

SUMMONS

Case No.: 92/26560

In the Supreme Court of South Africa (WITWATERSRAND LOCAL DIVISION DIVISION)

In the matter between:

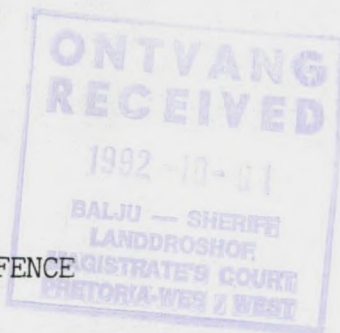
THABO MOFOKENG

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, c/o the Chief of the South African Defence Force, (Finance Division), South African Defence Force Headquarters, Dequar Road, Pretoria.

(hereinafter called the Defendant(s)) that

THABO MOFOKENG, an adult male, resident at A228 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

M J Coose

Registrar of the Supreme Court

ANNEXURE "A"

PARTICULARS OF CLAIM

1. Plaintiff is THABO MOFOKENG, an adult male, whose date of birth is 1968, resident at A228 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 a broken leg.
5. The disabilities suffered by plaintiff as a result of the injuries are as follows:-
 - 5.1 temporary disability, in that plaintiff was rendered unable to use his broken leg for a period of approximately two months.
6. As a result of the bodily injuries sustained, Plaintiff has suffered damages in the amount of R25 000,00.
7. Such damages are computed as follows:-

PAIN AND SUFFERING AND CONTUMELIA

- 7.1 For pain and suffering and contumelia, damages in the amount of R25 000,00.
8. In the premises Defendant is liable to Plaintiff in the amount of R25 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 R25 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

Nicholls and Cambanis

NICHOLLS AND CAMBANIS
PLAINTIFF'S ATTORNEYS
23RD FLOOR, KINE CENTRE
COMMISSIONER STREET
JOHANNESBURG
REF: VS/PP/54

IN THE SUPREME COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

CASE NO: 92/26560

P/H 308

In the matter between:-

MOFOKENG THABO

Plaintiff

and

THE MINISTER OF DEFENCE

Defendant

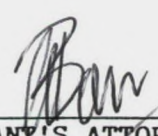
NOTICE OF INTENTION TO DEFEND

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
JOHANNESBURG

BUSINESS ADDRESS: S.A. DEFENCE FORCE HEADQUARTERS, DEQUAR ROAD,
PRETORIA.

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
JOHANNESBURG


REFER TO: G. BOWEN
REFER NO: 7304/92/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 Number : 92/26560

In the matter between:

MOFOKENG, Thabo

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 Thabo Mofokeng, 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:

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

4. AD PARAGRAPHS 4, 5, 6, 7 and 8:


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

5. AD PARAGRAPH 9:

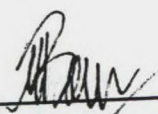
Defendant admits a demand and a failure or refusal to pay, but pleads that Defendant is not legally liable to pay the amount claimed or any portion thereof.

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/
7304/92/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/54**

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



for: **Plaintiff's Attorneys**

**WITHOUT PREJUDICE
TO RIGHTS**

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

CASE NO: 92/26560

In the matter between:-

MOFOKENG THABO

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.


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: 7304/92/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


For/PLAINTIFF'S ATTORNEY

WITHOUT PREJUDICE
TO RIGHTS

PH 466
IN THE SUPREME COURT OF SOUTH AFRICA
(WITWATERSRAND LOCAL DIVISION)

CASE NO : 92/26560

In the matter between : -

MOFOKENG, Thabo

Plaintiff

AND

THE MINISTER OF LAW AND ORDER

Defendant

REPLY TO NOTICE IN TERMS OF RULE 36(4)

BE PLEASED TO TAKE NOTICE that the Plaintiff hereby attaches relevant medical records as requested by the Defendant.

DATED at JOHANNESBURG on this the 8 day of DECEMBER 1992.

