hospital. In addition, it was not possible for Mr Matthee to have assaulted the plaintiff on that day as he took an inmate to Eben Donges Hospital for the full day (09: 00 - 18:00). It was not possible either for the plaintiff to have been assaulted by Mr Henry as during the time they struggled in the grille with the plaintiff wanting to lock cell 5, Mr Henry was bitten by Mr Sitera's dog and was taken to hospital.

[53] Mr Horn agreed that there was a hosepipe in front of the cell, but it was not used to hose down the inmates. As it was extremely hot on that day, the hosepipe was to enable the inmates to have access to drinking water. Further, it was conceded that shock shields were used to drive in the inmates that were violent to

the cells. That was the force that was used in the circumstances. It is not true that Mr Adams instructed the inmates to be dressed up. In fact, Mr Adams arrived very late in the facility on that day of the incident. He estimated the time to have been about 18H00 after the inmates were served dinner in the afternoon. He was then briefed about what happened and he was taken to Section 4 by Mr Horn where the incident happened. After the interaction with the inmates Mr Adams left and Mr Horn went to hospital to check on the inmates and members that were sent to hospital earlier that day.

[54] It was Mr Horn's testimony that he was very disappointed about what the inmates did on that day based on the alleged treatment they received from the members. Even when he arrived in hospital that evening, the plaintiff in particular said "*Haai papa man sorry man sorry for what we did.*" He told him that it was not the time to talk about the incident, he only came to check whether they are fine. When the plaintiff returned from hospital the following day, he was immediately transferred to Helderstroom Correctional Facility.

[55] Mr Horn testified that the officials were compelled to bring the situation back to normal as he felt that they could be overpowered by the inmates as their members were smaller than the inmates. They faced a life and death situation, it was necessary to use the minimum force. It was not true that the plaintiff was an inactive gang member. He was housed in a gangster cell because he practised gangsterism. Mr Horn disagreed with the suggestion that their attack was not planned and that the plaintiff reacted on Mr Pekeur's utterances that he will be degraded and sent to Kokstad. According to his investigation after the incident, it was said that the plaintiff called an "*up*" and the inmates went on with their attack. That shows that the attack was planned and that command "*up*" is in line with gangster activities. For instance, if a ritual has to be performed one inmate calls the "*up*" meaning "*Go over to action*" and it goes with a certain signal and the assault will take place. For instance, if the promotion is to become a No 1, a senior official in the unit had to be stabbed and in this case it was Mr Pekeur and the other members followed after him to be stabbed.

[56] With regard to the removal of the plaintiff in the pastoral course, Mr Horn explained during cross-examination that the recommendations by Mr Paulse to

remove him first served before the institutional committee and then were given to him for approval as the Head of Centre. The reasons put forward was that the plaintiff was practising gangsterism.

[57] The defendant closed its case.

[58] Mr Ricardo Wepener (*“Mr Wepener”*), the plaintiff testified that he was a 44-year-old bachelor. He has one daughter who is 24 years old. He was serving a sentence of life imprisonment at Helderstroom Correctional Centre. He has served 18 years towards his overall sentence. Prior to his sentence, he was an awaiting trial prisoner at Pollsmoor Correctional Centre for 3 years 3 months.

[59] After sentence he was transferred from Pollsmoor Correctional Facility to Brandvlei Correctional Facility on 13 September 2002. He started with his education with ABET at Brandvlei Correctional Facility in 2005 and obtained his Grade 12 Certificate in 2007. Post matric, he followed up with short courses including a course in Theology which he dropped out after 6 months of attendance. In 2012, he registered for a BA in Psychological Counselling at UNISA and completed it in 2018. He graduated on 27 June 2019.

[60] The plaintiff testified that he is an inactive member of the 26 gang. He holds a rank of Inspector No 1. When he arrived in prison for the first time at Pollsmoor Correctional Facility, he was locked up in an overcrowded cell. In this cell, he was robbed and financially abused. For him, the only way to protect himself was to join a gang. After joining the gang, he became active until 2005.

[61] When he was admitted at Brandvlei Correctional Centre there were no rehabilitation programmes in Section 4 besides soccer. When a notification came that there would be a school programme inside the prison he approached his gang and asked for permission to participate in the education and rehabilitation programme which they allowed him. It was necessary to get a permission from the gang so as to not have the gang responsibilities clashing with that of the school.

[62] The plaintiff had meaningful responsibilities at that Correctional Facility. He was a secretary of the soccer union, a representative of the recreational committee and was part of the founding members of the inmate's newsletter. They were inducted by the correctional official who had his own newsletter at the time. As a representative of ASRAT, he was allowed to stay out of the cells in order to attend to his duties. In the morning, he was given an opportunity to interact with food handlers and attend to his duties until the prison lock up the Correctional Centre. Otherwise it was his testimony that he was not a food handler. However, he filled in a position of a food handler on occasions where there is a need. He was not paid as an *ad hoc* food handler and was never entered in the books of the Department of Correctional Services as a food handler.

[63] During November 2008, he occupied cell 3, Section 4. On 27 November 2008 a search was conducted at night at about 20h00. He heard the members of the EST shouting that they should lie on the floor. Then they were instructed to come out of the cell with their hands above their heads. After they were in the courtyard, he saw Mr Horn and Mr Pekeur outside with other members from Brandvlei Correctional Facility. While they were made to sit in rows outside, another correctional officer came and wanted to pull his ring out of his finger. From experience, he knew if he allowed that to happen, he will not see his ring again, and he resisted. He only told him he will hand over his ring to a member that is known to him. These members started assaulting him. When Mr Horn and Mr Pekeur saw what happened, they came closer to investigate. After listening to the plaintiff, Mr Horn instructed Mr Pekeur to take his ring, chain and bracelet.

