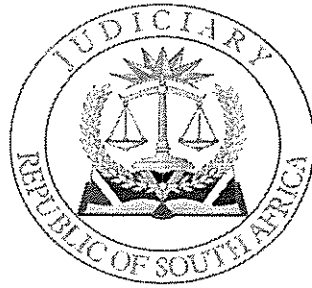


Reportable:	NO
Circulate to Judges:	NO
Circulate to Magistrates:	NO
Circulate to Regional Magistrates	NO



**IN THE HIGH COURT OF SOUTH AFRICA
NORTHWEST DIVISION, MAHIKENG**

CASE NUMBER: 218/2023

In the matter between: -

RIDNEY MATRAS

Plaintiff

and

MINISTER OF POLICE

Defendant

CORAM: MFENYANA J

Delivered: This judgment was handed down electronically by circulation to the parties' representatives *via* email. The time and date for hand-down are deemed to be 14:00 on **30 April 2024**.

ORDER

- (1) The issues of merits and quantum are separated in terms of Rule 33(4) of the Uniform Rules of Court.
- (2) The defendant is liable for 100% of the plaintiff's agreed or proven damages.
- (3) The issue of quantum is postponed to a date to be arranged with the Registrar, in consultation with the Office of the Judge President.
- (4) The defendant shall pay the costs to be taxed on a party and party basis on Scale A.

JUDGMENT

MFENYANA J

INTRODUCTION

- [1] The plaintiff instituted proceedings against the defendant for damages emanating from her assault by members of the South African Police Service (SAPS) on 10 August 2022.
- [2] Following an application by the plaintiff, on 17 November 2023, I granted an order separating the issues of merits and

quantum in line with the provisions of Rule 33(4) of the Uniform Rules of Court. The matter proceeded only on the issue of merits.

[3] In the particulars of claim, the plaintiff alleges that on 10 August 2022 she was shot at twice with rubber bullets by members of the SAPS. As a result of the shooting, she sustained injuries to her leg. She was treated in hospital for severe swelling, pain, and discomfort. She further alleges that she experienced emotional trauma and shock which she will continue to experience in future. As a result of the injuries she sustained, she will require medical treatment in future and has suffered a loss of enjoyment of the amenities of life. She claims an amount of R601 000.00 for the assault comprising an amount of R1 000.00 for past hospital, medical and related expenses, R100 000.00 for future medical and related expenses, as well as R500 000.00 for general damages.

[4] In the notice in terms of section 3 of the Institution of Legal Proceedings Against Certain Organs of State Act¹ the plaintiff

¹ Act 40 of 2002.

claims damages in the amount of R400 000.00 for the assault.

- [5] Despite entering appearance to defend, the defendant failed to deliver its plea, prompting the plaintiff to deliver a notice of bar on 28 June 2023. Having received no plea from the defendant, the plaintiff filed an application for default judgment which it served on the defendant on 10 July 2023. The application for default judgment was set down for 13 November 2023. It triggered no response from the defendant.
- [6] At the hearing of the default judgment on 13 November 2023, the defendant sought to defend the matter and brought an application for condonation, seeking to uplift the bar. The application had not been served nor had it been filed in court. In a bid to expedite the disposal of the matter, I invited both counsel to make submissions on the issue of condonation. I dismissed the application as no plausible explanation was proffered by the defendant for its failure to comply with the Rules of Court. The matter thus proceeded on the merits.
- [7] The plaintiff testified that she is 19 years old. She completed

her matric in 2022 and is now sitting at home. She testified that she was still attending school on 10 August 2022 when she was shot at by police officers for no reason. She stated that on that day she was not at school. On that day there was a strike in the community. While standing inside her yard at her home with other members of her family, observing what was happening on the street, she saw police officers alighting from a police vehicle. A police "Nyala" with other police officers in it was approaching, approximately two houses away from her house with its door open. As it passed her house one police officer pointed a firearm at her and shot her twice with blue rubber bullets while she was standing in her yard, taking videos of what was happening. The shots hit her on the right leg, and she lost balance. Her father tried to speak to the police about what they had done, and they simply ignored him. She was taken to hospital in Potchefstroom where she received medical attention. She reported the matter to the police, but no one reverted to her. She however confirmed that on 25 August 2022 she received a WhatsApp message indicating that a case had been registered under CAS number 252/8/2022.

- [8] The plaintiff submitted 28 photographs which were admitted into evidence. They depict injuries sustained by the plaintiff, and clearly show the two bullet wounds on the plaintiff's leg towards the thigh. She further testified that the photographs were taken by herself after the incident.
- [9] In addition, the plaintiff submitted evidence which was played in court and admitted as part of the record. She recorded the video while she was being shot at by the police. The video footage which lasted approximately two minutes and thirty minutes shows commotion and people screaming, which according to the plaintiff was shortly before and after the police shot at her with rubber bullets. A voice can be heard shouting in the Setswana language, saying: "Ke mang / Die man thunya yard?" which can be loosely translated in English as: "Who is / that man is, shooting in the yard?" According to the plaintiff, it was her father who was screaming that the police are shooting in the yard. In conclusion, the plaintiff testified that she had not seen the police officer who shot her but would be able to identify him.
- [10] What is apparent from the plaintiff's testimony is that the

plaintiff sustained injuries on her right leg. Her testimony was clear and concise. This evidence is uncontested. The plaintiff has discharged the onus of proving on a balance of probabilities, that the injuries she sustained were a direct consequence of the shots fired by employees of the defendant. There is no justification for the assault.

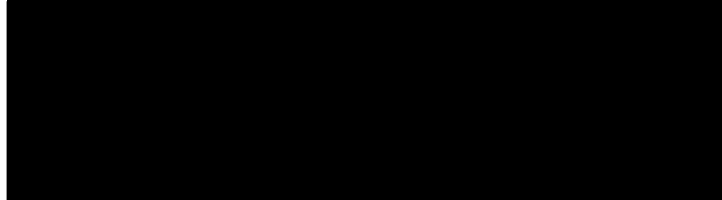
[11] Consequently, the defendant is liable for 100% of the plaintiff's agreed or proven damages arising from the assault.

ORDER

[12] In the result, I make the following order:

- (1) The issues of merits and quantum are separated in terms of Rule 33(4) of the Uniform Rules of Court.
- (2) The defendant is liable for 100% of the plaintiff's agreed or proven damages.
- (3) The issue of quantum is postponed to a date to be arranged with the Registrar, in consultation with the Office of the Judge President.

- (4) The defendant shall pay the costs to be taxed on a party and party basis on Scale A.



S'MFENYANA
JUDGE OF THE HIGH COURT
NORTHWEST DIVISION, MAHIKENG

APPEARANCES:

For the plaintiff : JJ Gerber

Instructed by : Jan Ellis Attorneys Inc.

Email : antonia@janellis.co.za
c/o Loubser-Ellis Attorneys

For the defendant : No appearance

Date reserved : 17 November 2023

Date of judgment : 30 April 2024