IN THE HIGH COURT OF SOUTH AFRICA

[EASTERN CAPE DIVISION – MTHATHA]

CASE NO.: 566/2016

In the matter between:-

DUMISANI MATINJWA **PLAINTIFF**

and

MINISTER OF POLICE **DEFENDANT**

JUDGMENT

NORMAN J:

[1] Plaintiff is an adult male residing at Qokolweni Location, in the district of Mqanduli, in the Eastern Cape Province. He instituted an action on 19 February 2016 against the defendant. The claim is based on unlawful search, unlawful arrest and unlawful and wrongful assault. The claim was split into three (3) claims being, Claim A: related to unlawful and wrongful search of the plaintiff's home including the six-corner house where he was staying, Claim B: related to unlawful arrest and Claim C: related to unlawful assault and torture by the police.

[2] He claimed the following amounts: in relation to Claim A: R350 000.00, in respect of Claim B: R50 000.00 and in Claim C: R250 000.00. The total amount claimed for damages is R650 000.00.

[3] Mr Melane appeared for the plaintiff and Mr Nomnyangwana for the defendant. At the commencement of the trial the parties applied, by agreement, for separation of issues relating to merits and *quantum* in terms of Rule 33 (4) of the Uniform Rules of Court, which was granted.

Plaintiff's evidence

[4] Plaintiff testified that at midnight on 14 May 2015 he was asleep in a six cornered room when he heard a knock at the door. He heard the people knocking shouting "police". He opened the door. Inside the room there was illumination from the television set that was on since he fell asleep while watching it. He moved towards the door to try and switch on the light as the light switch was closer to the door. The police blocked him saying that he was going to run away and he retreated.

[5] One of the police officers switched on the light. There were about eight to twelve police officers that entered the room, only one female police officer was present. They told him that they were looking for dagga. He denied any knowledge of dagga and they said they could smell dagga from the house. He responded by asking "how does it smell?". Some of the police officers started hitting him with open hands and he was warding off the blows using his hands. The other police officers were busy searching the room.

[6] Since he was warding off the blows, the police officers decided to handcuff him. Some of those officers continued to assault him and he fell down on three (3)

occasions. The police turned the room upside down and his clothes were removed from the wardrobe and scattered on the floor.

[7] As he was on the floor he was kicked all over his body. The police officers used the handcuffs to lift him up whenever he fell down. They were searching even behind the paintings or photographs that were hanging on the walls. When they could not find dagga, they asked him about the presence of other people in the main house, a six -roomed house. He told them that he was staying alone.

[8] They asked for the keys for that house. When they opened it, they realized that there was no one but they started conducting a search. They searched everywhere and in every room and in the process threw her sister's clothes all over the place. They turned couches in that house upside down and looked for holes underneath them. The police insisted that he must disclose to them where the dagga was. He thought that even in that house he fell down about three times as they continued to assault him.

[9] His ears could not hear properly. They took him to the kitchen where they retrieved plastic bags from the drawers. They used the plastic bags to suffocate him. He urinated and defecated on himself. When he cried they remonstrated with him. They took him to the shack outside where fowls are kept. They also searched the shack but found nothing.

[10] They took him back to the six cornered room. They were laughing and teasing him for having soiled himself. They instructed him to take off the soiled shorts. They removed the handcuffs when they instructed him to take off the soiled clothes. He was instructed to take off his shorts in front of a female police

officer. He put on clean shorts. They took him out of the house and did not tell him where they were going.

[11] They refused to let him phone his sister. He testified that he was seeing all these police officers for the first time that evening. They did not introduce themselves to him but he saw three (3) name tags and those were, a coloured police officer by the name of Livers, one Mbiza and one Mlambo.

[12] They left with him in a police vehicle. There were about three (3) police vans parked outside his home. These police officers, according to him, also smelt of alcohol. Two police officers sat with him at the back. There were five police officers in all and officer Livers switched on the car radio. When he looked at the car radio, the time was reflected as 3h30 am. Officer Livers said he must not try and narrate or even open a case because when he does that he will find them there at the police station. They asked him to disclose the name of the person or a place that sells dagga. They drove away with him, he did not know where they were going and then they just dropped him off on the side of the road away from his home.