Cttmicholls

NICHOLLS, CAMBANIS &
SUDANO
PLAINTIFFS' ATTORNEYS
23RD FLOOR, KINE CENTRE
141 COMMISSIONER STREET
JOHANNESBURG
REF : VS/PP/54

TO : THE REGISTRAR OF THE ABOVE
HONOURABLE COURT
JOHANNESBURG

AND TO : STATE ATTORNEY
DEFENDANT'S ATTORNEYS
8TH FLOOR, ROYAL ST.MARY'S BLDG
85 ELOFF STREET
JOHANNESBURG
MR.BOWEN/7304/92/P5

Received copy hereof on this
the 10th day of DECEMBER 1992.

FOR : DEFENDANT'S ATTORNEYS

STAATSPROKUREUR
PRIVAATSAK/PRIVATE BAG X9
JOHANNESBURG 2000
ONTVANG SONDER BENADELING VAN REGTE
1992 -12- 10
RECEIVED WITHOUT PREJUDICE OF RIGHTS
TYD/TIME 9.49
STATE ATTORNEY

BUITEPASIENTE EN/OF ONGEVALLE AFD. • OUTPATIENT AND/OR CASUALTY DEPT.

33246

HOSPITAAL • HOSPITAL

PASIENT • PATIENT No.

Naam voluit / Name in full: **THABO M Mokoeng**

Huisadres / Residential address: **E 228 ~~1172~~ Pella Park**
Tokosa 1401

Huwelikstaats / Marital state: **M** Geslag / Sex: **M** Ras / Race: **B**

Beroep / Occupation: **M** Geboortedatum / Date of birth: **1968**

Volgno. / Serial No. **92**

Datum • Date	VM. A.M.	NM. P.M.
9/4/99	10	06

Opgeneem / Admitted

Indeling / Classification: **AC**

Dr. **AC**

Naam van persoon verantwoordelik vir betaling van rekening / Name of person responsible for payment of account

Sy/Haar adres • His/Her address

Naam van werkgever • Name of employer

Adres van werkgever • Address of employer

Naam van siekefonds / Name of sick fund S/F S/F No.

*Jaarlikse gesinsinkomste • Annual family income
Uit alle bronne

Broodwinner • Breadwinner R

Vrou • Wife R

Ander afhanklikes • Other dependants R

Totaal • Total R

*Getal persone in gesin (broodwinner ingesluit) / Number of persons in household (including breadwinner)

Meld ouderdomme van afhanklikes / State ages of dependants

Rede vir afhanklikheid / Reason for dependence

(Minderjariges van 16 jaar en ouer wat selfonderhoudend is, moet uitgesluit word) / (Minor children of 16 years and older who are self-supporting must be excluded)

Datum van ongeluk/besering / Date of accident/injury Plek / Place Tyd / Time

Persoon wat beseerde ingebring het / Person who brought in the injured

Sy/Haar adres / His/Her address

Sy/Haar handtekening / His/Her signature **Maba** en voertuig No. and vehicle No. **Coex 4099**

Was beseerde: (i) Onder die invloed van drank? / Under the influence of liquor?
Was injured: (ii) By sy/haar bewussyn? / Conscious?

Geteken: Opnemingsbeampte / Signed: Admitting officer

Die aard van die pasiënt se siekte mag vir rekeningdoelendes vrygestel word. / The nature of the patient's illness may be disclosed for accounting purposes.

Getuie / Witness Geteken / Signed

Datum / Date **9/4/99**

Klagte / Complaint **Headache**

Huidige siekte / Present illness

SLEGS VIR AFSKEURSTROKIES
FOR COUNTERFOILS ONLY

Datum Date	Betalings • Payn	Betalings • Payments	Betalings • Payments
Rekenings • Accounts			

No: 297597

Kwitansie Nr. J
Receipt No. J

Datum
Date

Betaal
Paid R

ONDERSOEK/BEHANDELING/VORDERING
EXAMINATION/TREATMENT/PROGRESS

Datum • Date

9/4/92

Fell this morning
pain @ knee - Haemarthrosis

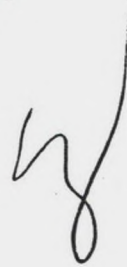
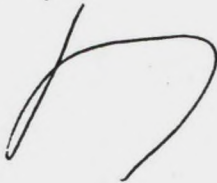
X-rays - no # seen

Refd to P.O.P clinic
- small effusion.
Pain of collateral lig. Stable.
- POP cylinder
- TCB 27.4.92

27.4.92

R.P.P.

