

IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

CASE NO. 1493/2022

In the matter between:

MODISE MOSHABE

Plaintiff

And

THEMBA MANDLAZI

Defendant

JUDGEMENT

Neutral citation:

*Modise Moshabe & Themba Mandlazi
(1493/2022) SZHC 72 (9th April 2024).*

Coram:

S.M. MASUKU J

Date of heard:

13th March 2024 and 14th March 2024

Date delivered:

9th April 2024

Flynote:

*Delict- Principles of law that govern and influence
the assessment and/or payment of damages.
Assessment of non-patrimonial damages.*

Summary:

In Claim 1 the Plaintiff claimed the award of damages for contumelia associated with assault. The Plaintiff assaulted on the cheeks with open hands. Assault in full view of the public. Plaintiff felt humiliated and his dignity or reputation attacked. In Claim 2 Plaintiff brought quotations for panel beating and repairs to the rear part of his damaged vehicle as a result of damage caused by Defendant's vehicle.

Discussed:

In Claim 1 factors and circumstances that influence an award of damages for contumelia associated with assault discussed. Prior comparative awards of damages in Eswatini jurisdiction also discussed.

In Claim 2, instead of comparing the pre-and posts delictual value of property, the costs of necessary, fair and reasonable repairs may be used to prove the damages recoverable.

Held:

Plaintiff awarded damages in both Claim 1 and Claim 2 with costs from date of judgement to date of payment.

Prelude

- [1] This was an opposed civil trial enrolled to commence before this court on the 1st February 2024. When both counsel for the parties appeared for the first time on the dates for a roll call, I drew their attention to the pre-trial minute

which lacked details on the issues for determination and the approach on the *quantum* in **Claim 1**. For example in **Claim 1**, the Plaintiff claimed he was assaulted by the defendant in full view of the public and claimed damages in the total sum of E150 500-00 (One hundred and fifty thousand five hundred emalangeni). The Defendant's plea contended that the Plaintiff was the one who started the fight. The pre-trial minute called upon this court to determine whether the Defendant assaulted the Plaintiff.

- [2] In his plea the Defendant did not deny assaulting the Plaintiff but contended that the Plaintiff was the one who started the assault, to mean that there was a fight for which the Plaintiff might have contributed to the assault and consequently that affected the *quantum* of damages to be awarded.
- [3] It seemed to me obvious that the Defendant did not in his plea deny the assault but simple stated that it is the Plaintiff who started the fight. The issue at trial should be to determine whether the Defendant was truthful about a fight in that the Plaintiff started the fight or that the Defendant simply assaulted the Plaintiff without him fighting back.
- [4] In **Claim 2** it is alleged that the defendant reversed his motor vehicle against the Plaintiff's vehicle thus colliding with it and causing damages on the Plaintiff's car. The Plaintiff's claim in that regard is E3 277-50 (Three thousand two hundred and seventy seven emalangeni fifty cents). The pre-trial minute recorded that the court should determine whether the Defendant was negligent in colliding with the Plaintiff's car. The Defendant in his plea admitted colliding with the Plaintiff's motor vehicle when reversing but stated that when he tried to fix the car, the Plaintiff went and fetched it before being fixed. There is therefore no question for the court to determine at trial whether the Defendant was negligent or not in colliding with Plaintiff's vehicle because he admitted same in the plea and replication on the allegation that in

colliding with Plaintiff's vehicle he was negligent. The only issue in **Claim 2** is for the court to determine the *quantum* and not liability.

- [5] Very often practitioners attend a pre-trial conference simple because the rule 37 (1) require them to so attend without any specific objective in mind. They cross this stage to trial without due regard to the object of this rule. The rule however is to expedite proceedings, curtail unnecessary time to be spent at trial establishing issues that have been admitted. The rule is also aimed at reducing costs of litigation and eliminate evidence on matters that are not really in dispute and to focus on disputed material.
- [6] John Mullins SC and Carlos da Silva SC, in their revision and update of Eric Morris SC's Technique In Litigation 6th edition at page 130, say:- *'the rule, however, was designed to achieve certain very useful purposes and it would be well to take advantage of its provisions wherever possible'*. In Grasso v Grasso 1987 (1) SA 48 (C) at 61-2 (also cited in this work Ibid) quoted Berman J's comment upon the practice which has evolved of practitioners honouring rule 37 (1) in breach of the pre-trial conference rule by which they hold 'short telephone conversations', and 'agree that nothing can be agreed'. His Lordship describe this as *'nothing short of a gross abuse of a Rule of Court.'*
- [7] Closer home, the pre-trial minutes found in book of pleadings are often too similar, even in their wording no matter what the case may be. More often than not, a stencil is simple used to produce the next pre-trial minute, pre signed by counsel without a pre-trial conference being held. Such practice creates unnecessary work and a work load for the Courts. Three or so, court days for example can easily be reduced to lesser time or days at trial if this rule is carefully observed.

