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| Reportable:                        | <b>NO</b> |
| Circulate to Judges:               | <b>NO</b> |
| Circulate to Magistrates:          | <b>NO</b> |
| Circulate to Regional Magistrates: | <b>NO</b> |



**IN THE HIGH COURT OF SOUTH AFRICA  
NORTH WEST DIVISION - MAHIKENG**

**CASE NUMBER: 480/2021**

In the matter between:

**TEBOGO ALBERT GASETINGWE**

**PLAINTIFF**

and

**THE MINISTER OF POLICE**

**DEFENDANT**

**CORAM: OOSTHUIZEN-SENEKAL AJ**

**Date judgment reserved: 27 JUNE 2025**

The judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for hand-down is deemed to be **29 August 2025 at 10H00am.**

## **ORDER**

1. The Defendant is directed to pay the Plaintiff:
  - 1.1. The amount of R250,000.00 (Two Hundred and Fifty Thousand Rand) in respect of general damages;
  - 1.2. The amount of R104,700.00 (One Hundred and Four Thousand Seven Hundred Rand) in respect of psychiatric and psychological treatment.
2. The Defendant shall pay interest on the aforesaid amounts at the legally prescribed rate *a tempore morae*, calculated from the date of summons to the date of final payment.
3. The Defendant shall pay the Plaintiff's taxed or agreed costs of suit, such costs to include but not be limited to:
  - 3.1. The costs of counsel on scale B in terms of the Uniform Rules of Court;
  - 3.2. The reasonable costs of medico-legal reports and the reasonable preparation and reservation fees (if any) of the following experts:

3.2.1 Dr D. Hoffmann - Plastic, Reconstructive and Cosmetic Surgeon;

3.2.2 Dr P.F. Colin - Psychiatrist;

3.2.3 Ms C. Hearne - Clinical Psychologist.

## **JUDGMENT**

### **Introduction**

[1] This matter concerns the assessment of damages following an unlawful assault on Mr Tebogo Albert Gasetingwe, the plaintiff by members of the South African Police Service ("SAPS") on 27 November 2020. The plaintiff, a 38-year-old man, instituted an action seeking compensation for physical injuries, permanent disfigurement, and serious psychological and psychiatric sequelae.

[2] In his particulars of claim, the plaintiff sought:

1. Future medical and related expenses in the amount of R109,500.00; and
2. General damages of R500,000.00, under the headings of pain, suffering, inconvenience, loss of amenities of life, violation of constitutional rights, contumelia, and permanent disfigurement.

[3] The defendant duly conceded liability on the merits, and an order to that effect was granted by Petersen J on 27 August 2024. In terms of that order, the defendant was held liable to compensate the plaintiff for 100% of his proven or agreed damages arising from the unlawful assault. The concession of liability had the effect of narrowing the scope of the dispute before this Court, with the result that the trial proceeded exclusively on the issue of *quantum*.

[4] At the commencement of the hearing, the plaintiff succeeded in an application in terms of Rule 38(2) of the Uniform Rules of Court (“the Rules”), permitting his expert evidence to be admitted by affidavit. His oral testimony was supplemented by three uncontested expert reports namely, those of a psychiatrist, a clinical psychologist, and a plastic and reconstructive surgeon.

[5] This judgment examines the plaintiff’s testimony and expert evidence in light of the applicable legal framework, relevant constitutional principles, and comparable awards.

### **Plaintiff’s Testimony**

[6] The plaintiff testified that he was unmarried but in a stable and long-term relationship. He was the father of four minor children for whom he provided both financial and emotional support. He sustained his livelihood by operating a tuckshop, which constituted his primary source of income, and he was also engaged in community affairs in his capacity as a liaison officer. His educational attainment extended to Grade 11.