[13] He said it was a cold night. He was not wearing shoes. He had bruises all over his body and he showed to the court two fingers on his right hand that were crooked. He said he suffered injuries on his back because he was kicked on his back and on the waist area, when he was lying down. He had lumps and bumps on his wrists. He had black marks on his wrists which, according to him, were caused by the handcuffs.

[14] Upon his arrival at home he phoned his sister who lived in Libode and went to her . She took him to the doctor almost fifteen days after the incident.

[15] He recalled that on the day he went to the police station in Mqanduli and upon his arrival he saw officer Mlambo who refused to open the case and told him that cases like those are supposed to be handled by the branch commander who would only be back on a Tuesday as he was attending a conference.

[16] He then waited for theTuesday and then went back. Upon his arrival he found the branch commander, Officer Naidoo. The branch commander instructed the police officers to open the case. A female officer by the name of Gova, opened it. She then handed it over to the investigating officer.

[17] After a while, he received a call from one Jimmy Mofokeng of the Independent Police Investigative Directorate (IPID). He met with Mofokeng who took down his statement. One day he again received a call from Mofokeng who informed him that they found officers Livers and Mbiza. He wanted to confirm the number of the police officers who were involved in the alleged assault. He reiterated to Mofokeng that there were between eight (8) to twelve (12) police officers. Nothing happened with the IPID case.

[18] He told the court about his experience as he was running away from the police, when they dropped him off on the side of the road. He felt that he was in harm's way because he could be a victim to anyone and he could have been attacked by people from the village. He became emotional when he expressed the humiliation he felt when he soiled himself and being forced to undress in the presence of a female officer.

[19] Mr Nomnyangwana crossed-examined the plaintiff. The cross-examination centered around the dates, namely, the 14th and 15th May. It was put to the plaintiff that the particulars of claim did not mention 14 May 2015 but 15 May

2015. Plaintiff was adamant that because the assault started during midnight on the 14th, it carried on until the 15th. He testified that he had gone up to standard 9 at school. In cross-examination, he was asked whether the police had asked for permission to search his premises and he denied that they did.

[20] He was asked about the reason why he did not go to the clinic or the hospital the following day. His response was that he was still hiding because he feared for his life. He denied that he opened a case against the police in 2016. He was questioned about the fact that in the initial particulars of claim, he did not put down the names of the three police officers whose name tags he allegedly saw. He was adamant that he had mentioned all three (3) police officers by name to his erstwhile attorneys.

[21] He was also questioned that there was no mention of the shack in the particulars of claim. It was suggested to him that after the defendant had discovered certain documents, it was only then that the particulars of claim were amended and two names of other police officers were added. He denied that. He was asked about the coloured police officer whether he spoke to him in English or Isixhosa. His response was that he was speaking Isixhosa, although he was not fluent in the language. It was put to him that constable Livers was not on duty on 15 May 2015. He was adamant that during the evening of the 14th until the following day he was present at his home.

[22] A bundle of documents entitled ‘Better Discovery by the Defendant’ was admitted as *Exhibit A.* He was questioned about visiting the doctor much later and about the origins of the J88 form. He testified that he got the J88 form

from the police station and that he delayed going to the doctor because he had no money as he depended on his sister.

[23] It was put to him that at page 9 of the J88 form, the name of the police station and the CAS number were not recorded. He stated that he had received that form from the police and it was completed by the doctor. It was confirmed under cross-examination that on the J88 he indicated that he was assaulted on the 14th of May 2015.

[24] The defendant denied that the plaintiff was handcuffed. He was asked about the fact that the J88 did not record the injury on the fingers. He indicated that he did not know why it was not written. He confirmed that he opened a case with the police and he recalled that at some stage he received an SMS message with a number 02/06/2015 on his phone, although he was not certain about the number. He did not recall whether he took the J88 form from the doctor back to the police station.

