

SOUTH AFRICA / JUDGMENT

Seapolelo and Another v Minister of Police, Republic of South Africa (63/17; 64/2017) [2018] ZANWHC 22 (2 March 2018) [2018] ZANWHC 22

COURT

North West High Court, Mafikeng

BEFORE

N Gutta

CASE / FILE NUMBER

63/17; 64/2017

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“IN THE HIGH COURT OF SOUTH AFRICA”

NORTH WEST DIVISION, MAHIKENG

CASE NUMBER: 63/17 & 64/2017

REPORTABLE

In the matter between:-

ODIRILE GODFREY SEAPOLELO First Plaintiff

(ID No: ...)

REFILWE QUEEN NGCOBO Second Plaintiff

(...)

And

MINISTER OF POLICE; REPUBLIC OF SOUTH AFRICA Defendant

JUDGMENT

GUTTA J.

A.

INTRODUCTION

[1] This is a consolidation of two actions arising from the same set of facts. In the first action under case number 63/2017, plaintiff,

Odirile Godfrey Seapolelo (Seapolelo) instituted action with two claims against the defendant, the Minister of Police. In claim A, Seapolelo claimed damages for his unlawful arrest and detention and in claim B, Seapolelo claimed damages for the unlawful entry, search and assault. In the second action under case number 64/2017 plaintiff, Refilwe Queen Ngcobo (Refilwe) claimed damages for her unlawful arrest and detention.

[2] At the commencement of the proceedings, counsel for the plaintiffs and the defendant Mr Mongala and Ms Ramaimela respectively informed the Court that the merits in the unlawful arrest and detention have been conceded and that the Court can grant judgment in favour of the plaintiffs in case numbers 63/2017 and 64/2017 and the issue of quantum will be determined at a later date as the parties had agreed at the pre-trial conference on a separation of quantum and merit.

[3] The only issue left for determination was the merits in Seapolelo's claim for damages arising from the unlawful entry, search and assault.

B. PLEADINGS

[4] Seapolelo in his particulars of claim alleged inter alia that:

4.1 Members of the South African Police Services (SAPS), without a warrant of search, unlawfully and wrongfully, entered and searched

plaintiff's premises based on allegations of possession of stolen property which allegations were not true and correct.

4.2 Members of the SAPS:

4.2.1 acted without any reasonable and or probable cause, nor did they have any reasonable belief in the veracity or truthfulness of the information at their disposal;

4.2.2 did not properly or adequately and or at all investigate the allegations levelled against the plaintiff before entering and

searching the plaintiff's premises, alternatively the room which the plaintiff was renting at the time of the entry and search;

4.2.3 did not have evidence or tangible proof at their disposal to suggest that any offence was committed to justify their decision or to search the plaintiff's premises, alternatively the room which the plaintiff was renting at the time of the entry and search without a warrant to do so;

4.2.4 were informed by the plaintiff that he did not commit any crime and was not in possession of any stolen property, which explanation was not taken into consideration or met with any approval by the said members.

4.3 As a result of and after the aforesaid search:

4.3.1 Plaintiff was not found in possession of the alleged stolen property or properties and could not be linked to the alleged offence or allegations;

4.3.2 The search of the plaintiff's premises was not only unlawful, wrongful, but it was also unreasonable or unjustified having regard to the explanation given by the plaintiff to the members of the SAP;

4.3.3 Plaintiff was unlawfully and wrongfully assaulted by the members of the SAP, which assault was not justified, reasonable given the fact that the plaintiff had nothing to do with the alleged offence.

[5] Defendant's plea constituted a bare denial of issues. In the pre-trial minutes, the defendant denied entering the plaintiff's

home without consent and approval and denied assaulting Seapolelo.

C. WITNESSES

[6] The plaintiff, ODIRILE GODFREY SEAPOLELO(Seapolelo) testified that on 15 November 2016 he was asleep in his room at Motlhabeng when he was awoken at 9am by the sound of people arguing in the kitchen. He went to the kitchen where he found four police officers who when they saw him said that he is the person they are looking for and started assaulting him. Seapolelo said his wife, her siblings and his friend were present when the police assaulted him. He said when he asked the police what he had done, they assaulted him because they alleged that he stole a cellphone and laptop from a student who was on his way to school. When he told them that he does not know where the items are, they assaulted him. They went inside the house and conducted a search and did not find anything. They did not produce any documents authorising the search.

