

SOUTH AFRICA / JUDGMENT

Zonela v Minister of Police (3306/2018) [2020] ZAECMHC 45 (17 September 2020) [2020] ZAECMHC 45

COURT

Eastern Cape High Court, Mthatha

BEFORE

Mafunda

CASE / FILE NUMBER

3306/2018

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IN THE HIGH COURT OF
SOUTH AFRICA
EASTERN CAPE DIVISION,
MTHATHA

Case

no.: 3306/2018

In

the matter between:

JABULANI
SICELO ZONELA
Plaintiff
and
MINISTER
OF POLICE
Defendant

JUDGMENT

MAFUNDA AJ:

1. The plaintiff, an adult male, instituted action against the defendant claiming compensation in the sum of R14 620 000.00 as and for damages arising out of an alleged shooting by members of the South African Police Service as employees of the defendant whilst acting in the course and scope of their employment with the defendant.

2. At the start of the proceedings, the parties moved a joint application for the separation of the issue of the defendant's alleged liability from the quantum of the plaintiff's alleged damages, with the issue relating to quantum standing over for later determination, which order I granted.

3. The plaintiff pleaded as follows:

"On or about 18 and/or 19 November 2016 on the R61 Road and/or at Sutherland Street, Mthatha within the area of jurisdiction of this

court the plaintiff was shot by members of the South African Police Service who were (i) on duty, (ii) acting during and within the scope of their employment as such and (iii) whose full names and particulars are not known to the plaintiff, save that at all material times hereto they were stationed at Madeira Police Station in Mthatha (Police)."

4. The plaintiff further pleaded that

"... the shooting was as a result of the wrongful and unlawful conduct on the part of the Police in that the Police had no reason to shoot him. In and as a result of the shooting, the plaintiff (i) was shocked, (ii) discomforted, (iii) suffered injury to his person and dignity and was deprived of his liberty and enjoyment of amenities of life, and (v) lost his employment and income as a taxi operator.

5. The defendant delivered a plea containing a bare denial.
6. The plaintiff testified that on the day of the incident, he was driving along Chatham Street intending to join Sutherland Street in Mthatha, and then into the R61 towards Ngqeleni. He had a passenger in his vehicle, one Teko.
7. When approaching the stop sign at Chatham Street and before joining Sutherland Street, he saw police officers and police cars parked on the side of the road with flashing blue lamps.
8. He was flagged down by a police officer and when he was about to stop he was told to continue driving but to reduce his speed. He complied with the instruction.
9. He proceeded to turn and joined Sutherland Street. He then heard gunshots. When he looked in the rear view mirror he saw police officers shooting at his vehicle.
10. He realised that he could not move his lower body and the vehicle he was driving stalled.
11. After the gunshots had subsided he requested Teko to move him from the driver's seat and take him to Madeira Police Station for assistance and to report the shooting.
12. On arrival at Madeira Police Station, Teko could not go into the police station as they were approached by two Police Officers who advised Teko to take the plaintiff to hospital. They also told him that they had no vehicle at the station. They told Teko to take the plaintiff to hospital where they would find him once a vehicle became available to them.

13. Teks telephoned someone at the local taxi rank. Soon thereafter a vehicle from the taxi association arrived and took him to hospital where he was admitted.
14. The plaintiff was cross-examined by the defendant's counsel with the aim of discrediting his evidence, such cross-examination however bore no fruit as the defendant has no contradictory version. Suffice to mention that the plaintiff was unshaken and stuck to his version of events.
15. At the close of the plaintiff's case Mr Ngadlela, who appeared for the defendant, moved for absolution from the instance. The application to absolve the defendant from the instances was refused.
16. Despite setting out the test to be applied when dealing with the application for absolution from the instance and referring to *Claude Neon Lights (SA) v Daniel*[1], wherein it was held that the test to be applied is not whether the evidence led by the plaintiff establishes what would finally be required to be established, but whether there is evidence upon which a court, applying its mind reasonably to such evidence, could or might (not should, nor ought to) find for the plaintiff, Mr Ngadlela submitted that the plaintiff's evidence was different from the particulars of claim in that it was not pleaded that the plaintiff was paralysed as a result of the shooting and that came out only during examination-in-chief. The plaintiff pleaded that "he suffered injury to his person". The nature and extent of the injury were not described in the particulars of claim.
17. Neither the particulars of claim nor the plea are model pleadings. Mr Bodlani, who appeared for the plaintiff, conceded that much.
18. The essential issue that must be considered for the absolution from the instance is whether the plaintiff has discharged the onus of showing the existence of a prima facie case against the defendant.
19. In my view, the plaintiff has discharged the onus of establishing the existence of a prima facie case against the defendant. The plaintiff testified that he was shot by members of the South African Police Service who were in full uniform, were directing traffic at the time and on hearing the gunshots he looked through his rear view mirror and saw the police shooting at him and that there were marked police vehicles in the area with their blue lamps flashing and that there was no reason for the police to shoot at him. This evidence was not gainsaid or challenged in any manner.
20. The infringement of another person's bodily integrity is prima facie wrongful.[2] The plaintiff did not only plead the infringement of his bodily integrity, he also gave evidence to that effect. That evidence is sufficient to call upon the defendant to rebut the plaintiff's version. It was for that reason that the application for absolution was refused.

21. After the refusal of the application for absolution Mr Ngadlala moved for the dismissal of the plaintiff's claim. He did so after the defendant's case was closed without any evidence having been adduced in rebuttal of the plaintiff's evidence.
22. It was submitted on behalf of the defendant that the plaintiff's claim should be dismissed because the plaintiff failed to report the shooting incident to the police and that there was no record of such shooting in any of the official records of the police. It must be remembered that the plaintiff testified that after the shooting, he requested Teks to take him to Madeira Police Station to seek assistance and to report the incident. They were not assisted at Madeira Police Station.
23. In all the circumstances I find that the plaintiff has discharged the onus of proving that the defendant is vicariously liable for damages that he suffered as a result of having been unlawfully shot at by members of South African Police Service on 19 November 2016 at Sutherland Street, Mthatha.
24. Mr Mapekula, who appeared with Mr Bodlani for the plaintiff, submitted on the issue of costs that this matter was important for the plaintiff and had complex issues warranting the engagement of two counsel.
25. It has always been apparent from the defendant's plea that he had no version to present and that this matter was to be decided only on plaintiff's uncontested version. In my view the engagement of two counsel by the plaintiff was a luxury that should not be paid for by the defendant.
26. In the result, the following order shall issue:
 - 26.1. The defendant be and is hereby held liable to the plaintiff for the proved or agreed damaged suffered by him arising from him having sustained injuries as a result of members of South African Police Service having shot at him at Sutherland Street, Mthatha on 19 November 2016.
 - 26.2. The defendant shall pay the plaintiff's costs of suit to date.
 - 26.3. The action be and is hereby postponed sine die for the determination of the quantum of the plaintiff's damages.

MAFUNDA AJ

JUDGE OF THE HIGH COURT (ACTING)

Counsel for the Plaintiff: Adv Bodlani with Adv Mapekula

Instructed by:

T. Noah Attorneys

54 Wesley Street

MTHATHA

Counsel for the Defendant: Adv Ngadlela

Instructed by: The

State Attorney

No. 94 Sisson Street

Broadcast House

Matter heard on:

10 September 2020

Judgment

delivered on:

17 September 2020

[1] Claude Neon Lights (SA)Ltd v Daniel 1976 (4) SA 403 (AD).

[2] Bennett v Minister of Police 1980 (3) SA 24 (C) at 34–35.

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Prepared on 11 October 2026 · Esheria