IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION, MTHATHA)

Case No.: 3104/16

Reportable	**Yes / No**

In the matter between:

UNATHI MANTASHE Plaintiff

and

MINISTER OF POLICE Defendant

JUDGMENT

Cengani-Mbakaza AJ

Introduction

[1] The plaintiff, a student at Ntombozuko FET College (the College) instituted a civil action against the Minister of Police (the defendant) for wrongful acts allegedly committed by the members of the South African Police Services (SAPS) whilst in the course and scope of the defendant's duties.

[2] In her particulars of claim, the plaintiff outlined that on or about 8 March 2016, she was assaulted by the members of SAPS unknown to her, without any reasonable excuse. Therefore, she suffered damages in the amount of R5 00 000 (Five Hundred Thousand Rand).

[3] The defendant denied the assault and asserted that the students were embarking on a strike, and its members were summoned to assess the situation.

In addition, the defendant averred that its members intervened when the plaintiff refused to vacate the premises resulting in a physical altercation between her and the security guard. Furthermore, the defendant denied the liability for any damages suffered as a result of the alleged assault.

[4] In a pre-trial conference dated 14 November 2022, the parties agreed that the duty to begin and the burden of proof shall rest with the plaintiff and further that the issues of merits and quantum will be dealt with simultaneously. During the trial proceedings, I endorsed this proposition.

The evidence

[5] In the weeks leading up to the incident, the students had a conflict with the College management emanating from certain grievances that they had. As a result, they embarked on a strike and were later ordered to vacate the school premises. According to the testimony of the plaintiff, the day of the incident was meant for the students to obtain feedback from the College management concerning their grievances.

[6] She had been chatting with other students when she heard a scream and observed others dispersing. At that moment she saw a police officer advancing towards her back. She could not run because the police officer grabbed, manhandled and assaulted her with a baton. He continued to assault her until she fell to the ground. Whilst in that position, the police officer continued with the assault. Certain male students intervened, asking the police officer to assault them instead.

[7] After the intervention by other students, the police officer stopped assaulting her. She went home and observed that her arm was swollen. On the following day, she went to Madwaleni Hospital for examination and treatment. Asked to explain the injuries, the plaintiff testified that a medical report was completed, and she suffered the injuries as depicted. These included a swollen

arm and bruises (ecchymosis). The medical practitioner concluded that she had a soft tissue injury.

[8] In contrast, the police officer Seargent Nqaba Vuke (Sgt Vuke) testified that on this day the students had embarked on a strike. Together with two other police officers, he was summoned to the College to monitor the situation and alert the Public Order Police Services (POPS) when it reached a critical point. As they approached the premises, they saw the security guards having a physical altercation with students and the plaintiff. This emanated from the refusal of the plaintiff and other students to vacate the premises as ordered. Sgt Vuke testified that his role was to intervene only, he never assaulted the plaintiff. This is the issue that the court is called upon to decide.

The legal framework

[9] In order to succeed, the plaintiff must prove her case on a balance of probabilities. As early as 1984[1], and even prior[2], the South African Courts set a legal tone on the test to be applied in civil cases and the correct approach to be adopted where there are two mutually destructive versions. In *Maitland of Kensington Bus Co (Pty) Ltd*[3], Davis J held that:

[1] In National Employers General Insurance Limited v Jagers 1984 (4) SA 437 at 440 D-G, the court held, "[I]t seem to me with respect, that in any civil case, as in criminal case, the onus can ordinarily be discharged by adducing credible evidence to support the case on the party on whom the onus rests. In a civil case, the onus is obviously not as heavy as it is in a criminal case, but nevertheless where the onus rests on the plaintiff as in the present case, and where there are two mutually destructive stories, he can only succeed if he satisfies the court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the other version advanced by the defendant is therefore false or mistaken and falls to be rejected…"

[2] Pillay v Krishna 1946 AD 946 at 952-3. In National Employers' Mutual General Insurance Association v Gray 1931 ad 187 at 199, the court held: 'Where there are two stories mutually destructive, before the onus is discharged, the court must be satisfied that the story of the litigant upon whom the onus rests is true.' See also Koster Ko-operative Landbounmaantskappy Bpk v Suid Afrikaanse Spoorwee 1974(4) SA 420 (W) at 426-7; African Eagle Assurance Co Ltd v Cainer 1980 (2) SA 324.

[3] 1940 CPD 489 at 492. See also Selamolele v Makhado 1988(2) 375 A-B.

> ‘For judgment to be given for the plaintiff, the court must be satisfied that sufficient reliance can be placed on his story for there exist a strong probability that his version is a true one.’

