

SOUTH AFRICA / JUDGMENT

Shashape v Minister of Police (1566/2018) [2020] ZANWHC 26 (30 April 2020)

[2020] ZANWHC 26**COURT**

North West High Court, Mafikeng

BEFORE

Gura

CASE / FILE NUMBER

1566/2018

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Policy**IN****THE HIGH COURT OF SOUTH AFRICA****NORTH****WEST DIVISION, MAHIKENG****CASE****NO.: 1566/2018****In**

the matter between:

**MATSHIDISO
JEANETTE SHASHAPE Plaintiff
and
MINISTER
OF POLICE
Defendant
CIVIL
TRIAL
GURA
J
DATE
OF HEARING
: 30
OCTOBER 2019
DATE**

OF JUDGMENT : 30 APRIL 2020
FOR

THE PLAINTIFF : ADV CJ ZWIEGELAAR
FOR

THE DEFENDANT : NO APPEARANCE

JUDGMENT

GURA J.

Introduction.

- [1] The plaintiff sued the Minister for payment of R100 000.00 damages for unlawful and wrongful entry and search of her house by two members of the South African Police Services. The detailed particulars of claim are as follows:

“3. On Saturday, 24 March 2018 at approximately 18h00 and whilst the Plaintiff was not at her place of residence at the address referred to in paragraph 1 (supra) as her residential address Inspector Phiricwane and Inspector Matonyane of the South African Police Service arrived at the place of residence of the Plaintiff, entering the house and searched the house.

4. The entry and search of the place of residence of the Plaintiff by

Inspector Phiricwane and Inspector Matonyane on the occasion referred to in paragraph 3 (supra) were unlawful and wrongful in that:

4. 1 same have been conducted by Inspector Phiricwane and Inspector Matonyane without:

4.1.1 a search warrant issued in terms of Section 21(1) of the Criminal Procedure Act requiring of them to seize any article as contemplated in Section 20 of the Criminal Procedure Act in the possession or under the control or upon the Plaintiff or upon or at the place of residence of the Plaintiff and authorising them to search the Plaintiff or to enter and search the place of residence of the Plaintiff;

4.1.2 a warrant issued in terms of Section 25(1)(a) of the Criminal Procedure Act authorising them to enter the Plaintiff's

place of residence at any reasonable time for the purpose of searching it or any person in or upon it for any article referred to in Section 20 of the Act which they on reasonable grounds suspect to be in or upon or at the place of residence of the Plaintiff or upon such person; and/or

4.1.3 the consent of the Plaintiff as contemplated in Section 22(a) of the Criminal Procedure Act;

4.2 whilst Inspector Phiricwane and Inspector Matonyane did not have reasonable grounds;

4.2.1 to believe that a search warrant and/or warrant would be issued to them under Section 21(a) and/or Section 25(2) of the Criminal Procedure Act if they apply for such search warrant and/or warrant and that the delay in obtaining such a search warrant and/or warrant would defeat the object of the search and/or entry of the place of residence of the Plaintiff as contemplated in Section 22(b) and/or Section 25(3) of the Criminal Procedure Act;

4.2.2 to suspect that an offence under the Drugs and Drug Trafficking Act had been or was about to be committed by means or in respect of a scheduled substance, drug or any property at the place of residence of the Plaintiff as contemplated in Section 11(1)(a) of the Drugs and Drug Trafficking Act;

4.2.3 to suspect that the Plaintiff or any other person who may furnish information with reference to any offence investigated

by them was on or at the place of residence of the Plaintiff at the time when they entered it and they could thus done so for the purpose of interrogating the Plaintiff and obtaining a statement from her as contemplated in Section 26 of the Criminal Procedure Act; and/or

4.3 it has not been conducted by Inspector Phiricwane and Inspector Matonyane with strict regard to order as required by Section 29 of the Criminal Procedure Act.

