

**IN THE HIGH COURT OF SOUTH AFRICA
(WITWATERSRAND LOCAL DIVISION)**

CASE NO: 06/5172

In the matter between:

BOQO MXOLISI

Plaintiff

and

MINISTER OF CORRECTIONAL SERVICES

Defendant

J U D G M E N T

SALDULKER, J:

A. INTRODUCTION

[1] The Plaintiff claims damages against the defendant as a result of bodily injuries he sustained when he was assaulted whilst he was a prisoner, in the Krugersdorp Correctional Centre, on 1 March 2005, (the incident) by an

inmate Mr Jeffrey Chikoto ("*Chikoto*").

[2] At the beginning of the trial and pursuant to an agreement reached between the parties, an application was made in terms of Rule 33(4) for a separation of issues and I ordered accordingly. The present trial therefore concerns only the merits of the plaintiff's case.

[3] It is common cause that:

3.1 the plaintiff was assaulted at approximately 09h00, at the Krugersdorp Correctional Centre, by Chikoto as set out in paragraph 3 of the particulars of claim, in the presence of two Correctional Services Officials, viz: Mr Masemola (Masemola) and Mr. Chonco(Chonco) (the defendant's employees)

3.2 Chikoto used a razor blade to cut the plaintiff on the left side of his face;

3.3 the plaintiff suffered injuries as a result of the assault;

[4] In issue is whether the defendant's employees acted negligently and whether their negligence caused him to be injured

[5] The Defendant denies any negligent conduct on its part.

B. THE PLAINTIFF'S CASE

[6] In a summarised form the evidence of the plaintiff was to the following effect:

6.1 At approximately 09h00 on 1 March 2005 the plaintiff was waiting in a closed off narrow passage for an official to open the spiral gates between the hospital section where he had been working and his section in the prison.

6.2 He saw two senior officers, (the defendant's employees) approaching with an inmate Chikoto. They were following Chikoto. Chikoto was not restrained and walked freely in front of them. When they were about 5 metres away from him, the plaintiff heard someone run towards him. Chikoto then assaulted him by cutting him deeply on his left ear and cheek on the side of his face. He tried to evade the attack but could not. When the two officials got to him it was too late. The officials then hit Chikoto with their batons.¹

¹ Batons was changed later to "tonfa".

6.3 After the assault he was bleeding profusely and received medical treatment at the hospital section. He was told at the hospital that Chikoto had prior to attacking him, assaulted three or four other inmates in the hospital section.

6.4 He did not know where Chikoto was being taken by the correctional officials. There was a solitary confinement section at the hospital which was the "J " Block and "C" Block and in order to reach that section, one had to pass the spiral gates where the plaintiff had stood prior to the assault.

6.5 Under cross- examination it was put to him that he was not allocated to work in the hospital section. To this he replied that he had been appointed in the A2 section as a cleaner and had been transferred to the hospital section.

6.6 It was unusual for a prisoner to be escorted by two senior officials. However when a prisoner assaulted someone or was involved in a fight he was escorted by senior officials. Otherwise junior sergeants accompanied the prisoner. If the prisoner was dangerous he was also handcuffed and escorted by senior officers. If the prisoners were involved in a fight they were sent to solitary confinement at "J" Block.

6.7 It was put to the plaintiff that inmates were not handcuffed or leg ironed unless this was authorised by the head of the prison. To this he replied that he had been incarcerated for ten years and was aware that if inmates were dangerous they were handcuffed and wore leg irons.

6.8 The plaintiff knew that Chikoto was a gangster. He denied that Chikoto had extended his hands as if to greet him when he assaulted him. The attack occurred “so fast, in a matter of seconds”.

[7]. The plaintiff then closed its case.

C. THE DEFENDANT’S CASE

[8]. Mr Samson Masemola (Masemola) testified that he was a senior correctional official working as a unit manager at the Correctional Service Centre. He was responsible for the security within the prison.

