

Constitutional Damages Claim - Detailed Legal Document

CONSTITUTIONAL DAMAGES CLAIM

IN THE HIGH COURT OF SOUTH AFRICA

CASE NO: [TO BE ALLOCATED]

IN THE MATTER BETWEEN:

**nicolas of the family brett SON OF PETER FREDERICK WILLIAM BRETT (DECEASED)
SON OF FREDERICK WILLIAM RUSSEL BRETT (DECEASED)
(N BRETT INVESTMENTS 1 CC)**

Applicant

AND

THE MINISTER OF POLICE

First Respondent

THE NATIONAL COMMISSIONER OF POLICE

Second Respondent

THE SOUTH AFRICAN POLICE SERVICE

Third Respondent

NOTICE OF MOTION

TO: The above-named Respondents

TAKE NOTICE that the Applicant will make application to this Honourable Court on a date to be arranged for the following relief:

PRAYER

1. CONSTITUTIONAL DAMAGES An order directing the Respondents to pay the Applicant constitutional damages in the amount of R500,000 (Five Hundred Thousand

Rand) for the violation of the Applicant's constitutional rights under Sections 25(1), 14, 12, 205(3), and 2 of the Constitution of the Republic of South Africa, 1996.

2. DECLARATORY RELIEF A declaration that the conduct of members of the South African Police Service on [DATE] at Terrace House Rivonia, 121 12th Avenue, Sandton, constituted: - 2.1 A violation of the Applicant's constitutional rights under Section 25(1) of the Constitution; - 2.2 A violation of the Applicant's constitutional rights under Section 14 of the Constitution; - 2.3 A violation of the Applicant's constitutional rights under Section 12 of the Constitution; - 2.4 A breach of the constitutional mandate under Section 205(3) of the Constitution; - 2.5 Conduct inconsistent with Section 2 of the Constitution and therefore invalid and unlawful.

3. INTERDICTORY RELIEF An interdict restraining the Respondents, their members, employees, and agents from: - 3.1 Entering the Applicant's property without a warrant or legal justification; - 3.2 Threatening or intimidating the Applicant in the exercise of his constitutional rights; - 3.3 Interfering with the Applicant's constitutional property rights; - 3.4 Acting as enforcers for private individuals in civil debt matters.

4. MANDAMUS An order directing the Respondents to: - 4.1 Implement comprehensive constitutional training for all police officers; - 4.2 Establish effective accountability mechanisms for constitutional violations; - 4.3 Develop clear policies on constitutional compliance and property rights protection; - 4.4 Report to this Court within 90 days on implementation of these measures.

5. COSTS An order directing the Respondents to pay the costs of this application on an attorney-and-client scale.

6. INTEREST Interest on the constitutional damages at the prescribed rate from the date of violation to the date of payment.

7. FURTHER RELIEF Such further and alternative relief as this Honourable Court may deem just and equitable.

FOUNDING AFFIDAVIT

I, **nicolas of the family brett SON OF PETER FREDERICK WILLIAM BRETT (DECEASED) SON OF FREDERICK WILLIAM RUSSEL BRETT (DECEASED)**, do hereby make oath and state:

INTRODUCTION AND LOCUS STANDI

- 1.** I am an adult male South African citizen and the sole administrator of N Brett Investments 1 CC, which operates Terrace House Rivonia, a guest house business located at 121 12th Avenue, Sandton.
- 2.** I have locus standi to bring this application as the victim of serious constitutional violations committed by members of the South African Police Service.
- 3.** The facts contained in this affidavit are within my personal knowledge and are true and correct.

CONSTITUTIONAL FRAMEWORK

- 4.** The Constitution of the Republic of South Africa, 1996, is the supreme law of the Republic, and all conduct inconsistent with it is invalid.
- 5.** Section 25(1) of the Constitution provides that no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.
- 6.** Section 14 of the Constitution protects the right to privacy, including the privacy of the home.
- 7.** Section 12 of the Constitution protects freedom and security of the person.
- 8.** Section 205(3) of the Constitution mandates that police must protect and secure the inhabitants of the Republic and their property.

FACTUAL BACKGROUND

- 9.** I operate a legitimate guest house business under strict prepaid accommodation terms, with advance payment required and no credit extended.
- 10.** Mabazole Matiwane occupied guest accommodation under these terms and accumulated debt of R8,250 for 11 days at R750 per night.
- 11.** Mr. Matiwane acknowledged this debt in writing and voluntarily offered his car keys as security.
- 12.** After vacating without payment, Mr. Matiwane illegally retained property keys and security remotes, enabling ongoing trespassing.
- 13.** I sent multiple formal demand letters requiring payment and return of illegally retained property, all of which were ignored.

