



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION
MBOMBELA (MAIN SEAT)**

CASE NUMBER 2706/2017

- | | |
|-----|---------------------------------|
| (1) | REPORTABLE: NO |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED. |

01 August 2025
DATE

SIGNATURE

FORTUNATE JOSEPHINA NKOSI

PLAINTIFF

And

MINISTER OF POLICE

DEFENDANT

JUDGMENT

SHAI AJ

Introduction and Background

- [1] This is a dependant's claim brought by the plaintiff against the defendant.
- [2] The claim is founded on the following:
 - 2.1 that the Plaintiff is the surviving spouse of Isaac ben Maseko ("the deceased");
 - 2.2 during his lifetime, the deceased had a legal duty to support or maintain the plaintiff;
 - 2.3 the plaintiff lost support due to the passing of the deceased, caused by the defendant.
- [3] The claim is defended by the defendant.

Issue

- [4] The issues for determination herein are whether:
 - 4.1 the plaintiff has established a relationship between herself and the deceased for purposes of being compensated for loss of support;
 - 4.2 the deceased was killed by the shot fired by Constable Thabethe, an employee of the defendant.

Plaintiff's case

- [5] Plaintiff testified as follows in her own case:
 - 5.1 She was customarily married to Isaac Ben Maseko ("the deceased") on 9 May 2015. A marriage certificate was posthumously applied for and issued on 24 April 2023.
 - 5.2 She had a child with the deceased. The child passed on in 2016.
 - 5.3 She was temporarily employed after the death of the deceased but as at the date of her testimony, she was unemployed.

5.4 The deceased was, during his lifetime, employed by DCI technology, a company owned by one Mr Nkosi. The deceased earned R6 600. He got the salary in cash and she saw the envelopes which he brought home.

5.6 On 18 February 2016 there was a protest at their location which started that Monday. There were no buses or taxis moving in or out of Pienaar. Those going to work caught their transport from Mbhebe Centre. She was later informed by Lindiwe Mhlabane that the deceased had been shot.

[6] Nkosinathi Mnisi testified as follows:

6.1 he was a friend to the deceased.

6.2 On 18 February 2016 he walked with the deceased to a busstop where they assembled to take transport to work. They got a message that the transport would not arrive because of the strike.

6.3 They then proceeded to Mbhebe centre where they usually used transport from Kanyamazane if there was a strike. At the Mbhebe junction they encountered a group of protesters as well as the police. There was commotion between the police and the protesters.

6.4 They were informed by the police that they could not proceed to cross over where they took their transport. They were instructed to go back, which they did. They proceeded to a car wash on the side of the road. This car wash was not far from the junction where the protest was.

6.5 As they were by the car wash, he saw how the protesters started throwing things at the police. By then the police had started firing rubber bullets at the strikers, who had then been retreating towards the direction of the car wash.

6.6 One police officer took out a firearm and pointed it in their direction, and fired a shot. He then realised that the deceased was bleeding. He notified the deceased, who

tried to run. He held the deceased down. It is at that stage that the attackers realised that a person was shot. They screamed to the police, informing the police that someone had been shot.

6.7 The Policemen later came and stood where they were. That's where the deceased lost his life. He called the deceased's family to notify them of his death.

6.8 He insisted on cross-examination that he saw a policeman shooting in their direction.

[7] Michael Adam Smith testified that:

7.1 He is employed by the Independent Police Investigative Directorate ("IPID"), which investigates criminal offences against members of the South African Police Services. They investigated the death of the deceased.

7.2 During his investigations he discovered that a policeman had on 18 February 2016 fired a shot. He was the only policeman that fired a shot. No person reported ever hearing another shot being fired. He established that the shot was fired by one Constable Thabethe, who was subsequently charged with the murder of the deceased.

7.3 The said Constable Thabethe admitted that he fired a shot, albeit to the ground.

7.4 No bullet was found in the body of the accused, meaning that the bullet had entered and exited the body.

[8] Lindiwe Sibongile Mhlabane confirmed that the deceased was employed.

[9] Johan Sauer testified that:

9.1 He is an actuary who specialises in damages quantum. He quantified the claim of the plaintiff first on 27 October 2017, then updated same in March 2024.

9.2 At the time of capitalisation he had an employer certificate which reflected that the deceased earned a salary of R6 500 per month and a thirteenth cheque (bonus) of R6 500, without benefits. The certificate was duly stamped by the employer.