[7] On the afternoon of 27 November 2020, the plaintiff was seated in his vehicle outside Econo Foods in Vryburg, accompanied by his pregnant partner and daughter. He observed unrest and protest activity in the area

but made the cautious decision to remain inside his vehicle until the crowd had dispersed. Once calm appeared to return to the surroundings, he stepped out of his vehicle and joined other bystanders who had gathered approximately four to five metres away. His actions, as he described them, were not those of a provocateur or participant in the unrest, but rather of a cautious onlooker, ensuring the safety of his family while satisfying his curiosity regarding the commotion.

[8] It was at this juncture that two SAPS Quantum vehicles arrived on the scene. One vehicle drove past, while the other came to a stop nearby with several officers visible inside. According to the plaintiff, without any prior warning or justification, one officer singled him out and instructed another to “shoot this guy, shoot this guy.” These words were not preceded by any inquiry into his conduct or any suggestion that he posed a threat.

[9] Instinctively, the plaintiff raised his right arm in an effort to shield himself from the threatened assault. In the next moment, two rubber bullets were fired at close range. One struck his right forearm; the other penetrated his right hip. He vividly recalled the immediate and overwhelming pain, which he described as “10 out of 10” on a scale of severity.

[10] While recounting this portion of his ordeal, he broke down emotionally, demonstrating the depth of trauma still carried from the incident. A bystander assisted him back to his vehicle, and he thereafter sought assistance at the police station, from where he was referred to Joe Morolong Memorial Hospital. His wounds were sutured, and he was discharged the same day.

[11] The plaintiff further testified that the assault has left him with permanent physical scars which he continues to bear with distress and humiliation. These scars, particularly the one on his forearm, are visible and have

become the subject of questions from his young son, evoking renewed shame and emotional pain each time he must explain them. Beyond the visible injuries, he suffers flashbacks of the incident, heightened anxiety, and was medically advised that his blood pressure and stress levels are elevated as a direct consequence of the trauma. He described his dignity and self-image as gravely impaired. His testimony conveyed that he has not only been physically wounded but also stripped of a sense of personal security and pride.

[12] The plaintiff's evidence was presented in a manner that was clear, internally consistent, and emotionally congruent with the events described. He did not attempt to embellish or dramatize his account. Rather, his narrative bore the hallmarks of authenticity: specific detail, emotional congruence, and an absence of exaggeration. During the plaintiff's testimony colour photographs were handed in, which depicted the injuries sustained during the incident.

[13] During cross-examination, he remained steadfast, resisting attempts to undermine his account. His emotional reactions while recounting the shooting appeared genuine and resonated with the clinical findings of the psychiatric experts, who diagnosed him with Post-Traumatic Stress Disorder and Major Depressive Disorder.

[14] The defendant, for its part, chose not to call any witnesses or present any evidence in rebuttal. The plaintiff's testimony therefore stood unchallenged. As the Supreme Court of Appeal held in *Stellenbosch Farmers' Winery Group Ltd v Martell & Cie*<sup>1</sup>, uncontroverted and credible evidence should generally be accepted by the court. This principle is directly applicable here: the plaintiff's version was not only uncontested

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<sup>1</sup> 2003 (1) SA 11 (SCA) at paragraph [5].

but was also consistent with the expert medical and psychological reports admitted into evidence.

[15] On the totality of the evidence, I am satisfied that the plaintiff was a credible, reliable, and truthful witness. His testimony was measured and forthright, and it was corroborated in material respects by independent expert evidence. I accordingly accept his version of the events and their sequelae as established on a balance of probabilities.

### **Expert Evidence**

#### **Dr D. Hoffman – Plastic and Reconstructive Surgeon**

[16] Dr Hoffman documented two permanent scars consistent with close-range rubber bullet injuries, namely, a 3cm x 3cm pigmented scar on the dorsum of the right forearm and another of the same size on the right hip. He concluded that the scars are permanent and not amenable to treatment. Their visibility, especially on the forearm, constitutes aesthetic disfigurement and contributes to psychological distress.

#### **Ms Claire Hearne – Clinical Psychologist**

[17] Ms Hearne diagnosed the plaintiff with major depressive disorder and post-traumatic stress disorder (PTSD). She observed clinically significant impairment in psychosocial and occupational functioning, directly attributable to the assault. She recommended psychotherapy at an estimated cost of R52,000.

