

SOUTH AFRICA / JUDGMENT

Mokoele and Another v Minister of Police and Another (7023/2020) [2024] ZALMPPHC 193 (19 November 2024) [2024] ZALMPPHC 193

COURT

Limpopo High Court, Polokwane

BEFORE

Naude-Odendaal

CASE / FILE NUMBER

7023/2020

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

(LIMPOPO

DIVISION, POLOKWANE)

CASE

NO: 7023/2020

(1)

REPORTABLE: YES/NO

(2)

OF INTEREST TO THE JUDGES: YES/NO

(3)

REVISED: YES/NO

SIGNATURE:

Naude-Odendaal J

DATE: 19/11/2024
In
the matter between
JACOB
SELAELO MOKOELE & ANOTHER PLAINTIFF
and
MINISTER
OF POLICE
1st DEFENDANT
MINISTER
OF DEFENCE
2nd DEFENDANT

JUDGMENT

NAUDE-ODENDAAL J:

- [1] The Plaintiffs have instituted legal action against the Defendants for damages suffered resulting from an alleged unlawful and wrongful assault without any provocation by members of the South African Police Service and members of the South African Defence Force on 18 May 2020 at Bochum.
- [2] Separate summonses were issued in respect of the Plaintiffs under case numbers 7023/2020 and 7024/2024. The two actions were consolidated and proceeded as one under case number 7023/2020.
- [3] The Defendants deny that the Plaintiffs' were assaulted by members of the South African Police Service and/or members of the South African Defence Force.
- [4] The Plaintiffs had the onus of proving, on a balance of probabilities, that they were assaulted by the Defendants. The Plaintiffs called three witnesses.
- [5] The Plaintiffs first witness was Mr. Jacob Selaelo Mokoele. He testified that he is a carpenter, 44 years of age and residing at La Rochelle Farm in Bochum. He testified that on the date in question, he left with Morapi Nimrod Manyelo to go and fix the fence on the farm to prevent their livestock from getting out. Once they were finished fixing the fence, they returned home. On their way home, about to reach the place where they reside, they were met by a Police van that was coming from the front. Behind the Police van emerged another Police Van, which was also accompanied by a National Defence
Force vehicle.
- [6] He testified that the Police and the Soldiers accused them (him and Mr. Manyelo) that they were the ones blocking the road with objects. Mr. Mokoele testified that he responded by saying that they were not coming from that road, and were coming from fixing the fence on the farm. From there, the police officers and soldiers did not say anything further and just started assaulting him with their hands. Mr. Mokoele testified that he was grabbed on the

one side by the police and on the other side by a member of the National Defence Force. One grabbed him by his left hand and the other by his right hand and they were threatening him and pulling him.

- [7] Mr. Mokoele testified that he was assaulted by open hands and fists after he was grabbed. The assaults by fists were directed to his rib area and the open hands to his face. They also took of Mr. Mokoele's belt and assaulted him with his belt. He was hit with the buckle portion in the face and his chest. He sustained an open wound injury above his right eye going down to his cheek from the assault with the belt. He was further also assaulted on his left leg above his ankle because the soldier was trying to get him to the ground. He was kicked at the back of his heel, just above the heel. He couldn't count how many times he was kicked or hit.
- [8] He managed to break loose and run away. They also took his cell phone. When he got home, his foot started swelling. He then left and went to Hellen Frans Hospital. He was seen by a medical practitioner and a J88 report was completed. They also reported the incident to the Bochum Police Station.
- [9] Mr. Mokoele testified that he knows that it was members of the South African Police Services and National Defence Force that assaulted him because they were wearing uniform and arrived in marked vehicles.
- [10] Mr. Mokoele also went to consult a Clinical Psychologist who compiled a report and made recommendations that he need Psychological intervention in order to address the impact of the incident and further that he need therapy in order to treat the possible post-trauma and preventing depression.
- [11] Under cross-examination it was put to Mr. Mokoele that he was not assaulted by members of SAPS and the National Defence Force, but rather by members of the community as they were fed up with them blocking the roads. Mr. Mokoele denied this and maintained that he was assaulted by members of the SAPS and National Defence Force. Mr. Mokoele did not alter his evidence under cross-examination and remained consistent. He was a very good witness and made a very good impression on the court. He was honest and did not exaggerate in any manner. I find him to be a very reliable witness.
- [12] The Plaintiffs called Mr. Morapi Nimrod Manyelo (2nd Plaintiff) as their second witness. Mr. Manyelo testified that he is 55 years old. He works as a volunteer at the local municipality planting vegetables. He stays at La Rochelle Farm in Bochum.
- [13] He testified that on the 18th of May 2020, he went to fix the fence at the Farm at Madibeng's side. He was in the company of Mr. Mokoele. When they finished fixing the fence on their way home, whilst walking on the road, a police van emerged from the front and another at the back. There was also a Hippo vehicle from SANDF. The vehicles were branded in the Police branding and had the police emblem on. He could identify the vehicles as being from Senwabarwana Police Station. The SANDF Hippo also had the SANDF branding and emblem