[25] He indicated that he was not aware that one does not pay the doctor if one has a J88 form. It was suggested that his evidence was not supported by the allegations in the initial particulars of claim where he indicated that he was arrested at Mqanduli. That changed in the amended particulars of claim where he alleged that the police dropped him off on the way and did not detain him at the police station. He stated that he was never detained instead he was dropped off on the side of the road. It was put to him that the severity of his assault demanded or warranted him seeing a doctor immediately. He repeated his evidence that he was scared to leave the house.

[26] The version of the defendant was put to him, to the effect that , the defendant does not dispute that he was arrested on 14 May 2015 because the police officers were not on duty. It was again put to him that he was never searched, assaulted nor arrested by the police. He denied that his constitutional rights were explained to him. When asked why he did not mention that in his evidence, his response was that he forgot to mention it. It was put to him that if he was arrested the police would not drop him on the side of the road, they would take him to the police station. He was adamant that everything that happened to him was done by the police.

[27] In re-examination, he explained that he told the doctor that the assault had occurred on the 14th May 2015 at midnight and that was the same date that he gave to his erstwhile attorneys. He did not draft the particulars of claim. He was not even aware that the particulars of claim mentioned the 15th and not the 14th. He was not aware that the erstwhile attorneys had mentioned only the name of constable Livers in the original particulars of claim. Thereafter plaintiff closed his case.

Absolution from the instance

[28] The defendant applied for absolution from the instance on the basis that the policemen mentioned on the day of the plaintiff's arrest, were not on duty. Mr Melane submitted that the police have a case to answer. After argument the court refused absolution from the instance. The test for absolution from the instance was succinctly set out in **Claude Neon Lights (SA)Ltd v Daniel**[1] to be, *"whether there is evidence upon which a court, applying its mind*

[1] 1976 (4) SA 403 (A) at 409 G-H.

reasonably to such evidence, could or might (not should, nor ought to) find for the plaintiff."

[29] In **Gordon Lloyd Page & Associates v Rivera and Another[2],** Harms JA dealt with this test as follows:

> *" This implies that a plaintiff has to make out a prima facie case- in the sense that there is evidence relating to all the elements of the claim- to survive absolution because without such evidence no court could find for the plaintiff…As far as inferences from the evidence are concerned, the inference relied upon by the plaintiff must be a reasonable one, not the only reasonable one… Having said this, absolution at the end of the plaintiff's case, in the ordinary course of events, will nevertheless be granted sparingly but when the occasion arises a court should order it in the interests of justice."*

[30] There was, in my view, existence of evidence that satisfied the above-mentioned test. It was for that reason that the defendant's request for absolution from the instance was refused.

Defendant's case

[31] Defendant led the evidence of Sergeant Hazron Warren Livers. He is a police officer stationed at the Mthatha Flying Squad. In 2015 he was stationed at the Mqanduli police station. He was doing Community Service Centre (CSC) and sometimes crime prevention duties. On 15 May 2015 he was not on duty, he was at home. He denied that he visited the plaintiff's home because he was not on duty. He denied that he assaulted him or that he searched his home.

[32] He was asked about the whereabouts of Mbiza on that day. He answered that he was not on the same shift as Mbiza. He was on relief C and Mbiza was on relief A or B. He was asked about a policeman known as Mlambo at the

[2] [2000] 4 ALL SA 241 (AD) at 243B

Mqanduli police station and he answered that there was no such person at that police station. He denied the plaintiff's version. He explained how a person obtains a J88 form from the police station. He stated that a person comes to a CSC to report a crime. Once they establish that the person has been assaulted, he will be allowed to open a docket and then the police would issue a J88. He stated that it is only the police that issue the J88 and no other department.

