

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 40521/2018

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

DATE

SIGNATURE

In the matter between:

LETWEEN KACHIDZA

Plaintiff

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA

Defendant

ORDER

[1] The plaintiff's claim is dismissed with costs.

JUDGMENT

Fisher J

Introduction

- [1] This is an action in respect of the liability portion of a claim brought by the plaintiff against the Passenger Rail Agency of South Africa (PRASA). The parties agreed to a separation of liability from quantum and an order was previously handed down to this effect.
- [2] This means that this court must determine whether PRASA is liable for the injuries pleaded. Put differently, the question is whether the negligence of the defendant resulted in the injuries pleaded.
- [3] The inquiry is almost entirely fact based. The main focus is on the plaintiff's evidence in relation to the pleaded case. The plaintiff also called an eyewitness who was traveling with her on the day of the incident.

The pleaded case on the facts

- [4] The plaintiff pleads in terms of her summons dated 29 October 2018 that on 30 July 2018 she was involved in an accident which occurred at Longdale train station, Johannesburg. At paragraph 3 of the original particulars of claim the following is pleaded:

“Whilst the Plaintiff was entering the train, the train moved whilst the doors were opened (sic) as a result the Plaintiff fell and sustained bodily injuries”.

- [5] The injuries alleged to have been sustained are pleaded at paragraph 5 as serious “injury to right and left hips”. It is pleaded that “as a result of the injuries sustained by the Plaintiff, The Plaintiff was treated at Helen Joseph hospital and has suffered damages”.

- [6] The claim is for general damages in the amount of R 850 000.

- [7] On 22 July 2022 the plaintiff amended her particulars of claim to augment her pleaded version as follows:

“4.3. The Plaintiff together with her then colleague proceeded to the Platform where there was a stationary train, which was loading and or offloading commuters;

4.4 As the doors were still open and the Plaintiff in a process of boarding the train, with one foot inside the coach and another still on the Platform, the train moved/ or started moving, violently and without any prior notice to the commuters and as a result the *Plaintiff fell in between the train and the Platform and sustained injuries.*” (Emphasis added).

[8] The plaintiff pleads further that “after the incident, the Plaintiff was conveyed from the scene of incident by an ambulance to Helen Joseph Hospital wherein she received first aid medical care and later transferred to Chris Hani Baragwanath Hospital”.

[9] In essence then, the negligence pleaded is that the train was put in motion with the doors open.

[10] The defendant pleads as follows to this version:

“Save to admit that the accident occurred on the 30 July 2018, at Longdale train station, Defendant denies the remaining allegations contained in this paragraph and pleads that the Plaintiff attempted two to three times to board the moving train as it departed from Longdale train station. Further, the Plaintiff failed on all her attempts to board the moving train, as the (*sic*) result she fell onto the platform and sustained bodily injuries”.

[11] As to the injuries, the defendant admits that there were injuries sustained as a result of the plaintiff’s own negligent conduct in attempting to board a moving train. As to the specific injuries pleaded and the treatment and hospitalization the defendant pleads no knowledge.

The evidence

[12] The plaintiff testified in her own case and called an erstwhile colleague, Ms Judith Kaundiza who testified that she was present at the scene of the incident.

[13] Both women are Zimbabwean and testified in Shona with the assistance of an interpreter.