Discharge



TO : THE SUPERINTENDENT
NATALSPRUIT HOSPITAL

CONSENT TO SUPPLY CONFIDENTIAL MEDICAL REPORT

NAME OF PATIENT : THABO MOFOKEMU
HOSPITAL REFERENCE NO : 33246/92
DATE OF TREATMENT : 9/4/92

I, the undersigned,

THABO MOFOKEMU

do hereby request and authorize you to give a medical report on the injuries sustained and treatment received by me, and to supply copies of all medical records, x-rays and records of any other form of treatment to : -

THE STATE ATTORNEY
888 ROYAL ST. MARY'S BUILDING
85 ELOFF STREET
PRIVATE BAG X9
JOHANNESBURG

as a matter of urgency.

I have fully considered the implications of my actions and authorize you to give all my medical records to my legal representatives or any private doctor they may advise me to see.

SIGNED at Johannesburg on this the 4th day of December 1992.

AS WITNESSES : -

1. *[Signature]*
2. *[Signature]*

[Signature]

SIGNATURE OF CONSENTEE
OR RIGHT HAND THUMB

PH 466
IN THE SUPREME COURT OF SOUTH AFRICA
(WITWATERSRAND LOCAL DIVISION)

CASE NO : 92/26560

In the matter between : -

MOFOKENG, Thabo

and

THE MINISTER OF LAW AND ORDER

Plaintiff

Defendant

COOPER VAN DE HOOGEREGSHOF
ADVOKAATSGENERAAL (KE AFDILING)
PRIVAATSAK/PRIVATE BAG X7
1993-03-24
JOHANNESBURG 2000
WITWATERSRAND LOCAL DIVISION
REGISTRAR OF THE SUPREME COURT

NOTICE IN TERMS OF RULE 37

KINDLY TAKE NOTICE that Pleadings in this matter having closed, the Defendant is hereby requested to attend a conference at a mutually convenient time and place with the object of reaching a agreement of possible ways of curtailing the duration of the Trial in this action and in particular as to all or any of the matters mentioned in Rule 37(1)(a) of the rules of the Above Honourable Court.

DATED at JOHANNESBURG on this the 5 day of JANUARY 1993.

C. Nicholls

NICHOLLS, CAMBANIS,
AND SUDANO
ATTORNEYS FOR PLAINTIFF
23RD FLOOR, KINE CENTRE
141 COMMISSIONER STREET
JOHANNESBURG
REF : VS/PP/54

TO : THE REGISTRAR OF THE ABOVE
HONOURABLE COURT

AND TO : THE STATE ATTORNEY
DEFENDANTS ATTORNEYS
888 ROYAL ST.MARY'S BUILDING
85 ELOFF STREET
JOHANNESBURG
REF : Mr.Bowen/7304/92/P5

Received copy hereof on this
the 23 day of MARCH 1993.

FOR : DEFENDANT'S ATTORNEYS



PH 466
IN THE SUPREME COURT OF SOUTH AFRICA
(WITWATERSRAND LOCAL DIVISION)

CASE NO : 92/26560

In the matter between : -

MOFOKENG, Thabo

Plaintiff

and

THE MINISTER OF LAW AND ORDER

Defendant

NOTICE IN TERMS OF RULE 37

KINDLY TAKE NOTICE that Pleadings in this matter having closed, the Defendant is hereby requested to attend a conference at a mutually convenient time and place with the object of reaching a agreement of possible ways of curtailing the duration of the Trial in this action and in particular as to all or any of the matters mentioned in Rule 37(1)(a) of the rules of the Above Honourable Court.

DATED at JOHANNESBURG on this the 5 day of JANUARY 1993.

