

CLAIMING COMPENSATION FOR DAMAGES SUFFERED AS A RESULT OF DAMAGE OR LOSS TO PROPERTY IN TERMS OF SECTION 300 OF THE CRIMINAL PROCEDURE ACT No. 51 of 1977 (as amended)

This is an additional mechanism to be considered in your basket of options, in an attempt to minimize the pain and disappointment suffered as a result of the scourge of crime.

This section is an easy, efficient, and cost-effective way for a victim to recover damages from the perpetrator, arising from his / her unlawful or negligent conduct, for damage or loss caused to the victim's property, which includes money.

This remedy is **not** applicable to claims for bodily injury, and therefore cannot be used to claim for pain, suffering, loss of amenities of life, and the like. The magistrate presiding at the criminal trial of the perpetrator has a discretion as to whether your request or application in terms of this section should be granted or refused.

This remedy will be well suited to certain claims, but inappropriate to others. In my view, it is well suited to instances where you are able to prove the damages very easily, by producing quotations to court for example. In other words, when your damages to property are easily quantifiable.

This remedy is only available to the victim, **before the accused is sentenced.**

You are therefore well advised to discuss this option with your Attorney in consultation with the public prosecutor. In fact, if possible, raise it with the police officer investigating the crime so that s/he includes your claim in the docket.

To recover damages arising from criminal conduct, the victim would ordinarily :-

- Claim from his or her insurers, if insured. This remedy will probably still be the safest and most efficient way for your property to be repaired or replaced, even though your "no claim bonus" or premium may be adversely affected.

- Institute a claim for damages in the Magistrates Court or High Court, and instruct an attorney for this purpose. This is still a prudent option. You are however encouraged to discuss with your attorney the prospect of using section 300, as a cost-saving mechanism.

Subject to the ability of the accused, it is simply a much more cost effective way to recover your damages to property.

This section is not used as often as it should be; and could be an effective tool at least for being paid the monetary damages suffered as a result of crime.

This remedy is not suited to all damages, but will bring relief to some, and hopefully serve as a further deterrent to those who disrespect the property of others ... they will at least get a sense of the value!

This section is presently applicable to claims less than R 500 000.00 (five hundred thousand rand) in the Regional Court, and R 100 000.00 (one hundred thousand rand) in the Magistrates Court. This limit is determined by the Minister of Justice and Constitutional Development, from time to time.

The section provides as follows :-

(1) Where a person is convicted by a superior court, a regional court or a magistrate's court of an offence which has caused damage to or loss of property (including money) belonging to some other person, the court in question may, upon the application of the injured person or of the prosecutor acting on the instructions of the injured person, forthwith award the injured person compensation for such damage or loss: Provided that-

(a) a regional court or a magistrate's court shall not make any such award if the compensation applied for exceeds the amount determined by the Minister from time to time by notice in the Gazette in respect of the respective courts.

(2) For the purposes of determining the amount of the compensation or the liability of the convicted person therefore, the court may refer to the

evidence and the proceedings at the trial or hear further evidence either upon affidavit or orally.

(3) (a) An award made under this section-

- (i) by a magistrate's court, shall have the effect of a civil judgment of that court;*
- (ii) by a regional court, shall have the effect of a civil judgment of the magistrate's court of the district in which the relevant trial took place.*

(4) Where money of the person convicted is taken from him upon his arrest, the court may order that payment be made forthwith from such money in satisfaction or on account of the award.

(5) (a) A person in whose favour an award has been made under this section may within sixty days after the date on which the award was made, in writing renounce the award by lodging with the registrar or clerk of the court in question a document of renunciation and, where applicable, by making a repayment of any moneys paid under subsection (4).

(b) Where the person concerned does not renounce an award under paragraph (a) within the period of sixty days, no person against whom the award was made shall be liable at the suit of the person concerned to any other civil proceedings in respect of the injury for which the award was made.

This section offers cost effective relief to the uninsured victim, where damage to property is easily quantifiable, and provided the accused is in a position to pay it, either in full or in installments.

Should the court make a compensation order which is not acceptable to you, for example because the order is for less than the damage actually suffered by you, you may renounce the order, in writing, and return any money received, within 60 (sixty) days of the date the order. Should you fail to do so, you will not be able to recover any further damages from the accused arising from the specific case.

It is prudent to finalise your application with the prosecutor, as the description of the property and the value claimed must be aligned with the findings of the court.

In practice, and only if the Magistrate or Judge finds it appropriate, taking into account all the circumstances, a sentence in the following terms could be imposed :-

The accused is sentenced to 6 months imprisonment, which period of imprisonment is suspended for 5 years on condition that:

- a. The accused is not convicted of an offence where dishonesty or force is an element within the period of suspension; and
- b. The accused pays to the complainant the amount of R xxxx.xx by not later than (a date to be determined by the court or in installments as determined).
- c. All payments made in terms of this order shall be paid to the clerk / registrar of the court, for collection by the complainant.

If the accused fails to pay, s/he could be imprisoned for the period of imprisonment (six months in our example).

A possible template is annexed hereto, to be used as a guide.

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