

SOUTH AFRICA / JUDGMENT

Magagula v Minister of Correctional Services (19938/2015) [2017] ZAGPPHC 799 (16 November 2017) [2017] ZAGPPHC 799

COURT

North Gauteng High Court, Pretoria

BEFORE

Louw

CASE / FILE NUMBER

19938/2015

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IN

THE GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

CASE

NO: 19938/2015

NOT

REPORTABLE

NOT

OF INTEREST TO OTHER JUDGES

REVISED

In

the matter between:

XOLANI
NICHOLAS
MAGAGULA Plaintiff
and
THE
MINISTER OF CORRECTIONAL
SERVICES Defendant

JUDGMENT

LOUW, J

- [1] The plaintiff is an inmate in the defendant's correctional facility at Witbank. The plaintiff claims compensation from the defendant as a result of injuries which the plaintiff says he suffered when he was assaulted on 29 December 2014 at the facility by prison warders employed by the defendant. By agreement between the parties, the quantum of the plaintiff's claim was separated from the other issues and postponed sine die.
- [2] The plaintiff testified that he had collected his breakfast from the kitchen at about 08h45 on the day in question and took it to his cell. While busy eating, one of the inmates came into the cell and said there were people fighting outside. He did not take notice, but shortly thereafter another inmate came in and said that the person in the fight was the plaintiff's friend and that he had just been stabbed. The plaintiff went outside and found his friend lying on his back with another inmate on top of him, engaged in a fight with the plaintiff's friend. The name of the plaintiff's friend is Andries Molotshwa. The plaintiff was not sure of the other person's name, but thought that it was Kgapule.
- [3] The plaintiff proceeded to remove the other person from the top of his friend. After removing the inmate who was on top of his friend, the plaintiff saw a knife stuck in his friend's forehead above his eye. The plaintiff pulled the knife out. At that stage, there was one female warder standing at the window of the nearby office and the male warder went out to press the alarm button.
- [4] The plaintiff further testified that he then stood up and as he was looking at the man who had fought with his friend, warders approached and assaulted him. He said there were three warders who assaulted him by hitting him with their batons on his body and his left arm. They did not communicate with him, but just assaulted him. He said that while they were assaulting him, other prisoners who were watching the fight, said that the plaintiff was not the one who was fighting, he was the one breaking up the fight.
- [5] The plaintiff, his friend and the one who fought with his friend were then taken to an office. Another inmate explained to the warders that it was the plaintiff's friend and Kgapule who were fighting. The three of them were then taken to the clinic inside the prison facility. The plaintiff was given pain tablets and medication to rub on his arm. His friend's wound was stitched. The plaintiff was then taken back to his cell.
- [6] The plaintiff further testified that he thereafter regularly went back to the clinic and asked to be referred for X-rays of his arm. He was told that he should just keep on taking the pain tablets. On about 12 January 2015, the plaintiff was taken to the Witbank provincial hospital. The X-rays that were then taken, revealed that his left arm was broken. The arm was put in plaster of Paris the next day.