9.3 The capitalisation value was R1 487 969.

[10] A post-mortem report was admitted into evidence as Exhibit B. The report reflects, inter alia, that the findings of the post-mortem disagree with the fact that the gunshot wound is a ricochet type of wound.

Defendant's case

[11] The defendant adduced evidence through Nkosinathi Clarence Thabethe, who testified as follows:

11.1 He is employed by the SAPS as a Sergeant. He was a constable as at 18 February 2016.

11.2 On 18 February 2016 he was, together with other officers, deployed at Pienaar, where there was a protest.

11.3 Because of the urgent nature of their deployment, they had no time to book shotguns. They, therefore, had to go and book shotguns at Pienaar Police station. These firearms use rubber bullets and are used in protests to disperse crowds.

11.4 On their arrival at Mbhebe centre they found that the road was barricaded. They started removing the barricades. He was on foot with other two police officers.

11.5 The crowd attacked as they were busy removing the barricades. He took out his firearm and shot at a 45-degree angle to the ground. He denies that it was his bullet that hit the deceased. He further denies that his bullet ricocheted.

11.6 According to him, the deceased was shot somewhere else and brought to the car wash. The deceased, together with the people that carried him, emerged from a side junction leading to KaMkay.

Loss of support

[12] For a claimant to succeed in a claim for loss of support, the following requirements should be satisfied:

12.1 that the deceased had an obligation or duty to support the claimant financially;

12.2 the claimant was financially supported by the deceased at the time of death;
and

12.3 the claimant needed support due to the death of the deceased.

[13] The plaintiff herein testified that she was customarily married to the deceased. A lobola letter was admitted into evidence as proof of negotiations for and agreement on the lobola. Plaintiff's mother confirmed that indeed the plaintiff was married to the deceased. She gave permission for her to be married. I am satisfied that the plaintiff was indeed married to the deceased and they lived together as husband and wife.

[14] Even if it were to be found that a marriage was not concluded, I have to consider whether or not the nature of the relationship between the parties gave rise to a reciprocal duty of support, which must be protected by the law. It has been

sufficiently established that the relationship shared with the deceased was like a marriage in that the plaintiff and the deceased were living together as a family unit. The plaintiff was financially supported by the deceased either as a sole-breadwinner or as part of a joint relationship. This would then constitute a common law partnership. It was held in *Paixao and Another v Road Accident Fund*¹ and *Kriek v Road Accident Fund*² that a common-law partner is entitled to sue for loss of support.

- [15] The fact relating to the shooting should be determined by circumstantial evidence, in light of the fact that

Evaluation

- [16] There is a dispute as to whether the deceased was hit by a bullet fired by the police officer.
- [17] The police officer admits having fired to the ground. Nkosinathi Mnisi, who was with the deceased when the shot was fired, stuck to the version that he saw the police officer pointing in their direction, and it was immediately after the shot was fired by the police officer that the deceased also fell.
- [18] Nkosinathi's version is corroborated by the version of Mr Smith which is to the effect that no other shot was fired by any other person on that day. No other gunshot was heard.

¹ (640/11) [2012] ZASCA 130; 2012 (6) SA 377 (SCA) (26 September 2012)

² 529/2019)[2020] ZAFSHC 42 (5 March 2020)

[19] I find, after looking at circumstantial evidence provisions, that the only reasonable inference to be drawn is that the shot that fatally wounded the deceased was fired by the police officer.

[20] The defendant is vicariously liable for the acts of the police officer as its employee.

[21] The plaintiff should therefore be compensated by the defendant for loss of support.

Conclusion

[22] I am satisfied that the Plaintiff successfully proved, on a balance of probabilities that she was married to the deceased who owed her a duty of support. She lost this support when the deceased passed on.

[23] In my view, a fair and reasonable compensation is an amount of R1 450 000

[24] Consequently, the following order is made:

1. The Defendant is ordered to pay to the Plaintiff a total amount of R1 450 000-00.
2. Defendant is ordered to pay costs of suit, including costs of Counsel, on a party and party Scale B.



SHAI AJ

DATE OF HEARING: : 2 April 2025

DATE OF JUDGMENT : 01 August 2025

This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be **15h00** on **01 August 2025**.

Appearances:

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