[10] The same legal stance was expanded upon with eloquence by the Supreme Court of Appeal (SCA) in *Stellenbosch Famers’ Winery Group Ltd & Another v Martell Et Cie & Others* (Stellenbosch Winery)[4]. In this matter, the SCA held that the approach involves a three-pronged analysis, and this includes the witnesses’ credibility, their reliability and probabilities.

[11] For the court to objectively follow this approach, several factors while not conclusive may play a significant role. This necessitates various characteristics including the witness’ honesty and behaviour while testifying, hidden biases, inconsistencies within the testimony or with previously stated facts, the probabilities or improbabilities or specific aspects of the account of events.[5] The list is not exhaustive.

[12] According to *Stellenbosch Winery*[6], the witnesses’ credibility relies on two key factors, namely the opportunity to experience the events in question and the quality, integrity and independence of their recollection.

The court’s analysis of evidence

[13] Given the fact that this was a very short trial with limited factual disputes, it is not necessary to dwell much on the parties’ factual submissions. Most importantly, both parties relied heavily on the well-established legal principles which I subscribe to. The plaintiff is a single witness, I must treat her evidence with caution. Section 16 of the Civil Proceedings Act 25 of 1965 provides:

[4] 2003(1) SA 11 SCA para 14J-15 A-D.
[5] Fn 2 above.
[6] Fn 2 above.

'**Sufficiency of evidence of one witness**

Judgment may be given in any civil proceedings on the evidence of any single competent and credible witness.'

Although it is acknowledged that the credibility of a single witness is not determined by a specific rigid test or formula[7], the case of *Sauls*[8], notwithstanding its origins in criminal proceedings provides a valuable guidance in the matter under consideration. In *Sauls*, the court held that "the trial judge will weigh its evidence, will consider its merits and demerits and having done so, will decide whether it is trustworthy and whether, despite the fact that there are shortcomings or defects or contradiction in the testimony, he is satisfied that the truth has been told…".

[14] With these principles in mind, I now turn to evaluate the evidence in the matter at hand. To establish the truthfulness of the plaintiff's testimony, I do not intend to prolong the analysis by focusing on immaterial issues. For instance, the presence or absence of a strike on the day of the incident is neither here nor there. Notably, it is not in dispute that at some point the situation at the College became chaotic and attracted police visibility, there were screams by other students and some dispersed and left the premises. The presence of the police at the scene, coupled with the injuries sustained by the plaintiff which are corroborated by a medical report in the form of hospital records enhances the credibility of the plaintiff's testimony. The argument by Mr Rili, counsel for the defendant to the effect that the plaintiff's injuries were not consistent with an assault, lacks evidentiary support.

[15] Although there is a dispute between the parties' testimonies regarding the identity of the wrongdoer, there is no evidence to suggest that the plaintiff mistakenly identified Sgt Vuke as the police officer who assaulted her. No matter how crowded the scene was, Sgt Vuke's presence at the scene was

[7] S v Sauls and Others 1981 (4) All SA 172 at 180 E-G.
[8] Fn 7 above.

uncontroverted. Even if it were to be suggested that the plaintiff might be shielding the actual perpetrator to falsely implicate the police officer, that proposition would be unfounded as it lacks evidentiary backing. The undisputed evidence of the plaintiff is that the uniform of the security guards differs from that of the police officers. Sgt Vuke corroborated this assertion and mentioned that the uniform of the security guards who were at the College premises was green. Therefore, the probabilities point to Sgt Vuke as the person who assaulted the plaintiff. As a consequence of these findings, I conclude that the plaintiff was a credible and reliable witness.

[16] Sgt Vuke did not impress me as a truthful witness. The plaintiff's undisputed testimony is that before the arrival of the police, she was standing in the foyer chatting with other students when she was unexpectedly attacked. I therefore find it implausible that the security guards who were present in the College premises the entire time before the police arrived, would suddenly attack and manhandle the students in the presence of the law enforcement officers, thereby warranting intervention by the police.

[17] The manner in which the plaintiff explained the peaceful atmosphere before the police arrival logistically suggests that the attackers were the new arrivals on the campus - the police. Instead of assessing the situation as they were summoned to do, the police forcefully ordered the students to vacate the premises, including the plaintiff. The police's presence resulted in chaos, which was characterised by screams, students running, dispersing and abruptly vacating the premises. Therefore, the plaintiff has proved the case on a balance of probabilities.