THE CONSTITUTIONAL VIOLATIONS

14. On [DATE], members of the South African Police Service arrived at my property acting as enforcers for Mr. Matiwane rather than protectors of constitutional rights.

15. The officers committed the following constitutional violations, which were captured on video evidence:

15.1 Illegal Entry: The officers entered my private property without a warrant, without consent, and without legal justification, violating Section 14 of the Constitution.

15.2 Property Rights Violation: The officers threatened me with arrest and handcuffs to force me to surrender property I was lawfully holding as security, violating Section 25(1) of the Constitution.

15.3 Intimidation: The officers used threats and intimidation to coerce compliance with their unlawful demands, violating Section 12 of the Constitution.

15.4 Mandate Violation: The officers violated their constitutional mandate under Section 205(3) by undermining rather than protecting property rights.

15.5 Constitutional Supremacy Breach: The entire conduct violated Section 2 of the Constitution by being fundamentally inconsistent with constitutional principles.

VIDEO EVIDENCE AND DOCUMENTATION

16. The constitutional violations were captured on video evidence that provides clear and undeniable proof of the misconduct.

17. The video shows officers illegally entering my property, ignoring my repeated demands to leave, threatening arrest, and demonstrating complete ignorance of constitutional requirements.

18. Additional documentation includes WhatsApp communications, formal demand letters, constitutional notices, and photographic evidence.

CONSTITUTIONAL DAMAGES CLAIM

19. The Constitutional Court has established in *Fose v Minister of Safety and Security* that constitutional damages are available for constitutional violations where necessary to vindicate constitutional rights.

20. Constitutional damages serve multiple purposes: - Compensation for victims of constitutional violations - Vindication of constitutional rights and principles - Deterrence of future constitutional violations - Affirmation of constitutional supremacy

21. The amount of R500,000 claimed reflects: - The severity of the constitutional violations - The need for meaningful deterrence - The vindication of constitutional principles - The systemic nature of the violations - The threat to constitutional democracy

SYSTEMIC IMPLICATIONS

22. The constitutional violations expose catastrophic failures in police education and training regarding constitutional rights.

23. These failures represent systemic problems that threaten constitutional democracy and require institutional reform.

24. Constitutional damages are necessary to demonstrate that constitutional violations have consequences and to deter future violations.

URGENCY AND PUBLIC INTEREST

25. This matter is urgent as constitutional violations by police officers represent an immediate threat to constitutional democracy.

26. The public has a fundamental interest in ensuring that constitutional rights are protected and that state officials who violate those rights are held accountable.

27. This case has significant precedential value for the protection of constitutional rights and the accountability of state officials.

CONCLUSION

28. The constitutional violations are clear, severe, and documented by video evidence.

29. Constitutional damages are necessary and appropriate to vindicate constitutional rights and deter future violations.

30. The relief sought is just and equitable in the circumstances.

WHEREFORE the Applicant prays for the relief set out in the Notice of Motion.

**nicolas of the family brett SON OF PETER FREDERICK WILLIAM BRETT (DECEASED)
SON OF FREDERICK WILLIAM RUSSEL BRETT (DECEASED)
APPLICANT**

SWORN TO AND SIGNED at Sandton on this 14th day of June 2025, the Deponent having acknowledged that he knows and understands the contents of this affidavit, that it is

true and correct, and that he has no objection to taking the prescribed oath, which oath was administered to him in accordance with the provisions of the Regulations published under Government Notice R1258 of 21 July 1972, as amended.

COMMISSIONER OF OATHS

LEGAL AUTHORITIES AND PRECEDENTS

Constitutional Provisions

- Constitution of the Republic of South Africa, 1996, Sections 2, 12, 14, 25(1), 38, 205(3)

Case Law

- Fose v Minister of Safety and Security 1997 (3) SA 786 (CC)
- Carmichele v Minister of Safety and Security 2001 (4) SA 938 (CC)
- Minister of Safety and Security v Van Duivenboden 2002 (6) SA 431 (SCA)
- Modderklip Boerdery (Pty) Ltd v Modder East Squatters 2004 (6) SA 40 (SCA)

Legislation

- Promotion of Administrative Justice Act 3 of 2000
- South African Police Service Act 68 of 1995
- Trespass Act 6 of 1959

This constitutional damages claim seeks to vindicate fundamental constitutional rights and establish that constitutional violations by state officials have serious consequences. The video evidence provides clear proof of constitutional violations that demand accountability and reform.