5. By unlawfully and wrongfully enter and search the place of residence of the Plaintiff Inspector Phiricwane and Inspector Matonyane have infringed upon the Plaintiff's rights to dignity and privacy which includes the right not to have her home and property searched as enshrined in Section 10 and 14 of the Constitution

which caused the plaintiff to suffer damages in the amount of R100 000.00."

Factual

background.

[2] A notice in terms of Section 3 of the Institution of Legal Proceedings Against Certain Organs of State Act[1] was dispatched to the defendant on 19 June 2018.

[3] The summons were issued by the Registrar on 24 August 2018 and served on the Office of the State Attorney: Mmabatho, on 30 August 2018. The State Attorney filed a notice of intention to defend on behalf of the defendant on 1 October 2018.

[4] On 19 November 2018 the defendant was served with a Notice of Bar calling upon it (defendant) "to plea within five (5) days from date of service hereof failing which the defendant will be barred from pleading". The defendant failed to file the plea and on 12 March 2019 the plaintiff applied (to the Registrar) for the allocation of date of hearing of the matter. A copy of this letter was served on the State Attorney on 12 March 2019.

- [5] On 14 May 2019 the Registrar allocated Monday, 24 June 2019 at 10H00 as the date for hearing of the matter. The Registrar's "Notice of allocation for a trial date" was served on the State Attorney on 19 May 2019.
- [6] On 22 May 2019 the plaintiff filed with the Registrar a notice of set down of an application for default judgment. The date of set down was 24 June 2019, at 10H00. Again, this notice (of set down) was served on the State Attorney on 22 May 2019. On the trial date, 24 June 2019, there was no appearance on behalf of the defendant. Accordingly, evidence was led by the plaintiff's counsel in support of the application for default judgment. Only the plaintiff testified. Let me now take the liberty of setting out the plaintiff's personal circumstances and her account of the events of 24 March 2018 at her house.
- [7] The plaintiff is a major female who was born on 11 May 1976 at Tlakgameng village, North West. She is presently 44 years old and was 41 years old at the time of the search of her home on 24 March 2018. Her mother, Elsie Makhoate, who was born in 1944 is still alive but is blind whilst her (plaintiff) biological father has passed away a long time ago. The plaintiff has two younger siblings, a sister, Billeshia Shashape and a brother Shadrack Shashape ("Shadrack"). Her highest school qualification is Grade 4, which she has completed through the Adult Basic Education and Training (ABET) – programme of the National Department of Basic Education at Tlakgameng village.
- [8] The plaintiff owns a four roomed house situated at her residential address which she acquired through the Reconstruction and Development Programme (RDP) of the National Department of Public Works. The plaintiff's kitchen is in a separate structure erected directly behind the house and the door thereof faces the back door of her house.
- [9] The plaintiff's mother is living in her own house situated directly behind the plaintiff's home on a separate stand at House M05, Lesotho Section, Tlakgameng village. At the time of the search of the plaintiff's home, by Inspectors Phiricwane and Matojane, on Saturday 24 March 2018, the plaintiff's mother was living in the aforesaid house together with the plaintiff's two younger siblings and their children.
- [10] She (plaintiff) is presently unemployed and she has never held any form of permanent employment. For a period of two years commencing during 2015, she was employed in the Expanded Public Works Programme ("EPWP") of the National Department of Public Works on a temporary basis.
- [11] The plaintiff is unmarried and is the biological mother and primary care giver of five children who are between the ages of 19 years and 3 months. These children are all living with the plaintiff. She is the sole bread winner at her house.
- [12] Her eldest child is a girl, K[...] S[...] ("K[...]"), who is presently nineteen years old and in Grade 9 in T[...]. The plaintiff's second eldest children are twin boys who are presently fourteen years old and of whom one of them, P[...] S[...] ("P[...]") is a Grade 4 learner at T[...]. The other child is not attending school as he is disabled. Her eldest daughter and her two

twin sons have the same biological father and she is not receiving any contribution towards their support from him. Her last two youngest children are a girl and boy, who are presently three years and three months old respectively, and thus not of school going age and who have the same biological father, who is residing and employed at Upington, Northern Cape.