C. Nicholls

NICHOLLS, CAMBANIS,
AND SUDANO
ATTORNEYS FOR PLAINTIFF
23RD FLOOR, KINE CENTRE
141 COMMISSIONER STREET
JOHANNESBURG
REF : VS/PP/54

TO : THE REGISTRAR OF THE ABOVE
HONOURABLE COURT

AND TO : THE STATE ATTORNEY
DEFENDANTS ATTORNEYS
888 ROYAL ST.MARY'S BUILDING
85 ELOFF STREET
JOHANNESBURG
REF : Mr.Bowen/7304/92/P5

Received copy hereof on this
the 23 day of ~~JANUARY~~ 1993.

FOR : DEFENDANT'S ATTORNEYS



IN THE SUPREME COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

Case Number : 92/26560

In the matter between:

MOFOKENG, Thabo

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 the following alternative to paragraph 3 of Defendant's Plea (ad paragraph 3 of Plaintiff's Particulars of Claim):

"3.2 *Alternatively and in the event of it being found that the Plaintiff was assaulted/that any physical act/s was/were committed against*

the Plaintiff, as alleged or at all, by a member or members of the South African Defence Force, then the Defendant pleads as follows:

3.2.1 *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.*

3.2.2 *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.*

- 3.2.3 *The Defendant is a member of the Cabinet of the Republic of South Africa.*
- 3.2.4 *The member or members of the South African Defence Force, as alleged by the Plaintiff to have assaulted Plaintiff/committed physical acts against the Plaintiff, was a member/were members of a Security Force, as provided for in the Regulations.*
- 3.2.5 *The place at Phola Park, Tokoza, where the assault/physical acts allegedly took place, is a place where the said Proclamations were valid and binding as at 8 April 1992.*
- 3.2.6 *The assault of/physical acts against Plaintiff was an act/were acts 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).*
- 3.2.7 *In the premises the Plaintiff has no cause of action as alleged and is not entitled to institute the said action."*

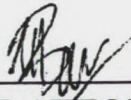
The Defendant tenders the wasted costs (if any) occasioned by the proposed amendment and subsequent amendment, save for the costs of opposition thereof.

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/
7304/92/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/54

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 : 92/26560

In the matter between:

MOFOKENG, Thabo

Plaintiff

and

MINISTER OF DEFENCE

Defendant

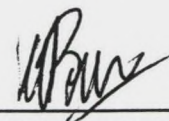
NOTICE IN TERMS OF RULE 28(5)

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/
7304/92/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/54

Received copy hereof on this the
.....~~18~~ day of April 1993.



for: **Plaintiff's Attorneys**

WITHOUT PREJUDICE
TO RIGHTS

IN THE SUPREME COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

Case Number : 92/26560

In the matter between:

MOFOKENG, Thabo

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 **Thabo Mofokeng**, 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:

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

3.2 Alternatively and in the event of it being found that the Plaintiff was assaulted/that any physical act/s was/were committed against the Plaintiff, as alleged or at all, by a member or members of the South African Defence Force, then the Defendant pleads as follows:

3.2.1 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.

3.2.2 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.

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

3.2.4 The member or members of the South African Defence Force, as alleged by the Plaintiff to have assaulted Plaintiff/committed physical acts against the Plaintiff, was a member/were members of a Security Force, as provided for in the Regulations.

3.2.5 The place at Phola Park, Tokoza, where the assault/physical acts allegedly took place, is a place where the said Proclamations were valid and binding as at 8 April 1992.

3.2.6 The assault of/physical acts against Plaintiff was an act/were acts 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).

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

4. **AD PARAGRAPHS 4, 5, 6, 7 and 8:**

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

5. **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 : 92/26560

In the matter between:

MOFOKENG, Thabo

Plaintiff

and

THE MINISTER OF DEFENCE

Defendant

DEFENDANT'S REQUEST FOR FURTHER PARTICULARS FOR PURPOSES OF
TRIAL, WITH REFERENCE TO PLAINTIFF'S PARTICULARS OF CLAIM

1. AD PARAGRAPH 1:

- 1.1 A copy of Plaintiff's birth certificate is requested.
- 1.2 Where was Plaintiff resident at the time of the alleged assault referred to in paragraph 3 of Plaintiff's Particulars of Claim?
- 1.3 Is Plaintiff a South African citizen?
- 1.4 If not, does 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 Was Plaintiff assaulted by one or more members of the South African Defence Force?