Quantum

[18] In assessing the issue of the quantum of damages, it is required of this court to exercise its discretion to grant what it deems to be a just and sufficient recompense.[9]

[19] Our courts have made awards of a similar nature in a number of cases.[10] However, in *Protea Assurance Ltd v Lamb,*[11] Potgieter JA held that:

> 'Headnote: In assessing general damages for bodily injuries, the process of comparison with comparable cases does not take the form of a meticulous examination of awards made in other cases in order to fix the amount of compensation; nor should the process be allowed so to dominate the enquiry as to become a fetter upon the Court's general discretion in such matters. Comparable cases, when available, should rather be used to afford some guidance, in a general way, towards assisting the Court in arriving at an award which is not substantially out of general accord with previous awards in broadly similar cases, regard being had to all the factors which are considered to be relevant in the assessment of general damages. At the same time, it may be permissible, in an appropriate case, to test any assessment arrived at upon this basis by reference to the general pattern of previous awards in cases where the injuries and their *sequelae* may have been either more serious or less than those in the case under consideration.'

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[9] Peterson v Minister of Safety and Security (1173/2008) [2009] ZAECGHC65 (23 September 2009) at para 21.

[10] In *Bam v Minister of Correctional Services* [2012] ZAECPEHC 66 (18 September 2012), the plaintiff was assaulted with batons and sustained bruising and swelling of arms, bruising of abdomen and back; haematoma of the head and a severe fracture of the knee. He was awarded 180 000 in general damages; In *Nomboniso Plaatjies v Minister of Police* [2022] ZAECMKHC 8 (3 May 2022), the appellant sustained bruises, scratch marks on her wrists, shock and pain in her thumb and back following an assault by police. She was awarded R50 000; In *Mhlengi v Minister of Police* [2021] ZAECGHC 59(29 June 2021), the appellant was hit and dragged to a police vehicle. He was awarded R40 000 for general damages; In *Minister of Police v Heleni* [2023] ZAECMKHC 55(11 May 2023, the court awarded general damages to a sum of R200 000. In this matter the respondent was violently pushed against the wall, grabbed on the ground and stamped on her right foot; *Minister of Justice and Correctional Services v Simon* [2022] JOL 53352 (ECG), in an appeal which emanated from the proceedings in the Magistrate's Court, the respondent was injured on his anklebone and leg that resulted in him struggling to walk and suffering pain for extended period; his ears became swollen; hearing was impeded; and the bruises he sustained on his back caused him associated back pain for some time. On appeal, the court confirmed an award of R30 000 in favour of the respondent.

[11] 1971 (1) SA 530 A.

[20] Reverting to the facts of this case, both parties argued that the court should grant whatever it deems fair and just under the circumstances. Despite the fact that the plaintiff adduced insufficient information regarding the impact that the assault had on her psychological state, it is significant to take a broader spectrum of facts into consideration. The uncontested evidence is that the assault took place in full view of other students and the ordinary members of the public. Although she had fallen to the ground, the assault continued. As a consequence of the assault, she felt ridiculed and belittled.

[21] In a democratic state like ours, protests that create violence between the students and the police should be a remnant of the past. A culture of tolerance, constructive engagement or dialogues and conflict management is significant in promoting a peaceful and stable academic environment. As a servant of the state, a police officer is vested with a responsibility to "respect, protect, promote and fulfil"[12] all fundamental rights entrenched in the Bill of Rights. In this instance, the defendant failed to fulfil what our Constitution[13] embraces.

[22] The plaintiff suffered no serious injuries, and no evidence was led regarding permanence and the impact that the minimum injuries would have on her life. Considering all the factors cumulatively, I am of the view that an amount of R80 000 (Eighty Thousand Rand) would be a fair and adequate award for wrongful assault.

[12] Chapter 2 of the Bill of Rights, with particular reference to Section 7 (2) The Constitution of the Republic of South Africa Act 108 of 1996 (as adopted on 08 May 1996 and amended on 11 October 1996) by the Constitutional Assembly. Section 7(1) provides,' The Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom'.
[13] Section 12(1) states: 'Everyone has a right to freedom and security of the person, which includes the right- (c) to be free from all forms of violence from either public or private sources; (d) not to be tortured in any way; (e) not to be treated or punished in a cruel, inhuman or degrading way.

Order

[23] Accordingly, the following order is issued:

1. Judgment is granted in favour of the plaintiff against the defendant.

2. The defendant is ordered to pay an amount of R80 000 (Eighty Thousand Rand) for wrongful assault. The defendant shall pay interest from 14 days after the date of this judgment, to the date of payment.

3. The defendant shall pay costs of this action on scale A as contemplated under Rule 67A read with Rule 69 of the Uniform Rules of Court.

N CENGANI-MBAKAZA
ACTING JUDGE OF THE HIGH COURT

Appearances**:**

For the Plaintiff	:	Adv B. D. Flatela
Instructed by	:	LG Nogaga Inc
		Mthatha
For the Defendant	:	Adv M. Rili
Instructed by	:	The State Attorney
		Mthatha
Date Heard	:	12 February 2025
Date Delivered	:	13 March 2025