IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

CASE NUMBER: 153/2019

Reportable: YES/**NO**

Circulate to Judges: YES/**NO**

Circulate to Magistrates: YES/**NO**

Circulate to Regional Magistrates: YES/**NO**

In the matter between:-

M J MOTSOMI Plaintiff

and

MINISTER OF POLICE Defendant

JUDGMENT

FMM REID, J:

Introduction:

[1] The plaintiff claims an amount of R500,000.00 (Five Hundred Thousand Rand) for damages suffered as result of an unlawful arrest and detention. The claim of damages suffered is for pain, suffering, discomfort and embarrassment, loss of amenities of life, *contumelia*

and deprivation of the plaintiff's freedom.

[2] It is recorded in the pre-trial minutes that condonation for the late institution of proceedings in terms of the **Institution of Legal Proceedings Against Certain Organs of State Act** 40 of 2002 have been granted. Merits have been conceded by the defendant as recorded in the court order dated 14 November 2022.

[3] Adv JC van Eeden appears on behalf of the plaintiff and Adv B Riley appears on behalf of the defendant.

[4] The following issues are to be determined by this court:

4.1. The amount of damages that the plaintiff is entitled to;

4.2. From which date the interest on the abovementioned amount should be calculated; and

4.3. On what scale costs should be paid.

[5] The parties agreed to present a stated case in terms of Rule 33(6) of the Uniform Rules of Court, which determines that "*if the question in dispute is one of law and the parties are agreed upon the facts, the facts may be admitted and recorded at the trial and the court may give judgment without hearing any evidence.*"

[6] The following facts were recorded as common cause between the parties:

6.1. The plaintiff was arrested on 21 November 2016 at approximately 15h00 without a warrant of arrest.

6.2. The plaintiff was detained at the holding cells of the

Wolmaranstad Police Station from the date of arrest to 6 December 2016.

6.3. The plaintiff was imprisoned for a total period of sixteen (16) days.

6.4. The defendant concedes that the arrest and detention of the plaintiff was unlawful.

6.5. The defendant concedes that the conditions of the plaintiff was “unfavourable” and “unhygienic”.

[7] The court was not favoured with any more information than that provided as stipulated in paragraph [4] above. In order to be in a position to properly exercise my judicial discretion, I take into cognisance the following common cause facts which I derived from the pleadings:

7.1. The plaintiff is a male person with ID number 8[...] and residing at House 1[...], Extention 1[…], T[...] Location, Wolmaranstad. The plaintiff was 27 years of age at the time of the arrest;

7.2. The circumstances in relation to the arrest are set out in the defendant’s plea as follows:

> *“9.2 It is specifically pleaded that the Complainant identified the Plaintiff as one of the accused who took part in her assault and pointed him out to the arresting officer.*
> *9.3 The plaintiff (according to the complainant) committed the alleged assault on the complainant together with one Mr X (name omitted for privacy reasons). Complainant alleged that she was stabbed several times with a knife. Upon the investigation of the*

arresting officer, Mr X and prior to his arrest, informed the arresting officer that he knows the Complainant and did not deny in taking part in her assault.

9.4 Upon investigation into the plaintiff, plaintiff informed the arresting officer that he has a previous conviction of housebreaking and one pending criminal case of attempted murder. However, upon further investigation, it became apparent that the plaintiff had already been found guilty of attempted murder and such case was not pending.

9.5 Collectively, the information assisted the arresting officer in using his discretion to arrest the plaintiff, in order to take him to court. The plaintiff was so taken within the prescribed 48 hours."

7.3. The plaintiff was detained at the South African Police Service (SAPS) cells for the duration of his arrest and was released on 6 December 2016 on bail in the amount of R800.00 (Eight Hundred Rand).

7.4. The plaintiff was taken to court for his first appearance on 23 November 2016, which period is within the legislatively prescribed 48 hours.