- [8] Notwithstanding, counsel for the parties herein followed the Court's administrative directive, met and produced a revised pre-trial minute that displayed a thorough investigation of the dispute and narrowed down the issues significantly. I am indebted for that response.
- [9] On the first day of the trial and in their opening statements counsel for the Plaintiff readily identified the issues in dispute for determination. The parties acknowledged that the Plaintiff was assaulted by the Defendant but the Plaintiff may have contributed in starting the fight between the two of them. The Court was called upon to determine in the first claim, who started the assault between the parties and the *quantum* thereto. In the second claim involving the motor collision, the only question for determination is the *quantum* of damages the Plaintiff is entitled to be compensated with.

In Claim 1

- [10] The facts as pleaded by the parties are that during or about the 8th May 2022 at or near Checkers shopping Centre, the Defendant unlawfully and intentionally assaulted the Plaintiff in full view of the public. The Defendant is alleged to have beaten the Plaintiff severely, numerous times on his face with open hands. The Plaintiff averred, he was severely humiliated by the Defendant's conduct as his self esteem was impaired.
- [11] As a result of the Defendant's conduct, the Plaintiff claimed to have suffered damages in the following heads;
- 11.1 Medical expenses E500 (Five hundred emalangeni).
 - 11.2 Pain and suffering E100 000-00 (One hundred thousand emalangeni).
 - 11.3 Humiliation E50 000-00 (Fifty thousand emalangeni).

[12] The total damages claim under **Claim 1** is E150 500-00 (One hundred and fifty thousand five hundred emalangeneni). Counsel for the Plaintiff conceded that pain and suffering, humiliation can conveniently be placed under the main head as general damages. No proof for medical expenses, E500 (Five hundred emalangeneni) was produced by the Plaintiff and this claim was not pursued.

In Claim 2

[13] On the same date as in **Claim 1** at or near Checkers shopping complex Mbabane, the Defendant's motor vehicle namely a Kia Seltos SUV registered ESD 509 CH driven by the Defendant unlawfully and negligently knocked the Plaintiff's motor vehicle Mazda 5 sedan registered VSD 084 CM driven by the Plaintiff. The Plaintiff alleged that the Defendant had without the exercise of reasonable care and attention reversed on to his car. The Plaintiff claimed the accident caused damages in the amount of E3 277-50 (Three thousand two hundred and seventy seven emalangeneni fifty cents) being costs of repairs for his motor vehicle.

The Trial

[14] The revised pre-trial conference envisaged the trial duration to be for one day. In the presence of counsel for both parties, the matter was set-down for the 16th February 2024 at 09h00 for a call. On that date only Mr W. Maseko for the Plaintiff appeared, the defendant and his attorney did not turn up and no one appeared to give an explanation of the default.

[15] The trial was then postponed to the 22nd February 2024 for setting of the trial date owing to the absence of the Defendant and his Attorney. On that date Plaintiff's attorney attended court, the defendant and his attorney Mr P.Mthethwa did not attend court. There was no explanation preferred for their

default even on this date. The matter was set down for two days of trial, 3rd March 2024 and 9th April 2024 at 14h00 on both days. The Plaintiff's attorneys issued and served a notice of set down for both days of the trial.

