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IN THE SUPREME COURT OF SOUTH AFRICA
(WITWATERSRAND LOCAL DIVISION)

CASE NO : 92/26558

In the matter between : -

SITHOLE, GETRUDE

Plaintiff

and

MINISTER OF DEFENCE

Defendant

NOTICE IN TERMS OF RULE 35 (1)(6)(8) & (10)

BE PLEASED TO TAKE NOTICE that in terms of Rule 35(1), the Defendant is required to make discovery on oath within 20 (TWENTY) days from the date of service hereof, of all documents and tape recordings relating to any matter in question in this action which are or have at any time been in the possession or the control of the Defendant's, his attorneys or agents.

AND TAKE NOTICE FURTHER that in terms of Rule 35(8), Plaintiffs' require Defendant to furnish written particulars of dates and parties of or to any document or tape recording intended to be used at the trial in the above action. The Defendant is furthermore required within 15 days before the date of trial to furnish a notice : -

- a. Specifying the dates of and parties to the general nature of any document or tape recording which is in his possession;
- b. Specifying such particulars as he may have to identify any document or tape recording not in his possession, at the same time furnishing the name and address of the person in whose possession such document is.



AND TAKE NOTICE FURTHER that in terms of Rule 35(6) the Defendant having made discovery, is required to make available for inspection any documents or tape recordings so discovered.

AND TAKE NOTICE FURTHER that in terms of Rule 35 (10) the Defendant is required to produce at the hearing of this matter such documents or tape recordings as are discovered by them.

● DATED at JOHANNESBURG on this the *9th* day of MARCH 1995.

C. Nicholls

NICHOLLS, CAMBANIS AND ASSOCIATES
PLAINTIFF'S ATTORNEYS
3RD FLOOR, 132 FOX STREET
JOHANNESBURG
REF : V.SITHOLE

TO :
THE REGISTRAR
SUPREME COURT
JOHANNESBURG

● AND TO :
THE STATE ATTORNEY
DEFENDANT'S ATTORNEYS
10th Floor- Northstate Building
95 MARKET STREET
JOHANNESBURG
REF : 6643/92/P5/JC
Mr.G.BOWEN



Received copy hereof on this the *10* day of March 1995.

[Signature]

DEFENDANT'S ATTORNEYS

IN THE SUPREME COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

CASE NO: 92/26558

P/H 308

In the matter between:-

SITHOLE GETRUDE

Plaintiff

and

THE MINISTER OF DEFENCE

Defendant

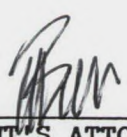
NOTICE OF INTENTION TO DEFEND

BE PLEASED TO TAKE NOTICE THAT the abovenamed Defendant intends to defend this action and has appointed the following address as the address for the service upon him of all notices and documents in the action:-

STATE ATTORNEY
888 ROYAL ST. MARY'S BUILDING
85 ELOFF STREET
PRIVATE BAG X9
J O H A N N E S B U R G

BUSINESS ADDRESS: S.A. DEFENCE FORCE HEADQUARTERS, DEQUAR ROAD,
P R E T O R I A.

DATED at JOHANNESBURG on this the 30 day of OCTOBER 1992.


DEFENDANT'S ATTORNEY
STATE ATTORNEY
888 ROYAL ST. MARY'S BUILDING
85 ELOFF STREET
PRIVATE BAG X9
J O H A N N E S B U R G

.... / 2


REFER TO: G. BOWEN
REFER NO: 6643/92/P5/JC
TEL NO: 29 2961

TO:
The Registrar of the
above Honourable Court
J O H A N N E S B U R G

AND TO:
PLAINTIFF'S ATTORNEY
NICHOLLS, CAMBANIS, & SUDANO
23rd FLOOR, KINE CENTRE
141 COMMISSIONER STREET
J O H A N N E S B U R G

REF: Ms C.H. NICHOLLS

COPY HEREOF RECEIVED ON THIS
THE 3rd DAY OF ^{November} ~~OCTOBER~~ 1992



For/PLAINTIFF'S ATTORNEY

WITHOUT PREJUDICE
TO RIGHTS

IN THE SUPREME COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

CASE NO: 92/26558

In the matter between:-

SITHOLE GETRUDE

Plaintiff

and

THE MINISTER OF DEFENCE

Defendant

DEFENDANT'S NOTICE IN TERMS OF RULE 36 (4)

BE PLEASED TO TAKE NOTICE that the Defendant requires the Plaintiff in so far as he is able to do so to make available within 10 (ten) days after service hereof to the former any medical reports, hospital records, X-ray photographs or other documentary information of a like nature relevant to the assessment of the damages of compensation in respect of bodily injury alleged to have been suffered by the Plaintiff.

TAKE NOTICE FURTHER that the Defendant requires from the Plaintiff a consent to inspect all hospital records relating to the latter and that such consent should mention the hospitals' reference numbers as well as the dates on which the Plaintiff was treated.

DATED at **JOHANNESBURG** on this the *16* day of **NOVEMBER** 1992.