- [14] The plaintiff testified as follows. She was 39 at the time of the incident and was employed as a packer by a company in Longdale known as *Strikers Snacks*. She worked the night shift. Her shift ended at 06h00. She was residing in New Canada. Her routine was to catch the morning train home each working day. She would take the ten-minute walk to the station and board the first available train. On the day in question, she followed this routine.
- [15] She was accompanied by Ms Kaundiza, a colleague who worked the same shift at *Strikers*. The two women sometimes caught the train together.
- [16] Having walked the ten minutes from their place of work the women entered the station together and proceeded from road level down the stairs along the platform which ran parallel to the platform where they were to board the train and then headed up the stairs to access the bridge across the tracks along which they walked to reach the stairs which led down to their platform.
- [17] The train was approaching the station as they descended the first set of stairs from road level. They rushed to make sure that they did not miss the train. The train pulled into the station as they crossed the pedestrian bridge. The plaintiff was waylaid briefly on the bridge by a guard asking to see her ticket and lagged shortly behind Ms Kaundiza. As they reached the bottom of the stairs, they were met by a security guard who asked to see their tickets and said they should hurry to board as the train was about to depart. There was no whistle blown.
- [18] The crucial testimony of the plaintiff is that as she was in the process of boarding the train and was positioned with her front foot on the train and the back foot on the platform the train lurched violently into motion. The doors into which she was boarding, being the doors to coach number two which was the coach directly behind the driver's engine coach, remained open as the train was moving out of the station. On her testimony, not only did the doors remain open but the train began "moving violently". This open door and violent movement had the consequence that she lost her footing as the train began moving out of the station.

- [19] She described and then, when asked to do so, attempted to demonstrate that she fell in such a way that her legs went straight out under the train, horizontal to the tracks. She stated, "I think I twisted about three times as the train was in motion". She continued "Eventually the train got to a halt and I noticed that I was thrown onto the platform".
- [20] As to the aftermath she stated "Judith [Ms Kaundiza] came and other people but I was not conscious at that time". She continued: "At that moment I could not feel like I had my legs. I felt that they had been snapped from me. But when I opened my eyes, my legs were there".
- [21] The plaintiff waited on the station for five to six hours before an ambulance, which was apparently called by officials employed by the defendant, arrived.
- [22] Ms Kaundiza alerted the plaintiff's relatives to her plight, and they came to sit with her as did some of her colleagues. Ms Kaundiza left at between 10h00 and 11h00 after staying with the plaintiff during this time.
- [23] The plaintiff was taken from the station in an ambulance to Helen Joseph Hospital where she underwent a scan and x-ray of her hips. There were no fractures. Her wounds were cleaned and she was discharged the same day.
- [24] During cross-examination the plaintiff was tested in detail in relation to precisely how she fell. On being asked to do so, she attempted to provide a demonstration of her version of the fall using a court bench to represent the train. This demonstration seemed to present a challenge for the plaintiff.
- [25] She testified that the train was higher than the platform by 40 to 50 centimeters. This, she said, was the space she fell into. She showed the position of her fall as being with her legs under the train up to the point of her upper thighs and the rest of her body on the platform. She indicated that her legs were straight out, in contact with the bottom of the train and horizontal to the train tracks. The version seemed strained.
- [26] The plaintiff was then asked about her injuries and the cross-examination became even more strained. It is relevant that the hospital reports relied on by

the plaintiff make reference to abscesses on her thighs and not injuries to her hips as pleaded.

[27] She volunteered that she had scars on her thighs and the rest of her legs which proved the injuries and that these indicated injuries to her hips as well.

[28] When I asked if I could see the scarring, her counsel objected on the basis that the injuries were not relevant for the purposes of determining the merits. It was also stated that because she was wearing trousers and there were men in the court this would be impossible.

[29] I offered that photographs be taken of the scarring and said I would allow them into evidence. This invitation was, inexplicably, not taken up.

[30] A further unexplained lacuna was the hospital records of her presentation and treatment at Helen Joseph Hospital on the day of the incident. The plaintiff described that the “flesh under her skin” was “rotting and swollen” and there was “blood coming out” she explained that she was bruised on her mouth and had wounds and scratches on her legs.

[31] The hospital records that are discovered are those of Chris Hani Baragwanath Hospital and a letter from Lillian Ngoyi Hospital which shows a referral of the plaintiff to Chris Hani Baragwanath for further management of what are described as “skin abscesses on her thighs”.

[32] The records show and it is not disputed that the plaintiff attended at Lillian Ngoyi on 16 August 2018 being sixteen days after the accident.