- [7] The plaintiff was asked in cross-examination whether he immediately laid criminal charges. He said that he did, and that the charges were laid against three warders whose names he mentioned to the members of the South African Police Service when they arrived. The names he mentioned to the police were Mr. Masilela, Mr. Maluleke and Mr. Mendu. The plaintiff was asked whether that happened before or after he instituted the civil case. He said that he saw an attorney during the afternoon of the same day. It was then put to the plaintiff that he only mentioned the name of Masilela to the attorney. He agreed, and said that at that time, he did not know the names of the other two which he only got from inmates approximately three days after the attorney arrived.
- [8] The plaintiff was further asked in cross-examination why he had withdrawn the criminal charges on 15 September 2015. He said that he did so because only one warder, Masilela, had been arrested, not the others.
- [9] The plaintiff was asked what he did with the knife after pulling it out from his friend's face. He said that he just felt the warders assaulting him on his back and that the knife fell down. He thereafter saw the knife in the office, in the possession of the warders.
- [10] He said in cross-examination that he was only hit by batons. It was then put to him that it was alleged in his particulars of claim that he had also been assaulted with open hands, clenched fists and booted feet. The plaintiff said that what he remembered, was that they used batons.
- [11] It was put to the plaintiff that the defendant's version would be that none of its officials assaulted the plaintiff. He said that he was assaulted, and that that was the reason his arm broke. It was further put to him that the injuries which he sustained were from fighting with inmates. He said that only two inmates were fighting. It was then put to him that he was in possession of a knife, that he was told to surrender the knife, that he refused and that the warders were then forced to dispossess him of the knife as he was posing a threat to other inmates. His answer was that they just assaulted him. It was further put to him that the warders used reasonable force to dispossess him of the knife. His answer was that they assaulted him and that the knife fell down. It was lastly put to him that, by refusing to surrender the knife, he contributed to his injuries. The plaintiff answered that he was not assaulting anyone, and that the warders should just have spoken to him.
- [12] The plaintiff called his friend, Andries Molotshwa, as a witness. He testified that while eating his breakfast after fetching it from the kitchen, a fellow inmate insulted him and an argument ensued between them. That inmate took out a knife. Molotshwa moved backwards, but the other inmate stabbed him above the eye. The knife remained stuck in his head. He saw the plaintiff, and the plaintiff then grabbed hold of him, pushed the other inmate away, and pulled the knife out. At that stage, warders from another section of the prison arrived and saw the knife in the plaintiff's hand. They did not speak to the plaintiff, they just assaulted him. He said that there were six or seven warders. They assaulted the plaintiff with their batons. The plaintiff's arm was injured. They were then taken to the

prison hospital. He denied that the warders asked the plaintiff to surrender the knife and that he refused. He said that, if they had asked for the knife, the plaintiff would have given it to them because he was not the one who had caused his injuries.

- [13] Molotshwa was referred in cross-examination to a statement which he deposed to on 31 December 2014 in which it was stated that he himself pulled the knife out of his face where it had got stuck, and that he then started stabbing the other inmate with the knife. He was asked whether that statement was true. He said that the evidence which he gave in court was true. When it was put to him that his evidence was inconsistent with the statement which he made soon after the incident, he responded by saying that it was the plaintiff who pulled the knife out. He was asked what happened to the knife. He said that the knife disappeared when the warders arrived, he didn't see what happened to it. The plaintiff had been holding the knife in his left hand while holding Molotshwa with his other hand.
- [14] Molotshwa was asked whether the warder s used anything else than their batons when they assaulted the plaintiff. He first said that they maybe used clenched fists and that they maybe kicked him. He then said that he saw this happening when the plaintiff fell down. It was then put to him that the plaintiff had testified that he had only been hit with batons. He said that the plaintiff's version could also be accepted because he had already fallen down and that the plaintiff did not see what happened. It was put to him that the warders say that they did not assault the plaintiff and that, on their arrival, they saw the plaintiff holding a knife in a stabbing position and holding someone. He answered that they did assault the plaintiff and denied that the plaintiff held the knife in a stabbing position. He said that the plaintiff was separating them, referring to himself and the person who stabbed him. He denied that the plaintiff posed a threat to himself and other inmates, and also denied that the warders asked him to hand over the knife.
- [15] The last witness called by the plaintiff was Mr. Jabulani Amos Xaba who was also an inmate at the Witbank prison facility at the time of the incident. He testified that he saw Molotshwa and another inmate fighting as he was coming out of the kitchen after collecting his food. He did not know the name of the other prisoner. Xaba then went to his cell to put his food down so that he could go out and see what was happening. The fight took place behind the cell in which he slept.
- [16] Xaba testified that the plaintiff was in front of him when he came out of the kitchen. He didn't know whether the plaintiff also went to his cell to put his food down, but what he did see was the plaintiff holding on to Molotshwa and pulling the knife out of his face. He thereafter saw the inmate who had fought with Molotshwa come back, full of blood on the front, approaching Molotshwa. The plaintiff grabbed hold of that inmate while holding the knife in his hand and pushing him towards his cell. He said that Molotshwa could not see properly and that he was pulled towards his cell by other inmates. When asked what the plaintiff's goal was, he said that the plaintiff was separating them. Xaba further testified that, as the plaintiff was pushing the other inmate away, they both fell into a ditch. They emerged from the ditch and the plaintiff continued pushing the other inmate towards his cell until

they reached a fence, where the other inmate then stood firm. There were a lot of other inmates around, some shouting that the plaintiff had done the stabbing and others that he had not. The plaintiff said to them that he did not stab the other inmate, but that he wanted to separate them and that he wanted the other inmate to go to his cell because he would injure Molotshwa if they were together.

