

SOUTH AFRICA / JUDGMENT

Nkabinde v Minister of Police (50315/2010) [2024] ZAGPPHC 678 (17 July 2024) [2024] ZAGPPHC 678

COURT

North Gauteng High Court, Pretoria

BEFORE

Nyathi

CASE / FILE NUMBER

50315/2010

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION,

PRETORIA

CASE

NO: 50315/2010

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED: NO

Date: 17 July 2024

Signature:

In
the matter betw
GEORGE
NKABINDE
Plaintiff
And
MINISTER
OF POLICE
Defendant

JUDGMENT

NYATHI J

A.

INTRODUCTION

- [1] The matter served before me on the 7 and 8 May 2024 as a claim for damages against the Minister of Police. It entails a claim for loss of support by the Plaintiff in his personal capacity, as well as in his capacity as natural guardian of his two minor children.
- [2] The matter arose out of a shooting incident in which a police officer was involved on 16 September 2008 in the Mhluzi Township at Middelburg, Mpumalanga Province.
- [3] The deceased, Mrs Emma Sibongile Mdhuli the Plaintiff's wife, was shot on this day by a police officer acting within the course and scope of his employment with the defendant.
- [4] The deceased sustained a bullet wound in her neck, which left her quadriplegic, she died on or about the 7 June 2009 in hospital. It is alleged by the Plaintiff, that the ultimate cause of death of the deceased were medical complications, which resulted from such bullet wound.
- [5] Having agreed to a separation of issues previously, merits were awarded 100% in favour of the plaintiff. I had to adjudicate on quantum.
- [6] The trial commenced with the plaintiff testifying and being cross-examined by Mr. Mathabatha on behalf of the defendant. At the conclusion of the viva voce evidence on behalf of the Plaintiff, the Plaintiff handed in the formal Inquest Docket, related to the death of the deceased as an exhibit.
- [7] Mr Dreyer then called Mr. Johan Sauer, an actuary to testify. He focused on the assumptions he made in his calculations in his report. The defendant called their own actuary Mr Pretorius to testify as well. The defence case was closed.
- [8] After an adjournment, the parties announced that they had come to a settlement on the following heads of damages:

8.1 Loss of support.

8.2 Future medical expenses in respect of the plaintiff and minor child.

- [9] The total amount of damages for the above amounted to R1 305 704.00.

the court made the settlement agreement an order of court.

- [10] The only outstanding issue was general damages, which were dealt with next.

- [11] With the parties having addressed the court with reference to applicable caselaw, the court reserved judgment in respect of general damages only in order to consider quantum.
- [12] An award for general damages is considered as “solatium”, i.e. as compensation for the injured party’s pain and suffering, and loss of amenities of life.
- [13] The general damages claimable in a case such as the current one are:
- 13.1 Pain and suffering over the loss of the plaintiff’s life.
- 13.2 Loss on the plaintiff’s part, and on the children’s part, of the enjoyment of the amenities of life with the deceased.
- [14] Pain and suffering may be physical, mental or both. For example, damages may be awarded for psychological or psychiatric injury.
- [15] In casu, it was demonstrated that the plaintiff’s life totally unravelled consequent to the demise of his wife. He became a drug addict and lost his employment with the attendant failure to be responsible for the upkeep of his children.
- [16] In *Komape v Minister of Basic Education*[1] the Supreme Court of Appeal recognized a claim for pain and suffering in circumstances of grief and bereavement, thus developing the law in so far as claims for emotional shock formed part of a claim for what is traditionally general damages.
- [17] Having regard to the above and other similar cases, I am satisfied that the interests of justice would be best served by the following award:

17.1 The defendant is ordered to compensate the plaintiff and the two minor children for general damages as follows: In respect of the plaintiff – an amount of R350 000.00. In respect of the children – R300 000.00 per child. Total amount – R950 000.00.

17.2 The defendant to pay plaintiff’s costs on a party and party scale at scale B of Rule 67A of the Uniform Rules of court as amended.

J.S. NYATHI

Judge of the High Court

Gauteng Division, Pretoria

Date of hearing: 07 May 2024

Date of Judgment: 17 July 2024

On behalf of the Plaintiff: Adv. W. Dreyer Duly instructed by: JW Joubert of Van Zyl Le Roux & Hurter (VZLR) Attorneys; Pretoria e-mail: wihann@vzlr.co.za / magdarp@vzlr.co.za On behalf of the Respondent: Mr. Mathabatha Duly instructed by: State Attorney, Pretoria Tel: (012) 309 1572

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[1] [2020] 1 All SA 651 (SCA); 2020 (2) SA 347 (SCA)

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