[33] This is at odds with the pleaded case being that she was “transferred” from Helen Joseph hospital to Baragwanath.

[34] The medical records are admitted to be the plaintiff’s hospital records on the basis that they are what they purport to be and it is agreed that use may be made of the documents without evidence of authentication. This is recorded in a pre-trial minute signed on behalf of both parties. It was agreed also that the court could only have reference to documents which were used in evidence.

- [35] It is recorded in the hospital records put into evidence that the history is that the plaintiff “fell while trying to get into a train & hit the track/railing of the train”. The plaintiff was asked in re-examination where this version on the clinic’s records would have come from. She denied that it came from her.
- [36] Ms Kaundiza confirmed that on the date of the accident she was the plaintiff’s co-worker at *Strikers Snacks*. She also worked the night shift. She confirmed that she accompanied the plaintiff to the station from work on the morning of the incident. She confirmed also the route taken by herself and the plaintiff from road level onto the platform where the train arrived. As testified to by the plaintiff, this entailed the ascending of a flight of stairs to a pedestrian bridge between the platforms, and the descent of a flight of stairs onto the platform into which the train had pulled.
- [37] She confirmed the incident as follows. She descended the stairs, showed her ticket to a guard who was standing at the bottom of the stairs and moved to the door. There were two men ahead of her and they boarded the train before her. The train was stationary. The plaintiff followed about a meter behind her. As soon as she (Ms. Kaundiza) had boarded the train it began to move “violently” with the door open. Ms Kaundiza herself slipped inside the train because of the violent motion.
- [38] An album of 55 photographs of the station taken from various angles during an inspection in loco undertaken by the parties at which the plaintiff was present was entered into evidence by agreement.
- [39] These photographs were used by counsel to examine and cross examine the witnesses for the most part on irrelevant minutia as to precisely where they were at any given time in the narrative. The only real value of the many photographs was that they allowed the plaintiff and Ms Kaundiza to be questioned on where on the platform she ended up and show the route that the women took to the platform.
- [40] An important component of this evidence is that it was common cause that there is, between the edge of the platform into which the train travels a yellow line painted on the platform which the commuters are meant to stay behind for

their safety. The area between the platform edge and the yellow line is approximately a meter wide.

[41] The evidence of Ms Kaundiza was that, when the train stopped and she was able to alight to go to the aid of the plaintiff she found her on the platform on the “safe” side of the yellow line.

[42] The plaintiff could not explain how she was “thrown out onto the platform” after her legs had first gone under the train. Ms Kaundiza also stated “I cannot explain how she got off (*sic*) the platform, I don’t know how she moved from the rail up to where she was sitting”.

[43] Ms Kaundiza’s evidence was that the train stopped almost immediately when the plaintiff fell. She initially said that she saw the fall but then recanted this and explained that she did not see the fall but only felt the “violent” movement and that, when the train stopped, she got out a few doors down (the train having moved forward). She said that she found the plaintiff sitting up on the platform crying with her jeans torn “up to her thighs”.

[44] On her testimony ,Ms Kaundiza’s stayed with the plaintiff for about three to four hours. She says that she saw no blood however but confirmed that there were “some scratches”.

[45] That was the case for the plaintiff.

[46] The defendant called two witnesses. Both, are its employees, Messrs. Themba Mahlangu and Lusane Xaba.

[47] Mr Mahlangu testified that he had been employed by PRASA for 15 years – 12 as a metro guard and later as acting supervisor. As such, he supervised the train driver and other metro guards. He was acting supervisor on the day in question.

[48] He explained the protocol in relation to the driving and controlling of a train as follows. The train comprises two motorized cars, one at each end. The driver occupies one motorized car and the controller occupies the other. The driver drives the train forward in accordance with the controller’s instructions which

are conveyed from the motorized car at the back. These instructions are conveyed by means of signaling using a series of coded bells and whistles.