- [13] From this gentleman, the plaintiff receives in some months R1000.00 and in other months R2000.00 as a contribution towards the support of her two youngest children. She receives every month a payment of R1 680.00 from the South African Social Security Agency (“SASSA”) in respect of child support grants of R420.00 per months for each of her two youngest children and Phenyio and a care dependency grant of R420.00 for his twin brother. The plaintiff had up and until the search of her home (by Inspectors Phiricwane and Matonyane on Saturday, 24 March 2018) generated a monthly income of about R8 000.00 from performing at Vryburg, Ganyesa, Tlakgameng Village and Morokweng Village, North West as a gospel singer under her stage name Mme Tshidiso, a contemporary dancer. Her dance partner was Mashimbosho. She was the leader of a cultural group with the name of Rebene Ngwao. In 2015 she paid R7000.00 for the recording of her two discs entitled “Jeso ke Morena”.
- [14] The plaintiff used to sell the aforesaid compact discs at R50.00 per compact disc from stalls at the places where she performed, at government grant pay points as well as at her place of residence. She does not have any record of the sales of the said compact discs as it were cash sales. Colour copies of the cover of the compact discs have been handed in by her into evidence as Exhibit A and B during her testimony.
- [15] The plaintiff was able to turn her talents as singer and dancer to the best advantage of her five children and herself due to the fact that she received training in singing and dancing from officials of the Department of Arts and culture, North West Government at Ganyesa, and she also received a sponsorship from the aforesaid Department as part of its involvement in the South African Traditional Achievement Award (“SATMA”).
- [16] During the first part of 2018 and prior to the search of her home, the plaintiff and Mashimbosho caused a compact disc to be produced from their singing and dancing after the plaintiff had paid a recording studio in Ganyesa an amount of R3 500.00 for the recording of their music. A colour copy of the aforesaid compact disc was handed in court as exhibit C during her testimony. As at the day on which her home was searched, the applicant had not sold any of the compact discs produced from the recording of the singing and dancing of her dance partner and herself as she experienced certain health problems brought about by her pregnancy with her youngest son, T[...] S[...], and his birth on 17 March 2019.
- [17] The plaintiff convened the cultural group about three years before the search of her home on Saturday 24 March 2018 and she trained the members thereof herself. The aforesaid cultural group consisted out of seven members of whom K[...], P[...] and plaintiff formed part thereof. The plaintiff paid the owner of a vehicle R2000.00 to convey her and the other members of her cultural group as well as her two youngest children on 24 March 2018 from

her place of residence to a recording studio in Ganyesa. On that day, she further paid an amount of R3 500.00 for the recording of the music of the traditional singing and dancing of her group for a compact disc to be produced

- [18] Plaintiff paid an amount of R9 800.00 for the design and the manufacturing of the traditional costumes worn by her and other members of her cultural group on the cover of the compact disc which was produced from the recordal of their music on Saturday, 24 March 2018. A colour copy of the said compact disc is Exhibit D before court. The plaintiff had hoped to recover all her operational costs from the proceeds of the sale of the said two compact discs.

The alleged wrongful search.