[9]. Prior to the incident, he had been alerted by Mr Mthembu that an offender in the hospital section was uncontrollable. He and Chonco then hurried there. At the hospital section they found Chikoto assaulting inmates with a belt to which a viral lock was attached. Chonco then ‘defused’ Chikoto, and removed the belt and the lock with ‘necessary force’. Thereafter, Chonco searched Chikoto thoroughly and found nothing on him. On questioning Chikoto about

his behaviour, they were told that Chikoto wanted a transfer to the Leeukop Prison. Chikoto was by then calm. They explained to Chikoto that since there was a pending assault case where he was the complainant, no such transfer could take place.

[10] After they had 'defused' Chikoto, he was 'so calm, he was like an ordinary person'. Masemola knew Chikoto who had been in his unit since 1999.

[11] Masemola explained to Chikoto that as he had assaulted another inmate he had to take him to the single cells in "C" block. On the way there, Chikoto walked in front of them as prison procedure dictates. They stopped at spiral gates where he saw the plaintiff sitting on a chair unescorted. The procedure of the plaintiff sitting on the chair at the spiral gates was unauthorised. Offenders were not allowed to loiter in the prison without permission and without an escort. The plaintiff was also far away from the A2 section where he was authorised to work.

[12] As they approached the spiral gates, Chikota went close to the plaintiff as if he was greeting him and he then 'cut' the plaintiff with what they later discovered was a razor blade. The incident occurred very quickly. He only saw the blood. When they went to 'defuse' Chikoto, they found a razor blade bent in half, with two sharp edges, about 4cm in size, in his hand which they removed. The plaintiff was instructed to go to the hospital for medical

attention.

[13] Razor blades were allowed in prison and were in the package with the toiletries that was offered to inmates.

[14] When asked whether Chikoto was dangerous, he replied that Chikoto was classified as a habitual criminal 'but in terms of danger he was a calm offender'. However according to prison regulations all offenders kept in prison were classified as dangerous. As Chikoto "was not that dangerous at that moment" they did not see it fit to utilise handcuffs which had to be authorised by the Head of the Centre.

[15] All correctional officials were armed with two - way radios which they used to call the Head of the Centre if they considered situations out of control. The Head would then attend at such incidents to decide whether a restraining order should be given to 'cuff' offenders. A senior officer could also use his discretion and authorise the restraint. If a junior officer handcuffed an offender without permission, disciplinary steps could be taken against him. However, in this incident there was no need to authorise the restraint because Chikoto was calm after he was searched in the hospital section.

[16] Both he and Chonco 'defused' Chikoto by hitting him with the batons and removing the razor. The incident was reported to the South African Police

Services.

[17] Under cross – examination, Masemola stated that ‘defuse’ meant ‘to separate’ by hitting with batons. After searching Chikoto in the hospital section, they escorted him to the spiral gates. At no time did he lose sight of Chikoto. He conceded that they had failed to find a weapon on Chikoto after a thorough search in the hospital section.

[18] He further conceded that Chikoto was acting violently towards other inmates in the hospital section but there was no need to restrain him. After they had ‘defused’ him, he posed no danger and walked freely. But after the plaintiff was cut, Chikoto posed a danger so they restrained him by holding him, and took him to “C” block. Offenders could not be handcuffed without the authorisation of the Head of the Centre. It would be a violation of their human rights.

[19] Masemola could not say whether Chikoto belonged to a gang and could not remember whether Chikoto had ever been violent before that day. When it was put to him that Chikoto had acted out of character and dangerously in the hospital section and when assaulting the plaintiff, he insisted that the prison rules required him to seek an authorisation to handcuff. Restraint was called for only if Chikoto had posed a danger but Chikoto had responded calmly after being searched in the hospital section.

[20] He stated that in a 'real situation' the plaintiff would not have been injured. He was not authorised to be at the spiral gate. However no disciplinary steps were taken against the plaintiff as he had explained to them the reason why he was there.