- [17] At that stage, the warders approached the scene. In reply to a question by the court about at what point the warders arrived, Mr. Xaba said that they, referring to the inmates, had already been at the fence for about two minutes. The first warder approached the plaintiff from the back and hit him on his head with a baton. The knife then fell down to the ground and the plaintiff raised both hands to his head. They continued to assault him with their batons. He said there were four or five warders but that the plaintiff was assaulted by two of them with batons. He did not see them assaulting the plaintiff with anything else. He denied that the warders asked the plaintiff to surrender the knife and that he refused. He said that when the warders arrived, they just started assaulting him and that they didn't utter a single word.
- [18] Mr. Xaba said that the warders were lying if they said that they never assaulted the plaintiff. He said that he later followed them and asked them why they had assaulted an innocent person. Their answer was that they had found the plaintiff in possession of a weapon. He was asked why the warders assaulted the plaintiff without asking him anything. He said that he thought that when they saw the plaintiff in possession of a knife and someone full of blood, they thought that he was the person who had injured that person.
- [19] Mr. Xaba was asked in cross-examination whether it was safe to regard him as a neutral person, which he confirmed. It was then put to him that the plaintiff didn't mention that he was hit on his head. His answer was that he didn't know why it was not mentioned, but that is what he saw. He said that only batons were used to assault the plaintiff, nothing else. He didn't see anybody kicking the plaintiff. The last time he saw Molotshwa was when he was taken to his cell. The only time that Molotshwa was near the plaintiff, was when the plaintiff pulled the knife out from his face. Other inmates then took him to his cell.
- [20] It was put to Mr. Xaba that the warders found the plaintiff with a knife and that he posed a danger to himself and other inmates. He disputed that and said that if the plaintiff had been a danger, he could have injured other inmates before the warders arrived. He was asked by the court when the plaintiff was hit on his arm. He said that happened when the plaintiff raised his hands to his head. At that stage, the knife had already fallen to the ground. The knife fell down when they hit him on his head.
- [21] That was the case for the plaintiff. The first warder who testified for the defendant was Mr. Bheki Goodwill Nkosi. He testified that he was one of the warders dishing up breakfast in the kitchen on the day in question. While doing that, some prisoners screamed at him that there were inmates fighting outside. He ran towards where the incident was and saw a person stabbing another person. The situation was such that he needed to run to the office, which

was not far, to gather more manpower. There were warders in the office. He grabbed hold of his baton and ran back to the scene of the fight, followed by another male warden. On his return, he found that the two fighters and the other inmates had scattered in all directions. Some prisoners pointed a person out with a knife, and asked him to chase that person. He later said that he did not see that person with a knife, but that is what the other inmates told him.