- [19] As sated earlier in this judgment, the plaintiff left her house with her two younger children and her cultural group at about 08H00 on Saturday, 24 March 2018 to travel to the recording studio in Ganyesa to record the music of the cultural group for a compact disc to be produced. When they left her place of residence, there was nobody in the house. She had left her 14 year old disabled twin son at her mother's house, in the care of her mother and requested the latter to watch her house as she could not lock the two external doors thereof and that of the kitchen as they do not have any locks. There were a few strips of beef cut like biltong hanging on the wires in her kitchen which had been hanging there since Wednesday, 21 March 2018. She had hung the meat there to dry because she had no fridge which was in a working condition. She had bought this meat at Stella butchery on a Wednesday, 21 March 2018. The door of the kitchen as well as the two external doors of her house were closed.
- [20] On the same day, between 18H00 and 19H00, whilst they were still busy with the recording at the studio in Ganyesa, the plaintiff received a call from Shadrack who told her that there were police officers at her house. Shadrack had at her behest handed his phone to one of the police officers, who introduced himself to the plaintiff over the phone as Inspector Phiricwane of the Police Services at Ganyesa. She requested Inspector Phiricwane not to enter her premises but to wait for her as she was on her way home. Instead, Phiricwane told her that he had already entered her premises, that he was inside her house and that he had found the meat that he was looking for in the kitchen. She immediately thereafter left Ganyesa to return to her place of residence.
- [21] Upon her arrival at her house at about 20H00 in the presence of her two youngest children and the members of her cultural group, she noticed four motor vehicles with white people in them leaving her premises. She found two marked police vehicles parked outside her premises, a large number of curious onlookers in her premises, and two external doors of her house and the kitchen door standing open.
- [22] Inspectors Phiricwane and Matonyane, dressed in police uniform, with their respective name tags on them, were busy searching the kitchen which was in a state of disorder in that the kitchen units were moved from their places, the drawers thereof were standing open and the groceries stored in them were removed from them and were lying on the floor. The door of the oven of the stove as well as that of the old refrigerator were standing open. Her

sitting room was in a state of disarray as the drawers and the doors of the room divider stood open.

- [23] Phiricwane and Matonyane introduced themselves to her and told her that they were from the Police Services at Ganyesa. They said that they had opened the external doors of her house and her kitchen door to gain entrance as they had received an anonymous tip off that she was in possession of the meat of two cows which were slaughtered and stolen during Friday night, 23 March 2018, on the farm of white people outside Tlakgameng Village. The two police officers did not produce a warrant authorizing them to enter and search her home and when she asked them whether they had such a search warrant, they replied in the negative.
- [24] She told them that she had no knowledge of the slaughtering of the two cows and the theft of the meat thereof and that she was neither involved nor participated therein. She explained to them that she had purchased the meat found by the police in her kitchen on Wednesday, 21 March 2018 at the abattoir in Stella and that she had paid R300.00 for it. She was not able to furnish them with a receipt acknowledging payment of the aforesaid amount as she paid it with her contribution to the purchase price of R1 200.00 for the meat purchased by herself and three other persons who shared it amongst themselves.
- [25] Subsequent to that, on Sunday, 25 March 2018 a police officer by the name of Simanga and who told her that he was from the Stock Theft Unit of the Police Service at Vryburg, seized one of the strips of beef, which had been hanging in her kitchen, claiming that he wanted to compare it with the heads of the slaughtered cows that were left behind on the farm. When she asked him how he would be able to do so as the strip of beef was already dry, he informed her that he had his ways of doing so. From her house, Simanga drove to the direction of the farm. He never came to the plaintiff's house again.
- [26] She was neither arrested, charged nor prosecuted in respect of the beef that was found by the police in her kitchen on Saturday, 24 March 2018. She did not have any knowledge of the meat which was stolen at the farm on Friday night, 23 March 2018 as she was neither involved nor participated in the theft thereof. She did not buy any meat after the commission of the theft of the meat of the two cows and the only meat that she knew of was that which she bought on Wednesday, 21 March 2018 at the abattoir in Stella. The two inspectors had trespassed upon her property in that she did not give them permission to enter her house and the kitchen and she also did not consent to the search of her house and kitchen by them. The door of the oven of the stove in her kitchen could, ever since she found it standing open on Saturday, 24 March 2018, not be properly closed.

Applicable legal principles.

- [27] Section 22 of the Criminal Procedure Act^[2] prescribes the circumstances under which an article may be seized without a search warrant. It reads:

“A police official 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 the 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 article in question; or

(b) if he on reasonable grounds believes-

(i) that a search warrant will be issued to him under

paragraph

(a) of section 21 (1) if he applies for such

warrant; and

(ii) that the delay in obtaining such warrant would defeat the object of the search.”