[8] The court has not been favoured with any of the following information, which has an impact on the exercise of the court's discretion. These circumstances are normally taken into account with the exercise of the judicial discretion in determining a just and fair *quantum* of the unlawful arrest. These absent factors were:

8.1. The circumstances under which the arrest took place – whether

it was in public, at home, etc;

8.2. The prevailing circumstances after the arrest;

8.3. The plaintiff's standing in the community;

8.4. Whether the plaintiff was detained alone or with other inmates;

8.5. Whether the plaintiff had communication with his lawyer and/or family members, etc;

8.6. What the conditions of the police holding cells were, save for it being unfavourable and unhygienic;

8.7. In what manner the police holding cells were unfavourable and unhygienic;

8.8. Whether the plaintiff received food to eat; and

8.9. What the sleeping conditions were.

[9] The court does not make any negative inference of the absence of the above factors. I include it in this judgment to illustrate the factors that a court would normally consider, and that I am bound to exercise judicial discretion with the scanty available information before me. The absent factors as mentioned in paragraph [8] above, are of no consideration *in casu* and are deemed to be "neutral" factors.

Quantum

[10] In **Motladile v Minister of Police** 2023 (2) SACR 274 (SCA) the Supreme Court of Appeal (SCA), on appeal from this Division, criticised the impression created that unlawful arrest matters can be uniformly quantified by calculation of an amount of approximately Fifteen

Thousand Rand (R15,000.00) per day. The SCA unanimously found that any attempt to "unify" calculation of *quantum* through a process that the SCA dubbed as a *"one size fits all approach"* is not in the interest of justice.

[11] The criticism has been encapsulated as follows in the Motladile matter:

> *"[13] At the outset of the appeal, and in the heads of argument, the respondent conceded that the damages the High Court awarded to the appellant are so disproportionately low, that this court can infer that the High Court did not exercise its discretion properly. The High Court found that, having regard to the facts and circumstances of the case, an adequate award would be an amount of R15 000 per day, which amounts to R60 000 for the four days that the appellant spent in detention. In adopting the amount of R15 000 per day, the High Court followed a practice that has developed in the North West Division of the High Court, Mahikeng (North West Division), of applying a 'one size fits all' approach of R15 000 per day to damages claims for unlawful arrest and detention. This practice is conveniently described in* ***Mocumi v Minister of Police and Another****. That matter concerned a 28-year-old plaintiff, who was arrested and detained for three days under appalling conditions. The court awarded him damages in the amount of R45 000, calculated at R15 000 per day. The court observed as follows in relation to the practice of the North West Division 'to strive for similarity' in awarding damages for unlawful arrest and detention:*
>
> > *'In* ***Ngwenya v Minister of Police*** *(924/2016) [2019] 3 ZANWHC 3 (7 February 2019) this Court awarded R15 000.00 per day for unlawful arrest and detention. The same amount was awarded in the matter of* ***Gulane v Minister of Police****, CIV APP MG 21/2019, in an appeal which emanated from the Magistrate Court,*

> *Potchefstroom and decided by Petersen J et Gura J. Petersen J et Gura J did also in the matter of* ***Matshe v Minister of Police****, case number CIV APP RC 10/2020, likewise, award an amount of R15 000.00 per day for each of the two days that the appellant was detained.*
>
> *. . .*
>
> *Much as there are also different amounts awarded by this Court as compensation or solatium, there is of late an attempt to strive for similarity or conformity. Each case must however be decided on its own facts, merits, and circumstances. The examples quoted above in the case of* ***Ngwenya v Minister of Police****,* ***Gulane v Minister of Police*** *and* ***Matshe v Minister of Police*** *underscore this. R15 000.00 per day, is a reasonable amount to be awarded.'*