[33] It was put to him that the plaintiff was claiming an amount of R650 000.00 from the defendant for damages. His response was that he was overwhelmed to hear that. When it was put to him that the plaintiff testified that he was wearing uniform and a name tag. His response was that he is well-known in Mqanduli because he used to assist a lot of people when it came to accidents and during the roadblocks. When asked how many coloured male officers were at the Mqanduli police station when he was still stationed there. He stated that he was the only one at that station. He was asked whether he would have access to government vehicles if he was not on duty. His response was that he would not have access at all unless he was authorized.

[34] Under cross-examination he stated that he had been in the police force for eighteen (18) years and when he was stationed at Mqanduli his rank was that of a constable. He confirmed that when he was on duty he would wear uniform. He didn't know the plaintiff, he was seeing him for the first time at court. When asked whether he was wearing a name tag, his response was "*when we wear a bullet proof it covers where the name tag is*." When asked again when you wear your uniform, do you wear a name tag? His response was: *Yes I do*.

[35] When asked about officer Mofokeng of IPID, he stated that he could not recall that name. He testified that the plaintiff would be lying if he implicated him because people lie. He stated that he was well known in Mqanduli. Thereafter, the defendant closed its case.

[36] Mr Melane submitted that the plaintiff had discharged the onus resting on him. In addressing the issue of the date between 14th and 15th, he submitted that, that is not an issue that would taint the evidence of the plaintiff. In his evidence, plaintiff stated clearly that the incident happened on the evening of 14th May 2015 and he was tortured, assaulted, his home was searched until around 3h30 am on 15 May 2015.He submitted that even if there was an error on the date, the court would not reject his evidence based purely on that because his version has not been contradicted.

[37] When addressing the issue of the particulars of claim, the original and the amended of particulars of claim, he submitted that the plaintiff did not draft the particulars of claim, the erstwhile attorneys drafted them. He submitted that the evidence of the plaintiff stands alone because there is no evidence coming from the defendant to refute it.

[38] As far as the evidence of sergeant Livers is concerned, his submission was that he had come to court to clear his name. His evidence also left the evidence of the plaintiff unchallenged. The plaintiff had testified how the premises were searched; how he was assaulted and there has been simply no evidence but a bare denial of that evidence coming from the defendant. In this regard he relied on the case of ***R v Mazema***[3]. He submitted that the fact that the plaintiff was taken into the police van, he was handcuffed behind his

[3] 1948 (2) SA 152 (E) at page 154.

back and driven away against his will, that was arrest and in this regard he relied on the case of ***Netshindama v Minister of Police***[4]***.***

[39] He submitted that the Court must find that the evidence that was given by the plaintiff was clear and acceptable and there is no evidence on the part of the defendant. He submitted that this is a typical case where the police had abused their authority. They have an obligation to protect the citizens of the country, the plaintiff was alone at home and victimized, he argued. He submitted that there is no doubt that the actions of the police offend against section 10 of the Constitution.

[40] He conceded that the particulars of claim mention only that when the plaintiff was suffocated with a plastic bag he wet himself with urine only. When the plaintiff was asked about the reason why he did not mention the fact that he defecated on himself, his answer was that it was because he was ashamed and he did not want people to laugh at him. He submitted that the search was unlawful and it offended the provisions of section 12 of the Constitution that everyone has a right not to have their property searched. He asked that the Court must find that the police are liable to compensate the plaintiff one hundred percent (100%) for all proven damages.

[41] Mr Nomnyangwana, on the other hand, submitted that the plaintiff both in his initial and amended particulars of claim mentioned 15 May 2015. If the date of the 14th May 2015 is the date relied upon then the police were not on duty. He submitted that the fact that he mentioned only three (3) police does not support his evidence. He submitted that there were many contradictions in the evidence of the plaintiff such as relying on a wrong date, which made it

[4] 2020 ZAGPPHC page 138 delivered on 20 March 2020.

difficult for the defendant to plead. He submitted that the plaintiff never took the J88 from the Mqanduli police station and he never went to a doctor in Mqanduli. He submitted that the J88 and the original thereof always goes with the docket and the members mentioned were never charged.

