

Lungile GABHAYI

1. Pleadings.

2.

3.

•
○

Issued by **ISSUED BY
UITGEREIK DEUR**

PRETORIA Case No.
22.09.92
Date

072639



M. Ballak
Clerk of the Court

**CLERK OF THE COURT
MEERK VAN DIE HOF**

No. RM2 Summons Commencing Action (Ordinary)

Sued out by
NICHOLLS, CAMBANIS & SUDANO
c/o Adams & Adams
Shorburg
492 Church Street
PRETORIA
0001

C. M. Mandy

Signature of Plaintiff or his Attorney

Postal address

P.O. Box 1014, PRETORIA.

In the Magistrate's Court for the District of PRETORIA

held at PRETORIA

Between **LUNGILE GABHAYI** Plaintiff
and **THE MINISTER OF DEFENCE** Defendant
To: **THE MINISTER OF DEFENCE, cited herein in his capacity as head of the South African Defence Force, and as such responsible for and in control of members of the South African Defence Force, c/o The State Attorney, 888 Royal St. Mary's Building, 85 Eloff Street, JOHANNESBURG.**

You are hereby summoned that you do within 21 (twenty-one) days of the service of this summons deliver or cause to be delivered to the CLERK OF THE AFORESAID COURT and also the PLAINTIFF OR HIS ATTORNEY, at the address specified herein, a notice in writing of your intention to defend this action and answer the claim of

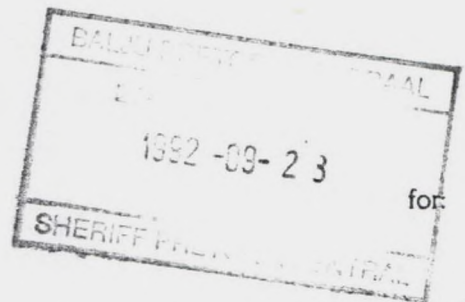
LUNGILE GABHAYI, an adult male, unemployed of full legal capacity resident at K22 Phola Park, Tokoza.

the plaintiff herein, particulars whereof are endorsed hereunder

(1) Particulars

Plaintiff's claim against defendant is for payment of the sum/balance of R

SEE ANNEXURE HERETO



Wherefore plaintiff prays for judgment against the defendant in the said sum, with costs.

Costs if the action is undefended will be as follows:

	Summons		Judgment	
	R	c	R	c
Attorney's charges	150	00	125	00
Court fees	10	00		
Messenger's fees				
Messenger's fees on re-issue				
Totals	R		R	
Total			R	

(See back)

PARTICULARS OF CLAIM

1. The Plaintiff is LUNGILE GABHAYI an adult male, unemployed of full legal capacity resident at K 22 Phola Park, TOKOZA.
2. The Defendant is the MINISTER OF DEFENCE, cited herein in his capacity as head of the SOUTH AFRICAN DEFENCE FORCE, and as such responsible for and in control of members of the SOUTH AFRICAN DEFENCE FORCE, c/o The State Attorney, 888 Royal St.Mary's Building, 85 Eloff Street, Johannesburg.
3. On or about the 8th April 1992 and at Phola Park, Tokoza, the Plaintiff was unlawfully and without lawful justification assaulted by members of the SOUTH AFRICAN DEFENCE Force, who at material times hereto were acting within the course and scope of their employment as members of the SOUTH AFRICAN DEFENCE FORCE.
4. As a consequence of the aforesaid assault, the Plaintiff suffered bodily injuries.
5. In consequence thereof, the Plaintiff has suffered damages in the amount of FIFTEEN THOUSAND RAND (R15 000.00) in respect of contumelia, pain and suffering, loss of amenities of life and disability.

6. The Plaintiff has given notice in terms of Section 113 of the Defence Act.

7. Notwithstanding demand, the Defendant has failed and/or neglected to pay the aforesaid sum as claimed.

WHEREFORE the Plaintiff claims : -

- a. Payment of the sum of R15 000.00;

- b. Interest on the aforesaid sum at the rate of 18.5% per annum from date of judgement to date of payment;

- c. Costs of suit;

- d. Further and/or alternative relief.

DATED at JOHANNESBURG on this the 21 day of *Sept* 1992.