- [22] Mr. Nkosi said that he knew the plaintiff and that the plaintiff was not one of the two fighters. When the person was pointed out to him, it was easy to recognize him and he gave chase. It was the plaintiff's friend, Molotshwa. When he, Nkosi, ran around the cells, he came across the plaintiff and a number of other prisoners. He said the plaintiff was in possession of a knife and had grabbed the inmate who had been fighting with the plaintiff's friend Molotshwa by the front collar of his shirt. The plaintiff was holding the knife in a stabbing position. He repeatedly asked the plaintiff to give him the knife but the plaintiff refused. The plaintiff did not say anything, but just looked at him while holding the knife. He kept on asking the plaintiff until other warders arrived from the other section of the prison to assist him to manage the situation. He said that they then forcefully disarmed the plaintiff. He was asked how this was done. He said that warders are equipped to use minimum force in terms of the Correctional Services Act 111 of 1998 and that batons was the minimum force that was used to disarm the plaintiff.
- [23] Mr. Nkosi was then asked whether he saw this happening. His answer was that he would not be specific, but that he saw the knife fall to the ground and that it was picked up by a colleague. He was again asked whether a baton was used to assault the plaintiff. He said that he never witnessed an assault with a baton. He was then asked exactly what minimum force was used. He said that one may use one's hands or a baton to disarm the person.
- [24] Mr. Nkosi testified that two persons were injured, namely the plaintiff's friend and the person who was fighting with him. He did not see the plaintiff's injuries. He further testified that other prisoners were endangered as the plaintiff might have stabbed them, or one of them may have taken the knife and stabbed the plaintiff. The warders who arrived from the other section to assist him were Mr. Maluleka, Mr. Mendu and Mr. Masilela. A criminal charge was only laid against Mr. Masilela, but he has since passed on. He did not know why charges were not laid against the other two.
- [25] Mr. Nkosi was asked in cross-examination whether he included himself when he said that force was used to disarm the plaintiff. He said that he saw the incident unfolding and that force was used. He was asked who used force. His answer was that his being there distracted the plaintiff until the other officials arrived and disarmed him. The question was repeated and he then said that he maintained an inactive role and that the other officials disarmed the plaintiff and that it was the others who used force. He was asked what type of force they used. His answer was that he was facing the plaintiff, making sure that he was not to be of harm to other inmates. The question was repeated and he then said that minimum force was used. He was again asked what force was used. He said that the plaintiff was disarmed of the

knife and that it could be that one of the wardens twisted his arm so that the knife fell down. He was asked whether he saw this, and he said yes. He was again asked, and then said that he had previously said that he saw the knife on the ground and that, when the knife fell, the plaintiff was surrounded by warders. It was then put to him that it followed that he did not see the minimum force that was used. After a number of evasive answers, he eventually conceded that he couldn't say whether minimum or maximum force was used. He was asked whether he understood the breaking of an arm as minimum force, to which he answered no. He agreed that that boiled down to maximum force which was not authorised by the Act.

- [26] Mr. Nkosi further agreed in cross-examination that he knew that the plaintiff was not one of the two who had been fighting. He also agreed that if the other three warders were told by him who had done the stabbing, they could have identified that person and would have known that the plaintiff was innocent. He said, however, that the situation did not warrant the asking of questions and that the other wardens were supposed to promptly disarm the plaintiff of the knife.
- [27] It is clear from the above summary of Mr. Nkosi's evidence that he was an evasive witness who repeatedly contradicted himself. It is clear that he was trying his best to disassociate himself and his colleagues from the suggestion that the plaintiff was assaulted with batons. No value can be placed on his evidence, save where it corresponds with that of the plaintiff and the plaintiff's witnesses.
- [28] The defendant's next witness was Mr. Justice Diniko Maluleke, who is employed by the defendant as a warder at the prison facility in question. He testified that the prison facility has two sections. In the section where he works, there were more than 290 inmates. In the section where the incident occurred there were around 400 inmates. He was working the day shift on the day in question. He received a telephone call from one Anna at between 06h30 and 07h00. She reported to him that there was a fight between inmates in the other section. He together with to other wardens, Masilela and Mendu, ran towards when the fighting was taking place.
- [29] On arrival, they pushed their way through the crowd. He noticed one inmate the grabbing another by the clothes at the chest. The one being grabbed had blood on his face. The other one, the plaintiff, had a knife in his hand. He approached the plaintiff and grabbed the hand holding the knife. He feared that he might stab the other inmate with the knife. He said that this was just a conclusion he made as he did not see what had happened before. On his arrival, Nkosi was already there and was asking plaintiff to hand over the knife. The plaintiff was not responding to the request and it was only after Maluleke grabbed him that he surrendered the knife. He said that he first grabbed him with his left hand and then also with his right hand because his left hand was not strong enough and the plaintiff was trying to break loose. Ultimately, the plaintiff opened his hand so that the knife dropped down. Maluleke let go of him and picked up the knife. To his recollection, his colleagues assisted him in holding the plaintiff.