2.2 If more than one member, how many members assaulted Plaintiff?

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

2.4 On what basis is it alleged that Plaintiff was assaulted by a member(s) of the South African Defence Force?

2.5 Was/were the member(s) clothed in uniform? If so, a description of the uniform is requested.

2.6 Where exactly in Phola Park was Plaintiff at the time of the assault?

2.7 When exactly was Plaintiff assaulted, with specific reference to the date and time of the assault?

3. AD PARAGRAPH 4:

3.1 Plaintiff is requested to make the x-rays available which would show the fracture.

3.2 Where exactly was the fracture to Plaintiff's leg?

3.3 What caused the broken leg?


4. AD PARAGRAPH 7.1:

4.1 Does Plaintiff still suffer from any pain as a result of the alleged assault?

4.2 If so, what is the extent of the pain and suffering?

- 4.3 If Plaintiff does not suffer from pain any longer, when did the pain and suffering cease?
- 4.4 Does Plaintiff still suffer from any disability as a result of the alleged assault?
- 4.5 If so, what is the extent of the disability?
- 4.6 If Plaintiff does not suffer from any disability any longer, when did the disability cease?
- 4.7 Does Plaintiff require any further medical treatment as a result of the alleged assault?
- 4.8 If so, Plaintiff is required to furnish full details thereof.

DATED AT JOHANNESBURG ON THIS THE 12th DAY OF JULY 1993.



B ROUX

A. J. Lowies

K. LOWIES
Defendant's Counsel

RB

STATE ATTORNEY
Defendant's Attorney
888 Royal St. Mary's Bldg
85 Eloff Street
JOHANNESBURG
Ref: Mr Bowen/
7304/92/P5
Tel: 29-2961

TO: THE REGISTRAR OF THE ABOVE
HONOURABLE COURT
JOHANNESBURG

AND TO: NICHOLLS, CAMBANIS & SUDANO
Plaintiff's Attorneys
23rd Floor
Kine Centre
141 Commissioner Street
JOHANNESBURG
Ref: Ms C H Nicholls

Received copy hereof on the
4 day of ~~July~~ 1993.

Aug

[Signature]

for: Plaintiff's Attorneys

WITHOUT PREJUDICE

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

SAAKNUMMER: 92/26560
P/H 308

In die saak tussen:-

MOFOKENG, THABO

Eiser

en

MINISTER 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.: 7304/92/P33
Tel.: (011) 29-2961

AAN :
DIE GRIFFIER VAN DIE
BOGEMELDE AGBARE HOF
JOHANNESBURG

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

Verw.: VS/PP/54

AFSKRIF HIERVAN BETEKEN OP
DIE DAG VAN MEI 1994.

nms/EISER SE PROKUREURS

BUITEPASIËNTE EN/OF ONGEVALLE AFD. • OUTPATIENT AND/OR CASUALTY DEPT.

33246

HOSPITAAL • HOSPITAL

PASIËNT • PATIENT No.

Naam voluit / Name in full: **1 HABCO M Mokoeng**

Huisadres / Residential address: **E 22 SK ~~1421~~ Rolia Park**

Takoga 1421

Huwelikstaat / Marital state: **M** Geslag / Sex: **M** Ras / Race: **B**

Beroep / Occupation: **1968** Geboortedatum / Date of birth: **1968**

Volgno. / Serial No. **63**

Datum • Date	VM. A.M.	NM. P.M.
9/4/99	10	06

Opgeneem / Admitted

Indeling / Classification: **AC**

Dr.

Naam van persoon verantwoordelik vir betaling van rekening / Name of person responsible for payment of account

Sy/Haar adres • His/Her address

Naam van werkgever • Name of employer

Adres van werkgever • Address of employer

Naam van siekefonds / Name of sick fund S/F S/F No.