[64] On his return to the cell, he observed that his personal items from his locker were scattered in the floor and the contents of his bags under his bed were also scattered on the floor. He disagreed with Mr Horn and Mr Pekeur's version that no one was assaulted on that day, as he was assaulted. He also witnessed other inmates being assaulted. He denied Mr Horn's version that all his fingers had rings on. He had only one ring on one finger. However, his rings, chain and bracelet were handed back to him the following day by Mr Pekeur and he registered his displeasure at the manner in which he was treated. He intended laying a charge of assault on the members that assaulted him. Mr Pekeur told him he will report the

issue and revert back to him but he did not. He somehow heard that the members of SAPS visited inmates in Section 3 who were assaulted, but was not visited. Again, he reported this matter to Mr Pekeur who promised to follow this up.

[65] As Mr Pekeur was the head of security in Section 4, he was the person responsible for their complaints in that section or register a complaint with the case officer. He was not given an opportunity to register the complaint with the Inspecting Judge. He disagreed with the version that Mr Horn would come to the cells frequently to visit the inmates. If he came to their section, it would be in the morning before exercise. During the exercise session, Mr Horn and the management would not be in the courtyard. In fact, it was his testimony that their complaints in Section 4 were not taken seriously.

[66] On 27 December 2008, he was standing at the grille of his cell when he observed Mr Pekeur and Mr Botes approached the room. They asked to see Boy-Boy whom they instructed to pack his belongings as he was moved to single cells. However, Boy-Boy refused. They went back to the office and Boy-Boy went back inside the room. After some few minutes, Mr Pekeur returned with Mr Samuels and Mr Moses who also came to address Boy-Boy. They advised him that there are some allegations against him. He must pack his belongings and move to the single cells. Boy-Boy tried to advance his reasons for his refusal to go to the single cells. They then walked away after they were convinced that Boy-Boy is not coming with them.

[67] After about 20 – 30 minutes, Mr Cupido came through the gate with some twenty (20) other officials running towards their cell 3 including Mr Pekeur, Mr Triskey and Mr Paulse. Mr Cupido had a teargas gun in his hand. When he saw them approaching, he moved away from the grille. On arrival at the cell, Mr Cupido closed the outside of the cell and he peeped through the window and started shooting the teargas rounds inside the room. All the inmates tried to move to the back of the room in order to get to the open window for some air. Mr Cupido kept on shooting the teargas rounds and according to the plaintiff, he shot about ten (10) and not two (2) or three (3) he testified. The plaintiff refuted the testimony that a wet blanket was put on top of the teargas to destabilise it. As he stood at the grille before

the incident, he could have seen someone drenching the blanket at the sink, basin or shower if at all this happened. He did not see that happening nor an inmate throwing a wet blanket on the teargas round.

[68] The plaintiff disputed that there was a person by the name of Gruwelik at their cell during that time. The Gruwelik he knew had been transferred to medium centre at about 2005/2006. At that time, Mr Cupido still worked at maximum centre. Also during that incident, there were no triple bunks at the cell. Even though there were at the time, when the prison was renovated they put only double bunks with the beds that were bolted to the ground. The plaintiff denied that Boy-Boy threatened the officials when he was asked to move to the single cells. He could not comment on whether Boy-Boy made No 1 as he was inactive. As such, he would not be informed of such activities by active members of the gang due to his inactive status.

[69] After the teargas shots were fired, they were moved out of the cell. Immediately they were out of the cell they were shocked with shields and beaten with tonfas. He could identify Mr Pekeur, Mr Cupido, Mr Paulse, Mr Triskey and Mr Claasen amongst the officials that assaulted him. He was then taken to Section 1 (single cells). He could recall that he was removed by Mr Claasen and Mr Hendry to single cells because they worked in that section. No explanation was given for his removal to single cells. After about two (2) to three (3) hours Mr Claasen and Mr Hendry took him off to the hospital section as he had an open wound on his head. After he received the stitches, he was returned back to single cells. He stayed there for about eighteen (18) to nineteen (19) days.

[70] After a day, in single cells, he was called to meet a representative of the Inspecting Judge who wanted an explanation of what happened in Section 4 and he explained to him. He further recorded his complaint in the G365 complaint register and promised to investigate the matter.

[71] On return of Mr Horn from the festive break, he was called by him to explain what transpired in his absence. In their interaction Mr Horn advised him that this operation was unnecessary and the whole situation could have been dealt with in a different way. He promised to do his investigation and revert back to the plaintiff. On

14 or 15 January 2009, he was called again by Mr Horn to his office and advised him that he has concluded his investigation and they agreed that all this operation was about Boy-Boy and none of the other inmates were involved. Mr Horn apologised to him for the behaviour of the officials and he was sent back to Section 4.

[72] On 8 February 2009 after breakfast, he sat on his bed. At that time, the inmates at Cell 2 and Cell 5 were in the courtyard. Mr Daniels came to stand next to his window and they had a conversation. Mr Pekeur came to advise them that the *Imaam* was in the premises to give religious teachings to Muslim inmates. The inmates who do not want to participate can leave to the courtyard. He then went out with other inmates to join Mr Daniels in front of cell 1. While he was standing with Mr Daniels, Mr Pekeur approached them and advised them that he was taking them to CMC the following day. They will be downgraded and taken to single cells in preparation of their transfer to Kokstad. He believed what was said to him as other inmates had been downgraded previously to Group C and transferred to Kokstad.