- [16] On the first day of trial the 13th March 2024 at 14h00, the Plaintiff's attorney was present in court with his witnesses to commence the trial. The Defendant and his attorney were not in court. As practice and procedure dictacts, the court orderly called Themba Mandlazi, the Defendant's name three times outside the court premises and there was no response.
- [17] The Plaintiff's attorney applied to court for the trial to proceed in the Defendant's absence in terms of the rule 39 (1) of the rules of the High Court. The rule allows for the Plaintiff to proceed with the trial where despite a set-down the Defendant fails to appear on the date of trial. On the basis of the notice of set down for both dates of trial which was duly served on the Defendant's attorneys of record on the 22nd February 2024 at 16h10, the court allowed the trial to proceed. The Plaintiff proceeded to lead his evidence to prove his claims 1 and 2.
- [18] The Plaintiff was the first to take the stand. He testified that it was on the 8th May 2022 when he was at a drinking place called Cozy Corner Mbabane Checkers. He had parked his motor vehicle (as described herein above) and had drinks with friends.
- [19] Whilst parked there, he noticed the Defendant's motor vehicle (as described in the paragraph above) driven by the Defendant reversing on to his parked vehicle and pumped his car. No one was injured but his motor vehicle was damaged on the right rear side fender whilst the Defendant's vehicle was not damaged. The police investigation and report which he attached to his pleadings revealed that the Defendant's motor vehicle was reversing out of parking when it knocked the Plaintiff's motor vehicle which was stationary.

He concluded that the Defendant failed to take a proper look-out while reversing. The police charged the Defendant with an offence of negligent driving. His docket was still pending at the time of the trial.

- [20] The Plaintiff testified that he stood up to talk to the Defendant because he could see that he was not stopping to assess what he had done to his motor vehicle. He said the Defendant looked like a person who was drunk at that time. As things unfolded, someone amongst the crowd grabbed the Defendant's car keys forcing his car to stop as it was being driven off. This was the moment when the Defendant alighted from his vehicle and came straight towards the Plaintiff. He then noticed that the Defendant was a police officer because he was in his police uniform.
- [21] The Defendant, he testified confronted him and held him by his clothes around the neck, pushed him against the wall whilst hitting him with an open hand. The Plaintiff was assaulted by claps on both cheeks so hard that he had to go to hospital where he was examined treated and discharged by Dr Tembe.
- [22] The Plaintiff produced an out-patient record which was handed in and admitted to form part of his evidence. The Doctor's note reveals that the Plaintiff was assaulted with open hands on both cheeks and had pain on both angles of the jaws especially when he opened his mouth. He also had pain at the left shoulder scapular area. No bruises or swelling noted. He was given analgesics (Pcm 55g diclo 5g and discharged the same day).
- [23] He testified further that it took him five days to recover after taking his medication. He said he was hurt by Defendant's assault in front of all his friends and the people who witnessed the clapping. 'It was really embarrassing and humiliating', he said. During the recovery, he could not chew well, the pain was unbearable. He was off work for three days to recover.

[24] He asked the court to order that he be compensated for what he described as humiliation he suffered in front of the crowd.

Claim 2

[25] Concerning the damage on his motor vehicle, he testified that he would like the Court to order the Defendant to compensate him for the damages for his car. To repair the vehicle to the condition it was before the incident, he took the motor vehicle to three different panel beaters. The first, was Global Motors which quoted him E3 277-50 (Three Thousand two hundred and seventy seven emalangeni fifty cents) for panel beating and spray painting. The second quotation was Santo Panel Beaters and Spray Painters with a total of E4 255-00 (Four thousand two hundred and fifty five emalangeni) broken down as E3 700-00 (Three thousand seven hundred emalangeni) for panel beating and spraying, E555 (Five hundred and fifty five emalangeni) for value added tax. The third quotation was Capital Motors Corporation with a total of E6 267-50 (Six thousand two hundred and sixty seven emalangeni fifty cents) for panel beating and spray painting, the damages included Value Added Tax. He testified that he wanted the quotation from Global motors to be considered as it was the lowest amongst the rest.

[26] The Plaintiff then called his 2nd witness Masiko Zungu. He testified that he resided at 20 West Bridge Park Mbabane known as Checkers. He was present on the date of the incident at Cozy Corner having a drink with friends. As they sat outside in full view of all that was happening, he noticed a scuffle unfolding in front of him. As he turned to focus on what was happening he witnessed the Defendant assaulting the Plaintiff. A crowd had gathered around the scene.

[27] He testified that although he was not aware of what the problem was, he intervened in the scuffle. He noticed that the Defendant was a police officer because he was in uniform, he also hesitated as he had no experience of intervening where a police officer was involved. The crowd helped him to separate the two and that is when he had an opportunity to establish the genesis of the scuffle. He testified that he established that the Defendant's car had pumped the Plaintiff's car.