[7] After patrolling the area they told him that he is under arrest and took him with them. First they went to a place where beer was sold and took one Sodiki from that house. Thereafter they took him and Sodiki to the police station. On arrival at the police station they put them against the wall and assaulted him and Sodiki saying that they must produce the cellphone and laptop. Sodiki confessed to the crime.

- [8] At the police station, he was ordered to remove his shoe lace and belt and was taken into the cell. He remained in the waiting cell until 8:30pm, where after they transported him home. The next morning he opened a case at the police station of assault against the police officers. The station commander advised him not to open a case and promised to rebuke the officers. The station commander called him after two days and said the police officers were apologetic. He also went to his attorney and opened a file against the Minister of Police.
- [9] It is common cause that the police took both him and his girlfriend from the house. Under cross examination he was asked whether there was someone at his home to attend to the child when they left with the police, he replied that his girlfriend's cousin remained behind. It was put to him that in his particulars of claim he alleged that his "minor child was left unattended and stranded". He said he and his girlfriend were taken in separately in the vehicle as he was seated in front and she was at the back and they did not have an opportunity to discuss who was taking care of the minor child. His girlfriend did not tell him that their child was with her cousin.
- [10] Under cross examination, he reiterated that he was assaulted when he told the police that he did not know where the cellphone and laptop was. He also said when he arrived at the police station he was assaulted by two police officers who hit him with an open hand on his eye and face. He admitted that he did not consult a doctor or go to a clinic. He said he was only concerned about opening a case and he didn't have the time as he does odd jobs.
- [11] The Court sought clarity regarding the assault and posed the following questions:
- Q: Was the first assault inside or outside the house?
- A: Inside the house.
- Q: Explain the assault;
- A: I was hit with open hand on my eye;
- Q. How many police officers assaulted you?
- A: Two police officers assaulted me;
- Q: Did both police officers assault you with an open hand on your eye?
- A: Yes, they hit me and pulled me around;
- Q: How many police officers assaulted you at the police station?
- Q: The same two police officers assaulted me at the police station by slapping me and 'fisting me' on the chest.
- [12] The next witness was Refilwe Queen Ngcobo (Refilwe). She and Seapolelo are in a relationship and he is the father of her children.

They live together in Motlhabeng in a two roomed house where a curtain separates the two rooms. She said on 15 December, at approximately 9am she was in the kitchen while Seapolelo was in the bedroom. She was in the company of her 2 year old child and her cousins Nonhlanhla and Naledi. She saw two police vehicles next to her gate. She told Seapolelo that the police were coming as they were walking through the gate. Seapolelo remained in the bedroom and said they were not coming to their house. They knocked on their door and she opened. The police officer entered and asked her if she saw a certain boy with a scar below the right eye. She told him she saw no one. She then called Seapolelo and told him to come and meet the police as they were making enquiries. As Seapolelo was coming out of

the bedroom, the police officer hit him with open hand and then said ‘come along you will explain up ahead’. She said the police officer didn’t ask any questions when they hit Seapolelo, and they did not explain why they hit him. The police also took her with them. She said she attempted to grab her child and the police officer pushed the child away.

- [13] The police officers took her and Seapolelo into the police vehicle. She was the first to enter the police vehicle and then Seapolelo. The police drove to Boitse place where they fetched one Sodiki and they proceeded to the Mmabatho Police Station. She said at the station, the police hit Seapolelo with fists on the chest. They said “this boy with a scar had committed an offence and items were taken”. Sodiki told them that the person they were looking for was left behind at Greta place. She said they were released and taken home by the police officers around 8 or 9 pm.
- [14] Under cross examination she was questioned how many police officers hit Seapolelo with fists on the chest at the police station. She said one police officer stood behind him and held his hand from behind and the other police officer hit him on the chest with fists. She said she saw everything clearly.
- [15] When the Court sought clarity regarding the assault in the house Refilwe said one police officer assaulted Seapolelo in the house with open hands.
- [16] The next witness for plaintiff was Nonhlanhla Ngcobo (Nonhlanhla). She is 17 years old and is Refilwe’s sister. She said on the 15 November she was at Refilwe’s house at around 10 or 11 am when, the police arrived. Seapolelo was in the kitchen. The police knocked and when they entered, they asked who was the owner of the house. Seapolelo emerged and greeted them and they told him they are looking for two boys. Seapolelo said they are the only two living in the house with the children. The police continued to say they are looking for the boys and when Seapolelo tried to explain, they beat him up. The police also took Refilwe who was holding the baby. Refilwe wanted to take her child with her but the police told her to leave the child behind. They beat Seapolelo and took him into the vehicle. She took Refilwe’s child to her house.