C. Nicholls

NICHOLLS, CAMBANIS,
KOOPASAMMY AND PILLAY
PLAINTIFF'S ATTORNEYS
c/o ADAMS & ADAMS
SHORBURG
429 CHURCH STREET
PRETORIA
REF : M.BEDHESI/mvd

NOTIFICATION IN ACCORDANCE WITH THE PROVISIONS OF - RULE 8(4) -
of the - MAGISTRATE'S COURTS ACT 32 of 1944

DEPUTY : F. A. RUSSOUW
ACC No.: NICHOLL050

RETURN No.: 92/0,044,113.00
CASE No. : 72639/92

IN THE MAGISTRATE'S COURT FOR THE DISTRICT
PRETORIA HELD AT PRETORIA

BETWEEN
LUNGILE GABHAYI

Plaintiff

AND
THE MINISTER OF DEFENCE
STATE ATTORNEY
ADDRESS : 4THF FEDLIFE FORUM BUILDING
VAN DER WALT STREET
PRETORIA 0000

Defendant

NATURE OF PROCESS:- SUMMONS COMMENCING ACTION (Ordinary)

ON 92/09/28 AT 15h45 THE ABOVEMENTIONED DOCUMENT WAS HANDLED IN THE MANNER
INDICATED BELOW:

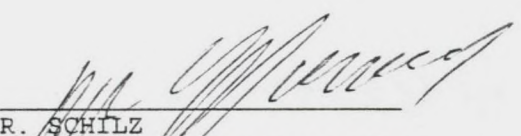
RETURN OF SERVICE : STATE ATTORNEY.

RULE 9(3)(g) : THIS IS TO CERTIFY THE A COPY OF THE ABOVE MENTIONED
PROCESS WAS SERVED ON M BESTER A PERSON APPARENTLY NOT LESS
THAN (16) SIXTEEN YEARS OF AGE AND DESIGNATED IN THE STATE
ATTORNEY'S OFFICE FOR THIS PURPOSE, BY HANDING A COPY
THEREOF TO SAID PERSON.

RECEIVED - 6 OCT 1992

CODE	DESCRIPTION	PRICE	QTY	AMOUNT	VAT	TOTAL
ADB	SERVICE (0-6km)	11.00/SERVICE	001	11.00	1.10	12.10
PST	POSTAGE	2.60/ACTUAL	001	2.60	0.26	2.86
						=====
						14.96

To THE CLERK OF THE COURT PRETORIA
Copy to (Your Ref.)
NICHOLLS, CAMBANIS, KOOPASAMMY & PILLAY
P O BOX 8694
JOHANNESBURG
2000


R. SCHILZ
SHERIFF - PRETORIA CENTRAL
P.O. BOX 478
PRETORIA - 0001
TEL: (012) 320-8482/3/4/5

(EMP 1 1 of 3)

You may require this PRO FORMA statement to be taxed and vouched before payment.

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF PRETORIA
HELD AT PRETORIA CASE NO : 72639/92

In the matter between : -

LUNGILE GABHAYI

Plaintiff

and

MINISTER OF DEFENCE

Defendant

FILING SHEET

PRESENTED FOR FILING BY : -

C. Nicholls

NICHOLLS, CAMBANIS AND
SUDANO
PLAINTIFF'S ATTORNEYS
c/o ADAMS & ADAMS
SHORBURG
429 CHURCH STREET
PRETORIA
REF :

TO : THE CLERK OF THE COURT
PRETORIA

AND TO : THE STATE ATTORNEY
DEFENDANT'S ATTORNEYS
4TH FLOOR, FEDLIFE FORUM BUILDING
VAN DER WALT STREET
PRETORIA

Received copy hereof on this
the day of APRIL 1993.

FOR : DEFENDANT'S ATTORNEY

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF PRETORIA
HELD AT PRETORIA CASE NO : 72639/92

In the matter between : -

LUNGILE GABHAYI

Plaintiff

and

THE MINISTER OF DEFENCE

Defendant

AFFIDAVIT IN TERMS OF RULE 10

I, the undersigned,

CAROLINE HEATON-NICHOLLS

do hereby make oath and say that : -

1. I am an attorney of the Supreme Court of South Africa (Transvaal Provincial Division), duly admitted and practising as such in partnership under the name and style of NICHOLLS, CAMBANIS AND SUDANO, at 23rd Floor, Kine Centre, 141 Commissioner Street, Johannesburg.
2. The facts herein contained are within my personal knowledge and belief and are both true and correct.
3. I am acting for the Plaintiff in this matter. Summons herein were issued at the Above Honourable Court on the 22nd September 1992. At the request of the Defendant, Plaintiff granted an extension for the entering of an Appearance to Defend by Defendant.