[73] As Mr Pekeur was walking away, the plaintiff was angry and told Mr Daniels that the treatment he received from the officials was intolerable and no one took their complaints seriously. He was being told he was due to be transferred to Kokstad Maximum Centre for no valid reasons. To him, it appeared that they were given punishment to Kokstad because of what Boy-boy did. He was therefore tired of the ill-treatment and wanted to give the officials a reason to be sent to Kokstad. He told Mr Daniels that he was going to assault Mr Pekeur and be sent to Kokstad for the wrong he has committed. Mr Daniels advised him that he will not be assaulted for something he has not done. He would rather join in assaulting Mr Pekeur. He planned with Mr Daniels on how they would carry out the assault, he then went to his cell to collect his sharpened object (knife). Mr Daniels confirmed that he had his sharpened object (knife).

[74] A group of eight (8) officials, i.e. Mr Pekeur, Mr Triskey, Mr Paulse, Mr van Deventer, Mr King, Mr Abrahams, Mr Kriel and Mr Voster came from the direction of cell 2 down to cell 4. The plaintiff and Mr Daniels approached from the direction of cell 6 to cell 2 and they all met in front of cell 4. The officials, from what he understood came to take out an inmate from cell 4. While all of them were still facing



the cell, the plaintiff and Mr Daniels came from the side and he started stabbing Mr Pekeur on his right arm. Immediately other officials started hitting them. The plaintiff stabbed Mr Pekeur two (2) times. When the officials hit him with tonfas, on looking back he saw Mr Triskey and he stabbed him. A chaos erupted and other inmates decided to join and were under the impression that the plaintiff was hit by the officials. Some officials ran to the office and some inmates were kicking and stabbing Mr Pekeur. After a while Mr Pekeur stood up and went back to the office. He walked after him and stood in front of the office and started swearing. He thereafter walked back to the cells.

[75] The plaintiff testified that if the word “up” was used during that altercation it would have meant that he gave an instruction to someone to stab the official. But that did not happen on the said day. According to his explanation, when the “up” is called the inmate will stab the official and there would be two (2) persons with him, i.e. the inspector and the captain, the “*glass en draad*” – who would walk this inmate or escort him and the captain will call the “up” and the said inmate will stab. However, in this instance there was no up that was called – since this altercation was not gang related.

[76] After he was back at his cell, Mr Van Deventer, the dog handler came out of the office and let his dog on him and he ran towards the corner with Mr Fillies. As he turned around the corner of cell 6 he saw Mr Paulse, Mr Hearn and Mr Noble and he started assaulting Mr Paulse. He stabbed him in his left arm and Mr Fillies took his baton and beat the dog away from them. He then turned into the direction of cell 5 and cell 6. He disputed that he said to the officials in Afrikaans “*Just look at me, today I’m going to kill your brother.*” When he arrived at the steps of cell 5 and cell 6, he took his knife (sharpened object) and threw it over the roof of cell 5 and cell 6. He knew from experience that once a siren is off, more officials would be activated and he would be in for it.

[77] Indeed, shortly thereafter he saw members coming from the kitchen side and others through the hospital side. He could recognise a number of them. Mr Horn and Mr Samuels were the first to arrive. The officials started locking up the inmates and they left the cells. About ten (10) minutes thereafter the officials came with Mr

Cupido and they formed a circle. Mr Kriel had a clipboard and a paper in his hand. As they were talking, he was writing. The officials moved to cell 3 and they started removing beds out of the cell to the hospital and kitchen yard. At the time cell 3 was being renovated as it was previously burnt down on 27 December 2008.

[78] On completion of this task, the officials formed a circle and then moved towards their cell. Mr Cupido moved towards them and shouted that the inmates must undress and come out in a squat position with their hands above their heads. The plaintiff, Mr Daniels and Mr “Tubby” Williams were the last to come out. As he came out the officials started assaulting him. A certain Mr Fuza tried to stop his colleagues as he was now on the ground. Mr Daniels and Mr Williams were also assaulted. The other inmates were instructed to go back to cell 5 and five (5) of them were told to go to cell 3. They were locked inside that cell. Later on, two (2) more inmates came to join them from cell 4. The officials went on to fetch some inmates at cell 2 and cell 1 and brought them to cell 3. They were told to sit in two (2) lines in the room.

[79] The officials started assaulting them intermittently. After the assault, the plaintiff was taken to the infirmary when he was examined internally by a doctor who was satisfied that there was nothing in his rectum. On his way back to the cell he was assaulted once more as it was said he is the one who called the “up.” Mr Samuels came to stop them as he reported that Mr Lionel Adams was at the Centre. He was instructed to go and sit with other inmates who formed two (2) lines. The officials started hosing them down with a hosepipe. He was once more assaulted but could not say who assaulted him and he was later instructed to go back to cell 3. Later, Mr Lionel Adams came to the cell and asked why they were naked. He instructed the members to bring the clothes to the inmates. He also instructed the members to take the inmates to hospital who were seriously assaulted. He was taken to the infirmary once more. The three (3) wounds in his head were stitched and later the plaintiff, Mr Daniels and Mr Williams were taken to Eben Donges Hospital (Worcester Hospital).

[80] At the hospital they were visited by Mr Horn and Mr Lionel Adams. Mr Horn asked him why he stabbed the officials. He told him that he was tired of being

violated. He was angry at the time. The plaintiff denied that he apologised to Mr Horn and called him “*Papa*.”

[81] Because of his injuries, the doctor told him that he will put him into an induced coma. When he woke up he realised he was in Tygerberg Hospital and no longer at Worcester Hospital and both his hands were in plaster. The doctor needed his permission to put screws and metal plates on both arms. He refused, and he was taken out of the ICU.