[42] He submitted that there was another contradiction between the times 3h00 and 3h30 am that plaintiff mentioned. He submitted that sergeant Livers would not have been able to communicate with the plaintiff without an interpreter because he does not speak isi Xhosa. When asked by the court about the injuries on the wrists of the plaintiff and the fact that Dr Khahla who examined the plaintiff had recorded that those injuries were caused by handcuffs, Mr Nomnyangwana conceded that the Court must take that into account because handcuffs would cause those injuries if one moved whilst being handcuffed. He submitted that he could not therefore ask the Court to reject that evidence.

[43] He also confirmed that he observed that the plaintiff's fingers were crooked and he had observed them. He said the case of the plaintiff was not good enough for the damages he was claiming. He submitted that the Court should dismiss the claim with costs.

[44] In reply, Mr Melane submitted that the court must reject the evidence of sergeant Livers, where he testified that there was no one by the name of Mlambo at the Mqanduli police station because the defendant in his plea had admitted the names of the police officers. He submitted that because that issue was never an issue between the parties, it was never canvassed with sergeant Livers because it was an admitted issue by the defendant. He

persisted in his submission that the Court must find that the police are liable to compensate the plaintiff.

Discussion

[45] The court is alive to the fact that plaintiff is a single witness and the cautionary rules is assessing his evidence should apply. In ***De Klerk v Minister of Police***[5], the court dealt with the rules and test applicable in delictual claims. It stated:

> *"[29] Subject to the usual rules of delictual liability, a wrongdoer is liable for all the harmful consequences of his or her wrongful act. As will become apparent later, the content of the fault requirement may play a role in limiting liability, but for the moment I shall focus on the elements of factual and legal causation. Factual causation is tested by asking whether the harmful consequence would have occurred, but for the wrongful act. Legal causation (or remoteness of damage) places a policy- laden limit on the factual consequences for which the wrongdoer is held liable.*
>
> *[30] The test for legal causation is supple, consistent with its foundation of public policy…This court has held that, in applying the supple test, a court should have regard to these and other tests, but should not apply them dogmatically…"*

[46] Counsel for the defendant submitted that the plaintiff failed to prove that he was assaulted by the police and because that fact was not proved then the claim must fail. I disagree. It would place an insurmountable burden on the plaintiff if the law would expect a plaintiff to identify each policeman that allegedly caused him harm with precision.

[47] In ***Minister of Safety and Security v Van Duivenboden***[6], the court held that a plaintiff is not required to establish the causal link with certainty, but only to establish that the wrongful conduct was probably a cause of the loss, which

[5] 2018 (2) SACR 28 (SCA) at page 40 para 29.
[6] 2002(6) SA 431 (SCA) [2002] 3 ALL SA 741; [2002] ZASCA 79) para 25.

calls for a sensible retrospective analysis of what would probably have occurred, based upon the evidence, and what can be expected to occur in the ordinary course of human experience.[7]

[48] The plaintiff gave his evidence confidently, in a very clear and satisfactory manner. He became very emotional when recalling the incident and the treatment that he suffered from the police who had visited his home. The issue of the date, as far as this court is concerned, is, as submitted by Mr Melane, a non-issue. I say so because in the letter of demand to the defendant which has been put up in the bundles, the demand makes it very clear that the offence complained of happened on the 14th of May 2015 at about 00h00 at Tunzini Location, Qokolweni Administrative Area. In the same demand the names of constable Livers and Mbiza were mentioned. That letter of demand was issued on 28 October 2015. Any suggestion that the 14 May 2015 is a fabrication on the part of the plaintiff lacks merit.

[49] Exhibit "B" is a J88 form which was also handed in by consent. That exhibit bears the following information: an official stamp written "The *Commander, CSC 28 May 2015, P.O Box Mqanduli."* On the J88, the following is written by Dr Khahla: *"Relevant medical history and medication assaulted and handcuffed by police, night of 14 May 2015".* The clinical findings: "*Allegedly assaulted by police in the night of 14 May 2015 with kicking and fists and suffocated him using plastic bags and handcuffed him throughout this process and left him far from home in a remote area. It was cold and he had a pyjama only":*

[7] EF v Minister of Safety and Security 2018 (2) SACR 123 SCA.