[14] This practice was also followed in ***Tobase v Minister of Police and Another****, which concerned a 30-year-old man who was unlawfully arrested at his place of employment and detained for three days. The North West Division, sitting as a court of appeal, awarded him damages calculated at R15 000 per day, amounting to R45 000. In* ***Nnabuihe v Minister of Police****, also a decision of the North West Division, the plaintiff was arrested and detained from Friday 12 April 2019 at about 12h40 and released on Monday 15 April 2019 without having appeared in court. The plaintiff was assaulted by the police and the inmates. He was squeezed into a cell with one toilet. The inmates shared a single sponge mattress. The plaintiff never took a bath for the duration of his incarceration, nor did he eat. The court awarded an amount of R50 000, which appears to be commensurate with the practice of the North West Division.*

[15] What is plain from the High Court's judgment, in the present matter, is that it followed the trend in the North West Division to award an amount of R15 000 a day for damages suffered as a result of an unlawful arrest and detention. The High Court cited comparable case law of other divisions of the High Court, where the compensation awarded was commensurate with the harm suffered by the respective plaintiffs due to their unlawful arrest and detention. This notwithstanding, in quantifying the damages to award, the High Court relied exclusively on the approach adopted in ***Minister of Police v Joubert*** *(Joubert), where the North West Division awarded R15 000 for each of the seven days the plaintiff was detained. In Joubert the plaintiff was 48 years old when he was arrested. On a Friday morning, while the plaintiff was busy erecting a shack in the company of two friends, two police officers arrested him and took him to the police station at approximately 10h00. He was detained in a cell together with 14 other inmates. The inmates confiscated his food and severely assaulted him that evening. He did not report the assault to the police. He had to share a blanket with a fellow inmate and was not given toiletries. He was detained until his release by the court on Monday 31 August 2015, at approximately 11h00.*

[16] More recently, in ***Spannenberg and Another v Minister of Police*** *(Spannenberg) Hendricks DJP sought to disavow this trend in the North West Division when he said this:*

> *'There is a misnomer that the High Court in the Ngwenya judgment set as a benchmark an amount of [R]15 000.00 per day as the norm for unlawful arrest and detention. This is incorrect and misplaced. Each case must be decided in its own peculiar facts and circumstances (merits). This cannot be emphasized enough. There is no benchmarking nor is there a one size*

(or amount) fits all practice that must be followed. This will most definitely erode the judicial discretion of presiding officers.'

Notably, the court in Spannenberg awarded the two plaintiffs damages in the amount of R18 000 each for being unlawfully detained for the duration of a day. Despite deviating from the practice of awarding R15 000 a day, the court in Spannenberg had no regard to awards in comparable cases." (footnotes omitted)

[12] In the Motladile matter, the SCA analysed the application of the *stare decisis* principle in our judicial system (in referring to cases of similar nature) and the following matters, originating from this Division, were not approved by the SCA:

12.1. **Joubert v Minister of Police and Others** 659/2017 NWHC: not approved;

12.2. **Nnabuihe v Minister of Police** NWM 2273/2019: not approved;

12.3. **Tobase v Minister of Police** Civ App MG 10/2021: not approved;

12.4. **Nnabuihe v Minister of Police** NWM 2273/2019: not approved;

12.5. **Mocumi v Minister of Police and Another** NWM Civ App 9/2021: criticised.

[13] The matter of **Spannenberg v Minister of Police** NWM 2993/2019 penned by Hendricks DJP (as he then was) was approved, and was in discord with the notion of applying a "per day" calculation in unlawful arrest matters. This method of calculation has been dispelled and

expressly criticized by Hendricks JP in **Spannenberg**.

[14] The SCA, when dealing with the matter of **Motladile**, had regard to the following uncontested evidence that was before the court *a quo:* the social standing of the plaintiff as a business man, the fact that the plaintiff was arrested on Christmas day as a result of cooperating with the investigating officer's request to contact the investigating officer, the fact that he was not allowed to have any contact with his wife or brother, that he was not allowed to consult a lawyer, he was refused the opportunity to bring an application for bail, that the plaintiff was incarcerated in a filthy cell with five (5) other inmates, was assaulted and feared further assaults, and was left traumatised after the experience. As a result of the incarceration the plaintiff and his wife could not attend his sister-in-law's wedding and as elders they had a particular social standing at the wedding. The SCA awarded the plaintiff an amount of R400,000.00 for a period of five (5) days and four (4) nights in detention.