[28] He witnessed the Defendant slapping the Plaintiff with open hand in the face. The Defendant had grabbed the Plaintiff by his neck and assaulted him. The Defendant kept on screaming at the Plaintiff saying 'bring my keys, bring my keys'.

Plaintiff's closing submissions

[29] Under **Claim 1**, the Plaintiff submitted that he had proved on a balance of probabilities that the Defendant assaulted the Plaintiff. The assault according to the Plaintiff was one way. It was not that they were fighting but the Defendant assaulted the Plaintiff with an open hand.

[30] The assault happened in full view of the public. The Plaintiff tendered evidence in the form of a medical report by Dr Tembe to confirm the assault and its extent. The Plaintiff suffered damages as a result of the assault as set out in the particulars of claim.

The Law

[31] The object and functions of non-patrimonial loss are to diminish the detrimental consequences of a compromise of rights of personality (heightened emotions, feeling of outrage and loss of happiness) in so far as this may be achieved by the payment of a sum of money. See H.B Kloppe, Damages Lexis Nexis at Page 20. An award for compensation of non-patrimonial loss

also serves as consolation for and vindication of an aggrieved person's interest of personality (H B Klopper, Ibid).

- [32] In the South African Constitutional Court case of Van der Merve v Road Accident Fund and Another 2006 (6) BCLR 682 (C) ,2006 (4) SA 230 (CC) 253 -4 the court had this to say:-

“Non – patrimonial damages, which also bear the name of general damages, are utilized to redress the de-terioration of a highly personal legal interest that attach to the body and personality of the Claimant... therefore, general damages are, so to speak, illiquid and are not instantly sounding in money. They are not susceptible to exact or immediate calculation in monetary terms.”

- [33] H B Klopper (*supra*) at page 221-222 says, in the assessment of non-patrimonial damages a distinction must be made between invasions of bodily integrity based on the action for pain and suffering and assault. In the latter case the presence of an element of affront or humiliation (*contumelia*) must be considered whereas this element is absent where bodily injuries do not result from assault. Consequently, the assessment of non-patrimonial damages must be considered under the headings i.e non-patrimonial damages based on: bodily integrity protected by the action for pain and suffering (or *corpus*) and other injurious conduct, assault and deprivation of liberty (*corpus*).

- [34] The award is assessed by the presiding judge according to what is fair and reasonable under the particular circumstances of the case being considered. He should (the Presiding Officer) also provide a reasoned basis for arriving at his/her conclusion *see Road Accident Fund v Murunga* 2003 (S) SA 164 (SCA)172.

- [35] The following factors and circumstances *inter alia* influence an award of damages for *contumelia* associated with assault; the nature and seriousness of the assault, degree of humiliation caused by the assault, impact of assault on dignity or reputation, possible provocation by the Plaintiff and the extent to which the assault was published, prior comparable awards. (these are not necessarily exhaustive) see Neethling and Potgieter Delicit 345. see also, Sabelo Mhlanga v Bhekinkosi Mhlanga (1174/2016) SZHC 20[13/03/2024].

Prior Comparative Awards (Eswatini Jurisdiction)

- [36] Factors and circumstance that have influenced the award of damages for *contumelia* associated with assault may be gleaned from a selection of decisions dating back from 1994. Counsel for the Plaintiff Mr W.Maseko spent a considerable amount of time in compiling and submitting a useful analysis of the case law for which I am indebted, especially because of the absence of compounded *quantum* year books in our jurisdiction. The case law is considered below.
- [37] In 1994, His Lordship S.W Sapire ACJ in the case of Sibongile Gumbi v Makhosini Dlamini Civil Case No. 399/94 considered an amount of E2000-0 (Two thousand emalangen) as adequate together with costs of suit taxed on a Magistrate court scale for *contumelia* associated with assault. In a three page judgement His Lordship captured that the Plaintiff and the Defendant both worked for a concern owned by the Defendant's father. The Defendant was the Manager of the business while the Plaintiff was employee. The particulars of claim alleged that the Defendant unlawfully assaulted the Plaintiff by striking her with an open hand.