[50] The report made by the doctor is consistent with the evidence of the plaintiff. The doctor would not record each and every minute detail of the events but he or she had captured information relevant to the cause of the plaintiff's injuries. On the pictorial, the doctor depicted healed bruises on the plaintiff's back towards the waist and the handcuff marks on both wrists. There were also bruises around the ribcage on the left-hand side. The crooked fingers were observed by the defendant's legal team and the court. The explanation that at the time the plaintiff went to the doctor his fingers were swollen was not challenged. In fact, defendant's counsel recognized the gravity of the injuries on the plaintiff and correctly made the concession that the medical evidence cannot be ignored.

[51] His evidence was also corroborated by sergeant Livers because he made it clear that only the police issue a J88 once they establish that a person was assaulted. It is not too far-fetched to find that the J88 was issued by the police because they had established that plaintiff was assaulted. When the issue of whether the plaintiff had taken the J88 to the police after it was completed, he was clearly not aware of what happened, and his answer was very direct and he indicated that he could not recall whether it was taken back. But it is understandable because he was not only dealing with the police to whom he had laid a charge but there was also IPID that was involved in the investigation of his complaint. In any event the report was handed in by consent.

[52] The evidence of sergeant Livers related to a wrong date and did not controvert the evidence of the plaintiff. The date of 14 May 2023 does not even appear on a schedule attached to "Exhibit A" , although according to the

calendar it fell on a Thursday, a week day. The defendant decided to simply confine himself to the 15th, although the particulars of claim made it clear '*on or about'.* When a party is confronted with such a pleading, the party is enjoined the invoke the provisions of Rule 21 and request further particulars. In this case, if the date of the 14th was being heard for the first time, I would perhaps agree with counsel for the defendant that, that was not made clear, but in this instance there was a demand which made specific reference to the 14th of May 2015. There was also a medical report which also made reference to that date.

[53] In so far as Sergeant Liver's evidence is concerned, he clearly, as correctly pointed out by Mr Melane had only come to clear his name. Unfortunately, his evidence fell short of disturbing the reliability of the plaintiff's evidence. Instead it corroborated it in the respects mentioned above. The defendant was confronted with direct evidence implicating his employees of unlawful and wrongful acts. He failed to rebut the evidence of the plaintiff.

[54] The plaintiff did not implicate the police falsely. I say so for these reasons:

(i) the defendant's counsel admitted that the marks on the plaintiff's wrists would have been caused by handcuffs. That corroborated the plaintiff's evidence. That evidence is also corroborated by the medical report;

(ii) the defendant had admitted that there were police officers known as Mlambo and Mbiza in the police service in its plea. Sergeant Livers also admitted the existence of Mbiza although he denied Mlambo.

(iii) The defendant decided not to call Mbiza although on sergeant Liver's evidence Mbiza would not have been on the same shift with him. The

defendant made an election not to call Mbiza and Mlambo. That means that whatever evidence had been given by plaintiff about Livers, Mbiza and Mlambo in relation to the 14th May and the events of that day remains unchallenged.

(iii) The fact that there is a J88 which, on sergeant Livers version, gets issued by the police only , corroborates the evidence of the plaintiff that he had received it from the police. On sergeant Liver's evidence the police would have established that the plaintiff was assaulted hence they issued the J88. The fact that there was no CAS number is not something that can be answered by the plaintiff because it is the police that must issue a CAS number. The plaintiff had indicated that he did receive an SMS with a CAS number as aforementioned. That evidence was not disputed.