[82] However, after two (2) weeks he was taken to theatre and they inserted some four (4) screws and two (2) metal plates in his left arm. He was taken back to Helderstroom Correctional Facility shortly thereafter. His arms were in plaster for three (3) weeks. He returned to Tygerberg Hospital for check-ups for about three (3) – four (4) times in three (3) months. On his return to Helderstroom Correctional Centre he attended a disciplinary inquiry and was sentenced to forty-two (42) days for the assault of Mr Pekeur. He was called to CMC and was degraded from Group A to Group C. After six (6) months at Helderstroom Maximum Centre he was charged with the assault and attempted murder of Mr Pekeur and other officials by the SAPS. On 27 February 2014, he was sentenced to seven (7) years imprisonment. When he was due for parole in his life sentence, he was advised to serve the outstanding seven (7) years, which he was still doing.

[83] Mr Quinton Dlwengu who came to testify for the plaintiff did not give an insight to the incident of 8 February 2009 which led to the cause of action in this case as his testimony was vague and unreliable in numerous respects.

### *Issues*

[84] Having the plaintiff and his fellow inmates launched an attack on the members of the defendant, were the members justified in their defence to use minimum force as pleaded to settle the unrest in the Correctional Centre; and were the injuries sustained by the plaintiff and the *sequelae* thereof caused by the unlawful attack by the plaintiff on Mr Pekeur and / or caused by the attack of the plaintiff by the members of the defendant.

### *Submissions by the Plaintiff and Defendant*

[85] At the commencement of the trial, the parties agreed that the onus rests on the defendant to prove that they used minimum force when they were confronted and attacked by the plaintiff and other inmates on 8 February 2009. Such force, as stated by the plaintiff was the cause of the injuries sustained by him.

[86] It was the defendant's submission that subsequent to the launch of the assault and stabbing of the members of the defendant by the plaintiff and his fellow inmates they were immediately taken to hospital in Worcester. The members who worked in Section 4 were debriefed and sent home, while other members who worked in other sections responded to an emergency situation were brought in to calm down the situation and restore order in Section 4.

[87] The members of the defendant when they arrived in Section 4 were met by a hostile group of inmates who were armed with knives and other sharpened objects and refused to enter into their cells. The inmates led by the plaintiff, Mr Daniels and Mr Williams continued to attack the members. It was argued that the number of the members, i.e. fifty (50) was way below that of the inmates which was one hundred (100) and required the members to act expeditiously. They came to the scene with shock shields, tonfas and a dog. In the circumstances, they were forced to contain the situation and put the inmates into the cells. In that process some members and inmates sustained serious injuries as the fight was unending.

[88] The members who entered the section to restore order were unlawfully attacked by the inmates who were armed with knives and sharpened objects. As the plaintiff was in the forefront and played an active role he sustained some serious injuries in the process. It was not disputed that the vicious role played by the plaintiff required an equivalent deterrence.

[89] It was the defendant's argument that it is trite that a person who is the victim of an unlawful attack upon his or the recognised legal interest of another, may resort to force to repel such attack. Any harm or damage inflicted upon an aggressor in the course of such private defence is not unlawful. The law therefore allows private defence where a citizen's interests are already under an unlawful attack that can be

repelled only by the immediate use of force. The inmates' refusal to enter their cells and their attack on the officials in itself constitutes an unlawful attack. The theory behind this approach is that every person has the right to protect his or her legal interest and is under no obligation to abandon or surrender these rights in order to avoid inflicting some evil on another person.

[90] Jonathan Burchell et al<sup>1</sup> sums up the situation and said:

*“Every person has the right to protect his legal interest and is under no obligation to abandon or surrender these rights in order to avoid inflicting some evil on another person. An individual who chooses to infringe the rights of another is the author of harm that he suffers in the course of a defensive response to his attack. That being so, there is no obligation on the person attacked to retreat in order to avoid the attack, nor is there a restriction upon the force used to protect life or property.”*

[91] Further, Gardner & Landsdown<sup>2</sup> states as follows:

*“If an unlawful attack is made upon the person or property of any person or of anyone whom it is his moral or legal duty to protect, that person is justified in using against the aggressor such reasonable measure of violence as may be necessary to repel the attack.”*

It therefore continues to state that:

*“This indulgence of the law is extended to the man who defends from unlawful attack the person or property of persons who stand to him in a position in which it is his moral duty to act in their defence ... It is highly improbable that the law would refuse, even in the case where a man acts in defense of a stranger, to extend the application of the rule if the circumstances were such as would have justified any reasonable and right-minded man in championing the victim of the unlawful attack.”*

[92] In such circumstances, it was the defendant's submission that Section 32(1)(a) of the Correctional Services Act III of 1998 (*“the Correctional Services Act”*)

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<sup>1</sup> Principles of Criminal Law, Third Edition, p231; See further : Ex Parte Die Minister van Justisie : In re : S v Van Wyk (49) 1967 (1) SA 488 (A)

<sup>2</sup> South Africa : Criminal Law and Procedure, Volume 1 General Principles and Procedure, Third Edition, p.71

provides that every correctional official is authorised to use all lawful means to detain in safe custody all inmates and, subject to the restrictions of this Act or any other law, may use minimum force to achieve this objective where no other means are available.

[93] In addition, it was stated that Section 32(1)(c) provides that a correctional services official may not use force against an inmate except when it is necessary for

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...

- (i) Self-defence;
- (ii) the defence of any other person;
- (iii) ...
- (iv) the protection of property.

In order for a private defence to arise, it was argued that there must be evidence that there was an attack upon a legally protected interest and that the attack was unlawful. The defender who makes use of private defence must adduce evidence that his resort to private defence was necessary in the situation in which he found himself. It is therefore upon the defence, if self-defence is pleaded, to prove that the force used by him in defending himself, was in the circumstances reasonable and commensurate with the plaintiff's alleged aggression.<sup>3</sup> Private defence can only be resorted to in respect of an imminent attack or an attack that has already begun (commenced), and at the attacker only to ward off a wrongful attack.