[Signature]
DEFENDANT'S ATTORNEY
STATE ATTORNEY
888 ROYAL ST. MARY'S BUILDING
85 ELOFF STREET
PRIVATE BAG X9
JOHANNESBURG

TO: THE REGISTRAR OF THE
ABOVE HONOURABLE COURT
JOHANNESBURG

REFER TO: G. BOWEN
REFER NO: 6643/92/P5/JC
TEL NO: 29 2961

AND TO: **PLAINTIFF'S ATTORNEYS**
NICHOLLS AND CAMBANIS
23rd FLOOR, KINE CENTRE
COMMISSIONER STREET
JOHANNESBURG

REF: Ms C H NOCHOLLS

COPY HEREOF RECEIVED THIS THE
16 DAY OF **NOVEMBER** 1992

[Signature]
For/PLAINTIFF'S ATTORNEY

WITHOUT PREJUDICE
TO RIGHTS

IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA
(WITWATERSRANDSE PLAASLIKE AFDELING)

SAAKNUMMER: 92/26558
P/H 308

In die saak tussen:-

SITHOLE, GETRUDE

Eiser

en

MININISTER VAN VERDEDIGING

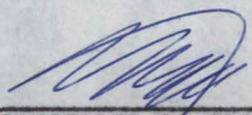
Verweerder

KENNISGEWING VAN ADRESVERANDERING

Neem kennis dat die adres van die Staatsprokureur waar betekening van alle dokumente in die aksie moet geskied vanaf 1 Junie 1994 soos volg verander:-

DIE STAATSPROKUREUR
10DE VLOER
NORTH STATEGEBOU
MARKETSTRAAT 95
h/v KRUISSTRAAT
JOHANNESBURG

GEDATEER te JOHANNESBURG hierdie 23^e dag van MEI 1994.


VERWEERDER SE PROKUREUR
DIE STAATSPROKUREUR
ROYAL ST.MARY'S GEBOU 888
ELOFFSTRAAT 85
PRIVAATSAK X9
JOHANNESBURG

Verwys na: J. PRETORIUS/mw
Verw.: 6643/92/P33
Tel.: (011) 29-2961

AAN :
DIE GRIFFIER VAN DIE
BOGEMELDE AGBARE HOF
JOHANNESBURG

EN AAN :
EISER SE PROKUREUR
NICHOLLS & CAMBANIS
23STE VLOER
KINE CENTRE
COMMISSIONERSTRAAT
JOHANNESBURG

Verw.: VS/PP/30

AFSKRIF HIERVAN BETEKEN OP
DIE DAG VAN MEI 1994.

nms/EISER SE PROKUREURS

IN THE SUPREME COURT OF SOUTH AFRICA
(WITWATERSRAND LOCAL DIVISION)

CASE NO 92/26558

In the matter between:

SITHOLE, GERTRUDE

Plaintiff

and

THE MINISTER OF DEFENCE

Defendant

DEFENDANT'S REQUEST FOR FURTHER PARTICULARS

The Defendant requests the following further particulars to the Plaintiff's particulars of claim:

1. AD PARAGRAPH 1

1.1 The Plaintiff is requested to furnish the Defendant with:

1.1.1 copies of her identity document and birth certificate;

1.1.2 her address at the time of the incident;

1.2 Is the Plaintiff a South African citizen?

1.3 If not, does the Plaintiff have permanent residence in South Africa or a work permit to work in South Africa and if so, documentary proof of same is required alternatively full details thereof.

2. AD PARAGRAPH 3

2.1 Precisely where in Phola Park was the Plaintiff assaulted?

2.2 Precisely at what time on 8 April 1992 was the Plaintiff assaulted?

2.3 How many members of the South African Defence Force assaulted the Plaintiff?

2.4 Was the Plaintiff assaulted inside or outside a building or structure? If inside any structure, then the full address thereof is requested.

2.5 Were the members clothed in uniform. If in the affirmative, were they clothed in:

2.5.1 neutria ("browns"); or

2.5.2 camouflage uniforms?

2.6 The Plaintiff is requested to give a description of each of the members who assaulted her in order to enable the Defendant to identify the said member(s).

2.7 How many times was the Plaintiff assaulted?

2.8 From which general direction was the Plaintiff shot?

2.9 How many times was the Plaintiff shot?

3. AD PARAGRAPH 4

- 3.1 What was the calibre of the bullet?
- 3.2 Was the bullet found?
- 3.3 Is the bullet available for examination?
- 3.4 Did the bullet exit?
- 3.5 What was the duration of the pain?

4. AD PARAGRAPH 5

- 4.1 A copy of the medico-legal report is required. If a copy is not available, then the Defendant requests the following particulars:
 - 4.1.1 Did the Plaintiff sustain any fractures to any bone?
 - 4.1.2 Was the Plaintiff hospitalised and if in the affirmative, for how long?
 - 4.1.3 What is the cause of the disability?
 - 4.1.4 What is the nature and the extent of the disability?
 - 4.1.5 Can the Plaintiff still walk?

- 4.1.6 Precisely what movement is impeded?

- 4.1.7 What was the nature and extent of the Plaintiff's work as a herbalist?