- [49] From the back car the controller is able remotely to control the opening and closing of the doors in accordance with his monitoring of the movement of passengers on the platform. He has a vantage point from out of the window of his car along the platform. His function is to check that all passengers wishing to do so have boarded. He then blows a whistle which signals that the train is to depart. He then closes the doors remotely. The system allows that the doors open and close simultaneously with the remote action of the controller. Once the doors are closed, a bell signal is then sent by the controller to direct the driver that it is safe to depart.
- [50] When the train reaches the end of its journey along the track the driver and the controller switch cars. Thus, the front of the train becomes the back and vice versa. The lights double as head and tail lights. The train is then driven back along the track to the station from which it first started its journey.
- [51] Mr Mahlangu testified that on the day in question he acted as controller on the train running between Park Station in central Johannesburg ending at Vereeniging Station. The journey takes on average two hours. There were 22 non-motorized cars between the two motorized cars on each end– i.e. there were 24 cars in all.
- [52] The train had first to be driven to Park Station from Vereeniging. According to records put into evidence the train left Vereeniging at 03h34.
- [53] His evidence as to the incident was as follows. When the train reached Longdale there were less than ten commuters on the platform. He opened the doors and the commuters began moving into the train. When the platform was clear he blew the whistle and closed the doors. He then sounded one bell. This was the signal to pull off. On his estimation the train was only stationary at the platform for about 30 seconds. This was enough time to allow those who wanted to disembark to do so and the few commuters who were embarking to do so.

- [54] He was categorical that when he blew the whistle and gave the bell for departure there were no commuters on the platform. He emphasized that he would always blow the whistle. He stated “the safety of commuters is in my hand. If I fail to blow a whistle there could be an accident. I could lose my job”.
- [55] Thus, on his evidence he blew the whistle, rang the bell and closed the doors and the train started to leave the platform.
- [56] He explains that motor car pulls off slowly. It is only once it has travelled some distance beyond the platform that it will gather momentum as it moves. He testified that a train cannot pull off violently or abruptly. He was not challenged on this statement.
- [57] He testified that once the train was in motion he walked along its corridor inside the train, towards the middle coach. It was then that he noticed a group of four or five women coming down the stairs at the platform end. They were running he said and the train was already in motion. Some were trying to get in and succeeded.
- [58] The plaintiff also tried to get into the train as it was moving slowly out of the platform. She tried once and fell down, she tried again and then Mr. Mahlangu sounded three bells which signaled to the driver that there was an emergency and to stop the train. He explained that the train does not have breaks that allow it to stop dead. It slows to a gradual a stop.
- [59] He testified that immediately on stopping the driver called and asked for an explanation. He told the driver that a person had fallen onto the platform. The driver and the witness alighted from the train and both went to where the woman had landed on the platform. She was in a seated position but leaning towards her side. She had fallen beyond the safe area of the yellow line. He asked her “are you well” but she did not answer and just cried. He too says he saw no blood. The driver then called the operating office which called security guards who arrived whilst he and the driver were still on the scene. He and the driver carried on with the journey after the security guards arrived.

- [60] Then began a long-drawn-out cross-examination of Mr Mahlangu in relation to the checks done by him and others in the early hours of the morning. This questioning seemed to be aimed at uncovering some technical irregularity in the manner in which the train was checked at the commencement of the shift. If this was the aim, it yielded no result. Mr Mahlangu stuck adamantly to his version being that he complied with the protocol to the letter. The records of PRASA as to the day in question served to bear out his adamance.
- [61] In relation to the operation of the doors he explained that there was one system for all the doors. If there was a problem with one door i.e. it was not closing or opening it would be locked and a sign put up a sign saying “door locked.” This locking does not affect the opening and closing of the other doors.
- [62] In regard to the fall, Mr Mahlangu testified as follows: “She attempted to get hold of the handles. I don’t know of what coach. The train was in motion whilst she was doing this. She fell backwards, stood up again and tried again”. He said it may have been the same door that she initially tried to board or a different one. When asked what the plaintiff was reaching for, he said that there were outside door handles. She reached for them and then she fell. She tried twice and he then stopped the train. She may have tried a third time.
- [63] He said that people stopped the doors from closing. They forced the doors open and encouraged the ladies to board the slowly moving train. If a person is standing against the doors, they will not close. He said she might have tried three times but after he noted her second attempt he signaled the driver to stop by sounding three bells.
- [64] Mr Xaba testified that he had been employed by PRASA as a security officer for eleven years. He described that he would arrive at work at 05h00 and attend at the guard parade, where the guards would be allocated their duties for the day. One such allocation would be to a station platform another could be to guard a substation. Part of his duties when assigned the platform duty would be to see that the commuters did not stray beyond the yellow line. He testified to a phenomenon of people attempting to board trains whilst they