[28] In relation to section 22 (a), it is clear that the plaintiff did not permit the search of her premises by the police. In fact, she told them telephonically not to conduct the search until she had arrived. Secondly, none of the plaintiff’s relatives e.g. her mother, permitted the search of her house.

[29] It is trite law that the ambit of protection provided in s 22 has to be interpreted with reference to the Constitution of the Republic of South Africa,

1996. Section 14 (b) and (c) of the Constitution

provides that everyone has a right to privacy. The right not to have one’s

property searched and one’s possessions seized is part and parcel of the right to privacy. In terms of section 36 of the Constitution, the latter right is subject to reasonable and justifiable limitation[3].

[30] In *Magobodi v Minister of Safety and Security and another*[4], the Court held that it had a constitutional duty to critically regard searches and seizures and to ensure that such actions were reasonable and justifiable in the circumstances. Therefore, the searching official will have to show that reasonable grounds existed at the time when he decided to enter and search the plaintiff’s

premises without a search warrant[5].

[31] The problem which confronts the defendant in this case is that there is no explanation at all, let alone a reasonable account why the police decided to search the plaintiff’s house. The little which the Court was told by the plaintiff is that the police told her that they had information that the farmer’s lost cow meat was in her house. The onus which rests on the defendant to justify the search without a

warrant has not been discharged.

[32] Section 9 of the Stock Theft Act[6] reads:

“(1) Any person may, without warrant, arrest any other person upon reasonable suspicion that such person has committed the offence mentioned in section two or four.

- (2) Whenever any justice of the peace, policeman, or owner, lessee or occupier of land reasonably suspects that any person has in or under any receptacle or covering or in or upon any vehicle any stock or produce in regard to which an offence has been committed, such justice of the peace, policeman, owner, lessee or occupier may without a warrant search such receptacle or vehicle and move such covering, and if thereupon finds any stock or produce in regard to which he reasonably suspects an offence to have been committed, he may without warrant arrest such person and seize such vehicle or receptacle and shall as soon as possible convey such person and the stock or produce so found and the vehicle or receptacle so seized to a police station or charge office.”

Advocate Zwiegelaar for the applicant submitted in her heads of argument, that this section (s 9) does not find application in the current case. I agree.

[33] In my view, the plaintiff was an honest, truthful and reliable witness and the Court accepts her account as a correct version of the incidents of the day in question. On a balance of probabilities, I am satisfied that Phiricwane and Matonyane’s search of the plaintiff’s house was unlawful as it went against the criteria laid down in section 22 of the Act. The defendant is therefore wholly vicariously liable for the plaintiff’s damages.

Quantum.

[34] What follows is the plaintiff’s evidence regarding the sequelae of this incident on her and her family’s life. About one weekend after the police had searched at her house, the plaintiff arranged for a singing and dancing session where she sang as usual. However, the spectators just dismissed her by leaving the singing venue, gesticulating by throwing their arms in the air backwards. This was a sign that the people were boycotting her music session. Prior to the unlawful search of her house, she never experienced such a humiliation by members of the public who, generally, enjoyed her music and dance.

[35] One of the effects of the police’s unlawful conduct is that parents of the children who were part of the plaintiff’s signing group, refused to allow them (their children) to participate in the plaintiff’s group any longer. However, these are children who had all along been part of this singing group. As at the date of this incident (the search), the plaintiff had been signing with these children at her house for three years.

[36] The plaintiff is no longer selling CD’s because people are no longer interested in buying them. She has lost confidence and strength of standing in front of a group of people to render a music item. Previously, she was able to raise about R8000.00 per month on the sale of her CD’s. However, she was not keeping any record of the sales and income. Currently she

has stopped everything – she is no longer recording or selling CD's. Her current situation and that of her family is not a happy one. Even her children at times ask her: "Mom, are they no longer coming to buy CD's?" Her fourteen year old child once came to her crying saying: "Mom, a certain child at school told me that at home we are stealing."