- 4.1.8 Where did the Plaintiff work as a herbalist?

5. AD PARAGRAPH 7

- 5.1 A salary advice or any other acceptable proof of earnings is required for the period in question.

- 5.2 The Plaintiff is requested to furnish a consent to inspect her documents at the office of the Receiver of Revenue together with her reference number at the Receiver of Revenue.

- 5.3 Did the Plaintiff receive any disability pension of whatever nature prior to the incident? If in the affirmative, then the Plaintiff is requested to state full details thereof.

- 5.4 Is the Plaintiff currently employed? If in the affirmative, then full details are requested of the following:
 - 5.4.1 the nature and extent of the work;

 - 5.4.2 date of employment;

5.4.3 current salary.

5.5 The Defendant requests any copies of actuarial reports, if available.

5.6 What was the nature, the extent, and the duration of:

5.6.1 the pain; and

5.6.2 the suffering

suffered by the Plaintiff?

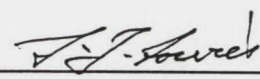
DATED at JOHANNESBURG on this

22

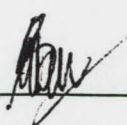
day of JULY 1993.



BROUX



L J LOWIES
Defendant's Counsels



THE STATE ATTORNEY
Defendant's Attorney
888 Royal St Mary's Building
85 Eloff Street
JOHANNESBURG
TEL: 29-2961
REF: 6643

TO:
THE REGISTRAR
OF THE ABOVE HONOURABLE COURT
JOHANNESBURG

AND TO:
NICHOLLS CAMBANIS & SUDANO
Plaintiff's Attorneys
23rd Floor, Kine Centre
Commissioner Street
JOHANNESBURG
REF: MRS C H NICHOLLS

RECEIVED COPY HEREOF ON THE

.....⁴..... DAY OF ~~JULY~~ 1993.

Aug

for: PLAINTIFF'S ATTORNEYS

(ljl\sithole.eb)

WITHOUT PREJUDICE

IN THE SUPREME COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

Case Number : 92/26558

In the matter between:

SITHOLE, Getrude

Plaintiff

and

MINISTER OF DEFENCE

Defendant

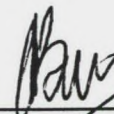
NOTICE IN TERMS OF RULE 28(5)

TAKE NOTICE THAT:

- (a) as the Defendant filed a Notice of Intention to Amend its Plea on 9 March 1993; and
- (b) as no objection was made in writing to this said notice of amendment;

the Defendant hereby files the amended pages to its Particulars of Claim.

DATED AT JOHANNESBURG ON THIS 1st DAY OF APRIL 1993.



STATE ATTORNEY
Defendant's Attorneys
888 Royal St. Mary's Bldg
85 Eloff Street
JOHANNESBURG
Ref: Mr Bowen/
6643/92/P5
Tel: 29-2961

TO: **THE REGISTRAR OF THE ABOVE
HONOURABLE COURT
JOHANNESBURG**

AND TO: **NICHOLLS & CAMBANIS**
Plaintiff's Attorneys
23rd Floor
Kine Centre
Commissioner Street
JOHANNESBURG
Ref: VS/PP/30

Received copy hereof on this the
.....² day of April 1993.



for: **Plaintiff's Attorneys**

WITHOUT PREJUDICE
TO RIGHTS

IN THE SUPREME COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

Case Number : 92/26558

In the matter between:

SITHOLE, Getrude

Plaintiff

and

MINISTER OF DEFENCE

Defendant

**DEFENDANT'S AMENDED PLEA TO PLAINTIFF'S
PARTICULARS OF CLAIM**

1. **AD PARAGRAPH 1:**

Save to admit that Plaintiff is **Getrude Sithole**, Defendant has no knowledge of the remaining allegations contained in this paragraph, accordingly denies same and puts Plaintiff to the proof thereof.

2. **AD PARAGRAPH 2:**

Defendant admits the contents of this paragraph.

3. **AD PARAGRAPH 3:**

3.1 Defendant denies the contents of this paragraph and puts Plaintiff to the proof thereof.

3.2 Alternatively and in the event of the Honourable Court finding that Defendant assaulted Plaintiff by shooting Plaintiff (which is denied) and thereby causing Plaintiff to sustain the injury as set out in paragraphs 4.1 and 4.2 of Plaintiff's Particulars of Claim, Defendant pleads that:

3.2.1 the shooting was in self-defence; alternatively

3.2.2 the Plaintiff was shot and injured in cross-fire under circumstances where shots were being fired at members of the Defence Force, who returned fire in self-defence. Defendant furthermore pleads that the shooting by members of the Defence Force was necessary, reasonable and justifiable in order to avoid the threat of imminent peril, as stated above.