- [17] Under cross examination, when questioned how the police assaulted Seapolelo, she said they hit him with open hands on the face. She said as Seapolelo was leaving the house two police officers hit him with open hands on his face.
- [18] Defendant called Uyangapha Victor Mpambane (Mpambane). He is a constable stationed at Mmabatho police station. He said he was among the police officers who took Seapolelo from his house on the 15 December 2016. He said they arrived at Seapolelo's house, knocked and they were allowed in where they found Seapolelo with his wife and child. Once inside they introduced themselves to Seapolelo and informed him of the reason they were there and asked permission to search his house. They were looking for a cellular phone and a firearm that was used in a robbery in Motlhabeng. Seapolelo gave them permission to search the house. They allowed Seapolelo to be with them while they conducted the search so he doesn't later deny that items were found. Thereafter they requested Seapolelo, Refilwe and their child to accompany them to the police station. Refilwe refused for the child be taken in the police vehicle as she said it will cause him bad luck in life. Refilwe called her niece who lived next door, who remained with the child.
- [19] He said he was involved in the investigation of house robbery. The reason why they went to Seapolelo's home was because one of the complainants gave them a description that one of the perpetrators who was clad in a blue top ended at Seapolelo's place. Seapolelo told them that his yard is not fenced and people cut across his yard. He said they didn't obtain a search warrant because they realised that if they did apply for a warrant it would take a long time and they feared that the items they were looking for could be removed. He denied the testimonies of Refilwe, Seapolelo and Nonhlanhla regarding any assaults. He further said they took them from the house around 9am and returned them to the house at around 11am.
- [20] Under cross examination he said Seapolelo and Refilwe were not arrested as they were asked to accompany them from the house to the police station for questioning. The defendants' counsel acknowledged that the arrest and detention was conceded.
- [21] Mpambane said they took Refilwe along to the police station as they suspected that she 'might make calls' and they suspected that Seapolelo and Refilwe may have hidden some stolen items. They were looking for 5 cellular phones and a firearm. He thought after questioning them they may "say something". While questioning them they received a call from the complainant who identified other people. They left Seapolelo and Refilwe in the charge office and requested Captain Matswa to take care of them in their absence. On their return to the police station, they took Seapolelo and Refilwe back to their house.
- [22] The next witness for the defendant was George Madito (Madito), a Sergeant in the SAPS. He was one of the officers who took Seapolelo and Refilwe from their house on the 15 November 2016. He corroborated Mpambane's evidence that when they arrived they introduced themselves and asked permission to conduct a search following information from the complainants that there was a person who entered his yard who was a suspect in the robbery. Seapolelo agreed and they conducted a search. He said only Seapolelo, Refilwe and

their child were present.

[23] He said they didn't secure a search warrant as they feared that it will delay them and the items they were looking for would be removed. He denied assaulting Seapolelo while inside the house or at the police station and denied that there were other people present. He also said that Refilwe didn't want to take the child with her because of bad luck and she called her cousin from the neighbouring house to take the child. He said Seapolelo and Refilwe were taken for approximately 2 hours 30 minutes and then taken back to their home.

[24] Under cross-examination he said he took the complainant's statement. His responsibility was to open the case, trace suspects

and if possible arrest the suspect. He said the complainants were able to identify suspects from their clothing. The complainant said she saw Seapolelo in a blue top similar to the one being worn by the suspect.