- [37] Hunger and need has suddenly entered her home with her children constantly reminding her that "when we were still selling CD's, we were not struggling at home." Post this incident, she spends sleepless nights and has since developed high blood pressure. She is unable to see clearly letters which are written on a paper. At the clinic, she was told that this was due to the high blood pressure.
- [38] In her area of residence, she no longer feels safe in her house. The fact is, people have started to talk about her family, they allege that at her house they are thieves. Some community members say if they loose anything or anything belonging to one of them disappears, they will suspect the plaintiff and her family. The neighbours, who used to visit her freely and frequently before, have suddenly stopped coming to visit her house. Equally, her eldest daughter's friends have stopped visiting her at home. When she asks them why, they say even at funerals people are talking about them (the plaintiff's family). The plaintiff views this whole situation as a "disgrace to us". One of her children asked her how could they stop people from talking about them. To that question, she had no answer. This child told her that they are no longer enjoying themselves at school. The plaintiff concluded by saying her name had been tarnished. Her evidence came to an abrupt end when she became emotional, broke down and cried in the witness box.
- [39] It is trite law that in arriving at a quantum of general damages, an attempt has to be made by the Court, in the exercise of a broad discretion, to arrive at a fair award to compensate for the negative impact of the delict on the life of the injured party. The amount of such an award is not susceptible of precise calculation and it should not be extravagant as there should also be fairness to the defendant[7]. In *Pillay v Minister of Safety and Security*[8] an award of R150 000.00 was made for general damages on 2 September 2008 to a 62 year old plaintiff where the police purported

to act under an authorization to search her home; broken through two security gates as well as three entrance doors, to obtain access to it. They damaged certain interior doors, door frames, door locks and cupboard-door locks and scattered her goods and belongings around the house. They body-searched her and thereby caused her to become so scared that she called the flying squad to assist her. This resulted therein that she was diagnosed by two psychiatrists with post traumatic stress syndrome arising from the incident, involving:

"flash-backs and reliving the traumatic event, anxiety, mood disturbances, upsetting dreams, persistent avoidance, sleep disturbances, impaired concentration, memory deficiencies, depression, feelings of guilt, rejection and humiliation"-

with a poor prognosis.

[40] In *Minister of Safety and Security v Augustine*[9], awards of R200 000.00 were made for general damages to each of the first to third respondents (a father employed as a quality supervisor of a vehicle tracking company, a mother employed as a creditor controller and a 16 year old son respectively) and R250 000.00 to the fourth respondent, a 15 year old daughter. A large number of police officers broke in the dead of the night (at approximately 2h00) into the house. They had been living as a family together with the two-and-half-year old baby boy of the first and second respondent. The Police cut a lock in order to enter the driveway gate and broke a side door to gain access to the house. This, the Police did without their permission or a search warrant and without having identified themselves as members of the Police Service. They had started to search their home and subjected them to assault, intimidation and humiliation, resulting therein that the first to fourth respondents decided to relocate. They were diagnosed by a clinical psychologist with post traumatic stress disorders arising from the incident. The author, Christo Potgieter[10] holds the view that in the year 2019 the value of R200 000.00 which was awarded to each of the first to third respondents is R260 000.00 and that of the R250 000.00 awarded to the fourth respondent R325 000.00.

Evaluation.

[42] It is only that the nature of insult which the plaintiff and her family suffered in this case is less severe in comparison to *Pillay and Augustine*, supra. That notwithstanding, I do recognize that I am dealing here with a case where the unlawful conduct of the police officers caused the plaintiff and her family untold misery. Her appearance, facial expression, the tone of her voice, her temperament and mood in the witness box tells it all. She is emotionally shattered. Her and her family's dignity and self esteem is gone. It will take time to heal the psychological wounds which this family has suffered. Her health has been compromised. Her income has suffered a battering. This unlawful invasion of this family's rights to privacy has directly put a spoke in the wheels of the plaintiff's music career. Now she is left to be a beggar and to depend on the money she receives for the children in the form of maintenance from the father of some of her children and a government children's grant. When these children reach the prescribed age, this grant will cease.