were moving and that this was difficult to control. He said that the doors could be held open by the interruption of their operation thus overriding the closing system in relation to the door so impeded. He testified that in instances where this occurred and he was on platform duty he would phone ahead to the next station and give the relevant personnel there the coach number and the description of the commuter. If located at the next station, the culprit would be removed from the train.

[65] On the morning of the incident he was allocated a post at a substation five to six meters away from the platform in question. He pointed out the substation on page 003-47 of the photograph album at a position which was underneath the footpath leading to a concrete bridge which crossed the track at road level, close to where the plaintiff and Ms Kaundiza had indicated they entered the station.

[66] He testified that he left his post at the substation to get water. With reference to the photograph this would have involved him walking across the tracks and diagonally to the platform. He would then have to have hoisted himself on to the platform.

[67] On his evidence, the train to Vereeniging which was the train in question was at the station. It started to move as he was arriving at the platform.

[68] He testified as follows as to the incident:

“A certain lady came, the train was moving, she attempted to embark the moving train. I heard noises coming. They were warning her that she should not embark. Then she fell. She then grabbed the door. Other commuters had ‘bridged’ the doors. The other doors were closed. She fell down. The commuters were warning her. Three times she tried. She did not succeed. She fell on the side of the yellow line. Now she is lying down. I had to phone my supervisor”.

[69] He said that in the aftermath his colleagues had arrived at the scene. He asked that they continue with the taking of a statement and attending to her injuries. He says he did not see any wounds. He explained that she fell onto her right side. He then left the scene.

[70] In cross-examination Mr Xaba had difficulty navigating the album of photographs. Most of his cross-examination was directed at where he was going to get the water he wanted. It seems that he was disorientated by the photographs. He stuck to his version that he would pass the platform where he saw the plaintiff fall en route to the ticket office where there was a tap for him to get water.

[71] In relation to the plaintiff's version that there was a ticket examiner at the bottom of the stairs who indicated that the train was about to depart. He indicated that ticket examiners don't normally stand at this spot.

[72] The defendant closed its case.

Analysis

[73] There are two mutually destructive versions of the parties. The court must apply the principle propounded in the *Stellenbosch Farmers' Winery Group Ltd v Martell ET CIE*,¹ 2003 (1) SA 11 (SCA) as follows:

"The technique generally employed by courts in resolving factual disputes of this nature may conveniently be summarised as follows. To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities. As to (a), the court's finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness' candour and demeanour in the witness-box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extracurial statements or actions, (v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events. As to (b), a witness' reliability will depend, apart from the factors mentioned under (a)(ii), (iv) and (v) above, on (i) the opportunities he had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall

¹ *Stellenbosch Farmers' Winery Group Ltd v Martell ET CIE* [2002] ZASCA 98; 2003 (1) SA 11 (SCA) ("*Farmers' Winery*").

thereof. As to (c), this necessitates an analysis and evaluation of the probability or improbability of each party's version on each of the disputed issues. In the light of its assessment of (a), (b) and (c) the court will then, as a final step, determine whether the party burdened with the *onus* of proof has succeeded in discharging it. The hard case, which will doubtless be the rare one, occurs when a court's credibility findings compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors are equipoised probabilities prevail".²