3.3 Alternatively and in the event of it being found that the Plaintiff

was shot by a member or members of the South African Defence Force, then the Defendant pleads as follows:

3.3.1 In terms of Government Notice No. 13519, Proclamation No. R2242 of 9 September 1991, the Minister of Law and Order in terms of Section 5A(1) of the Public Safety Act, No. 3 of 1953, declared that public disturbance, disorder, riot and public violence were occurring or threatening in **inter alia** the Tokoza area, as demarcated and described in Government Notice No. 511 of 10 April 1959, as amended, as from 9 September 1991. In terms of Proclamation No. R2243, 1991, of 9 September 1991, the Minister of Law and Order in terms of Section 5A of the Public Safety Act proclaimed certain regulations ("*the Regulations*"). Proclamations R2242 and R2243 were valid and in force on 8 April 1992.

3.3.2 Regulation 12(1) of the Regulations provides that no civil proceeding shall be instituted against any member of the Cabinet of the Republic of South Africa or any member of a Security Force by reason of any act in good faith advised, commanded, ordered, directed or performed by any person in the carrying out of his duties or the exercise of his powers or the performance of his

functions in terms of the Regulations as therein more fully provided, with the intent to combat or to prevent public disturbance, disorder, riot or public violence or to maintain or to restore public order or for dealing with any circumstances which in his opinion have arisen or are likely to arise as a result of such public disturbance, disorder, riot or public violence or the combating or prevention thereof.

3.3.3 The Defendant is a member of the Cabinet of the Republic of South Africa.

3.3.4 The member or members of the South African Defence Force, as alleged by the Plaintiff to have shot the Plaintiff, was a member/were members of a Security Force, as provided for in the Regulations.

3.3.5 The place at Phola Park, Tokoza, where the shooting allegedly took place, is a place where the said Proclamations were valid and binding as at 8 April 1992.

3.3.6 The shooting of Plaintiff was an act in good faith advised, commanded, ordered, directed or performed

by a person or persons in the carrying out of his/their duties or the exercise of his/their powers or the performance of his/their functions in terms of the Regulations, as more fully provided in Regulation 12(1).

3.3.7 In the premises the Plaintiff has no cause of action as alleged and is not entitled to institute the said action.

4. **AD PARAGRAPH 4:**

Defendant denies the contents of this paragraph and puts Plaintiff to the proof thereof.

5. **AD PARAGRAPHS 5, 6, 7 and 8:**

Defendant denies the contents of these paragraphs and puts Plaintiff to the proof thereof.

6. **AD PARAGRAPH 9:**

Defendant admits a demand and a failure or refusal to pay, but pleads that Defendant is not legally liable to pay the amount claimed or any portion thereof.

WHEREFORE Defendant prays that Plaintiff's claim be dismissed with costs.

IN THE SUPREME COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

Case Number : 92/26558

In the matter between:

SITHOLE, Getrude

Plaintiff

and

MINISTER OF DEFENCE

Defendant

NOTICE OF INTENTION TO AMEND DEFENDANT'S PLEA

BE PLEASED TO TAKE NOTICE that Defendant intends to amend his Plea as follows:

1. By deleting the citation of the Defendant as "*Minister of Law and Order*" and by substituting it with "*Minister of Defence*".
2. By the addition of paragraph 3.3 to paragraph 3 of Defendant's Plea (ad paragraph 3 of Plaintiff's Particulars of Claim):

"3.3 Alternatively and in the event of it being found that the Plaintiff was

shot by a member or members of the South African Defence Force, then the Defendant pleads as follows:

3.3.1 *In terms of Government Notice No. 13519, Proclamation No. R2242 of 9 September 1991, the Minister of Law and Order in terms of Section 5A(1) of the Public Safety Act, No. 3 of 1953, declared that public disturbance, disorder, riot and public violence were occurring or threatening in *inter alia* the Tokoza area, as demarcated and described in Government Notice No. 511 of 10 April 1959, as amended, as from 9 September 1991. In terms of Proclamation No. R2243, 1991, of 9 September 1991, the Minister of Law and Order in terms of Section 5A of the Public Safety Act proclaimed certain regulations ("the Regulations"). Proclamations R2242 and R2243 were valid and in force on 8 April 1992.*

3.3.2 *Regulation 12(1) of the Regulations provides that no civil proceeding shall be instituted against any member of the Cabinet of the Republic of South Africa or any member of a Security Force by reason of any act in good faith advised, commanded, ordered, directed or performed by any person in the carrying out of his duties or the exercise of his powers or the performance of his functions in terms of the Regulations as therein more fully provided, with the intent to combat or to prevent public disturbance, disorder, riot or public violence or to maintain or to restore public order or for dealing with any circumstances which in his opinion have arisen or are likely to arise as a result of such public disturbance, disorder, riot or public violence or the combating or prevention thereof.*

- 3.3.3 *The Defendant is a member of the Cabinet of the Republic of South Africa.*
- 3.3.4 *The member or members of the South African Defence Force, as alleged by the Plaintiff to have shot the Plaintiff, was a member/were members of a Security Force, as provided for in the Regulations.*
- 3.3.5 *The place at Phola Park, Tokoza, where the shooting allegedly took place, is a place where the said Proclamations were valid and binding as at 8 April 1992.*
- 3.3.6 *The shooting of Plaintiff was an act in good faith advised, commanded, ordered, directed or performed by a person or persons in the carrying out of his/their duties or the exercise of his/their powers or the performance of his/their functions in terms of the Regulations, as more fully provided in Regulation 12(1).*
- 3.3.7 *In the premises the Plaintiff has no cause of action as alleged and is not entitled to institute the said action."*

The Defendant tenders the wasted costs (if any) occasioned by the proposed amendment and subsequent amendment, save for the costs of opposition thereof.