- [30] Mr. Maluleke further testified that he was in possession of a baton but said that he did not use it at all. His other colleagues also had batons, but he did not see them using their batons as his concentration was on the plaintiff. If his concentration was on the plaintiff, he must have seen whether or not the plaintiff was being hit with batons. He knows nothing about the injuries which the plaintiff received, neither does he know what happened to the plaintiff's left arm with which he had grabbed the other prisoner. He did not see any fight on the day.
- [31] Mr. Maluleke said in cross-examination that he did not ask Mr. Nkosi what was going on as he could see that there was fighting taking place. He conceded that people who were breaking up the fight could have been involved and that warders should identify who was who. He nevertheless did not think it necessary to ask Nkosi as he could see what was unfolding before his eyes. He agreed that he assumed that the plaintiff had stabbed the other inmate. He confirmed that warders may only use minimum force. He said that a baton is not used to hit a person, but to neutralize or restrain the person to stop what he is doing.
- [32] The last witness for the plaintiff was Mr. Sekululani Mabusa who is also employed by the defendant at the Witbank correctional facility as a prison warder. On the day in question, while breakfast was being served to inmates between 06h00 and 07h00, he was in the office in the company of Ms. Anna Ndluli. The office is in the section where the incident occurred. He heard noises outside and peeked through the window. He noticed inmates who had surrounded inmates who were fighting. After a few minutes, Mr. Nkosi came into the office and said that they should go check on the fighting. As they were exiting the office, they noticed that one prisoner had grabbed hold of another with his arm raised up, holding a knife in his hand. It was the plaintiff, whom he knew. Mr. Nkosi repeatedly asked the plaintiff to hand the knife over, but he did not obey. At that stage, they were joined by Mr. Maluleke from the other section. Some of the inmates wanted to attack the plaintiff. Mr. Maluleke grabbed the plaintiff by his hand which resulted in a tussle between them. Maluleke eventually succeeded in disarming the plaintiff of the knife. The injured were then taken to the clinic. The only other officials whom he remembered being present, were Mr. Nkosi and Mr. Maluleke.
- [33] Mr. Mabusa said that he did carry a baton but that he did not use it on the plaintiff. He used it to ward off those who wanted to attack the plaintiff. He said that the only person who grabbed the plaintiff was Mr. Maluleke. He did not see whether the plaintiff was injured. He did not see whether the plaintiff was taken to the clinic. He took the other two injured inmates to the clinic.
- [34] In cross-examination, Mr. Mabusa was referred to a statement made by him two years after the event in which she said that the plaintiff threatened to stab them with a knife and that they then used their rubber batons to overpower him. That statement contradicts his evidence that he used his baton to ward off inmates who wanted to attack the plaintiff. It also contradicts his evidence under

cross-examination that he did not see the other warders using batons. When asked whether the plaintiff was threatening to stab the warders, he said he could not answer. The question was repeated and his answer was that, despite several requests, they did not know what the plaintiff's intentions were. The question was again repeated, and he then said that the plaintiff made a turning gesture which he considered to be a threat. On Mr. Maluleke's evidence, however, no threat of any kind was made by the plaintiff to the warders.

[35] It was put to Mr. Mabusa that Mr. Nkosi had testified that if the force used caused the breaking of an arm, it was not minimum force. Mr. Mabusa's answer was that, to his knowledge, minimum force was applied as he only saw the plaintiff's hand being grabbed and him being disarmed of the knife.

[36] The versions of the plaintiff and his witnesses and that of the defendant's witnesses are mutually destructive. The version of the

plaintiff and his two witnesses was that the plaintiff was assaulted by the warders with their batons. The version of the three warders was a denial that the plaintiff was assaulted with batons. According to their evidence, minimum force was used to disarm the plaintiff of the knife, such minimum force being the grabbing hold of the plaintiff's right hand by Mr. Maluleke which caused the plaintiff to release the knife. In *Stellenbosch Farmers' Winery Group Ltd and Another v Martell et Cie and Others*,^[1] the Supreme Court of Appeal said the following at 14I-15E:

"The technique generally employed by courts in resolving factual disputes of this nature may conveniently be summarised as follows. To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities. As to (a), the court's finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness' candour and demeanour in the witness-box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extracurial statements or actions, (v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events. As to (b), a witness' reliability will depend, apart from the factors mentioned under (a)(ii), (iv) and

(v) above, on (i) the opportunities he had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to (c), this necessitates an analysis and evaluation of the probability or improbability of each party's version on each of the disputed issues. In the light of its assessment of (a), (b) and (c) the court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it. The hard case, which will doubtless be the rare one, occurs when a court's credibility findings compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors are equipoised probabilities prevail."