[15] Further in the Motladile matter, in determining a just and fair *quantum* for unlawful arrest and detention, the SCA held as follows as a point of departure:

> *"[12] The amount of damages to be awarded to a plaintiff in a deprivation-of-liberty case, as we have here, is in the discretion of the trial court. That discretion must naturally be exercised judicially. The approach of an appellate court to the question of whether it can substitute a trial court's award of damages is aptly summarised by the Constitutional Court in* ***Dikoko v Mokhatla*** *2006 (6) SA 235 (CC) as follows:*
>
> > *'(S)hould an appellate Court find that the trial court had misdirected itself with regard to material facts or in its approach to the assessment, or, having considered all the facts and circumstances of the case, the trial Court's*

assessment of damages is markedly different to that of the appellate Court; it not only has the discretion but is obliged to substitute its own assessment for that of the trial Court. In its determination, the Court considers whether the amount of damages which the trial Court had awarded was ***so palpably inadequate as to be out of proportion to the injury inflicted.****'"*
(own emphasis)

[16] The principles underlying the judicial assessment of damages suffered as a result of an unlawful arrest and detention, has also been set out by the SCA in **Minister of Safety and Security v Tyulu** 2009 (2) SACR 282 (SCA):

"[26] In the assessment of damages for unlawful arrest and detention, it is important to bear in mind that the primary purpose is ***not to enrich*** *the aggrieved party but to offer him or her some much-needed solatium for his or her injured feelings. It is therefore crucial that serious attempts be made to ensure that the damages awarded are commensurate with the injury inflicted. However, our courts should be astute to ensure that the awards they make for such infractions reflect the importance of the right to personal liberty and the seriousness with which any arbitrary deprivation of personal liberty is viewed in our law. I readily concede that it is impossible to determine an award of damages for this kind of injuria with any kind of mathematical accuracy. Although it is always helpful to have regard to awards made in previous cases to serve as a guide, such an approach if slavishly followed can prove to be treacherous. The correct approach is to have regard to all the facts of the particular case and to determine the quantum of damages on such facts (****Minister of Safety and Security v Seymour*** *2006 (6) SA 320 (SCA) at 325 para 17;* ***Rudolph and Others v Minister of Safety and Security and Another*** *2009 (2) SACR 271 (SCA)."*

[17] The above confirms the trite principle that the amount of compensation is in the court's discretion, and has to be exercised judicially in comparison with other, similar matters. A court of appeal will intervene with this court's discretion should it be "… *so palpably inadequate as to be out of proportion to the injury inflicted."* See Dikoko *supra.*

[18] The court has to have regard to the unique circumstances of each case to determine a just and fair amount of compensation. The plaintiff's material circumstances as presented in the stated case, can be summarised as follows:

18.1. The plaintiff, a 27 year old male person, was unlawfully deprived of his liberty and freedom of movement for a period of sixteen (16) days.

18.2. The cells in which the plaintiff was detained, was "unfavourable" and "unhygienic".

[19] The onus to convince the court of a just and fair *quantum* rests on the plaintiff. As already mentioned, the court cannot compare factors such as the circumstances of the plaintiff's arrest, whether he is employed and if so, what occupation he holds, his social and/or professional standing, what the reason for the arrest was outside of those pleaded by the defendant, whether the plaintiff was able to have contact with his family, lawyers etc with other comparable cases. The court is simply not in a position to compare the facts of this case with other cases in similar facts, in the absence of any detail.