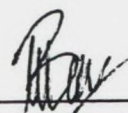
BE PLEASED TO TAKE FURTHER NOTICE that unless objection in writing is made

to the proposed amendment within ten (10) days, the Defendant will amend the pleading in question accordingly.

TAKE NOTICE FURTHER that if no objection in writing be so made, the Plaintiff shall be deemed to have agreed to the amendment.

If objection be made within the said period in terms of Rule 28(4) of the Rules of Court, the Defendant shall within ten (10) days of the receipt of such objection, apply to Court on notice for leave to amend and shall set the matter down for hearing.

DATED AT JOHANNESBURG ON THIS 5th DAY OF MARCH 1993.




STATE ATTORNEY
Defendant's Attorneys
888 Royal St. Mary's Bldg
85 Eloff Street
JOHANNESBURG
Ref: Mr Bowen/
6643/92/P5
Tel: 29-2961

TO: **THE REGISTRAR OF THE ABOVE
HONOURABLE COURT
JOHANNESBURG**

AND TO: **NICHOLLS & CAMBANIS**
Plaintiff's Attorneys
23rd Floor
Kine Centre
Commissioner Street
JOHANNESBURG
Ref: VS/PP/30

Received copy hereof on this the
...15... day of March 1993.



for: **Plaintiff's Attorneys**

WITHOUT PREJUDICE
TO RIGHTS

IN THE SUPREME COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

Case Number : 92/26558

In the matter between:

SITHOLE, Getrude

Plaintiff

and

MINISTER OF LAW AND ORDER

Defendant

DEFENDANT'S PLEA TO PLAINTIFF'S PARTICULARS OF CLAIM

1. AD PARAGRAPH 1:

Save to admit that Plaintiff is **Getrude Sithole**, Defendant has no knowledge of the remaining allegations contained in this paragraph, accordingly denies same and puts Plaintiff to the proof thereof.

2. AD PARAGRAPH 2:

Defendant admits the contents of this paragraph.

3. AD PARAGRAPH 3:

3.1 Defendant denies the contents of this paragraph and puts Plaintiff to the proof thereof.

3.2 Alternatively and in the event of the Honourable Court finding that Defendant assaulted Plaintiff by shooting Plaintiff (which is denied) and thereby causing Plaintiff to sustain the injury as set out in paragraph 4.1 of Plaintiff's Particulars of Claim, Defendant pleads that:

3.2.1 the shooting was in self-defence; alternatively

3.2.2 the Plaintiff was shot and injured in cross-fire under circumstances where shots were being fired at members of the Defence Force, who returned fire in self-defence. Defendant furthermore pleads that the shooting by members of the Defence Force was necessary, reasonable

and justifiable in order to avoid the threat of imminent peril, as stated above.

4. AD PARAGRAPH 4:

Defendant denies the contents of this paragraph and puts Plaintiff to the proof thereof.

5. AD PARAGRAPHS 5, 6, 7 and 8:

Defendant denies the contents of these paragraphs and puts Plaintiff to the proof thereof.

6. AD PARAGRAPH 9:

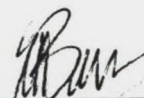
Defendant admits a demand and a failure or refusal to pay, but pleads that Defendant is not legally liable to pay the amount claimed or any portion thereof.

WHEREFORE Defendant prays that Plaintiff's claim be dismissed with costs.

DATED AT JOHANNESBURG ON THIS 2nd DAY OF DECEMBER 1992.



B ROUX
Defendant's Counsel



STATE ATTORNEY
Defendant's Attorneys
888 Royal St. Mary's Bldg
85 Eloff Street
JOHANNESBURG
Ref: Mr Bowen/6643/92/P5
Tel: 29-2961

TO: THE REGISTRAR OF THE ABOVE
HONOURABLE COURT
JOHANNESBURG

AND TO: NICHOLLS & CAMBANIS
Plaintiff's Attorneys
23rd Floor
Kine Centre
Commissioner Street
JOHANNESBURG
Ref: VS/PP/30

Received copy hereof on the
4th day of December 1992.