[94] In this instance, the officials who entered Section 4 to restore order were continuously attacked by the inmates after Mr Pekeur and other officials were initially attacked by the inmates and were later taken to Worcester Hospital. When the officials attempted to put them in their cells, the inmates were extremely arrogant, abusive, confrontational and had knives and / or sharpened objects in their possession. Given such situation, the officials had no choice but to stand up against the attack of the inmates. The officials used their shock shields, tonfas and a dog. This amount of force was therefore necessary to drive the inmates into the cells as it

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<sup>3</sup> Mabaso v Felix 1981 (3) SA 864 (A)

was only when the inmates were in their cells that the order was restored. No further force was used against the inmates after they were locked up.

[95] In essence, private defence was resorted to in respect of an attack that was unlawful.<sup>4</sup> The refusal by the inmates to enter the cells and their violent attack on the officials constituted an unlawful attack. In so doing, the officials needed to protect themselves in acting in self-defence against an unlawful attack. The officials could not avert the attack in any way. Private defence was therefore necessary when the officials directed their action against the offenders' actual or imminently wrongful act in order to protect a legally recognized interest of the defendant.<sup>5</sup>

[96] It was submitted that it is a trite principle that a person making use of private defence must use a means appropriate to the danger that confronted him.<sup>6</sup> The objective criterion is interpreted as meaning that there must have been reasonable grounds for believing that a situation of actual or imminent danger existed.<sup>7</sup> A person may inflict harm in a situation only if the danger existed, or was imminent,<sup>8</sup> and he or she has no other reasonable means of averting the danger.<sup>9</sup> The means used and measures taken to avert the danger or harm must not have been excessive, having regard to all the circumstances of the case. The nature of the threat; the extent of harm; the likelihood of serious injury to persons must be taken into consideration.<sup>10</sup> The official resorted to private defence in an explosive situation which necessitated them to resort to private defence in the circumstances.<sup>11</sup> The officials, under the guidance of the head of prison, Mr Horn, were not given an opportunity to liaise with the inmates. It was a situation whereby a hundred (100) inmates were in the courtyard whilst the warders were attacked.<sup>12</sup> Earlier on, in a matter of minutes the other officials who were on duty in that Section were almost killed by the inmates and

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<sup>4</sup> R v Ndara 1955 (4) SA 182 (a); Ntanjana v Vorster Minister of Justice 1950 (4) SA 398 (C)

<sup>5</sup> Ntsomi v Minister of Law and Order 1990 (1) SA 512 (C)

<sup>6</sup> Ex Parte Die Minister van Justisie : In re : S v Van Wyk (49) 1967 (SA 488; Ntanjana v Vorster Minister of Justice 1950 (4) SA 398 (C)

<sup>7</sup> Chetty v Minister of Police 1976 (2) SA 450 (N)

<sup>8</sup> R v Garnsworthy 1923 WCD 17; S v Mtetwa 1977 (3) SA 628 (E)

<sup>9</sup> Petersen v Minister of Safety and Security 2010 (1) All SA 19 (SCA)

<sup>10</sup> Petersen v Minister of Safety and Security 2010 (1) All SA 19 (SCA); Jooste v Minister of Police 1975 (1) SA 49 E; Maimela v Makhado Municipality 2011 6 SA 533 (SCA)

<sup>11</sup> R v K 1956 (3) SA 353 (A); R v Manyele Sile 1945 WLD 134 at 135

<sup>12</sup> S v Adams 1979 (4) SA 793 (T)

had to be rushed to hospital. It was necessary to bring the situation under control by using the necessary force to repel the danger.<sup>13</sup>

[97] The defence Counsel submitted that the plaintiff's version was riddled by inconsistencies. For instance, he wanted this Court to believe that the inmates were instructed to leave the cells naked and were repeatedly assaulted by Messrs Classen, Henry, Cupido and Matthee, and were further hosed down with a hosepipe until they were drenched in water. This was despite the fact that Mr Horn and Mr Cupido testified that they were instructed to come out naked for security measures given the fact that they were armed with knives and sharpened objects when they entered the cell. Those who sustained injuries during the altercation were given fresh clothes after they were searched and were taken to Eben Donges Hospital thereafter. This was confirmed by Mr Dlwengu in his testimony.

[98] It was the defence argument that the inmates could not have been taken to Room 3 for the alleged assault. That room was inhabitable as it had burnt down on 27 December 2008. Further, the inmates could not have been hosed down. It was indeed explained that there was a hosepipe which lied on the ground which was used to provide water for anyone who was thirsty. It was extremely hot on the day and the officials wanted to minimize movement.

[99] Further, the fact that the plaintiff testified that Mr Adams arrived at their cell whilst they were naked and instructed the officials to hand them clothes was not true. Mr Lionel Adams, it was asserted arrived at the Correctional Centre late in the afternoon when Mr Horn was preparing a report about what happened on that day. The allegation that the plaintiff was taken to infirmary after the altercation and not to hospital was not corroborated by Mr Dlwengu, the plaintiff's own witness. Mr Dlwengu testified that all the injured inmates were immediately taken to hospital and that was confirmed by Mr Horn's testimony.

[100] Also, it was argued that the plaintiff attempted to bring as many as possible members of the defendant on the fray by accusing them of assault. For instance, Mr

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<sup>13</sup> R v Mohamed (55) 1938 AD 30



Henry left Section 4 to hospital immediately after he was bitten by the dog. He could not assist in bringing order to the section. Mr Matthee similarly, it was stated, he was not at the Correctional Centre on that day as he took an inmate to hospital. A trip sheet was produced as proof to that effect. Mr Dlwengu on the contrary, did not make mention of Mr Matthee's presence during the altercation. The plaintiff was adamant that the trip sheet was completed to remove Mr Matthee from the scene. It was expected that Mr Dlwengu would corroborate the plaintiff in all respects as in his testimony he portrayed an image of being present throughout the alleged assault of the plaintiff. It was argued that he missed the part that the plaintiff said he was assaulted with electrical devices and tonfas on his head.