- [74] The plaintiff is the sole witness to the manner of her falling and injuring herself. Ms Kaundiza, although she at a stage said she had seen the fall, ultimately could only testify to events immediately before and after the accident.
- [75] She said she was unable to testify as to how the plaintiff had got up onto the platform between the alleged violent movement, the fall and her reaching the plaintiff. Her evidence was that she found the plaintiff beyond the yellow line, conscious and crying. This accords with the evidence of both witnesses called by the defendant.
- [76] The plaintiff's pleaded version is to the effect that she slipped and fell between the train and the platform. This is clearly not possible. The plaintiff is a relatively large woman. It was confirmed by Ms Kaundiza that she struggled to keep up with her in the rush to board the train because her "because of her body" and "she is big" but even a very small person would not fit between the gap between the train and the platform. The fact that, on the plaintiff's version, there was a step up from the platform to the train of approximately 40 centimeters does not explain the version.
- [77] The plaintiff's evidence was further that she slipped and fell under the train so that her legs up to her thighs were straight out under the carriage and touching the train and the rest of her body was on the platform. She "twisted three times" whilst half under the train and then was "flung" out onto the platform beyond the yellow line.

² See *Farmers' Winery* (fn 1) at para 5.

- [78] She was, according to her evidence, unconscious when she was found by Ms Kaundiza on the platform. This evidence as I have said was contradicted by Ms Kaundiza who said she first encountered her beyond the yellow line.
- [79] The plaintiff's version of the mechanics of the fall is peculiar. The original version of falling in between the train and the platform morphed in evidence to the version that there was a falling of only her legs under the train and her torso having landed on the platform at which stage she twisted and then was flung approximately a meter out onto the platform.
- [80] On her version the trajectory of her fall was backwards. This would have involved her falling with a backward force. The physics of such a fall would have her moving away from the train. But on her version, this backward downward trajectory away from the train and onto the platform did not materialize. Instead, the direction of the motion changed from her body moving backwards away from the train to a forward-thrusting motion, which served to project her legs forward so that they ended up under the train. On the plaintiff's evidence this forward thrust then changed direction yet again so that she was flung from halfway under the train outwards onto the platform by approximately a meter. The twisting three times whilst half under the train is difficult to imagine and it seemed impossible for her to demonstrate.
- [81] The demonstration of the fall was forced and incoherent when viewed together with her evidence.
- [82] There was a studious avoidance of the medical records in the presentation of the plaintiff's case to the point of objection to the court having reference to the injuries at all – which objection was overruled. Clearly, the nature of her injuries which were allegedly caused by the fall would be relevant to her version. She needed to show that the negligence of the defendant resulted in the injuries pleaded.
- [83] The positioning of the “scarring” which the plaintiff made reference to in evidence could possibly have shed some light on the alleged mechanism of the fall but, as I have said, the invitation by the Court to introduce such evidence by way of photographs was not taken up. No explanation was given

for this refusal to present what was obviously evidence of some relevance to the court.

[84] It was also of concern that the plaintiff gave no evidence of any development in her injuries between the occurrence of the incident and the sixteen days that passed before her attending at Lillian Ngoyi hospital where she presented with abscesses and was on-referred to Chris Hani Baragwanath hospital. The pleaded case was that she was “transferred” from Helen Joseph where she received “first-aid” to Chris Hani Baragwanath. On her own evidence and the hospital records which were discovered, this is false.

[85] Further anomalies emerge from the hospital records put into evidence. She is recorded as informing an attending clinician at Lillian Ngoyi hospital that she fell onto the tracks. There was no evidence led of what occurred in the intervening weeks before she went to Lillian Ngoyi hospital which then referred her to Chris Hani Baragwanath for further management of what are described as “skin abscesses on her thighs”.