D. COMMON CAUSE

[25] The following facts are common cause:

25.1 Seapolelo and Refilwe were unlawfully arrested and detained on the 15 November 2016;

25.2 Seapolelo's home was entered into and searched on the 15 November 2016 without a search warrant;

25.3 No goods were seized nor found at Seapolelo's home after the search;

25.4 Seapolelo and Refilwe were taken to Mmabatho Police Station around 9/10 am and returned home on the same day;

25.5 Members of the SAPS members were acting in the course and scope of their employment with the defendant.

E. EVALUATION

[26] There are two irreconcilable versions regarding the search and the assault. In *Stellenbosch Farmers Winery Group Ltd and Another v Martell et Ge and Others* 2003(1) SA 11 (SCA), Nienaber JA said the following:

"[5] 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 the 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".

[27] Seapolelo, Refilwe and Nonhlanhla contradicted each others evidence in the following material respects:

27.1 Seapolelo said on the 15 November 2016 he was asleep in his room when he was awoken by people arguing in the kitchen and when he went to the kitchen he found 4 police officers. Refilwe testified that on 15 November 2016, the police officers entered the house and enquired about a boy with a scar. She called Seapolelo and told him to "come and meet the police who were making enquiries". The aforesaid versions are conflicting as on Refilwe's version there was no one arguing in the kitchen and she initially told Seapolelo that the police were coming to the house and after they entered she called Seapolelo to come and meet the police.

27.2 Seapolelo testified that when he went into the kitchen, the police said he is the person they are looking for and two police officers assaulted him with open hands on his eye and when he asked what he had done they assaulted him again and said he had stolen a cellphone and a laptop. When he told them that he does not know where the items are, they assaulted him. They then conducted a search. Refilwe testified that as Seapolelo emerged from the bedroom, the police didn't ask any question and hit him with open hands. Although Refilwe corroborated Seapolelo's evidence that the police hit him before asking any question, she said Seapolelo was assaulted by one police officer and not two and she did not testify that after the first assault, Seapolelo asked the police what he had done and they assaulted him again saying that he stole a cellphone and laptop or that they assaulted him when he said he does not know where the stolen items are.

27.3 Nonhlanhla's version differs from both Seapolelo and Refilwe's version. She said the police arrived at around 10am or 11am while Seapolelo and Refilwe said they arrived at 9am. She also said when the police arrived Seapolelo was in the kitchen and the police enquired who the owner was. Seapolelo greeted them and the police told Seapolelo that they were looking for two boys, Seapolelo explained that they were only 2 people living in the house and when he wanted to explain further, the police beat him up. Hence according to Nonhlanhla the police officers did not assault Seapolelo before questioning him and in fact explained the reason why they were there. Neither Seapolelo nor Refilwe said anything about the police enquiring about two boys.

Nonhlanhla also contradicted her earlier testimony when she testified in cross examination that as Seapolelo was leaving the house, the police assaulted him will open hands on his face.

27.4 Seapolelo contradicted his own evidence when he admitted that the police officer took him out and beat him and then searched the house. This is contrary to his earlier testimony that he was assaulted in the house. Also in his evidence he refers to four possible assaults; the first assault is when the police first saw him and assaulted him without asking questions, the second is when he asked the police what he had done and they assaulted him. The third is when he told them he does not know where the stolen items are, they assaulted him again and the fourth was at the police station. However when the Court questioned Seapolelo to get clarity he referred to one assault inside the house and another assault at the police station.

27.5 Seapolelo testified that when he was transported by the police to the police station, he was seated in front while Refilwe was seated at the back. This is contradicted by Refilwe's evidence that they were seated next to each other. When Refilwe was confronted with this contradiction she said Seapolelo is "not talking the truth we were side by side".

27.6 Seapolelo testified that at the police station, two police officers put him against a wall and assaulted him. Under cross examination he said at the police station he was assaulted by two police officers who hit him with an open hand on his eye and face. In reply to the Court's questioning he said he was slapped and "fisted" on the chest. This version is contrary to Refilwe's version that at the police station one police officer held his hands at the back while the other hit him on the chest. When Refilwe was confronted with Seapolelo's version that the two police officers hit him by slapping him on his face and chests, she replied "the fact is they hit him".