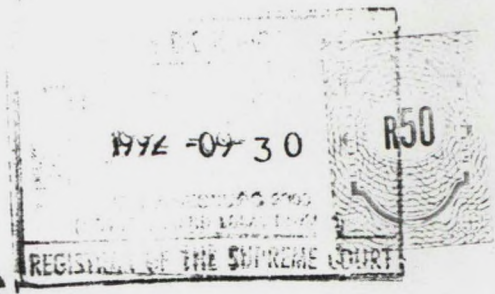
for: Plaintiff's Attorneys

WITHOUT PREJUDICE
TO RIGHTS

1992 09-30

COMBINED

SUMMONS



Case No.: 92/26558

In the Supreme Court of South Africa

(WITWATERSRAND LOCAL DIVISION)

In the matter between:

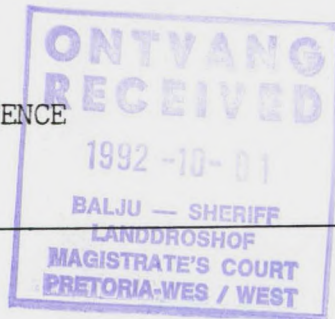
GETRUDE SITHOLE

Plaintiff.

and

THE MINISTER OF DEFENCE

Defendant.



To the sheriff or his deputy:

INFORM

THE MINISTER OF DEFENCE, cited herein in his official capacity, as being the person legally responsible for the conduct of members of the South African Defence force, (Financial Division), South African Defence Force Headquarters, Dequar Road, Pretoria.

(hereinafter called the Defendant(s)) that

GETRUDE SITHOLE, an adult female divorcee who is^a self employed herbalist, of full legal capacity, resident at J51 Phola Park, TOKOZA.

(hereinafter called the Plaintiff(s)), hereby institutes action against HIM in which action the Plaintiff(s) claim the relief and on the grounds set out in the particulars annexed hereto.

INFORM the Defendant(s) further that if Defendant(s) disputes/dispute the claim and wishes/wish to defend the action, the Defendant(s) shall -

- (i) Within 1 month ~~days~~ of the service upon the Defendant(s) of this summons, file with the registrar of this Court at Room 007, Supreme Court Building, Pritchard Street, JOHANNESBURG.

Notice of Defendant(s) intention to defend and serve a copy thereof on the Attorneys of the the Plaintiff(s), which notice shall give an address (not being a post office or poste restante) referred to in rule 19 (3) for the service upon the Defendant(s) of all notices and documents in the action.

- (ii) Thereafter and within twenty days after filing and serving notice of intention to defend as aforesaid, file with the registrar and serve upon the Plaintiff(s) a Plea, Exception, Notice to strike out, with or without a Counter-claim.

INFORM the Defendant(s) further that if the Defendant(s) fails/fail to file and serve notice as aforesaid, Judgment as claimed may be given against the Defendant(s) without further notice to the Defendant(s), or if having filed and served such notice, the Defendant(s) fails/fail to plead, except, make application to strike out or counter-claim, Judgment may be given against the Defendant(s)

AND immediately thereafter serve on the Defendant(s) a copy of this Summons and return the same to the Registrar with whatsoever you have done thereupon.

DATED at JOHANNESBURG this 30th day of SEPTEMBER 19 92.

C H Nicholls

NICHOLLS, CAMBANIS & SUDANO
Attorneys of Plaintiff(s),

23rd Floor, Kine Centre
141 Commissioner Street
JOHANNESBURG
Ref. Ms C H Nicholls

A. West

Registrar of the Supreme Court

ANNEXURE "A"

PARTICULARS OF CLAIM

1. Plaintiff is GERTRUDE SITHOLE, an adult female divorcee who is a self employed herbalist, of full legal capacity, whose date of birth is 27 October 1930, resident at J51 Phola Park, Tokoza.
2. Defendant is the MINISTER OF DEFENCE, cited herein in his official capacity, as being the person legally responsible for the conduct of members of the South African Defence Force, c/o the Chief of the South African Defence Force, (Finance Division), South African Defence Force Headquarters, Dequar Road, Pretoria.
3. On or about 8 April 1992, and at Phola Park, Tokoza, the Plaintiff was unlawfully assaulted, by a member, or members, of the South African Defence Force, acting within the course and scope of their employment with the Defendant.
4. As a consequence of this assault, Plaintiff sustained injury as follows:-
 - 4.1 bullet entry wound, left side of chest, giving rise to severe pain;
5. The disabilities suffered by plaintiff as a result of the injuries are as follows:-
 - 5.1 permanent disability, in that plaintiff is permanently unable to move without great discomfort;
 - 5.2 as a result plaintiff is 100% permanently unable to carry out her work as a herbalist.

6. As a result of the bodily injuries sustained, Plaintiff has suffered damages in the amount of R73 000,00.
7. Such damages are computed as follows:-

LOSS OF FUTURE POTENTIAL EARNINGS

7.1 Plaintiff has suffered loss of future earnings on the amount of R43 000,00, computed as follows:-

7.1.1 Plaintiff has a future working life expectancy of 6 years;

7.1.2 prior to her injury, plaintiff earned R600,00 per month;

7.1.3 no provision has been made for contingencies.

PAIN AND SUFFERING AND CONTUMELIA

7.2 For pain and suffering and contumelia, damages in the amount of R30 000,00.

8. In the premises Defendant is liable to Plaintiff in the amount of R73 000,00
9. Despite demand, Defendant fails or refuses to pay the above amount of any portion thereof.