on it.

- [14] According to Mr. Manyelo, the soldiers and police officers asked them why they blocked the road whereto they responded that they came from fixing the fence. Police Officers and Soldiers summarily started assaulting them and said that they were lying.
- [15] When asked how he was assaulted, he testified that one of the perpetrators took off Mr. Mokoele's belt and assaulted him with the buckle of the belt over the head. Others were kicking him in the ribs and others were kicking him on his legs and on his thighs from behind until he fell on the ground. He sustained an open wound injury over the middle of his head and across his right eye with the belt. He further sustained injuries to his hands as he used his hands to block the blows by the belt.
- [16] Mr. Manyelo further testified that he was kicked in his ribs and somebody stepped/stumped on his back whilst he was lying down. He says he was kicked as if he was a ball. He sustained a broken rib at his left side. He coughed blood due to the injuries to his back and chest.
- [17] Mr. Manyelo testified that he went to Hellen Frans Hospital where he was treated and a J88 was completed. He also opened a case against the assaulters at the police station. He managed to identify two of the people who assaulted him. One is called Machete and the other is called Rametsi. They are both working at the police station where he went to open a case.
- [18] Under cross-examination Mr. Manyelo testified that there were 6 police officers who assaulted them and 3 National Defence Force members. After the assault another police officer came and assisted them. According to Mr. Manyelo, this police officer rescued him. He picked him up and took him to Mr. Ramabalala. According to Mr. Manyelo he could not walk properly for almost 2 months. Mr. Manyelo also went to consult a private clinical psychologist. He went only once and never went back again.
- [19] It was during the Covid-19 Pandemic and Mr. Manyelo was told to return to hospital only on the following day as the X-Ray Machine was not functioning properly. On 19 May 2020, he was told to return on the 2nd of June 2020. He was then admitted in hospital until the 4th of June 2020. He confirms that he was only admitted approximately 14 days later as he was told that the Hospital staff was busy with Covid-19 patients.
- [20] The Plaintiffs' called Ms. Lerato Madileng, a clinical psychologist as their third witness. She testified that she examined Mr. Mokoele on the 23rd of June 2020 in relation to an incident that occurred on 18 May 2020. She diagnosed him with the following symptoms following the incident:-