27.7 There is also a contradiction in Seapolelo's evidence regarding who took care of the minor child when Seapolelo and Refilwe were taken into the police vehicle. Seapolelo under cross examination said Refilwe's cousin remained behind to care of the minor child. It was put to him that this in his particulars of claim he alleged that the minor child was left unattended and stranded. Seapolelo then changed his version to state that in the police vehicle he and Refilwe were not seated next to each other and it is only at the police station when Refilwe told him that the minor child was with her cousin.

27.8 Contrary to Seapolelo's evidence neither Refilwe nor Nonhlanhla referred to the unlawful entry and search of the house by the police officers.

[28] Seapolelo, Refilwe and Nonhlanhla were in my view not candid with the Court. It appeared that their evidence was contrived. They did not present their evidence confidentially and in cross examination Seapolelo contradicted his evidence. Seapolelo did not impress me as a truthful witness. The fact that there are several material contradictions referred to supra in Seapolelo, Refilwe and Nonhlanhla testimony regarding the assault and unlawful entry and search, assisted this Court in finding that they were not credible witnesses.

[29] Police officers Constable Mpambane and Sergeant Modito corroborated each other evidence in the following material respects:

29.1 Mpambane and Modito both said that on 15 December 2016 on arrival at Seapolelo's house, they introduced themselves to Seapolelo and informed him of the reason reason why they were there and they asked permission to search the house and Seapolelo gave them permission. Nonhlanhla corroborated their evidence that the police explained the reason why they were there.

29.2 They both said that the reason why they didn't obtain a search warrant was because of the fear that it would delay them and the stolen items they were looking for could be removed.

29.3 They requested Seapolelo, Refilwe and the minor child to accompany them to the police station. Refilwe refused and said it would cause the child bad luck in his life. Refilwe called a young girl, her niece from next door who remained with the child.

29.4 Seapolelo said they took Seapolelo and Refilwe back home from the police station around 11am and Mpambane said they were taken home after approximately 2 hours 30 minutes.

[30] I am of the view that the police officers were clear honest and forthright. As stated supra, they corroborated each other in all material respects. They gave their evidence confidentially and didn't contradict each other in cross examination. I am of the view that they are credible witnesses.

F. THE LAW

[31] Section 22 of the Criminal Procedure Act, 1977 (Act 51 of 1977) ("the CPA") reads as follows:

"22 Circumstances in which article may be seized without a search warrant

A police officer may without a search warrant, search any person or container or premises for the purpose of seizing any article referred to in section 20

- a) If the person concerned consents to such search for and the seizure of the article in question, or if the person who may consent to the search of the container or premises consents to such search and the seizure of the articles in question; or
- b) If he on reasonable grounds believes –
 - (i) that a search warrant will be issued to him under paragraph (a) if he applies for such warrant; and
 - (ii) that the delay in obtaining such a search warrant would defeat the object of the search".

[32] Section 20 of the CPA provides that:-

"20 State may seize certain articles

The State may, in accordance with the provisions of this chapter, seize anything (in this chapter referred to as an article)-

- a) which is concerned in or is on reasonable grounds believed to be concerned in the commission or suspected commission of an offence, whether within the Republic or elsewhere;
- b) which may afford evidence of the commission or suspected commission of an offence, whether within the Republic or elsewhere; or
- c)”

[33] The police officers testified that they were tracing suspects who were involved in an armed robbery and who had taken cellphones and a firearm. They received information that one of the suspects was wearing a blue top and was seen entering Seapolelo's premises and they went there to conduct their investigation. Their evidence was not disputed. Both Mpambane and Madito testified that they searched Seapolelo's house after having been granted permission to search. As stated supra, Mpambane and Modito testified that they feared the delay in obtaining the search warrant would defeat the object of the search. The items were stolen in an armed robbery and are objects that can be easily moved and hidden, hence the probabilities are in favour of the defendants' version that there are reasonable grounds to believe that a search warrant would have been issued had they applied and that the delay in obtain the search warrant would defeat the object of the search. Even in the absence of Seapolelo's

permission to search, the search would not have been outside the bounds of the law as they were investigating a case of armed robbery

and they were searching for a firearm allegedly used in the commission of the offence. Their believe in that regard was not challenged nor was it suggested to be unreasonable.