CH 10

4. On the 15th December 1992 Defendant's attorneys requested that the further exchange of pleadings in the above matter be held in abeyance pending the outcome of Supreme Court actions relating to the same facts as this matter. Attached hereto is a copy of a letter from the Defendant's attorneys marked "A" containing such request.
5. On the 15th December 1992 the Plaintiff agreed to such extensions as requested by the Defendant.
6. I therefore pray that the Summons shall not lapse until 12 months after the expiration of conclusion of the Supreme Court actions.

C. H. ...

DEPONENT

THUS DONE, SIGNED AND SWORN TO BEFORE ME AT JOHANNESBURG on this the 22 day of APRIL 1993. Deponent having affirmed that she knows and understands the contents of this affidavit, she has no objections to taking this oath and considers this oath binding on her conscience.

Dissel

COMMISSIONER OF OATHS

AMANDA JOY DISSEL
COMMISSIONER OF OATHS
PRACTISING ATTORNEY
7 MEDICAL ARTS BUILDING
2 JEFFREY STREET, JOHANNESBURG
REPUBLIC OF SOUTH AFRICA
23rd Floor King Centre
141 Commissioner Street.

I the undersigned
Lungile Gabhanyi
do hereby make oath and say,

1 I am an adult male aged 34 I am
employed at Dutton Plastics, Acrede
I reside at k22 Phola Park.

2 On Wednesday April 8, 1992 at
about ~~12~~ 22h35²², soldiers arrived
at my home and they shouted to
open the door. I refused to open
the door and they started
kicking the door. I then decided
to open the door when I noticed
that the door was about to break

3 When I opened they told me to
come out. I saw seven soldiers
out seven were black. I know them
as members of 32 Battalion who
are based at Steenpunt.

4 I was told to lie down on the
ground outside my home. They
then went inside and searched
the wardrobe and pulled out
the clothes out of the wardrobe.
After throwing the clothes on the
floor, they went outside. They
then started beating me with a

stick on my arms and back and on the head. The stick was about 10cm thick and about 1m long. I was beaten for about 10 minutes and I told them that they were killing me and they then stopped and I ran away into my shack and the soldiers left.

5 On Thursday April 9, 1992, I went to the doctor, his name is Dr KANA and his surgery is in Ntaka Street. I informed him as to what happened to me. My right arm is badly bruised and I have several stitches in my head.

6 I am unable to identify the soldiers who were involved.
Date 10/04/92

Deponent
L. GABHAYI

WITNESS
Sally Sealey
Sally Sealey

THUS DONE AND SIGNED BEFORE ME AT THOKOZA ON THIS THE 14 DAY OF APRIL 1992, THE DEPONENT HAVING ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS DECLARATION AND CONSIDERS THE OATH TO BE BINDING ON HIS CONSCIOUS.

Nicholls, Cambanis & Associates

Attorneys at Law

Adv.Karel Tip
14th Floor, Schreiner Chambers
Pritchard Street
JOHANNESBURG
2001

3rd Floor
132 Fox St
Johannesburg
2001

P.O.Box 8694
Johannesburg
2000

Telephone
331-6919
331-6910
331-6927 / 8 / 9

Fax: (011) 331-8691

Your Ref:

Our Ref:

Date:

H.V.SITHOLE/dk

7 February 1995

Dear Karel,

RE : **MAGISTRATE'S COURT MATTERS - PHOLA PARK**

Further to our letter of 2nd February 1995, we enclose herewith a copy of a medical certificate in respect of Lungile Gabhayi.

Yours faithfully

NICHOLLS, CAMBANIS AND ASSOCIATES

DR K M M KANA
MB ChB (Natal)

L 6413.

PR. 1464736

7936 Nkaki St
Thokoza
PO Box 3721
1451 Alrode

Surgery Tel.: 905-3717

Date: 6. 2. 95 Age ~~minor~~ Ouderdom indien minderjarig: 35yr

Name: Lungile Gabhaji

Address: _____
Adres: _____

Seen 9. 4. 92 ± 8.50am.

90 Pain @ Scapular area, head,
& elbows. ~~But~~ Bleeding @ elbow.

on examination: Pyrexial. BP $\frac{120}{80}$.

laceration @ parietal area → 7cm → Sutured

Swollen @ elbow, laceration medially
limited movement

@ elbow - abrasions medial area &

multiple linear abrasions on his
back.

Xray: @ elbow comminuted
Fracture medial condyle of
humerus. No displacement.

Thanks
K.M.M.K.

Collection Number: AK2702

Goldstone Commission of Enquiry into PHOLA PARK Records 1992-1993

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