20.1 Symptoms of anxiety;

20.2 Symptoms of depression;

20.3 Frequent anger outbursts;

20.4 Developing intense mistrust of law enforcement officials.

- [21] Ms. Madileng recommended that considering the psychological functioning of Mr. Mokoele post the incident, he might need psychological intervention in order to address the impact of the incident. Sessions will be estimated within 15 sessions depending on his adjustment. Further, that Mr. Mokoele might also need a psychiatrist in order to treat the possible post-trauma and presenting depression. According to her, Mr. Mokoele will also need frequent sessions with his medical practitioner to avoid over-the-counter medication.
- [22] Ms. Madileng testified under cross-examination that in the absence of the intervention, Mr. Mokoele might have anger outbursts and suffer from anxiety when he sees people in uniform (police and soldiers). These people were referred to by her as flight and fight risk people. She also stated under cross-examination that if he doesn't consult a medical practitioner frequently, he might become addicted to over-the-counter medication.
- [23] The Plaintiffs closed their case. The Defendants called two witnesses. Sergeant Matsheta and Sergeant Semone. Sergeant Matsheta testified that he is a police officer stationed at Senwabarwana Police Station. He has been employed by SAPS for 18 years, 3 months and 19 days. On the 18th of May 2020 he was officially on duty with full Police Uniform. He was tasked to attend to Covid-19 operations.
- [24] Sgt. Matsheta testified that he was at Silvermyn Village patrolling since there were protests in the Village. They used one of the roads to access the Village. He was with Warrant Officer Ramela, using a closed bakkie marked with the Police emblems. Warrant Officer Ramela was his crew. When they left the Village, they decided to use a different road to the one they used when going to that Village. They used the road which came from Silvermyn going to Laroshell Village.
- [25] According to Sgt. Matsheta there were 4 (four) closed Police Vans and 2 (two) defence force motor vehicles. There was a truck called a Casper and a 4x4 van used for medical assistance. His vehicle was the last vehicle in the convoy.
- [26] When he arrived in the village, he saw the community members were gathered. He also saw a male who had long dreadlocks and who was sitting on the ground. He testified that he and W/O Ramela alighted from the vehicles because they realized that the convoy of Police and Defence Force vehicles were stationary for a long time. Their route was blocked by logs on the road. There was one particular big log the soldiers were trying to remove.
- [27] Sgt. Matsheta testified that he saw the community members were arguing with Mr. Manyelo. It was just verbal. They did not assault him. The community members were saying that Mr. Manyelo was acting like he is the leader of the community and now they found him, so he can't continue with his behaviour. Sgt. Matsheta testified that he then grabbed Mr. Manyelo by the hand and put him in the Police Van because he saw the community getting closer to him and it looked like they wanted to attack him. Sgt. Matsheta and W/O Ramela took Mr. Manyelo to a bus shelter and dropped him off there. According to Sgt.

Matsheta, Mr. Manyelo was pale and had dreadlocks covering his face, so he could not observe if anything was wrong with him.

[28] Sgt. Matsheta testified under cross-examination that he never saw Mr. Manyelo being assaulted. He was not assaulted by community members and he did not assault him either. Mr. Manyelo was only insulted by name calling by the community members. He only saw that he was pale and had long dreadlocks covering his face. He was seated on the ground on his buttocks when they found him.

[29] The Defendant's second witness was Warrant Officer Makwena Jerry Senono. He is a police officer stationed at Senwabarwa Police Station. He has been in the SAPS for 8 years. On the 18th of May 2020 he was on duty doing crime prevention and patrolling at Silvermyn. They were patrolling together with members of the South African National Defence Force. After patrolling Silvermyn, they went back to the police station. They used the road that passes Larochelle Village. At Larochelle village was a lot of problems. The road was blocked with logs. They stopped and removed the logs as they continued on the road.

[30] W/O Senono testified that they were approximately 5 (Five) vehicles in the convoy. Two from SANDF and approximately three or four from SAPS. He testified that when they arrived at Larochelle Village, they came across two males. They were just walking on the road. One of the vehicles stopped and a member from SANDF (South African National Defence Force) approached them. One of the men fled and ran away. Other members of the SANDF remained with the other male that remained behind.

[31] He then joined in with the soldiers and chased after the one that fled because he was going towards the direction of the mountains. It took some time to find him. When they returned with him to the village, they found members of the community have gathered, together with the soldiers and police officers who remained behind with the one male person.

[32] The members of the community were making some noise saying they think they are the bosses in the Village. While the community members were throwing insults, he wanted to know where the person who was left behind was and they pointed at the person who was placed in the Police Van. W/O Semono then went to the police van and saw a person with dreadlocks. He did not see anyone assaulting him.