[21] At first he conceded that if there had been a proper search the razor blade would have been found, but later he disagreed. He agreed that if Chikoto had been violent then he would have been handcuffed and the incident would not have occurred. He did not consider it necessary to telephone the Head of Centre to get the authorisation. A "tonfa" was used to 'defuse' the situation and not a baton. He described the tonfa as an object, half a metre in length made of rubber with a protruding handle.

[22] He stated that incidents such as the belt and lock attacks on fellow inmates occurred on a daily basis in the prisons. Both he and Chonco considered Chikoto dangerous when he was assaulting inmates in the hospital section but they did not phone in for authorisation to handcuff him. A short time after having searched Chikoto, they escorted him to the spiral gate. They did not consider holding him.

[23] After the attack on the plaintiff, Masemola realised that Chikoto "is just bluffing us". They did not search him again after the attack on the plaintiff. However they restrained him by holding him as they continued to walk to "C"

Block.

[24] The next witness to testify for the defendant was Mr Enoch Chonco (Chonco). He was a senior correctional officer at the Krugerdorp Correctional Service Centre. He was working as a unit manger in "J" Block. His duties included controlling the movements of offenders in the facility, managing the personnel and ensuring that the offenders in the facility were kept safe. On the day of the incident he was summoned by Mr Mthembu to investigate a situation where Chikoto was assaulting inmates in the hospital section.

[25] When he arrived there, he saw Chikoto assaulting other inmates with a lock tightened in a waist belt. He separated them with a tonfa and disarmed Chikoto of the lock and belt. Chikoto offered no resistance. He then searched Chikoto thoroughly for other unauthorised items and found nothing on him.

[26] He then ordered Chikoto to accompany him to the single cells at "C" block as he had violated the rules by assaulting an inmate. As they walked to "C" block, Chikoto walked in front of Masemola and Chonco, a metre away from them. At the spiral gates they saw the plaintiff sitting on a chair. He saw Chikoto go to the plaintiff as if he was greeting him and all of a sudden he saw that the plaintiff was bleeding. Chonco grabbed Chikoto and used his tonfa to separate him from the plaintiff. Chikoto offered no resistance. He then removed the razor blade which was used to cut the plaintiff from Chikoto's

possession.

[27] Masemola and Chonco then held Chikoto by both his hands and continued to escort him to “C” Block. Chonco testified that inmates were not handcuffed or ‘footcuffed’. If this had to be done the permission of the Head of the Prison had to be obtained. Disciplinary steps would be taken against an official who handcuffed an inmate in prison without authorisation.

[28] The plaintiff was appointed to work as a cleaner in section A2 which was far from the hospital section. On realising that the plaintiff was not authorised to be at the spiral gates, Chonco reported the matter to his unit manager to take steps against the plaintiff.

[29] Handcuffs and ‘footcuffs’ were used only when offenders displayed violence against authority. There was no need to seek permission to ‘cuff ’ Chikoto as he had complied with their instructions in the hospital section. After the incident at the spiral gates Chikoto was not aggressive. He did not foresee that Chikoto would assault another inmate on the way from the hospital section to the spiral gates. Had he foreseen that, he would have made a request to sign out for foot or handcuffs. He did not know that Chikoto was dangerous and a gangster.

[30] He stated that incidents such as the belt and lock attacks were common

and occurred in the prisons almost on a weekly basis. It was triggered by arguments amongst the inmates for different reasons. Correctional officials would then separate the offenders and take disciplinary steps against them.

[31] Under cross - examination he stated that although Chikoto's conduct was aggressive and violent in the hospital section, after he was separated from the other inmates, he displayed no further signs of assaulting anyone. He denied that he had to hit Chikoto with the tonfa to separate him from the other inmates or from the plaintiff.