WHEREFORE PLAINTIFF CLAIMS

- i) the amount of R73 000,00.
- ii) interest on the above amount at the rate of 18.5% per annum as from 14 days of date of judgment to date of payment.
- iii) costs of suit;
- iv) further and/or alternative relief

DATED AT JOHANNESBURG THIS ^{18th} DAY OF SEPTEMBER 1992.

D J M Pitman

D J M PITMAN
COUNSEL FOR PLAINTIFF

G Nicholls

NICHOLLS AND CAMBANIS
PLAINTIFF'S ATTORNEYS
23RD FLOOR, KINE CENTRE
COMMISSIONER STREET
JOHANNESBURG
REF: VS/PP/30

NOTES OF CONSULTATION ON THE 16TH SEPTEMBER 1993 WITH **GERTRUDE**
SITHOLE (BAD WITNESSES)

CITIZENSHIP

1. South African I.D. No. 301028 0204 08 8.

ASSAULT AND WITNESSES

2. She could hear soldiers shouting outside, saying things like "why do you not switch off the lights when we order you to do so?" and then she heard them shooting. She was shot while she was in her shack. She also claims that she has witnesses, which she will look for.

INJURIES

3. She was shot in the left breast and now cannot attend to washing or anything else. She says she gets very swollen. (Vusi will check from Fazel which specialists she should go and see. Fazel did a medico-legal, but there is no report available).

INCOME

4. She was self employed as a Sangoma and she used to earn

about R300,00 a month. She says because of her injuries she cannot mix muti and dig roots and can't carry on her duties.

(It appears that there are no questions from the State in this matter).

PH 466

IN THE SUPREME COURT OF SOUTH AFRICA
WITWATERSRAND LOCAL DIVISION

CASE NO : 92/26558

In the matter between : -

SITHOLE, GERTRUDE

Plaintiff

and

THE MINISTER OF DEFENCE

Defendant

NOTICE IN TERMS OF RULE 36(9)(a) AND (b)

BE PLEASED TO TAKE NOTICE that at the hearing of the above matter, the Plaintiff will call the following expert witness to give evidence relating to the Plaintiff's claim : -

Dr. Robert W. Girdwood a Thoracic surgeon, practising at Milpark Hospital, Parktown West, holding the degrees F.R.C.S (Eng) F.R.C.S. (Edin).

BE PLEASED TO TAKE FURTHER NOTICE that a summary of the expert's opinions and his reasons are contained in the report attached hereto.

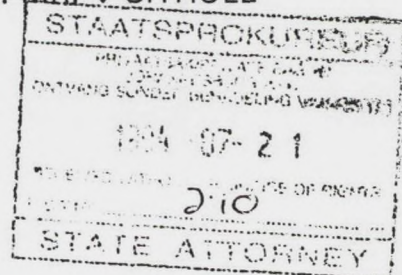
DATED at JOHANNESBURG on this the 20th day of JULY 1994.

NICHOLLS, CAMBANIS & ASS.
PLAINTIFF'S ATTORNEYS
3RD FLOOR - 132 FOX STREET
JOHANNESBURG
REF. MR. V SITHOLE

TO : THE REGISTRAR OF THE ABOVE
HONOURABLE COURT

AND TO :

THE STATE ATTORNEY
DEFENDANT'S ATTORNEY
10TH FLOOR - NORTH STATE BUILDING
95 MARKET STREET
JOHANNESBURG
REF : MR. BOWEN/6643/92/P5



RECEIVED COPY HEREOF ON THIS
21 DAY OF JULY 1994.

for : DEFENDANT'S ATTORNEYS

ROBERT W. GIRDWOOD, F.R.C.S. (ENG.), F.R.C.S. (EDIN.)

THORACIC SURGEON — TORAKSCHIRURG

MILPARK HOSPITAL
9 GUILD ROAD
PARKTOWN WEST
2193
TEL. 726-7300/1

EMERGENCY 331-8131
RESIDENCE 486-2173
TELEFAX 726-2851

P.O. BOX 91155
AUCKLAND PARK
2006

Nicholls, Cambanis & Associates
Attorneys at Law
P O Box 8694
Johannesburg
2000

MEDICO-LEGAL REPORT - Date of Examination 21.2.1994

GERTRUDE SITHOLE, Age 64 years

HISTORY

This patient was allegedly involved in the Phola Park shootings on 9.4.1992. This shooting was allegedly performed by the SADF Battalion number 32. She was shot in the left breast at about 7pm on the evening of the 9.4.1992. She apparently was unconscious and when she woke up she noted blood on the anterior aspect of her chest. She was found injured and was taken to hospital where she was treated and discharged. No intercostal drain was inserted.

At present she is complaining of pain over the anterior aspect of the chest and both breasts, especially when she is cold. The pain is present every day but is worse when she is cold or when she uses her hands, for example when she is washing. She is constantly dizzy. These symptoms were not present before her injury. She does have some mild shortness of breath with this pain. There is no orthopnoea. She has in the past had an abdominal operation.

CLINICAL EXAMINATION

She was an elderly short lady who was hyperventilating. She weighed 115 lbs. Her pulse was 84 per minute in sinus rhythm with a blood pressure of 150/80mmHg. There was no evidence of congestive cardiac failure. Her chest was clear. There was evidence of a scar in the left axillary area and she was tender over the left anterior aspect of the chest wall, particularly over the upper part of the left breast. The rest of the examination was non-contributory.