[101] It was the defence argument that convincingly, the head of prison was present at all times of this altercation. He was present when the inmates were driven into their cells and immediately ordered all inmates to come out naked for purposes of a search. For doing so, they quelled the possibility of another attack on the officials.

[102] The defence Counsel noted that the plaintiff wanted to exaggerate his situation by testifying that after his admission in Eben Donges Hospital, he remained unconscious for five (5) days and woke up at Tygerberg Hospital. His testimony was in stark contrast with that of Mr Dlwengu, his own witness who stated that he met the plaintiff the next day (9 February 2009) at the prison reception where he signed out to be transferred to Helderstroom Correctional Facility. This fact was corroborated by Mr Horn who testified that plaintiff was transferred on the next day to Helderstroom Correctional Facility.

[103] The available evidence and the Criminologist report stated that the plaintiff stabbed Mr Pekeur on the head; the plaintiff chased Mr Van Deventer's dog in the direction of Mr Paulse; the 26 gang planned the attack on the warders (officials) the previous day; the plaintiff received the rank of inspector (glass) in February 2008; the plaintiff had to take blood in order to legitimize his rank; there were still incomplete gang rituals that had to be completed; the 26 gang used a ruse to get the officials to unlock the communal cell after which they launched the assault on the warders. In fact, on the morning of the attack (8 February 2009) Mr Dlwengu approached Mr

Pekeur with a request for permission to have a seven-a-side soccer tournament.<sup>14</sup> In retrospect it was the defence submission that it follows that Mr Dlwengu's request was intended to have all rooms unlocked in line with their plan to attack the warders. It was stated that given the aforementioned circumstances, the plaintiff's claim on merits should be dismissed.

[104] The plaintiff's Counsel disputed that there was a necessity for self-defence by the officials. It was plaintiff's Counsel's submission that according to Mr Horn's testimony they were approached by ten (10) – twelve (12) inmates with knives. At the time there were about fifty officials in the courtyard. In that instance, the officials could have easily pushed them back into the cells without assaulting them. It was the plaintiff's assertion that there was no attack on the officials when Mr Horn entered Section 4, it had stopped. The officials, it was stated did not act in self-defence but on a revenge attack on the inmates.

[105] The plaintiff argued that this Court has to decide whether there was an emergency situation which necessitated the officials to use the minimum force. In the plaintiff's understanding there was no imminent attack on the officials. As a result thereof, the force used exceeded the bounds of self-defence. The defendant did not discharge the onus that the officials acted in self-defence. The plaintiff's Counsel asked the Court to find in their favour.

### *Analysis*

[106] In his claim, the plaintiff gave a background that for a number of years he has been a victim of inhumane and brutal treatment by the officials of the defendant which resulted in the plaintiff and other inmates being deprived of hard earned privileges and rights. One official who made himself guilty of this treatment and harassment was Mr Pekeur. After the plaintiff who was with Mr Daniels on 8 February 2009 was allegedly advised by Mr Pekeur that he was earmarked to be transferred to Kokstad Maximum Centre and would be downgraded for that purpose, he and Mr Daniels resolved to attack Mr Pekeur. It was the plaintiff's testimony that he stabbed him once. The plaintiff's testimony was in total contrast with Mr Pekeur's

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<sup>14</sup> Record p 43 – line 8-14

testimony and the stab wounds sustained by Mr Pekeur during this attack which amounted to forty-two (42).

[107] During his testimony, the plaintiff did not testify about any of the rights and privileges that were taken away by the officials whilst he was incarcerated at Brandvlei Correctional Centre. The only rights and / or privileges to be gleaned in his testimony to have been taken was when he received punishment after the stabbing of Mr Pekeur. Even then, that happened after he was transferred to Helderstroom Correctional Centre. Before the incident of 8 February 2009, he had appeared before the CMC which is the committee responsible for the downgrades and was not downgraded nor his rights and / or privileges taken away. Throughout his testimony, the plaintiff did not testify to the rights and privileges that he was deprived of that led him to attack Mr Pekeur, which on its own is no justification for taking law in his hands. The Court was only made aware of his downgrade to Group C over six months after he stabbed Mr Pekeur and had already been transferred to Helderstroom Correctional Facility. That, in my view has nothing to do with what happened on 8 February 2009. It is my considered view that, the allegations of his victimisation and maltreatment at Brandvlei Correctional Facility are not supported by any evidence.

[108] Also, it appeared that according to plaintiff, Mr Pekeur was his main target and was the reason for his complaints that were not taken into consideration. In my assessment, the plaintiff did not follow a standardised complaint mechanism for his complaints to be actioned. Even if Mr Pekeur promised to investigate his complaints, but never did, as a person who has been long in that Centre, he knew the complaints procedure fairly well. If he did not, he should have escalated his complaint to Mr Pekeur's supervisor or Head of Centre. Mr Botes testified that he was the head of section and the CMC member, should the plaintiff had approached him with his complaints, they should have been actioned. The fact that the plaintiff stated that Mr Pekeur did not take care of the complaints did not justify physical attack on his person. This Court has to dismiss those accusations forthrightly.