[32] After the razor blade was taken from Chikoto, both he and Masemola restrained Chikoto by holding him. He conceded that had he thoroughly searched Chikoto in the hospital section and restrained him, as a reasonable man would have done, the incident would not have occurred.

[33] Under re-examination Chonco stated that the razor was not easily detectable as it was bent in half. He did not foresee the need to hold Chikoto with both hands after the incident in the hospital section as he was "calm and patient".

[34] He did not know whether any disciplinary steps were taken against the plaintiff for sitting unauthorised on the chair at the spiral gate. He stated that it was a long procedure to acquire the handcuffs. It could take time. One could radio for the handcuffs to be given to the correctional officials but the

permission of the Head of the Centre had to be sought.

D. DISCUSSION

[35] Mr Pieterse for the plaintiff has argued that a reasonable correctional officer in the position of Masemola and Chonco would have realised that Chikoto was dangerous and/or had acted out of character when he assaulted other inmates at the hospital. In these circumstances they should have restrained him by holding on to him or handcuffed him. Furthermore, had they conducted a proper search, they would have found the razor blade in Chikoto's possession. They should have warned others including the plaintiff to be on their guard. Their failure to do any of this fell short of the standard of a reasonable man and they were clearly negligent. Such negligence was causally connected to the injury sustained by the plaintiff.

[36] Ms Bodiba for the defendant has argued that the two correctional officials Masemola and Chonco acted diligently, that the injury was not foreseeable and they could not be held negligent in the circumstances. Had the plaintiff not been loitering at the spiral gates he would not have been injured.

E. THE LAW

[37] In terms of the Correctional Services Act², correctional officials must take such steps as are necessary to ensure the safe custody of every prisoner and maintain security and good order in every prison. The purpose of the correctional system is to contribute to maintaining and protecting a just, peaceful and safe society by detaining all prisoners in safe custody whilst ensuring their human dignity³.

[38] Section 35 of the Bill of Rights spells out the rights of all detained persons clearly. Section 35(2)(e) ensures that a prisoner has a right to conditions of detention which are consistent with human dignity.

[39] In *Minister of Correctional Services & Others v Kwakwa & Another*⁴ Navsa JA cited with approval the following dictum that has become known as the residuum principle from the dissenting judgment of Corbett JA in *Goldberg and Others v Minister of Prisons and Others*⁵:

"It seems to me that fundamentally a convicted and sentenced prisoner retains all the basic rights and liberties.... of an ordinary citizen except those taken away from him by law, expressly or by implication, or those necessarily inconsistent with the circumstances in which he, as a prisoner, is placed".

2 Correctional Services Act 111 of 1998 -Chapter 111 Custody of all Prisoners under conditions of Human Dignity-section 4(2) (a) Approach to safe custody

3 Section 2(b) Of Correctional Services Act 111 of 1998 -Chapter 11

4 2002(4)SA at 455(SCA)

5 1979(1) SA 14(A) at p 39 C to D

[40] The Constitution and the Bill of Rights entrenches the right to life, human dignity, freedom and security of a person. There is a duty imposed on the state and all of its organs not to perform any act that infringes the rights enshrined in the Constitution. The state and its organs are obliged to provide appropriate protection to everyone through laws and structure designed to afford such protection.⁶

[41] In *Kruger v Coetzee*⁷ the foreseeability test for the determination of negligence was formulated as follows :

“For the purposes of liability, culpa arises if:

(a) A diligens paterfamilias in the position of the defendant:

i.would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss; and

ii.would take reasonable steps to guard against such occurrence; and

(b) the defendant failed to take such steps.”

[42] In determining the issue of negligence this court must be satisfied that a reasonable man in the position of the defendant:

- a. Would have foreseen the harm/danger which would occur to the plaintiff;

⁶ Carmichele v Minister of Safety and Security and Another 2001(4) SA 938(CC) at 957 para44. See also K v Minister of Safety and Security 2005(6) SA 419 (CC).