[34] In the case of *Magobodi v Minister of Safety and Security & Another* 2009(1) SACR 355(Tk) at 369G Miller J held that “proper consent in terms of Section 22(a) of the Act must be voluntary. I am satisfied that in this case the plaintiff voluntarily gave consent, as in his own words he stated that he has respect for the police. In the circumstances the defendant's evidence in support of Section 2(b) was superfluous”.

[35] Despite Seapolelo's denial that his house was searched without consent, neither Refilwe nor Nonhlanhla who were allegedly present when the police arrived and entered the house, testified about the search and whether or not there was consent. Nonhlanhla's

testimony that the police knocked before they entered and after entering enquired who the owner was and that Seapolelo greeted them and the police they enquired about the boys they were looking, is at variance with Seapolelo evidence that the police assaulted him without asking him any questions and lends support on probabilities to the defendant's version that the entry and search was lawful.

- [36] When considering the totality of evidence, specifically the contradictions in Seapolelo, Refilwe and Nonhlanhla's testimonies supra, and that Mpambane and Modito corroborated each other in material respects, then I am of the view that the probabilities favour the defendant's version that the entry and search was lawful and that Seapolelo was not assaulted. There was also no documentary proof to support Seapolelo's testimony of an assault. Seapolelo referred to the assaults with an open hand on his eye and face and to being 'fisted' by the police officers but when questioned whether he consulted a doctor after the assault he said he was only interested in opening a case the next day and also he did not have the time as he did odd jobs.
- [37] Much was made of Mpambane's evidence that Seapolelo was not arrested but merely taken in for questioning and therefore he is not a reliable witness. In this regard I agree with the defendant's counsel's submission that police officers are not legal experts who are skilled in the essence of legal questions and the concession was made by the defendant's legal representatives upon consideration of the applicable legal principles which a lay witness such as Mpambane would not have knowledge. In any event, nothing really turns on this evidence.
- [38] It is common cause that defendants' plea consisted of a bare denial. The plaintiff did not raise any objection to the plea. The plaintiff cannot at this stage after both plaintiff and defendant closed its case and after admission and concessions were made, apply to the Court in closing that the Court reject the defendants' evidence based on its plea.
- [39] The police in my view acted within the ambit of the relevant statutory framework in relation to the entry and search of Seapolelo's house and in view of the contradictions in the plaintiff's version set out supra, the probabilities are that Seapolelo was not assaulted. The defendant succeeded in proving that the search of plaintiff's premises without a warrant was justified and the plaintiff failed to discharge the onus of proving that he was assaulted.

G. COSTS

- [40] The defendant contends that despite the concession of liability in so far as the arrest and detention being made on the day of trial, as the plaintiff persisted with his claim for the unlawful search and assault, the plaintiff should bear the costs. The defendant only conceded the unlawful arrest and detention at the hearing of the matter. Hence they are responsible to pay all the costs incurred up to and including the costs for first day of the trial namely, 11 December 2017. As the plaintiff did not succeed in his claim for assault and unlawful entry and search, the plaintiff is responsible to pay the costs for the balance of the trial including the costs for second day of the trial, 12 December 2017.

H. ORDER

- [41] In the result,

1. The defendant concedes the merits in the claim for unlawful arrest and detention of both plaintiffs under case number 63/2017 and under case number 64/2017 and their claim for damages is postponed to a date to be arranged with the registrar.
2. The plaintiff's claim, under case number 63/2017, for assault and unlawful entry and search is dismissed.
3. The defendant is to pay all the costs, up to and including 11 December 2017 under both case 63/2017 and 64/2017.
4. The plaintiff under case number 63/2017 is to pay the costs from and including 12 December 2017.

N. GUTTA

JUDGE OF THE HIGH COURT

APPEARANCES

DATE OF HEARING: 18 DECEMBER 2017

DATE OF JUDGMENT: 02 MARCH 2018

ADVOCATE FOR PLAINTIFF: ADV MONGALA

ADVOCATE FOR DEFENDANT: ADV RAMAIMELA

ATTORNEYS FOR APPLICANT: MOTSHABI & MODIBOA ATTORNEYS

ATTORNEYS FOR RESPONDENT: STATE ATTORNEY

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