[33] After the testimony of W/O Senono, the Defendants closed their case. The common cause facts are that the members of the South African Police Services and South African National Defence Force were present on the scene on the day in question. Mr. Mokoele did run away from the scene. Mr. Manyelo was present at the scene and was put in the Police Van. Both Mr. Mokoele and Mr. Manyelo were injured as per the J88 reports.

- [34] As a starting point, to succeed, the litigant who bears the onus of proof in a civil trial should satisfy the court on a preponderance of probabilities that his or her version is true and accurate and therefore is acceptable, and that the other version advanced by the defendant is false or mistaken and falls to be rejected. In deciding whether the evidence is true or not, the court will weigh up and test the plaintiff's allegations against the general probabilities. (See *Baring Eiendomme Bpk v Roux* 2001 (A) All SA 399 (SCA))
- [35] In *National Employers' General Insurance Co Ltd v Jagers*, 1984 (4) SA 437 (ECD) at 440D-441A, the court set out the correct approach to be adopted in analysing and assessing evidence in a civil case as follows:

"It seems to me, with respect, that in any civil case, as in any criminal case, the onus can ordinarily only be discharged by adducing credible evidence to support the case of the party on whom the onus rests. In a civil case the onus is obviously not as heavy as it is in a criminal case, but nevertheless where the onus rests on the plaintiff as in the present case, and where there are two mutually destructive stories, he can only succeed if he satisfies the Court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the other version advanced by the defendant is therefore false or mistaken and falls to be rejected. In deciding whether that evidence is true or not the Court will weigh up and test the plaintiff's allegations against the general probabilities. The estimate of the credibility of a witness will therefore be inextricably bound up with a consideration of the probabilities of the case and, if the balance of probabilities favours the plaintiff, then the Court will accept his version as being probably true. If, however the probabilities are evenly balanced in the sense that they do not favour the plaintiff's case any more than they do the defendant's, the plaintiff can only succeed if the Court nevertheless believes him and is satisfied that his evidence is true and that the defendant's version is false."

This view seems to me to be in general accordance with the views expressed by COETZEE J in *Koster Ko-operatiewe Landboumaatskappy Bpk v Suid- Afrikaanse Spoorwee en Hawens* 1974 (4) SA 420 (W) at 426 - 7 and *African Eagle Assurance Co Ltd v Gainer* 1980 (2) 234 (W):

"I would merely stress however that when in such circumstances one talks about a plaintiff having discharged the onus which rested upon him on a balance of probabilities that means that he was telling the truth and that his version was therefore acceptable. It does not seem to me to be desirable for a Court first to consider the question of the credibility of the witnesses as the trial Judge did in the present case, and then, having concluded that enquiry, to consider the probabilities of the case, as though the two aspects constitute separate fields of enquiry. In fact, as I have pointed out, it is only where a consideration of the probabilities fails to indicate where the truth probably lies, that recourse is had to an estimate of relative credibility apart from the probabilities."" (See *Minister of Police v Heleni* (CA4/2022) [2023] ZAECGHC 43 (11 May 2023)).

[36] In *Stellenbosch Farmers' Winery Group Ltd & Another v Martell & Cie SA & Others* [2002] ZASCA 98 (6 September 2002) the Supreme Court of Appeal also observed what it fell to the trial court to do in a civil matter when there are two irreconcilable versions and so too on a number of peripheral areas of dispute which it reckoned could have a bearing on the probabilities:

"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's 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's 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] In the present matter, the Defendants simply denied that the Plaintiffs' were assaulted by them and stated in their plea that they were assaulted by community members. The Defendants however did not lead any evidence as to the assault on the Plaintiffs' by community members. Both the Defendants' witnesses testified that they did not see any assault and the community members simply verbally insulted the Plaintiffs. There was no evidence to rebut the Plaintiffs' versions that they were assaulted by members of the South African Police Services and members of the National Defence Force and in the assault sustained the injuries as they did and as reflected on the respective J88's.