- [38] The court noted that in evidence the Plaintiff hardly referred to the assault in Chief and there was little to connect it with the damages claimed. The only significance of this allegations he found, was that it was admitted by the Plaintiff that the matter was subsequently settled. The court did ultimately found that the Defendant was liable for the assault.
- [39] When it came to the assessment of damages the court observed that the Plaintiff's case was brief and his account of the injuries she received was vague which did not bring the attack into a category of a vicious assault as described by counsel. The court held that the assault was not of a grievous nature and the damages to be awarded could not be substantial. The court considered that the case could well have been brought in the Magistrates court as an appropriate amount of the award was within the jurisdiction of the court at that time.
- [40] Compared to the Plaintiff's claim herein, the extent of the assault in *casu* is supported by Dr Tembe's medical record and was well articulated by the Plaintiff in chief. The assault was described as carried out with open hands on both cheeks. Plaintiff had pain on both angles of the jaws especially when he opened his mouth and a pain at the shoulder scapular area. The award in Sibongile Gumbi was ordered about 29 years ago in 1994 and was considered trivial.
- [41] In 2007, His Lordship S.B. Maphalala J_ in the case of Thabiso Masilela v Mabandla Motsa civil case 2998/2007 in a claim for damages by the Plaintiff against the defendant for pain and suffering, humiliation and loss of dignity (general damages), awarded E30 000-00 (Thirty Thousand emalangen).
- [42] The Plaintiff in that case testified that he was unlawfully and wrongfully assaulted by the defendant with fists on the head and face, particularly on the left ear. Further, the defendant verbally assaulted him by labelling him a

stupid poor fool who was pretending to be a saint before his superiors and the government of Swaziland. The assault apparently took place before and in front of the general public, their colleagues and workmates. After the assault the Plaintiff experienced some pain on the left ear and thereafter he is said to have experienced some hearing and pain problems on the left ear which required further medication. In awarding damages the court granted E20 000-00 (Twenty thousand emalangeni) for pain and suffering and E10 000-00 (Ten thousand emalangeni) for humiliation.

- [43] The award of damages in that matter compared to the one on hand is that the court in that matter relied on unchallenged evidence of the Plaintiff's description of the extent of the injuries. There was no medical report or record produced to guide the injuries unlike in our case. The probative value of the extent of the injuries as described by the claimant should be less rated than that of a medical Doctor. The Plaintiff may as well have described what he felt, influenced by emotions and the urge to revenge or raise his compensation. The award turned 17 years old in 2024.
- [44] Recently in March 2023 His Lordship B W Magagula in the case of Sabelo Mhlanga v Bhokinkosi Mhlanga (1174/20160 SZHC 20/13/03/2024) a contested claim for damages that arose in 2016 but were awarded in 2024.
- [45] The Plaintiff's evidence was that he was unlawfully and wrongfully attacked by the defendant who unleashed a punch on his right eye. The plaintiff (according to Dr Msiska's report) suffered hyperemic conjunctival surface on his right eye which in simple language he had a blood shot eye after the assault. The Plaintiff's claim *inter alia* was for temporary pain and suffering and/or discomfort and permanent eye sight disability (general damages).

- [46] After a considerable analysis of the evidence brought to court on the *quantum* of damages, the court in the Sabelo Mhlanga case (ibid) made a comparative award influenced by the case of Sebenzile Malinga vs Christopher Dlamini 3480/05 [2012] 11 April 2012, where the court in that matter awarded E20 000-00 (Twenty thousand emalangeni) for pain and suffering. The Plaintiff had been assaulted by a visiting friend and is said to have suffered severe injuries to the head and arm that resulted in extreme pain and persistent headache.
- [47] In considering the award in Sabelo Mhlanga's case, Magagula J noted that the assault was committed in 2012 and the assessment of damages before him was in 2024.
- [48] He described the eye as quite a sensitive part of the body whilst also acknowledging that the injury in Sebenzile Malinga was to the head and right arm (also described as quite sensitive). The eye was considered very sensitive and delicate than the head.
- [49] The Plaintiff's claim in Sabelo Mhlanga was for E250 000-00 (Two hundred and fifty thousand emalangeni) for eyesight disability. The Court found that there was no medical report supporting permanent disability of the eye. The Court however proceeded to award E45 000 (Forty five thousand emalangeni) for eye disability instead of the E250 000 (Two hundred and fifty thousand emalangeni) in the particulars of claim.
- [50] Regarding the temporal and suffering, the plaintiff's particulars of claim was for E40 000 (Forty Thousand emalangeni). The Court in recognizing that the plaintiff may have experienced some degree of pain due to the assault. The Court relied on the doctor's testimony and report that although the eye had fully recovered and the plaintiff was not in pain during trial, he did suffer pain

and discomfort. The Court awarded a reduced amount of E20 000 (Twenty thousand emalangeni).

