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**IN THE HIGH COURT OF SOUTH AFRICA**  
**(GAUTENG DIVISION, PRETORIA DIVISION)**

**Case No. 70310/2009**

**Not reportable**

**Not of interest to other judges**

**Revised.**

**22/8/2017**

In the matter between:

**DANIEL THABANG MAGEZA**

**PLAINTIFF**

and

**THE MINISTER OF SAFETY & SECURITY**

**DEFENDANT**

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**JUDGMENT**

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**MILLAR, A J**

1. The present matter came before me as a stated case. The facts relied upon by the parties were common cause and the only issues to be determined by me were the quantum of general damages and certain aspects relating to costs.
2. The matter was argued on Friday 18 August 2017 and after argument I made an order in favour of the plaintiff inter alia for the payment of general

damages in the sum of R650 000.00 (six hundred and fifty thousand rand) and certain costs - the specific terms of the order are contained in a draft order marked "X" attached hereto.

3. I indicated at the time of the handing down of the order that I would furnish my reasons in due course. These are now my reasons for the order.
4. The plaintiff, a cell phone technician who was born on 11 February 1979 was arrested without a warrant, wrongfully and unlawfully shot and unlawfully detained by the South African Police.
5. The plaintiff suffered an abdominal gunshot wound, a small and large bowel perforation and a frank hematuria. After being shot, the plaintiff was resuscitated and had to have a blood transfusion as well as an exploratory laparotomy. During this procedure, the perforations to his bowel were repaired and he was hospitalized for 5 days. He was kept under police guard for the entire time and on discharge, he was taken to prison.
6. He was subsequently during 2010 readmitted with an intestinal obstruction secondary to adhesions that had formed in his bowels and thereafter treated conservatively. All this was in consequence of the gunshot wound he had sustained.
7. The plaintiff remained in police custody from the time of his discharge in hospital until 21 April 2009 after which he was released on bail and appeared several times in court until 12 August 2009 when all charges were withdrawn against him.
8. In a judgment on 24 April 2015, this court found the defendant liable to compensate the plaintiff for all the damages he had suffered.
9. During the trial for the determination of liability, it was found that the first shot fired on the scene had hit the plaintiff and had gone straight into his

abdomen. He had been shot from the back. The trial court found that this had been a brutal attack by the defendant's task force members without any justification and that there was no reason for them to have acted as they did. The trial court's description of what transpired at paragraphs 202 to 204 of the judgment paints a particularly vivid picture of what transpired.

10. Counsel for the plaintiff argued for an award of general damages in the sum of R950 000.00. This was made up of R450 000.00 for the unlawful arrest and detention of the plaintiff and R500 000.00 for assault, *contumelia* and pain and suffering in respect of the gunshot wound and its sequelae.
11. Counsel for the defendant argued for an award of general damages of no more than the sum of R350 000.00. This was made up of R180 000.00 to R200 000.00 for the unlawful arrest and detention of the plaintiff and R100 000.00 to R120 000.00 for the *contumelia* and pain and suffering in respect of the gunshot wound and its sequelae.
12. I am indebted to both counsel for the heads of argument that they have submitted. Both referred to a number of different cases. I would mention however that both specifically referred me to the case of *Lamela v Minister of Safety & Security*<sup>1</sup> in respect of which there are certain similar features to the present case.
13. I was in addition also furnished with a copy of the unreported judgment in the case of *Marius Bouwer v Minister of Safety & Security*<sup>2</sup> in which the court found that having regard to the malice with which the police had acted in that case, a substantially higher award was justified than had been made in a similar case.
14. It is trite that while awards made in previous cases provide guidance, each

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<sup>1</sup> 2012 (6K6) QUD 111 (GSJ)

<sup>2</sup> an unreported judgment in this division under case no 27479/2003 delivered on 8 December 2008

case must be decided on its own facts.<sup>3</sup>

15. In my view, the brutality of the attack and its aftermath together with the multiple surgeries that the plaintiff has had to undergo are of such severity so as to justify a substantial award for damages.

16. In my opinion, it is neither appropriate nor practical to attempt to break down the individual heads of damage and to make an award piecemeal. The plaintiff suffered the damages that he did in an indivisible fashion, firstly by being shot and chased by the police, hospitalized and undergoing surgeries and thereafter having to appear in court on more than one occasion. The pain, suffering and indignity all of which took place at the same time as the unlawful arrest and detention and then persisted thereafter only served to exacerbate the damages suffered by the plaintiff.

17. According, in the exercise of my discretion, I regard the sum of R650 000.00 (six hundred and fifty thousand rand) as an appropriate award in respect of the unlawful arrest and detention, assault, contumelia, pain and suffering.

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**A MILLAR**

**ACTING JUDGE OF THE HIGH COURT**

**IN THE HIGH COURT OF SOUTH AFRICA**  
**(GAUTENG HIGH COURT, PRETORIA)**

CASE NO. 70310/2009

18/8/17

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<sup>3</sup> See Minister of Safety & Security v Seymour 2006 (6) SA 320 (SCA) at paragraphs 16 to 18

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**DRAFT ORDER**

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**AFTER HEARING** counsel on behalf of both the parties and considering the stated case agreed to between the parties the following is made an order of Court:-

- 1.1 The Defendant will pay the amount of R650 000, 00 (Six hundred and fifty thousand rand ) in damages to the Plaintiff;
- 1.2 Interest on the amount of R 650 000, 00 at the rate of 15,5% per annum from 30 September 2009, to date of payment;
- 1.3 The amount referred to hereinabove in paragraph 1.1 will be paid into the trust account of Plaintiff's attorney of record, C G Leistner Attorneys (Trust account), Absa Bank Ltd, Silverton, Branch code : 334-445 (632-005 for EFT payments), Account no. [...];

2. Costs of suit;

3. The costs referred to herein above in paragraph 2, shall also include the Plaintiff's costs and expenses as far as experts and counsel are concerned, including the following:

- 3.1 Costs of obtaining reports, and the reasonable preparation, reservation

and qualifying fees, if any, of Dr Evelyn M Moshokoa;

3.2 The costs of pre-trial meetings, including the costs of counsel;

3.3 The reasonable costs of Plaintiff to make trial bundles for purposes of trial;

BY COURT,

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REGISTRAR

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