The x-ray of the chest was essentially normal and there was no evidence of any fractures and no bullet was in the x-ray field.

IMPRESSION

This patient has definite evidence of tenderness over the left anterior aspect of the breast and chest wall. It would seem that this is musculoskeletal in origin and may well be due to an intercostal neuralgia.

TREATMENT

It would be worthwhile offering her an intercostal block and following this to assess her response. The pain could well disappear not to return again or she might only have relief of pain for a short while. She may also have no relief at all following the intercostal block. There appears to be a supratentorial element to her illness as evidenced by her hyperventilation as there was no reason for her to be hyperventilating at the time of the examination. I am sure that her dizzy spells may be related to this.

I feel that her symptoms are real and need to be addressed. Should an intercostal block initially be successful and she develops further pain, perhaps removal of the intercostal nerve could also be considered. She may require analgesics for a considerable period of time.

Yours faithfully

Robert Girdwood

DR. R.W. GIRDWOOD

MILPARK HOSPITAL
9 GUILD ROAD
PARKTOWN WEST
2193
TEL. 726-7300/1

EMERGENCY 331-8131
RESIDENCE 486-2173
TELEFAX 726-2851

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Yours faithfully

Robert Girdwood >

DR. R.W. GIRDWOOD

REFERENCE : GERTRUDE SITHOLE
DATE OF BIRTH : 28/10/30
MARITAL STATUS : MARRIED
2 CHILDREN
EMPLOYMENT : SELF EMPLOYED

At the request of Nicholls, Cambanis & Associates I saw and examined Mrs. Sithole in my rooms in Mayfair, Johannesburg. She told me that on the 8th April 1992 whilst asleep in her home in Phola Park, the house was invaded by soldiers of the South African Defence Force. She subsequently remembers being assaulted with a heavy object on the left side of her chest and immediately lost consciousness. Later, she was taken to Natalspruit Hospital where she was x-rayed and treated. She was given pain killers and reassured. Since then she has had to see a private doctor, Dr. Peer, on several occasions. She also tells me that she could not work for a period of 6 months, and, being self employed she earns approximately R600,00 per month. Mrs. Sithole also told me that her job as a traditional healer required for her to go into rural areas to pick herbs. This she is not able to do effectively. At the time of being seen Mrs. Sithole complained of : -

- a. Pain in her right arm;
- b. Difficulty breathing;

- c. Coughing up blood intermittently;
- d. Weight lost;
- e. Difficulty sleeping; and
- f. Fear of soldiers and people in authority.

On examination Mrs. Sithole appeared to be a frail 62 year old lady. There was nothing of relevance to be found on examination of her major medical systems, except for a moderately raised blood pressure and she was advised to go see her local clinic or family doctor. She had a 2cm scar over xxxxx the second rib on the right thigh xxxxxxxxx and marked tenderness underneath. There was no muscle wasting and no obvious weakness.

In summary, we therefore have a 62 year old lady who was assaulted by soldiers of the South African Defence Force on the 8th April 1992. Despite being seen a year later, she complained of pain in her chest and her arm. Undoubtedly, the assault has left Mrs. Sithole with mental scars and this she will have for many years to come. She has not suffered any other permanent disability.

M F RANDERA

(M.R.C.S.L.R.C.P., B.R.C.O.G.)

REFERENCE : CYTNTHIA MNISI
DATE OF BIRTH : 3/3/62
MARITAL STATUS :
EMPLOYMENT : SELF EMPLOYED

At the request of Nicholls, Cambanis & Associates I saw Ms. Mnisi at my rooms in Mayfair, Johannesburg. She told me that whilst asleep in her home in Phola Park in April 1992 her door was suddenly broken and soldiers of the South African Defence Force marched in and started assaulting her. She was slapped, kicked on her abdomen and back, and also kicked over her left eye. She also remembers suffering intense pain on her back and felt that she had been burned by some object. At the time she was pregnant.

At the time of being seen Ms. Mnisi complained primarily of pain in the left eye and also of scars on her back. Her pregnancy had not been affected, and at the time of being seen she had a 3 month old baby. She also told me that because of pain that she gets continually, she has to go for pain killers, and this she receives from the local Phola Park Clinic. On examination Ms. Mnisi was an overweight 34 year old. There was nothing of relevance to be found on examination of the major medical systems. She had a 1cm scar on the bridge of her nose and also two scars, approximately 2.1cm on the right side of her back.

In summary, we have a 34 year old lady who was assaulted by soldiers of the South African Defence Force in her home in Phola Park on the 8th April 1992. She suffered pain and loss of earnings. (She was and still continues to be a self-employed person). Besides the scars, she has suffered no other permanent disability.

M F RANDERA

(M.R.C.S.L.R.C.P., B.R.C.O.G.)

Collection Number: AK2702

Goldstone Commission of Enquiry into PHOLA PARK Records 1992-1993

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