[20] Adv Riley submits on behalf of the defendant that an amount of **R288,000.00** (Two Hundred and Eighty Eight Thousand Rand) would be a fair and reasonable amount. This is calculated at a rate of R18,000.00 (Eighteen Thousand Rand) per day x 16 days. Adv Riley

bases this submission on the matter of **Sondlo v Minister of Police** 2012 JDR 1409 (GSJ) where the following was held:

> *"[4] There is no evidence before me of any injuries suffered by the plaintiff of any long term effects following upon the arrest and detention.*
>
> *[5] The only question which I am required to determine is the quantum of damages to be awarded to the plaintiff. Counsel referred me to a number of decided cases where damages were awarded in similar matters. Ms Adam relied on four cases to contend that an amount of R125,000.00 would be an appropriate award of damages. These are* ***Louw v Minister of Safety and Security*** *2006 (2) SACR (T) where an amount of R75,000.00 was awarded;* ***Van Rensburg v City of Johannesburg*** *2009 (1) SACR 32 (W) where an amount of R75,000.00 was awarded;* ***Murrel and Another v Minister of Safety and Security*** *(24152/2008) (2010) ZAGPPHC 16 (22 February 2010)) where an amount of R90,000.00 was awarded; and* ***Olivier v Minister of Safety and Security and Another*** *2009 (3) SA 434 (W) where an amount of R50,000.00 was awarded."*

and further:

> *"[9] Any infringement on this basic right is a serious inroad into an individual's liberty and will be open to censure. The censure in this matter is by way of solatium awarded to the plaintiff for his injury.*
>
> *[10] The plaintiff's damages will ultimately be forthcoming from the State coffers to which the citizens of this country contribute. Some restraint is called for when awarding damages where the fiscus is source thereof."*

[21] Adv van Eeden submits on behalf of the defendant that an amount between R320,000.00 (Three Hundred and Twenty Thousand Rand), calculated as an average amount of R20,000.00 per day for 16 days, and an amount of R480,000.00 (Four Hundred and Eighty Thousand Rand) would be a fair amount, calculated as R30,000.00 per day x 16 days. On this basis he submits that the amount of **R400,000.00** (Four Hundred Thousand Rand) would be a fair amount.

[22] This approach followed by both counsel, with respect, completely misses the mark with the application of the principles set out by the Constitutional Court in the Motladile matter. There are no factors before court to consider an amount in excess of the amount awarded in the Motladile matter, having regard to the facts of Motladile as opposed to absence of the facts in this matter. The point to be understood from the Motladile matter is to move away from a so-called "day-rate".

Quantum

[23] The circumstances are to be taken into account holistically.

[24] In the lack of detail to the circumstances of the arrest, I take guidance from the matter of ***Olivier v Minister of Safety and Security and Another*** *2009 (3) SA 434 (W)* in which it is eloquently stated in relation to the right of freedom that "*Any infringement on this basic right is a serious inroad into an individual's liberty and will be open to censure. The censure in this matter is by way of solatium awarded to the plaintiff for his injury."*

[25] Further in the **Olivier** matter it is expressed that the plaintiff's damages will ultimately be forthcoming from the State coffers to which the citizens of this country contribute. Some restraint is called for when awarding damages where the *fiscus* is the source thereof.

[26] Despite the distress in the deprivation of the plaintiff's freedom, the arrest and detention, no evidence was placed before court that the plaintiff suffered any pain, suffering, discomfort and/or embarrassment, loss of amenities of life and/or *contumelia*.

[27] On the basis of the above, as well as with guidance to the applicable legal principles stipulated in **Oliver** that it has to be kept in mind that the compensation originates from the fiscus (i.e the public purse), I am of the view that the submissions as made by both counsel on an amount representing just and fair *quantum,* are too high.

[28] I hold the view that an amount between R150,000.00 (One Hundred and Fifty Thousand Rand) and R200,000.00 (Two Hundred Thousand Rand) would suffice as fair and just compensation for the damages proven by the plaintiff. The aggregate between these two (2) amounts is the amount of R175,000.00 (One Hundred Seventy Five Thousand Rand), which is the basis on which I calculate compensation to the plaintiff to be a just and fair amount in the circumstances.

Interest

[29] The next issue for the court to determine is the date from which the interest on the abovementioned amount should be calculated.