- [51] In the whole, the Court awarded E65 000 (Sixty five thousand emalangeni. E45 000 (Forty five thousand emalangeni) for what was termed the 'eye disability' (perhaps under the general damages head) and E20 000 for pain and discomfort (general damages). I note that although the Court had concluded that there was no 'permanent disability of the eye' because it was not supported by the medical evidence submitted in Court, it nonetheless awarded a reduced amount of E45 000 (Forty five thousand emalangeni). The justification or reason for the award even at reduced sums for 'eye disability' is simple unsupported with respect, if we were to go by the Court's own assessment. For our purposes this means no probative value should be placed to this part of the award comparatively.
- [52] The E20 000 (Twenty thousand emalangeni) awarded for pain and suffering and discomfort (general damages) for *contumelia* associated with assault) that the Court awarded in Sabelo Mhlanga should stand as a good guide for our case. The assault was more severe per that Court's assessment and description as the eye was described as being very sensitive and delicate. This is unlike the assault in *casu* where it was all over the cheeks with open hand. This Court should however take into account that in Sabelo Mhlanga, the Court recorded that the assault occurred in 2012 and the assessment in 2024. This means the award of E20 000 (Twenty thousand emalangeni) for general damages is an award in 2024.
- [53] Having analyzed the prior comparative awards on the facts as assessed, the extent of injuries sustained by the defendants in those cases, the *quantum* awarded and the historical dates of the awards on damages *contumelia* associated with assault, this court concludes thus ;-

- 53.1 There has been a steady increase from E2 000-(Two thousand emalangeneni) (Sibongile Gumbi, 1994) to stagnated awards of E20 000 (Twenty thousand emalangeneni) in recent times. In Thabiso Masilela, E20 000 (Twenty thousand emalangeneni) was awarded in 2007. In Sebenzile Malinga, E20 000 (Twenty thousand emalangeneni) was awarded in 2012 and in Sabelo Mhlanga, E20 000 (Twenty thousand emalangeneni) was awarded in 2024.
- 53.2 In the Sibongile Gumbi's case, the evidence showed that the assault was petty and cannot be compared to the present case it was awarded also 29 years ago.
- 53.3 In the case of Thabiso Masilela, the assault with fists on the faces and head was more severe and it happened in full view of working colleagues. The matter was not contested as in our matter. What is to be noted is that there was no medical record/report supporting the extent of the injuries.
- 53.4 The recent award in the Sabelo Mhlanga case (2024) was for a punch in the eye, described as sensitive and delicate. It was supported by a medical doctor's evidence as is in our case.
- 53.5 E20 000 (Twenty thousand emalangeneni) is low when taking into account that the Thabiso Masilela case awarded the same amount on less sensitive parts of the body compared to the eye. The punch to the eye was much more severe than the fits on the faces and head. Thabiso Masilela was awarded in 2007 and Sabelo Mhlanga in 2024, but they are the same amount on less sensitive parts of the body compared to the eye.

[54] I am of the considered that when making an award in *casu*, the court has to take into account that the Plaintiff's assault was severe as described by Dr Tembe. It was on both cheeks. The Plaintiff had to be treated for 5 days, he was off duty 3 days. He suffered pain on his jaws making it difficult to chew and most of all he was assaulted in front of a crowd and patron at Cozy Corner, his drinking place with friends that knew him. As he said he felt very humiliated. His dignity or reputation was attacked. There is no evidence that he was provoked or that he started the assault against the Defendant. The assault on him went on for a few minutes according to evidence of Masiko Zungu. There Defendant never even showed up in court to give an apology even after the assault to the Plaintiff.

Claim 1

[55] The court deems it to be fair and reasonable having considered the circumstances to award the plaintiff an amount equal to half of what the plaintiff claimed in his particulars of claim. The court awards the Plaintiff E75 250 (Seventy five thousand two hundred and fifty emalangen) for *contumelia* associated with assault.