*Jaarlikse gesinsinkomste • Annual family income / Uit alle bronne / From all sources

Broodwinner • Breadwinner R

Vrou • Wife R

Ander afhanklikes • Other dependants R

Totaal • Total R

*Getal persone in gesin (broodwinner ingesluit) / Number of persons in household (including breadwinner)

Meld ouderdomme van afhanklikes / State ages of dependants

Rede vir afhanklikheid / Reason for dependence

(Minderjariges van 16 jaar en ouer wat selfonderhoudend is, moet uitgesluit word) / (Minor children of 16 years and older who are self-supporting must be excluded)

Datum van ongeluk/besering / Date of accident/injury Plek / Place Tyd / Time

Persoon wat beseerde ingebring het / Person who brought in the injured

Sy/Haar adres / His/Her address

Sy/Haar handtekening / His/Her signature en voertuig No. / and vehicle No. **Coet 6099**

Was beseerde: (i) Onder die invloed van drank? / Under the influence of liquor?

(ii) By sy/haar bewussyn? / Conscious?

Geteken: Opnemingsbeampte / Signed: Admitting officer

Die aard van die pasiënt se siekte mag vir rekeningdoeleindes vrygestel word. / The nature of the patient's illness may be disclosed for accounting purposes.

Getuie / Witness Geteken / Signed

Datum / Date **9/4/99**

Klagte / Complaint **HEADACHE**

Huidige siekte / Present illness

SLEGS VIR AFSKEURSTROKIES FOR COUNTERFOILS ONLY

Datum Date	Betelings • Payn	Betelings • Payments	Betelings • Payments
Rekenings • Accounts			

Kwitaasie Nr. J
Receipt No. J

No 297597

Datum Date

Betaal Paid R

ONDERSOEK/BEHANDELING/VORDERING
EXAMINATION/TREATMENT/PROGRESS

Datum • Date

9/4/92

Fell his morning
pain @ knee - Haemarthrosis

Xray - no # seen

Refd to pop clinic

- small effusion.

Pain of collat. lig. Stable.

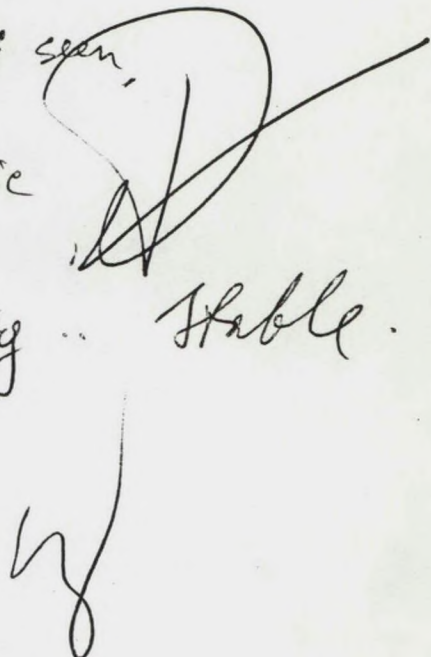
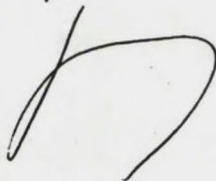
- POP cylinder

- TCB 27.4.92

27.4.92

R.P.P.

Discharge



TO : THE SUPERINTENDENT
NATALSPRUIT HOSPITAL

CONSENT TO SUPPLY CONFIDENTIAL MEDICAL REPORT

NAME OF PATIENT : THABO MOFOKEMU
HOSPITAL REFERENCE NO : 33246/92
DATE OF TREATMENT : 9/4/92

I, the undersigned,

THABO MOFOKEMU

do hereby request and authorize you to give a medical report on the injuries sustained and treatment received by me, and to supply copies of all medical records, x-rays and records of any other form of treatment to : -

THE STATE ATTORNEY
888 ROYAL ST. MARY'S BUILDING
85 ELOFF STREET
PRIVATE BAG X9
JOHANNESBURG

as a matter of urgency.

I have fully considered the implications of my actions and authorize you to give all my medical records to my legal representatives or any private doctor they may advise me to see.

SIGNED at Johannesburg on this the 4th day of December 1992.

AS WITNESSES : -

1. *[Signature]*
2. *[Signature]*

[Signature]

SIGNATURE OF CONSENTEE
OR RIGHT HAND THUMB

Collection Number: AK2702

Goldstone Commission of Enquiry into PHOLA PARK Records 1992-1993

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