[86] Ms Kaundiza seemed confused about the version of the fall. It seems that she had come to corroborate an impossible version. She first said that she had seen the fall but then thought better and said she had not seen the fall and could not actually describe its mechanics. The part she said she was able to testify to was the violent movement of the train. She used this similar terminology to the plaintiff in describing the alleged movement of the train. Because she could not explain how the plaintiff fell under the train, her evidence had to pick up where and in what condition she found the plaintiff upon reaching her. She testified that she found her on the platform. She volunteered that she did not know how the plaintiff got to the platform from the tracks. This assumes that her evidence was based on an understanding that she had come to corroborate a version to the effect that the plaintiff landed on the tracks. As I have said this is the version pleaded and recorded in the report by the clinician who attended her at Lillian Ngoyi Hospital.

[87] The plaintiff was not a good witness. She was taciturn and non-responsive in relation to salient features of the case. This included the mechanics of her fall

and questions relating to her injuries and how and when they were treated and at which hospital. Recall her pleaded version is that her hips were injured.

- [88] She gave simplistic responses to questions that needed in depth analysis for her to sustain her case.
- [89] The contradictions between her evidence and that of Ms Kaundiza were important. Ms Kaundiza ultimately distanced herself from the actual fall and the injuries. There was a salient contradiction inherent in her testimony. She said both, that she had seen the fall and that she had not. The version that she stuck to was that she did not see the actual fall. This was clearly because she was hard pressed when called upon to do so to describe how it had happened.
- [90] On the basis that Ms Kaundiza stayed with the plaintiff for some hours, it is strange that she was unable to describe the injuries other than that there were “some scratches”. None of the witnesses, including the plaintiff, gave testimony as to the “serious” injuries to her hips which occurred in the fall as is the pleaded case.
- [91] Ms Kaundiza did not impress me. Her evidence was contradictory and when called on to give details she resorted to distancing herself from the actual fall and the extent of the injuries.
- [92] Messrs. Mahlangu and Xaba were not faultless witnesses. Mr Mahlangu was so adamant that he had not failed to close the doors that he seemed unwilling to accept that the door could have been open and that it could have been breached by commuters who had managed to bridge the doors. He would not necessarily have been able to see the state of the door from his vantage point at the end carriage but ultimately, he had to accept that a person would not attempt to board a train if there were not an open door to receive them.
- [93] On a conspectus of all the evidence, the plaintiff’s version to the effect that she suffered serious injury to her hips by falling halfway under the train and being flung up onto the platform is improbable if not impossible.

[94] Both the defendant's witnesses confirm that she tried to board the train whilst it was moving and that she fell onto the platform two or three times. Whilst they were defensive in their cross examination this does not disqualify their credibility as to the events which they witnessed. I cannot find them to have lied.

[95] The failure to discover the medical records relating to her treatment on the day of the incident also calls into question the plaintiff's pleaded injuries as does her failure to take up the court's invitation to submit real evidence of these injuries by way of photographs of the scarring that was testified to.

Costs

[96] There is no reason why the costs in this matter should not follow the result.

Conclusion

[97] In the circumstances, the plaintiff's version of her accident and injuries is rejected. The version of the defendant is accepted as more probable.

[98] On this basis the plaintiff assumed the risks inherent in the boarding of a moving train and her own negligence in this regard caused her to fall. There is furthermore no nexus established between the pleaded injuries and the alleged negligence.

Order

[99] I make the following order:

[1] The plaintiff's claim is dismissed with costs.

D FISHER
JUDGE OF THE HIGH COURT
JOHANNESBURG

Delivered: This Judgment was handed down electronically by circulation to the parties/their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be 26 September 2023

Heard: 18 July 2023

Delivered: 26 September 2023

APPEARANCES:

For the plaintiff: Adv. Sazi M.Tisani

Instructed by: Mngqibisa Attorneys

For the defendant: Adv. Thuli Mzizi

Instructed by: Ngeno and Mteto Inc.