- [37] The plaintiff's version was corroborated by the evidence of his two witnesses. All three were satisfactory witnesses. Mr. Xaba was an independent witness and made a favourable impression on the court. There were small differences in their versions, but that is to be expected when evidence is tendered about such a volatile situation. They were, however, consistent in saying that the plaintiff was assaulted by the warders with their batons and that the plaintiff had not been involved in the fight but that he was the one who broke up the fight.
- [38] As far as the defendant's witnesses is concerned, I have mentioned that Mr. Nkosi was an evasive witness. Questions had to be put to him repeatedly in chief and in cross-examination before he gave a proper answer. He also repeatedly contradicted himself. He was not a credible witness. Mr. Maluleke and Mr. Mabusa both testified that they did not hit the plaintiff with their batons and also did not see anyone hitting the plaintiff with a baton. They also did not see the plaintiff being injured. That, of course, raises the question why the plaintiff needed to be taken to the clinic immediately after the incident. It is improbable that he would have been taken to the clinic if he had not been sufficiently seriously injured to require treatment. It was conceded by Mr. Nkosi that the consequences for a prison official found guilty of assaulting an inmate, could be dire. The consequences could range from a suspension of salary, a suspension from work or a dismissal.
- [39] As far as the probabilities are concerned, the only probable explanation for the fact that the plaintiff's arm was broken, is that he was assaulted by one or more of the wardens with their batons. The suggestion that the plaintiff's left arm may have been broken during an altercation with other inmates is not supported by any concrete evidence.
- [40] I therefore conclude that the plaintiff has succeeded in discharging the onus of proving that he was assaulted with batons by one or more of the wardens and that they should American and Scott were acting within the course and scope of their employment with the defendant.
- [41] The defendant in its amended plea denied that its employees acted wrongfully and unlawfully and pleaded that the plaintiff posed a danger to other inmates and its employees by carrying and refusing to surrender a knife and that its employees were obligated to exercise reasonable force to remove and dispossess the plaintiff of the knife. This defense is obviously based on the provisions of section 32(1) of the Correctional Services Act 111 of 1998 ("the Act"), which provides the following:
- (1)
- (a) 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.
- (b) A minimum degree of force must be used and the force must be proportionate to the objective.

- (c) A correctional official may not use force against an inmate except when it is necessary for -
 - (i) self-defence
 - (ii) the defence of another person
 - (iii) preventing an inmate from escaping; or
 - (iv) the protection of property.

[42] Section 33 of the Act deals with the use of non-lethal incapacitating devices. In terms of regulation 21 of the Correctional Service Regulations, published in GN914 of 2004, non-lethal incapacitating devices which may be used include baton-type equipment. Section 33(3) provides the following:

Such devices may be used in the manner prescribed by regulation and then only-

- (a) if an inmate fails to lay down a weapon or some other dangerous instrument in spite of being ordered to do so;
- (b) if the security of the correctional centre or safety of inmates or others is threatened by one or more inmates; or
- (c) for the purpose of preventing an escape."

[43] It follows from the above that a baton may be used for any of the purposes mentioned in 33(1)(c) of the Act, but the overriding

requirement is that only minimum force must be used to obtain the objective. If the use of a baton causes a person's arm to break, such use cannot be regarded as the use of minimum force. It was correctly conceded by Mr. Nkosi that such use constituted maximum force, which was not authorised by the Act.

[44] In the result, I find that the assault on the plaintiff by one or more of the defendant's wardens was unlawful. It is therefore ordered that the defendant is liable to compensate the plaintiff for the damage which the plaintiff is able to prove he has suffered or which may be agreed upon.

Counsel for plaintiff: Adv L Mgwetyana.

Instructed by: Mjali & Zimena Attorneys, Volksrust.

Counsel for defendant: Adv. T. Mankge.

Instructed by: The State Attorney, Pretoria.

[1] 2002 (1) SA 11 (SCA)

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