[43] The plaintiff is currently 44 years old. It is almost two years since her premises were unlawfully searched. Therefore, at least for the past two years, hers and her family's standard of living has been compromised. Unfortunately, this evil act was perpetrated by the police officers whose constitutional duty is to protect society. I am quite conscious that no amount of compensation can atone the dark cloud of poverty which is currently hovering over the plaintiff's family. She was not a fixed income earner but she had income from her music production. She is talented in music and dancing. However, this whole gift has been blown away. Despite that she is still a singer and dancer, there is no one to entertain because who is interested to listen to the lyrics of a suspected thief.

Conclusion.

[44] When I take all the circumstances of this case into account and the limited resources which the respondent has at its disposal, I am of the view that a fair amount of compensation is R96 000.00. As regards to costs, the plaintiff decided to bring its action in the High Court instead of the Magistrates Court. The costs will therefore be taxed on the Magistrate's Court scale.

Order.

[45] In the premises, the following order is made:

1. The defendant is ordered to pay to the plaintiff, within thirty days from date hereof, an amount of Ninety Six Thousand Rand (R96 000.00) with costs.
2. If payment is not made within thirty days as aforesaid, the defendant will be liable to pay interest.

SAMKELO GURA

JUDGE OF THE HIGH COURT

ATTORNEYS

For the Plaintiff: NIENABER & WISSING 10 Tillard Street

MAHIKENG

(018) 381 0098

Ref: C NIENABER/SD/BN6740

For the Defendant: STATE ATTORNEY

1St Floor, East Gallery

Mega City Shopping Complex

MMABATHO

Ref: 1138/18/P6

[1] Act 40 of 2002. Section 3 of this Act provides: "(1) No legal proceedings for the recovery of a debt may be instituted against an organ of state

unless- (a) the creditor has given the organ of state in question a notice in writing of his or her intention to institute the legal proceedings in question; or (b) the organ of state in question has consented in writing to the institution of that legal proceedings- (i) without such notice; or (ii) upon receipt of a notice which does not comply with all the requirements set out in subsection (2) (2) A notice must- (a) within six months from the date on which the debt became due, be served on an organ of state

in accordance with section 4 (1); and (b) briefly set out- (i) the facts giving rise to the debt, and (ii) such particulars of such debt as are within the knowledge of the creditor. — — — “

[1] Act 40 of 2002. Section 3 of this Act provides:

“(1) No legal proceedings for the recovery of a debt may be instituted against an organ of state

unless-

- (a) the creditor has given the organ of state in question a notice in writing of his or her intention to institute the legal proceedings in question; or
- (b) the organ of state in question has consented in writing to the institution of that legal proceedings-

(i) without such notice; or

(ii) upon receipt of a notice which does not comply with all the requirements set out in subsection (2)

(2) A notice must-

- (a) within six months from the date on which the debt became due, be served on an organ of state

in accordance with section 4 (1); and

(b) briefly set out-

(i) the facts giving rise to the debt, and

(ii) such particulars of such debt as are within the knowledge of the creditor.

— — — “

[2] Act 51 of 1977.

[3] Du Toit et al: Commentary on the Criminal Procedure Act; page 2-30E

[4] 2009

(1) SACR 355 (TK).

[5] Alex Cartage (Pty) Ltd & Another v Minister of Transport & Others 1986 (2) SA 838 (E).

[6] Act 57 of 1959

[7] Minister of Safety and Security v Seymour 2006 (6) SA 320 SCA para [20]; Minister of Safety and Security v Augustine 2017 (2) SACR 332 (SCA) at para [25].

[8] (228) ZAIGPHC 463 (2 September 2008)

[9] Supra, note 7

[10] Christo Potgieter: The Quantum of Damages in Bodily and Fatal Injury Cases, 2019 at 224.

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