[109] It is therefore common cause that the plaintiff is serving a life sentence and an additional seven years based on this incident. When he gave testimony before this

Court he had served eighteen (18) years of the life sentence. He did not dispute that he knew the procedure that was employed by the defendant before any inmate is downgraded to a lower grade. In any event, he was not downgraded whilst in Brandvlei Correctional Facility. The plaintiff is a highly intelligent and educated man. If he had a reason to complain throughout the years as he put it, surely he would have reduced such complaints into writing and even escalated them to the Inspecting Judge. Nothing of that nature happened.

[110] Be that as it may, the plaintiff knew that Mr Pekeur does not have authority to take such decisions single-handedly, it was the CMC that was tasked with grading functions. Therefore, his reasons and ultimate decision to attack Mr Pekeur does not hold. Even then, the plaintiff and his contingent did not attack Mr Pekeur only, as it was their resolve. About seven (7) officials who were with Mr Pekeur to open the cell for Mr Fillies' fictitious visitor were assaulted and stabbed by the inmates. These officials were overpowered by the inmates and some inmates took over their equipment and / or weapons. His evidence that the attack was planned between himself and Mr Daniels does not hold, as it is not borne out by the evidence before Court that the launch of the attack against Mr Pekeur and other officials was a co-ordinated plan. If it was the only two. i.e. the plaintiff and Mr Daniels who attacked Mr Pekeur out of frustration, he could not explain why half of the inmates in that cell had knives and or sharpened objects and ready to immediately attack after the "up" was called.

[111] The plaintiff's evidence was, in any event riddled with contradictions and inconsistencies and could not be relied on by this Court with regard to his alleged assault. He testified that there was Mr Pekeur, Mr Bennie Matthee, Mr Claasen, Mr Hendry, Mr Arries and other members who assaulted them. It escaped the plaintiff that when the security was re-enforced and officials from other components came to assist in Section 4, Mr Pekeur and his initial colleagues who came to open the cell had long been taken to hospital as they sustained serious stab wounds. Mr Matthee was also not in the premises as he testified that he was tasked with transporting an inmate to hospital with his colleague, the late Mrs June; and Mr Hendry had been transported to hospital as he was bitten by Mr Sitera's dog. It seems that the plaintiff

mentioned names of the officials who were familiar to him not according to what happened in reality.

[112] Due to the volatility of the situation, an alarm was sounded and other officials responded to an emergency situation in order to put the status quo back to normal. However, the evidence on record pointed out that the officials encountered further resistance and violence from the inmates. Mr Horn, the head of the Correctional Centre came to Section 4 to respond to an emergency situation with other officials and they witnessed their colleagues being stabbed and assaulted. It was Mr Cupido's testimony that when he arrived the floor was full of blood.

[113] It was Mr Horn's testimony that after they were confronted with an extremely dangerous situation, they had to use the shock shields in driving the inmates back to the cell. Also they had to act fast given the fact that the number of inmates was much greater than the number of officials. That is, there were about one hundred (100) inmates outside in the courtyard and there were about fifty (50) officials who responded to the emergency call. It is unbelievable where the plaintiff's Counsel got to ten (10) – twelve (12) inmates that approached the officials with knives as compared to 100 inmates that were in the courtyard. Even if there were ten (10) – twelve (12) inmates that approached the officials with knives, it was not disputed that there were about one hundred (100) inmates in the courtyard. In my considered view, and taking into account Mr Horn's state of mind during this occurrence, he was justified in acting swiftly and allowed the officials to use reasonable force to avert the foreseeable danger that was facing them.

[114] It was Mr Horn's undisputed evidence that the plaintiff was in the front line and he resisted when they tried to lock the inmates in cell 5. In fact, it was testified by Mr Horn that the plaintiff decided to hold on to the gate with both hands. If that was the situation, it is expected that he might have sustained injuries in his arms during such resistance of not wanting the grille to be closed.

[115] The plaintiff argued that there was no attack when the other officials came to the rescue of the officials who were attacked by the inmates. The violence had stopped. They even attempted to classify the events as the two (2) different

scenarios. That on its own is outrageous. Mr Horn and the other officials testified to the life threatening nature of the situation. Even if the plaintiff would want to downplay the events of the attack on that day, Mr Horn and the officials of the defendant could not have surrendered to the lawlessness and unruly behaviour of the inmates. It was not for the inmates to dictate the governance of the Correctional Centre. It was undisputed that the plaintiff and his contingent posed a greater danger to the officials even after the greater staff component of the facility stepped in to calm down the situation. Mr Horn stated that when the plaintiff ultimately entered the cells, he was already injured as he observed that he was bleeding. It was denied by Mr Horn that the officials assaulted the inmates. In my opinion, there was a fierce fight which needed to be dealt with urgently by the management and officials at the Centre.

[116] The plaintiff attempted to mislead the Court that he was induced into coma and stayed in hospital for some days and ultimately woke up at Tygerberg Hospital. Mr Horn and Mr Dlwengu both testified that the plaintiff stayed overnight at Eben Donges Hospital, and on his discharge the next day he was transferred to Helderstroom Correctional Centre. Mr Dlwengu testified that he met him at the reception area where he was awaiting for the process of his transfer. In my view, the plaintiff tried to exaggerate the extent of his injuries, but his allegations are not borne out by any proof. This made him not a credible and reliable witness to say the least.

#### *Was self-defence justifiable in the circumstances*

[117] The requirements for self-defence are generally accepted as stated above. It was submitted convincingly that the defendant invoked such a defence out of necessity. The test for self-defence / private defence is objective in nature. In as far as the requirement for a reasonable man's test is concerned, in *S v Steyn*<sup>15</sup>, the Court stated that:

*"[I]n considering lawfulness the courts often do measure the conduct of the alleged offender against that of a reasonable person on the basis that reasonable conduct is usually acceptable in the eyes of the society and, consequently, lawful."*

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<sup>15</sup> 2010 (1) SACR 411 (SCA) para [18]

This means therefore that the test for unlawfulness of the attacker's conduct requires a diagnostic, *ex post facto* assessment that is purely objective in nature. The plaintiff's version is not that his attack to the officials was lawful. His only motivation was that he acted out of anger and frustration due to the fact that his complaints for years were not taken into consideration and was due to be transferred to Kokstad Maximum Centre. The plaintiff's allegations were proved not to be correct.