⁷ 1966(2) SA 428 (A) at 430 p E to F.

- b. Would have foreseen the result of such harm/danger;
- c. Would have taken steps to guard against the harm/danger;
- d. Failed to take such steps.

F. ASSESSMENT OF THE EVIDENCE

[43] The Defendant's employees Masemola and Chonco were correctional officers stationed at the Correctional Services Centre at the Krugersdorp Prison. Both Chikoto and the plaintiff were inmates there.

[44] It is common cause that the defendant's employees were summoned to a crisis in the hospital section which was described to them as uncontrollable. Both witnessed Chikoto assaulting other inmates with a viral lock and belt. Both were aware that he was behaving dangerously and violently. They had to use the tonfa to 'defuse' the situation. Chikoto was searched and no dangerous items were found on him. They assessed him as calm and ordered him to accompany them to the single cells in "C" Block, solitary confinement as punishment for his conduct. They did not restrain him nor seek permission from the Head of the Centre to handcuff him as they were of the opinion that he had become "calm". He walked in front of them, and

unrestrained to the spiral gates where he attacked the plaintiff viciously with a razor blade and caused him to suffer injuries.

[45] During the search in the hospital section Chikoto was not asked whether he was in possession of any other dangerous weapons and none were found during the search. Both correctional officials were aware that razor blades were issued to all inmates but there appeared to be no specific search for a razor blade which is a dangerous item. Razors are issued to prisoners for obvious hygienic reasons. All correctional officials must be aware that razors can potentially be used by inmates as instruments to attack or defend themselves with. When a search of an inmate is carried out a reasonable correctional official would be searching for such a lethal weapon. Yet it does not appear that Chonco specifically looked for such an item when he searched Chikoto in the hospital section. Clearly the officials were not diligent in their search, failing in their duty to properly and thoroughly search Chikoto, thereby clearly putting the safety of other inmates in jeopardy.

[46] Chikoto was not restrained in any way after the incident in the hospital section. He was allowed to walk freely in front of the two senior members. Yet after the attack on the plaintiff, Chikoto was restrained by both members holding on to him on either side. This was clearly done to prevent any further assaults on other inmates.

[47] Prior to the attack on the plaintiff the officials were at least aware of the criminal tendencies of Chikoto. They had been summoned to the hospital section to 'defuse' an attack on other inmates by an uncontrollable offender. They used the tonfa to prevent Chikoto from continuing to assault another inmate with the belt and lock. It was clear that he was searched in an effort to disarm him of any other dangerous items in order to disable him from being a threat to others. The officials were aware that he was a habitual criminal. Immediately after Chikoto was searched he was told that he was to be confined at "J" Block in solitary confinement as he had violated the rights of another inmate. It was certainly a serious transgression that necessitated the meting out of immediate punishment to solitary confinement quarters. Yet no attempt was made to restrain Chikoto by holding him when they approached another inmate at the spiral gate. Nor did they warn the plaintiff to be on his guard or to move out of the way as they approached with Chikoto.

[48] In my view the correctional officials' assertion that because Chikoto appeared calm he did not have to be restrained after his attack on a fellow inmate, must be rejected. Chikoto had acted violently and aggressively in the hospital which justified him being restrained, even if it meant using handcuffs for which permission had to be sought. Yet no such request was made by either of the correctional officials.

[49] They were aware that he had to be stopped from assaulting other

inmates. Yet they allowed him to walk freely in front of them without any restraint.

[50] According to them disciplinary measures could be instituted against officials if restraints were imposed without permission. In my view this is not a reason for failing to restrain Chikoto as neither requested permission as they did not consider that a restraint was necessary. Both Masemola and Chonco contradicted each other in material respects with regard to the procedure for requesting handcuffs. Although both testified that the permission of the Head of the Centre had to be sought, Chonco stated that it was a long procedure to acquire the handcuffs, and it could take time, but that the officials could radio for handcuffs to be given to them. Masemola, on the other hand, testified that the Head of the Centre could be contacted if the situation was considered out of control. The Head would then attend at such an incident to decide whether an order should be given to handcuff the offender. A senior officer could also use his discretion and authorise the restraint.