[38] I find it highly unlikely that no police officer or soldier from the National Defence Force saw any assault on the Plaintiffs' or has any knowledge thereof. I find it further highly unlikely that Mr. Mokoele will simply flee into the mountains if he was not under threat physically or otherwise. I further find it highly unlikely that the Plaintiffs' sustained the open wounds to the areas above their eyes down to their cheeks and Mr. Manyelo to his head by the community assaulting them, to mention only these very visible and bleeding injuries, in the

presence of the police and soldiers. According to the evidence of W/O Senono, they came across the two Plaintiffs' on the road as they were still approaching the village. They were just walking on the road. The police officers and soldiers therefore reached the two Plaintiffs before the community members could as they were still on their way to the village.

[39] Having had regard to a conspectus of all the evidence in order to get to a common baseline or to establish the more plausibly accepted version by an analysis and evaluation of the probabilities or improbabilities of each party's version on each of the disputed issues, I find the Plaintiffs' version to be more plausible and acceptable.

[40] The Plaintiffs had to prove in order to succeed, firstly, regarding the assault, they had to establish the physical interference (and verbal abuse) alleged, since this was denied. An established interference would be *prima facie* wrongful and implies an intention to injure even if committed during the course of an arrest performed by a police officer pursuant to the exercise of a discretion to arrest. In the present matter, both the Plaintiffs pleaded that they were assaulted physically, they testified to that effect and submitted J88's as proof of their injuries sustained during the assault. The Defendants did not lead any evidence to show the contrary or to rebut what was alleged and proved by the Plaintiffs. Although not part of their pleaded case, it would have been for the defendants to allege and prove a lack of intention to injure and or justification for the physical violation. However, in the present instance, the Plaintiffs were summarily assaulted and injured, without any justification and not even in the process of resisting arrest as there was no arrest effected on either of them or even an attempt to arrest.

[41] In my view, the Plaintiffs therefore managed to prove on a balance of probabilities that they were indeed unlawfully and wrongfully assaulted by members of the South African Police Services, as well as members of the South African National Defence Force and that they sustained the injuries alleged in the particulars of claim. In the result the action on merits stands to succeed.

[42] This then brings me to the question of quantum. The trial proceeded on both merits and quantum. The parties submitted in closing argument heads of argument on merits, but no argument was made on the quantum. The Plaintiffs claimed the payment of R1500 000.00 (One Million Five Hundred Thousand Rand) each, together with interest on the aforesaid amount at a rate of 10.25% per annum from date of mora to date of judgment. In my view, it is necessary for the parties

to make full submissions and provide argument on the question of quantum as well. In the result, the question of quantum should be postponed *sine die*.

[43] As a general rule, costs follow the result. There is no reason to deviate in the present matter from the general rule.

ORDER:

[44] In the result, I therefore make the following order:-

1. The 1st and 2nd Defendants are 100% liable for the 1st and 2nd Plaintiffs' proven or agreed damages, jointly and severally, the one to pay the other to be absolved.
2. The question of quantum is postponed sine die in order for Heads of Argument to be filed by the Plaintiffs' and the Defendants' within 20 days from date of this judgment.
3. The 1st and 2nd Defendants are ordered to pay the 1st and 2nd Plaintiffs' costs of suit, jointly and severally, the one to pay, the other to be absolved.

M. NAUDE-ODENDAAL

JUDGE OF THE HIGH COURT,

LIMPOPO DIVISION,

POLOKWANE

APPEARANCES:

HEARD ON

22 - 23 APRIL 2024

HEADS OF ARGUMENT FILED 23 MAY 2024

JUDGMENT

DELIVERED ON 19 NOVEMBER 2024.

This judgment electronically by was handed down circulation to the parties' representatives by email. The date and time for hand-down of the judgment is deemed to be 19 NOVEMBER 2024 at 10h00

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