[30] The plaintiff claims in the particulars of claim interest on the amount of damages at the prescribed rate of 10% per annum from the date on which service of the Plaintiff's notice in terms of Section 3(1) of the Institution of Legal Proceedings against Certain Organs of State Act has been effected, to date of payment. This date is 20 July 2017.

[31] The defendant argues that the correct date would be the date that the liability arose, being the date of the judgment. At the very earliest, the defendant argues that the date of summons, being 22 January 2019 would be the correct date on which interest is to accrue.

[32] In the matter of **Blything v Minister of Safety and Security** 2016 JDR 1653 (GP) the following was said by Ledwaba DJP in dealing with the question of when interest should begin to accumulate:

> *"**Applying the law to the dispute in this case**:*
> *[13] It is general principle that delictual cause of action and the liability for damages arises from the date of delict. (**General Accident Insurance Co SA Ltd v Summers**; **Southe rn Versekeringsassossiasie Bpk v Carstens NO**; **General Accident Insurance Co SA Ltd v Nhlumayo** 1987 (3) SA 577 (A), **Eenden & Another v Pienaar** 2001 (1) SA 158 (W) at 167F, **SA Eagle Insurance CO Ltd v Hartley** 1990 (4) SA 833 at 8416-J)*
>
> *[14] In context of unlawful detention, in **Ngcobo v Minister of Police** 1978 (4) SA 930 (D) at 932H-933A**,** Shearer J stated the following:..... at any given moment during detention there is only one cause of action for damages during the period of detention up to that moment; and that at the conclusion of the period of detention there exist only one cause of action which has assumed its final and complete form at the moment of release."*
>
> *[15] I am in agreement with the submission made by the plaintiff that the court in **Takawira,** incorrectly relied on section 2A (3) in coming to the conclusion that the unliquidated damages could not incur interest due to it being undetermined until date of judgment.*
>
> *[16] Section 2A (3) deals with the consequential damages which occur after but due to the same cause of action.*

[17] The position in respect of unliquidated damages has been set out in several judgments in our law and in Coetzee AJ in ***Du Plooy v Venter Joubert Ing. en Ander*** *2013 (2) SA 522 (NCK) at paragraph (23] states as follows:*

> *"In as far as s 1 do not provide for the calculation of interest on unliquidated debts, Grosskopf JA, prior to s 2A being enacted, in* ***SA Eagle Insurance Co Ltd v Hartley*** *1990 (4) SA 833 (A) at 841G-842A****,*** *remarked as follows:*
>
> *'.... If a plaintiff through no fault of his own has to wait a substantial period of time to establish his claim is seems unfair that he should be paid in depreciated currency. Of course, in respect of many debts this problem is resolved (or partially resolved) by an order for the payment of interest, and the Prescribed Rates of Interest Act 55 of 1975 is flexible enough to permit the Minister of Justice to prescribe rates of interest which reflect the influence of inflation on the level of rates generally (see s 1(2)). Its application is, however, limited to debts bearing interest (s 1(1)); and it is trite law that there can be no mora, and accordingly no mora interest in respect of unliquidated claims of damages. See* ***Victoria Falls*** *&* ***Transvaal Power Co Ltd v Consolidated Langlaagte Mines Ltd 1915 AD*** *at 31-33, a decision which has been consistently applied and followed, also in this Court. It follows that there is no mechanism by which a court can compensate a plaintiff like the present for the ravages of inflation in respect of monetary losses incurred prior to the trial.'*

[18] In terms of the Prescribed Rates of Interest Act it is permissible to recover mora interest on amounts awarded by a court which, but for such award, were unliquidated. ***Kwenda***

and others v Minister of Safety and Security *(2015] JOL 34203 (GNP). Once judgment is granted such interest shall run from the date on which payment of the debt is claimed by the service on the debtor of a demand or summons, whichever date is earlier- section 2A(2) (a) of Act 55 of 1975. The word "demand" is defined in the Act to mean a written demand setting out the creditor's claim in such a manner as to enable the debtor reasonably to assess the quantum thereof.*

