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OFFICE OF THE CHILD JUSTICE  
REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA, GAUTENG DIVISION, PRETORIA

CASE NUMBER: 66553/13

26/1/18

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / NO

(2) OF INTEREST TO OTHER JUDGES: YES / NO.

(3) REVISED.

26/01/2018

DATE

SIGNATURE

In the matter between

FRANS MOJAPELO T/A JIKELEZA TAVERN

and

THE MINISTER OF SAFETY AND SECURITY

CHARLES KWAPA MAREDI

PLAINTIFF

1<sup>ST</sup> DEFENDANT

2<sup>ND</sup> DEFENDANT

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JUDGMENT

SENYATSI AJ

## INTRODUCTION

1. This is a claim for damages arising out of the allegations made by the police on 27 September 2012 in Siyabuswa that the Plaintiff kept human skeleton and an unlicensed firearm at his property.
2. As a result of these allegations, the Plaintiff's safety was endangered in his community and his dignity was violated. He had no option but to relocate from Siyabuswa to Mokopane and had to purchase another property in Pretoria.
3. At the hearing of the matter, the two legal representatives of the parties informed me that the Defendants have conceded the merits and that it was quantum of the damages that had to be determined by this court.
4. The Plaintiff's counsel submitted that the award for general damages should be R2 million rand and the damages relating to the costs of transfer of two properties, one in Pretoria and another in Mokopane should be R69 000 and R13 000 respectively.
5. It was submitted for the Defendant by their counsel that an offer of R500 000 was made to the Plaintiff in respect of general damages and the costs of transfer, but that same was rejected. He contended that the offer was reasonable and appropriate means to redress the damages given the circumstances of the instant matter.
6. It was furthermore submitted on behalf of the 1<sup>st</sup> Defendant that although the Plaintiff relocated from Siyabuswa, he was still operating his tavern in the same place. This submission was not controverted for issue for determination.
7. The issue for determination is whether the Plaintiff is entitled to the quantum he seeks this court to determine.

## LEGAL PRINCIPLES

8. It is settled law that the court has a wide discretion in calculating general damages in delictual claims<sup>1</sup>. Comparative awards in other cases might be useful guide. Although they may be instructive, they are not decisive.<sup>2</sup>
9. In **Protea Assurance Co Ltd v. Lamb**<sup>3</sup>, the following instructive statement was said by court:-

*" It should be emphasised, however, that the process of comparison does not take the form of 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 matter".*

10. The main factor for determining quantum is the seriousness of the *iniuria*<sup>4</sup>.
11. In **Brenner v Botha**<sup>5</sup> where the plaintiff sued for the defendant for *iniuria* (for insult) the full bench awarded the Plaintiff damages of £25. In that case the defendant (the plaintiff's employer) had said to her (after she made a mistake on measuring material) '*you are too useless you cannot even measure material*'. The court regarded the award of £25 pounds sterling as substantial and commented that in cases founded on *iniuria* which includes contumelia, substantial damages are always awarded by the court
12. In **Ciliza v Minister of Police and Another**<sup>6</sup> where a policeman had referred to the plaintiff as "kaffer" and persisted in doing so after the Plaintiff had objected to this, the full bench of court held that this was an unfounded aggression upon the plaintiff's dignity and ordered the Minister to pay damages of R150.00, a substantial amount in 1976.
13. In **Mbatha v. Van Staden**<sup>7</sup> the court awarded the Plaintiff damages of R2000 for the insults and assaults which occurred after an altercation about a parking place. At the scene the defendant repeatedly addressed the plaintiff as "kaffir", he threatened the plaintiff and talked loudly and excitedly of murdering the plaintiff, slapped his face twice and threw a punch at the plaintiff's head which missed. At the police station, when the policeman left the room the defendant resumed calling the plaintiff "kaffir", repeated the threats and punched him twice in the face, knocking him to the floor and stunning him.
14. Our courts have held that one of the rights protected by *actio iniuriarum* is the right to an unimpaired dignity.<sup>8</sup>

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1. See *Southern Versekerings v Carstens* 1987(3) SA 577 (A)

2. See *Mngomezulu v Minister of Law and Order* (2014) ZAKDHC 34

3. 1971(1) SA 530 (A) at 535H – 536A, dominate the enquiring as to become a fetter upon the court is general discretion in such matter.

4. See *Charles Mogale & Other v Ephraim Seima* 2008(5) SA 637 (SCA).

5. 1956(3) SA 257(T)

15. I now deal with the circumstances of this case. The accusation by the second defendant that the Plaintiff was keeping human skeleton and unlicensed fire-arm at his property was, in my view, of the seriousness nature and the iniuria suffered has been conceded.
16. In my view the Plaintiff is entitled to a substantial damages award. He had to relocate his family from Siyabuswa as the insult was potentially endangering his live. We know in the Republic that someone accused of keeping for instance human skeleton at his house in some communities may be associated with the practice of witchcraft which may lead to such person being killed. This is why our law has made it a criminal offence to accuse any one of witchcraft. The injury suffered as a result of such accusation by the second defendant is understandable and cannot be under estimated.
17. I have considered the arguments made on behalf of the parties. In my view an appropriate award of damages is the sum of R850 000.

## **ORDER**

18. The following order is made:-
  - (a) The defendants are ordered to pay the Plaintiff the sum of R850 000.00 jointly and severally the one paying the other to be absolved.
  - (b) The defendants are ordered jointly to pay the costs of suit jointly and severally the one paying the other to be absolved.

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6. 1976(4) SA 243(N)

7. 1982(2) SA 260(N)

8. See Minister of Police v Mbilini 1983 (3) SA 705(A) at 715F-G. Also see Viviers v Jentile (2010) ZAGPPHC239 (10 December 2010)





**SENKASTI M**

Acting Judge of the High Court

Judgment reserved:

Judgement delivered: 26 January 2018

Counsel for the Plaintiff: T.P Kruger SC

Counsel for the Defendants: M. Mokadikoa