[118] The requirements of the attack and the requirements of defence are discussed clearly by C R Snyman in his book.<sup>16</sup> It was stated that "a person act in private defence, and her act is therefore lawful, if she uses force to repel an unlawful attack which has commenced, or is imminently threatening, upon her or somebody else's life, bodily integrity, property or other interest which deserves to be protected, provided the defensive act is necessary to protect the interest threatened is directed against the attacker, and is reasonably proportionate to the attack."<sup>17</sup>

[119] In the circumstances where the plaintiff claims that both his hands were broken, he sustained cuts, bruises and abrasions in his body or head and he was bitten by a dog on his left foot and right buttock, after he and his contingent launched the attack on officials and played a prominent role in the attacks and resisted the officials' measures to lock them up in the cells. In my view, the force that was applied by the officials in the circumstances was reasonable and justifiable. In any event, it appears that this was an enduring or moving scenario, it was not stated exactly during testimony by the plaintiff as to what equipment or weapon was used by the defendant's officials to break his bones for this Court to find that excessive force was used to assault the plaintiff. Before Court is the evidence of quelling the violence as stated by the defence witnesses.

[120] However, this Court has to bear in mind that the defendant is responsible for the control and the proper administration of the Correctional Facilities in general. In a situation where they are responsible for law and order at their facility, it was expected of them to employ reasonable measures to quell the situation. When the officials were stabbed by the inmates, it was necessary for them to bring law and

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<sup>16</sup> C R Snyman, Criminal Law Sixth Edition 2014 pages 102 - 114

<sup>17</sup> Steyn (supra) para [16]

order in the Correctional Centre into place. Our courts recognize the principle that if it is dangerous for X to flee in the sense that she would then expose herself to, for example, a stab or a shot in the back, she need not flee, but may act pro-actively and put her attacker out of action.<sup>18</sup> The law does not expect a person to gamble with her life by turning her back on her attacker and merely hoping that she will not be hit by a bullet or be stabbed in the back with a knife by the attacker.<sup>19</sup> Put simply, it is the attacker (the plaintiff), who unlawfully and intentionally launched the attack, who carried the risk of injury or death, and not the attacked party.

[121] Further, the law does not expect X to flee from her own house if she is attacked there.<sup>20</sup> Similarly, the officials could not have deserted the Correctional Facility as the defendant expects them to administer and protect the facility. It is not expected of a law enforcement officer, such as a police officer, to flee if she is being attacked while lawfully performing her duties.<sup>21</sup> The position of the correctional officers is equally placed to that of the law enforcement officers. In the circumstances, the same principle applies.

[122] In a situation where the plaintiff and his contingent inflicted numerous amount of stab wounds on the officials and were subsequently found guilty of attempted murder by the criminal court consequent thereto, it is appropriate to find that the officials were justified in using minimum or reasonable force to quell a violent situation that prevailed at Section 4 in Brandvlei Correctional Facility on 8 February 2009.

[123] No evidence nor argument was tendered before this Court that the officials had breached their duty in terms of Section 10 and 12 of the Constitution of South Africa 108 of 1996. The evidence that the inmates were made to take off their clothes was explained that it was for security reasons as they posed danger to the officials as they had sharpened objects or knives in their possession. Upon the finalisation of search, they were issued with clean clothes. The plaintiff's version that

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<sup>18</sup> Steyn (supra) para [24]

<sup>19</sup> Steyn (supra) para [21]; See also Hoor 2010 SACJ 125-127 in his discussion of this judgment and Ngubane v Chief Executive Director of Emergency Services, Ethekwini Metropolitan Services 2013 (1) SACR 48 (KZD) para 27

<sup>20</sup> Engelbrecht 2005 (2) SACR 41 (W) para 354

<sup>21</sup> Ntsomi v Minister of Law and Order (supra) at page 528 - 530



he was issued with clothes after the arrival of Mr Lionel Adams was refuted by Mr Horn as Mr Adams only arrived at the Centre at the late hours of the afternoon when Mr Horn was busy preparing his report on the incident on that day.

[124] It is my considered view that the defendant has put a plausible defence and as a result the plaintiff's claim has to fail.

[125] In the circumstances, the plaintiff's claim on merits is dismissed with costs.

**MANTAME J**  
**WESTERN CAPE HIGH COURT**

<b>Coram</b>	<b>:</b>	<b>B P MANTAME, J</b>
<b>Judgment by</b>	<b>:</b>	<b>B P MANTAME, J</b>
<b>FOR PLAINTIFF</b>	<b>:</b>	<b>ADV T RUITERS</b> <b>0719190738</b> <a href="mailto:theresaruiters@capebar.co.za">theresaruiters@capebar.co.za</a>
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**Date (s) of Hearing** : 02 December 2019  
03 December 2019  
09 December 2019  
10 December 2019  
17 February 2020  
18 February 2020  
19 February 2020  
20 February 2020  
23 March 2020  
18 August 2020  
19 August 2020  
20 August 2020  
24 August 2020  
15 September 2020  
16 September 2020  
17 September 2020  
18 September 2020  
10 August 2021  
23 August 2021  
30 August 2021  
31 August 2021  
02 September 2021  
11 October 2021  
14 October 2021  
26 January 2022

**Judgment delivered on** : 12 MAY 2022