[19] In the ***Kwenda case,*** *Murphy J accepted that in the particular case, it was reasonably possible for the defendant to assess the quantum once the summons was issued.*

[20] In ***Eden*** *&* ***Another v Pienaar*** *2001(1) SA 158 (W) at 197 F referring to the criticism in* ***Hartley's case*** *the Full Court of the then WLD, stated that the effect of the inserted section 2A, is that; "the position in our law is now both liquidated and unliquidated debt beat interest (the latter from the date on which payment is demanded or claimed by summons) at the rate prescribed by the Minister of Justice in terms of s 1(2)."*

[21] The Supreme Court of Appeal in ***Thorough Breeders Association v Price Waterhouse*** *2001 (4) SA 551(SCA) at 591-595 it was held that in the absence of a letter of demand, section 2A of Act 55 of 1975, ordained mora interest at 15.5% per annum from the date of summons. The court observed that "if the award was one for mora interest there is no reason why, having regard to s2A of the Act, interest should only run from the date of judgment and not from the date of summons." In paragraph [79] the court concludes: "since no demand prior to summons was proved, the*

date for the commencement for the calculation would therefore be the date upon which summons was served."

[22] The Supreme Court of Appeal further held, in ***Steyn NO v Ronald Bobroff*** *2013 (2) SA 311 (SCA) at paragraph [35] that [t]he term mora simply means delay or default. The mora interest provided for in the Act is thus intended to place the creditor, who has not received due payment ... in the position that he or she would have occupied had the payment been made" when it was first requested from the defendant.*

[23] In ***Minister of Safety and Security and others v Janse van der Walt and Another*** *[2015] JOL 32548 (SCA) the Supreme Court of Appeal ordered the first defendant to pay the interest on the amount of damages awarded at the rate of 15.5% per annum from the date of demand to the date of payment. Similarly the Supreme Court of Appeal in* ***Woji v The Minister of Police*** *2015 (SACR 409 (SCA) ordered the defendant to pay interest on the sum of R500 000.00 at the rate of 15.5 % per annum a tempore morae from date of demand to date of payment.*

[24] Having regard to the above-mentioned case law and the reasoning therein concluding that interest in illiquid claims for damages may be awarded interest a tempore morae from the date of demand or summons, whichever is earlier, in terms of section 2A (2)(a) of Act 55 of 1975, it is clear in Takawira case the court in finding that interest on an illiquid claim for damages, can be determined from the date of judgment.

Discretion in terms of section 2A /5):
[25] In the unreported case of ***Nel v Minister of Safety and Security*** *A1009/2010ZAGPPHC 188 (22 August 2012) Kubushi J held that: "The default position of the Act is that the amount of*

every unliquidated debt as determined by any court of law shall bear interest at the prescribed rate a tempore morae, unless a court of Law orders otherwise. Where a court deviates from this position, an order that it any make, must appear just in the circumstances of that case."

[33] I am bound by the application of the principle set out in the **Blything** matter, unless it is clearly wrong. After careful analysis of the case-law referred to, I cannot come to the conclusion that the **Blything** matter has been determined wrongly. In application of the principle determined in **Blything** the interest is to accrue from date of letter of demand, as requested by the plaintiff in the particulars of claim.

Costs

[34] The normal rule is that costs follows the outcome and a successful party is entitled to the costs incurred by the successful party.

[35] I find no reason to deviate from the normal principle.

Order:

[36] In the premise I make the following order:

i) The plaintiff is to pay to the defendant an amount of R175,000.00 (One Hundred and Seventy Thousand Rand).

ii) Interest on the abovementioned amount is to be calculated *a tempore morae* from date of letter of demand, namely 20 July 2017.

iii) The plaintiff's costs are to be paid by the defendant.

FMM REID

JUDGE OF THE HIGH COURT

NORTH WEST DIVISION MAHIKENG

DATE OF HEARING:	**26 JULY 2023**
DATE OF JUDGMENT:	**19 SEPTEMBER 2023**

APPEARANCES:

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