[51] Both officials testified that Chikoto was calm after the incident in the hospital section. In my view this must be rejected taking into account that not much time appears to have elapsed from the separation of Chikoto from the other inmates with the tonfa, their search of him and him being led away to solitary confinement. Both officials in my view failed to assess Chikoto properly and his subsequent attack on the plaintiff bears testimony to that.

[52] Chikoto must have been harbouring violent and aggressive tendencies which reasonable correctional officials in the position of Masemola and Chonco should have foreseen. Their failure to effectively restrain Chikoto after his first attack on fellow inmates in the hospital section was clearly unreasonable and negligent and was the cause of the plaintiff being injured. Both correctional officials failed to exercise their discretion properly regarding the volatile situation that had been created in the hospital section which clearly called for restraints on Chikoto. Both correctional officials were aware that lock and belt attacks in the hospital section were a common occurrence. Their decision not to handcuff or restrain Chikoto in an effective way lacked reasonableness.

[53] Both were senior officers who failed to apply their minds properly to the matter and instead adopted policy considerations regarding handcuffs which they followed rigidly to the detriment of an inmate. In not restraining Chikoto either by holding him or handcuffing him, they acted unreasonably and in breach of the plaintiff's rights to bodily integrity and human dignity.

[54] Having assessed all of the evidence I find that the plaintiff was an impressive and truthful witness who testified in a cogent, forthright and candid manner. He was consistent, credible and reliable and his evidence unimpeachable. He withstood the rigours of cross-examination and there

were no contradictions of a material nature to put his credibility into question. I have no reason to reject his testimony.

[55] The defendant's witnesses in my view were unimpressive and unsatisfactory. They contradicted each other in material respects. Their version with regard to Chikoto being 'calm' after the incident in the hospital section is inherently improbable and unreliable. They should have realised that Chikoto was dangerous. Their explanation in regard to their failure to use handcuffs was poor and arbitrary.

[56] Ms Bodiba argued that the plaintiff was loitering at the spiral gates and had no authority to be there. Had he not been there he would not have been injured. In my view this argument has no merit. It was not put to the plaintiff that he had been loitering at the spiral gates and that had he not been there unauthorised and unescorted the incident would not have occurred. Furthermore Masemola and Chonco contradicted each other as regards the plaintiff's presence at the spiral gates. Masemola stated that when the plaintiff explained the reason for his presence they accepted it. Chonco on the other hand stated that the plaintiff was reported to his unit manager for being at the spiral gates without authorisation.

[57] Imprisonment necessarily makes inroads into a prisoner's personal rights but he is not stripped of these rights. He has the right to be protected against

any infraction of these rights. It is so that he has to submit to prison life and conduct himself according to the prescripts of prison rules and regulations. However his right to bodily integrity, and human dignity are inviolable.

[58] The fact that a prisoner may be loitering unauthorised in a particular section of the prison grounds and sustains an injury, does not mean that he has consented to such injury, nor does this absolve or excuse correctional officials from their duty in maintaining the safety of prisoners. Even if the plaintiff was not authorised to be at the spiral gates, he was nevertheless entitled to be protected by the correctional officials. The plaintiff does not give up his right to physical and bodily integrity as a result of such loitering.

[59] He may have faced a disciplinary hearing for loitering, unescorted and unauthorised in a particular section of the prison, but this did not mean he is not entitled to legal redress for the assault perpetrated on him⁸. Prisoners are at the mercy of their gaolers⁹. It is to them that prisoners look for protection and safe custody. Their gaolers have a duty to maintain their safe custody until they leave the prison.