[55] The fact that the plaintiff only mentioned having wet himself with urine and had not mentioned that he had soiled his shorts, is consistent with his evidence that he was overwhelmed with shame as he was naked in the presence of a female officer. I do not regard that as a contradiction because in any event particulars of claim are not evidence. Given the fact that the police deny that they were on duty on that day, whether that had been mentioned or not would not have made a difference because they would not have been able to refute the evidence of the plaintiff.

[56] In the circumstances, I accept the evidence of the plaintiff as being reliable and I accept that he was an honest witness. His evidence remains unchallenged. The plaintiff has succeeded in discharging the onus resting on him and has proved that the police searched his home which has a six-

bedroomed house, his six bedroomed home (the main house) and a shack outside without consent. I accept that he was humiliated, assaulted and belittled in a manner which he had testified in the presence of a female officer and by eight to twelve police officers. He tendered reliable evidence which is corroborated by the medical evidence to show that it is the police who inflicted harm on him.

[57] I am of the view that from the moment the police entered his home at that time of the night , they restricted his freedom of movement. They placed handcuffs on him, assaulted him, searched his home for dagga, ransacked the wardrobes and threw his clothes on the floor, taking him along when they searched the other house and shack, instructing him to take off the soiled shorts while watching him and further placing him in a vehicle with them. They had, by their unlawful and wrongful actions placed him under arrest.

[58] In ***Booysen v Minister of Safety and Security***[8], the Constitutional Court stated:

> *"The test essentially consists of two questions: first, whether the employee committed the wrongful acts solely for his or her own interests or those of the employer (the subjective question); and second, if he or she was acting for his or her own interests, whether there was nevertheless a "sufficiently close link' between the employee's conduct and the business of his employment (the objective question)."*

[59] When the police arrived at his home they announced their presence by shouting: "police". Thereafter they conveyed to him the purpose of their presence there, they were looking for dagga. They embarked on the search and on the assault on the plaintiff with the purpose of inducing him to tell the

[8] 2018 (2) SACR 607 CC at para [11].

police where the dagga was. They searched all the other structures situate on that homestead. They were wearing police uniform with their name tags on. They had their service firearms on them. They had handcuffs which they used to restrain the plaintiff. They had driven in police vehicles to get to the plaintiff's home.

[60] These factors clearly demonstrate that those police officers were performing their duties as employees of the defendant and were thus furthering the interests of their employer, the defendant. Even if they were on a frolic of their own abusing their power for their own interests, their actions were such that they were closely connected to their work as police officers. The plaintiff succeeded in proving that it is the police that committed the unlawful and wrongful acts. He also proved that in the process he suffered physical, and emotional harm, degradation of his dignity and an infringement of his constitutional rights.

[61] The treatment that the police meted out to him was harsh, brutal, unfair, cruel and unconstitutional. It is for these reasons that I find that the plaintiff is entitled to be compensated one hundred percent (100%) by the defendant for all proven damages.

[62] On the issue of costs, there is no reason to depart from the usual rule that the successful party should be awarded costs. Plaintiff as a successful party is entitled to costs of suit.

[63] **In the circumstances, I make the following Order:**

63.1 The Defendant is liable to compensate the plaintiff one hundred percent (100%) for all proven damages, arising from his unlawful search of his home, unlawful arrest and wrongful assault.

63.2 Defendant is ordered to pay costs of suit.

_____

T.V NORMAN

JUDGE OF THE HIGH COURT

Matter heard on 18 & 19 April 2023

Judgment Delivered on 25 April 2023

APPEARANCES

For the PLAINTIFF : ADV MELANE

Instructed by : L.L KETANI ATTORNEYS

SUITE 138 & 140

ECDC BUILDING

CNR YORK & ELLIOT STREET

MTHATHA

REF: LLK/06/CIV/DM-HC

For the DEFENDANT	**:**	**ADV NOMNYANGWANA**
Instructed by	**:**	**THE STATE ATTORNEY**
		94 SISSON STREET
		FORTGALE
		MTHATHA
		EMAIL: BShumane@justice.gov.za
		REF: 325/16-A6S (Mrs Shumane)