## **Dr F. Colin – Psychiatrist**

[18] Dr Colin diagnosed PTSD, major depressive disorder, and panic disorder. He recommended psychiatric consultations totalling R33,500 and medication over two years amounting to R19,200, for a combined figure of R52,700.

[19] Together with Ms Hearne's recommendations, the projected treatment costs amount to R104,700.

[20] The expert reports are consistent, mutually reinforcing, and uncontested. Following *Stellenbosch Farmers' Winery*, they must be accepted.

## **Constitutional Framework**

[21] The assault in question implicates the plaintiff's entrenched constitutional rights. Section 12(1)(c) of the Constitution guarantees that "*everyone has the right to freedom and security of the person, which includes the right to be free from all forms of violence from either public or private sources.*"

[22] This provision establishes a clear and affirmative duty on the State and its officials, including members of the SAPS, to respect and protect individuals against unlawful violence. Where, as in the present case, the police themselves are the perpetrators of violence, the breach of constitutional rights is particularly grave.

[23] In *Ex Parte Minister of Safety and Security and Others: In Re S v Walters and Another*<sup>2</sup>, Kriegler J emphasised that the use of force by the police must always be proportionate, strictly necessary, and a measure of last resort. The firing of rubber bullets at close range into a group of unarmed,

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<sup>2</sup> 2002 (4) SA 613 (CC) at paragraphs [28]-[31].

non-threatening civilians, as occurred here, is manifestly at odds with those constitutional principles. It was both unlawful and unconstitutional.

[24] The Constitutional Court, in its seminal judgment of *Fose v Minister of Safety and Security*<sup>3</sup>, provided authoritative guidance on the nature and purpose of remedies for constitutional infringements. The Court recognised that when constitutional rights are violated, the law cannot be satisfied with remedies that are hollow or symbolic; they must be meaningful, substantive, and capable of giving real effect to the rights in question. At paragraph [69], the Constitutional Court held that remedies for constitutional violations must be “*effective, just and equitable*.” This means that courts must provide relief that both restores the individual as far as possible and gives effect to constitutional values.

[25] At paragraph [70], the Court explained that remedies should not be limited to compensation alone. They must also vindicate the rights that were infringed and deter future abuses of power by the State. In this way, constitutional damages serve a wider purpose: they affirm the importance of rights such as dignity, bodily integrity and personal security, while also warning state officials that unlawful conduct will not be tolerated.

[26] Finally, at paragraph [71], the Court added that delictual damages, when properly assessed, can meet both these objectives. Put differently, the ordinary principles of private law, if applied with sensitivity to the constitutional context, are often sufficient to ensure both fair compensation for the victim and the protection of constitutional values.

[27] Accordingly, the award in this case must not only compensate the plaintiff for his pain, suffering, loss of amenities of life, and permanent disfigurement. It must also affirm constitutional rights, signal this Court’s

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<sup>3</sup> 1997 (3) SA 786 (CC).

disapproval of gratuitous police violence, and deter similar abuses in the future.

## Legal Framework for Quantum

[28] In quantifying general damages, courts must exercise judicial discretion, weighing the nature and severity of the injuries, their permanence, the plaintiff's subjective experience, and comparable awards. This principle is well established in *Sandler v Wholesale Coal Suppliers Ltd*<sup>4</sup> and *Southern Insurance Association Ltd v Bailey NO*<sup>5</sup>.

[29] While the plaintiff claimed R500,000, it is important to situate this matter within the broader context of comparable awards. In *Nthebolang v Minister of Police*<sup>6</sup>, the award was R100,000.00 for PTSD arising from rubber bullet injuries, the current value of the award is R105 498.50 calculated by using the Koch CPI values 2025.