Claim 2

[56] The Plaintiff's claim under **Claim 2** is for E3 277-50(Three thousand two hundred and seventy seven emalangen) fifty cents). Emanating from a quotation for Global Motor to panel beat and the spraying of the rear part of his damaged vehicle as a result of collision caused by the defendant's vehicle.

[57] The Plaintiff brought in three quotations for the repairs and requested that he preferred the quotation from Global Motors because it was the lowest amongst

the rest. He submitted the quotations without providing expert evidence or a mechanics to testify as expert.

Necessary, fair and reasonable costs of repair

- [58] Instead of comparing the pre and post delictual value of the property, the costs of necessary fair and reasonable repairs may be used to prove the damages recoverable. See HB Klopper damages (supra at page 168). Necessity, fairness and reasonableness can be proved by production of estimates or quotations for the repair of the damaged property. The mere production of quotations is insufficient, however. The Plaintiff must provide expert evidence that the particular quotation he is relying on reflects the necessary, fair and reasonable costs of repair. Under certain circumstances it is admissible for a mechanic to testify as an expert to the necessity for the fair and reasonable costs. There is a duty on the defendant to rebut such proof by adducing contrary evidence to show that such repairs cannot represent the damages to the property. Failure to do will result in the acceptance of the fair and reasonable costs of repair as the measure of damages. See H B Klopper (*Supra* at page 170 and the cited cases).
- [59] In the case of Health vs Grange [1974] 2 All SA 419 (C), 1974 (2) SA 262 (C) 263, the court said *‘in order to help establish what repairs were necessary, and certainly in order to establish what the reasonable costs of such repairs were, it is usual in such cases for the Plaintiff to call one or more expert witnesses engineers or motor mechanics of training and experience or possibly some other persons with special knowledge qualifying them to speak as to the requirements of labour and skill and spare parts involved. Such expert witnesses are called in order to give evidence which will be of assistance to the Court in forming its own opinion as to the correct amount of*

money to be awarded to the Plaintiff in the event of his being successful on the merits. Indeed, without hearing expert evidence of the kind discussed above it would be impossible for the ordinary court of law to make a proper assessment of the quantum of damages’.

[60] Although the Plaintiff in *casu* did not call an expert or mechanic, he pleaded the three quotations, spoke to the quotes for the record and evidence. They were all handed in to the court as exhibits. The quotation, I must point out served as a good and sufficient guide for the court to formulate a proper assessment of the *quantum* of damages to be awarded. In the absence of an expert or mechanic, the Plaintiff settled for the lowest quotation saving the hustle of justifying as a lay person why he chose the highest quote, had he gone for that one.

[61] In **Claim 2**, the court accepts the Global Motors quotation of E3 277-50 (Three thousand two hundred and seventy seven fifty cents) as an unchallenged quotation for necessary, fair and reasonable costs to repair his vehicle.

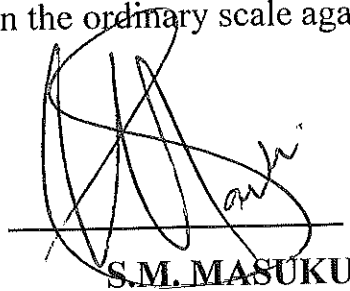
Interest on awards of illiquid claims

[62] The Plaintiff prayed for an award in damages together with interest of 9% per annum from date of issue of summons to date of final payment.

[63] The Plaintiff’s claim is for illiquid sums and has been awarded essentially those sums. The Supreme Court has pronounced itself that interest on illiquidated claims cannot be ordered to take effect from the date of issue of summons but from the date of judgement. Army Commander and Another v Bongani Shabangu SZHC 19 (31 May 2012) and The Commander of The Umbutfo Swaziland Defence Force and Another v Themba Maziya (11/2019) [2022] SZHC 14 (24 May 2022).

[64] In the end, the Court awards damages as follows;

1. **Claim 1**, E75 250-00 (Seventy five thousand two hundred and fifty emalangeneni)
2. **Claim 2**, E3 277-50 (Three thousand two hundred and seventy seven emalangeneni fifty cents).
3. Interest at 9% per annum from date of judgement to date of payment.
4. Costs of suit in the ordinary scale against the Defendant.



S.M. MASUKU

JUDGE - OF THE HIGH COURT

For the Plaintiff : Mr W.Maseko

**For the Defendant: No appearance for the Defendant and Defendant in
absentia**