G. CONCLUSION

[60] Providing safe custody for prisoners under conditions of human dignity,

⁸ Corbett JA in Goldberg (supra) at p 39 Dto E

⁹ Minister of Justice v Hofmeyr 1993(3) SA 131 at p 141 at B to C

maintenance of good order, discipline and security in prisons are fundamental principles of the Correctional Services Act. The circumstances under which prisoners are incarcerated must be secure.

[61] Correctional services have an enormous task regulating and maintaining law, order and discipline in prisons. However maintaining discipline amongst inmates remains their duty as does the safe custody of the prison population. A prison is insulated from the outside world. A prisoner's right to freedom of association, movement and security is also severely curtailed. His choice of company are his fellow inmates and their supervision is the primary responsibility of correctional officers.

[62] The functions of correctional officers are to ensure that every prisoner detained in any prison be kept in safe custody and not pose a danger to himself or to other inmates until lawfully discharged or removed from there. Leg irons and handcuffs, if the circumstances justify it, must necessarily be used in order to restrain violent behaviour where the prisoner is likely to endanger his own or another inmate's safety.

[63] It was the duty of Masemola and Chonco to protect the plaintiff from Chikoto whose criminal character was known (he was a habitual criminal) and who had displayed violent tendencies a short while earlier. Exposing him to other inmates whilst he was unrestrained constituted an unlawful intrusion into

the plaintiff's freedom to walk in the prison without fear of being assaulted.

[64] Both Masemola and Chonco should have foreseen that an unrestrained Chikoto would be a danger to other inmates and that the possibility of Chikoto assaulting another inmate existed, in particular for the plaintiff standing at the spiral gates. The correctional officials failed in their duty to provide safe custody to the plaintiff as they ought to have done. In my view the unprovoked and serious attack with a razor blade on the plaintiff by an unrestrained Chikoto was clearly foreseeable and both correctional officials failed to take steps to guard against the assault on the plaintiff. Even after the serious attack on the plaintiff, two senior officials did not request permission from the Head of the Centre for handcuffs.

[65] A reasonable correctional official in the position of Masemola and Chonco should have:

- 65.1 realised that Chikoto was dangerous;
- 65.2 restrained him by holding on to him or by handcuffing him;
- 65.3 performed a proper search and would have found the razor blade in his possession;

65.4 warned other inmates and more particularly the plaintiff to be on their guard.

[66] Both Masemola and Chonco failed to do any of the aforesaid. A reasonable correctional official in their position would have foreseen the possibility of their conduct in walking with an unrestrained Chikoto could result in injury to another. They failed to take reasonable steps to guard against such occurrence and were negligent.

[67] From all of the foregoing, in my view the plaintiff has proved on a balance of probabilities that the conduct of the defendant's employees, Masemola and Chonco was negligent. Their conduct clearly falls short of that of a reasonable man in the circumstances and is clearly negligent. On the evidence their negligence is causally connected to the injury sustained by the plaintiff.

[68] The plaintiff has accordingly discharged the onus of proving causal negligence on the part of both the correctional officers.

[69] At the pre-trial the parties agreed as follows:

"The parties agree that the costs of the merits trial shall be immediately taxable on the High Court scale."

[70] In the result I make the following order:

70.1 The injury that the plaintiff sustained on 1 March 2005 was caused as a result of the negligent conduct of the Defendant's members, Masemola and Chonco, the correctional officials employed by the Defendant;

70.2 The Defendant is ordered to pay to the plaintiff all the proven damages that he suffered as a result of the injuries he sustained on 1 March 2005;

70.3 The Defendant is ordered to pay the plaintiff's costs, which costs shall be immediately taxable on the High Court Scale.

H SALDULKER
JUDGE OF THE HIGH COURT

Judgment date 17 April 2008

For Plaintiff: Adv C. Pieterse
Instructed by: Logan Naidoo Attorneys

For Defendant: Adv Bodiba
Instructed by: The State Attorney