[30] In *Bapela and Another v Minister of Police*<sup>7</sup>, the plaintiff was assaulted by being shot with a rubber bullet on his left hand. The injury resulted in significant reduced functioning of his left hand. Moreover, the plaintiff suffered from emotional trauma and was diagnosed with major depressive and post-traumatic stress disorder. In 2013, the plaintiff was awarded R150 000.00 for general damages. The current value calculated by using Kock CPI values as of 2025 would be an award of R274 401.78.

[31] In *Louw v Minister of Police*<sup>8</sup>, where the plaintiff was shot three (3) times with rubber bullets on her lower legs resulting in the plaintiff being

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<sup>4</sup> 1941 AD 194 at 199.

<sup>5</sup> 1984 (1) SA 98 (A) at 116H.

<sup>6</sup> [2025] ZANWHC 7 at paragraphs [30]-[34].

<sup>7</sup> [2013] ZAGPJHC 256.

<sup>8</sup> [2023] ZANWHC 233.

hospitalised for five (5) days. The plaintiff was also diagnosed with post-traumatic stress disorder. The plaintiff, in the matter was awarded R300 000.00 for general damages. In the present matter, the plaintiff's circumstances, involving permanent scarring and multiple psychiatric diagnoses, are more serious than *Nthebolang* but not so severe as to justify the amount of R500,000.00 claimed.

### **Assessment of General Damages**

[32] The plaintiff has claimed an amount of R500,000.00 in general damages. This figure reflects his assertion that the assault caused not only physical pain and permanent disfigurement but also profound psychological harm, humiliation, and impairment of his quality of life. While this Court acknowledges the seriousness of these consequences, it must exercise its discretion judicially, ensuring that the award is fair to both parties and consistent with comparable precedents. Having considered the evidence, the relevant case law, and the constitutional imperatives that guide awards in matters of police brutality, I am satisfied that an award of R250,000.00 is just, reasonable, and proportionate.

### **Special Damages: Future Medical Expenses**

[33] The plaintiff claimed R109,500.00 under this head. On the uncontested expert evidence, his probable future needs amount to R104,700.00, comprising psychotherapy, psychiatric consultations, and medication. In *Bailey NO*, the Court held that such awards must reflect probable future needs on the evidence. I accordingly award R104,700.00 under this head.

## Costs

[34] Costs ordinarily follow the result. In *Mmadu v Minister of Police*<sup>9</sup>, the Court awarded High Court costs, including counsel's fees on Scale B, in recognition of the seriousness of unlawful police assaults. Similarly, *Nthebolang* at paragraph [31] affirmed this approach.

[35] Given the egregious conduct of the South African Police Services, the violation of constitutional rights, and the defendant's belated concession of liability, the plaintiff is entitled to costs on the High Court scale, including counsel's fees on Scale B.

## Order

[36] In the result, the following order is made:

4. The Defendant is directed to pay the Plaintiff:
  - 4.1. The amount of R250,000.00 (Two Hundred and Fifty Thousand Rand) in respect of general damages;
  - 4.2. The amount of R104,700.00 (One Hundred and Four Thousand Seven Hundred Rand) in respect of psychiatric and psychological treatment.
5. The Defendant shall pay interest on the aforesaid amounts at the legally prescribed rate *a tempore morae*, calculated from the date of summons to the date of final payment.

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<sup>9</sup> [2024] ZANWHC 143 at paragraph [24].

6. The Defendant shall pay the Plaintiff's taxed or agreed costs of suit, such costs to include but not be limited to:

6.1. The costs of counsel on scale B in terms of the Uniform Rules of Court;

6.2. The reasonable costs of medico-legal reports and the reasonable preparation and reservation fees (if any) of the following experts:

3.2.4 Dr D. Hoffmann-Plastic, Reconstructive and Cosmetic Surgeon;

3.2.5 Dr P.F. Colin-Psychiatrist;

3.2.6 Ms C. Hearne-Clinical Psychologist.



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**CSP OOSTHUIZEN-SENEKAL**  
**ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA**  
**NORTH WEST DIVISION, MAHIKENG**

**APPEARANCES**

|                    |                              |
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