

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 416/2020

DATE: 2023-07-25

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / NO.

(2) OF INTEREST TO OTHER JUDGES: YES / NO.

(3) REVISED.

DATE

SIGNATURE

10 In the matter between

V A NTSHANGASE

Plaintiff

and

PRASA

Defendant

EX TEMPORE J U D G M E N T

HOLLAND-MUTER, J:

20 [1] I will proceed with an ex-tempore judgment. The Plaintiff sued the Defendant PRASA for damages which he sustained injuries, whilst on board, a PRASA carriage on 2 July 2019. The Plaintiff testified and he gave us a long introduction how he eventually ended up at the President Station.

[2] He was at a previous station but that he stopped there and they changed trains and as he crossed over at President Station to board the train which was *en route* to the next station at Driehoek. The train approached Katlehong township; he and many other passengers, in the early morning, he boarded the train.

10 [3] He did not take up a seat but he remained standing somewhere in the middle of the carriage and if he refers to the middle, I accept that it is a few metres into the carriage from the open doors.

[4] He testified that there was a lot of shoving and pushing between the commuters, some wanted to board, some wanted to disembark. In this pushing and shoving as the train started to leave the President Station, the carriage he was in, apparently the first passenger carriage behind the engine, was
20 that first carriage just past the end of the platform due to this pushing, shoving, jostling for positions in the train when he fell off the train.

[5] His evidence-in-chief was that he fell beyond the end of the platform. The question was posed in terms of

Rule 21 of the uniform rules of court, the answer which was given that he fell onto the platform. His falling out of the train caused the passengers to scream and yell which caused, according to him, the train to stop.

[6] As the train stopped some of the passengers assisted him and he re-boarded the carriage. He stayed on this train up until the next station at the Driehoek Station, there he disembarked, he walked through the turnstiles and he left the Driehoek train station.

[7] As he was walking along to his work, which was a walk of approximately 15 minutes, he started to feel some pain in his leg and when he arrived at his work he discovered that his trousers, right trouser was torn and there was blood coming from the injury sustained to his right ankle. His employer referred him for medical treatment and he went to Pola Clinic and afterwards to what is called the Natalspruit General Hospital.

[8] There he was apparently treated. No medical evidence was tendered about the injury or the severeness of the injury although there are two

medical documents uploaded onto CaseLines which was not presented as evidence to the Court. There is no explanation why he did not when he left the train at the Driehoek Station reported the incident to the PRASA authorities at Driehoek or that the incident was reported to the PRASA authorities at President Station. I find it very strange because in my experience the cases which I have heard in the past is that the first thing that has to happen is that the registers are completed for record keeping.

10

[9] There was no explanation why he did not after being treated at hospital go back to PRASA to report the incident. We do not know whether he was only seen as an out-patient and how, what medical attention he received for the alleged fractured right ankle, whether there some sort of medical procedure or fixing fractures *etcetera* was administered we do not know. We do not know whether he was hospitalised and if so, for how long he was hospitalised.

20

[10] On the other hand we have the version, the train driver Ms Molelo. According to her she seems to be the driver of the train on which the alleged incident occurred. Why I am saying alleged is because the

Plaintiff could not assist PRASA in any way in identifying a specific number which he boarded and on which the alleged incident occurred. She denies because it was the Plaintiff's evidence that as he fell the people started screaming and yelling, the train driver brought the train to a standstill. She denied that she even brought a train to standstill.

[11] What I found unexplained, which is somewhere
10 hanging in dark, is that should the version of the
Plaintiff be true that the train came to standstill, the
first thing the driver would have done is to go and
investigate and/or other PRASA people. The train
was still partly in the President train station because
the evidence is that just as the front carriage past the
end of the platform, the possibility that some of the
carriages were still next to the platform.

[12] The Plaintiff could not give any indication of any
20 PRASA personnel on duty, nothing. What I find
strange is that when such an incident takes place
there will always be people who saw it, will assist the
injured and that it would be brought to the attention
of PRASA to investigate.

[13] We are therefore confronted and at this stage at the commencement of the trial the parties requested the separation of quantum and merits. we only proceeded on the merits as per so that the Plaintiff bears the onus to prove on a balance of probabilities that the incident took place.

[14] In this regard if I am to refer the parties to an unreported case of *Lefa Victor Komako v PRASA* (43704/2012) judgment was delivered (21 October 2022) in Johannesburg High Court by my brother Adams, to establish negligence on the part of the rail agency, the onus is to claim to do so and if the versions of the parties are mutually destructive there is an evaluation of probabilities which has to take place.

[15] In doing so there are guidelines, specific guidelines from the past and I refer to the matter of *Stellenbosch Famers Winery Group Limited and Another v Martell and Another* 2003 (1) SA 11 (SCA) at 5 where Nienaber JA said the following and I quote: "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 probability or improbability of each of the party's version in the disputed issues".

[16] It was reiterated in *National Employers General Insurance Company v Jagers* 1984 (4) SA 437 (EC) at 440E-441A, where the court said and I quote:

10 “Where there are two mutually destructive stories the Court can satisfy itself on preponderance of probabilities which is the accurate and then acceptable version.”

[17] A similar *dictum* is found the matter of *Dreyer v AXZS Industries* 2006 (5) SA 548 (SCA) at 558(c)-(g). It says:

20 “The correct approach which the court have to adopt is that you have to look at the two versions, both cannot be true, you have to look at the probable inherent and respective conflicting versions of the parties.”

[18] If I compare what is before me today, the factual

evidence, we have a single witness on both sides, we have the evidence of the Plaintiff of an alleged incident but there are in my view too many unanswered or unsatisfactory aspects in his version.

[19] The first is the contradiction between his evidence in court and the answers supplied in terms of Rule 21 for preparation of the trial, was the place where he fell. Was it on the platform, was it beyond the platform
10 after the carriage left the station. If it was as he testified in court that it was past the end of the platform the Court can accept that where he fell there was some sort of height distance which would have made it very, very difficult for him in his injured state to embark back onto the train.

[20] The improbability that on his version the train came to standstill and miraculously after he was assisted by some of the passenger to have him boarded again, the
20 train just took off and nobody of PRASA investigating why the train had to come to a standstill.

[21] The improbability further on his side is that seeing that there were passengers who were already and able to assist him, why they did not assist when at

Driehoek station, when they got off he was taken to the PRASA authorities to report the matter.

[22] The next improbability is that he leaves the station, he walks although with some sort of limp 15 minutes to his work then only realises that he sustained a serious fracture with blood oozing from the fracture, his trousers torn and then he goes to hospital for medical attention.

10

[23] We do not know how he was treated, how long he was hospitalised and we do not know whether he did in fact have a fracture. The easiest thing would have been is to produce X-ray examination photos that is normally done at any provincial hospital and a person will turn up such an injury.

20

[24] The further improbability is that he did not deem it necessary to go back a day or two later, when he was in a position to, report it to PRASA at the relevant station where the incident took place.

[25] If all that the improbabilities and unsatisfactory parts of his evidence is compared with that of the train driver who gave a straightforward version. She was

the driver, no indication that anything happened, nobody informed her. She was cross-examined and much was made about it that her statement was only taken long after the incident. The question which the Court will have to ask is, is it her fault.

[26] Is it her fault that at some stage PRASA realised that they made a mistake and they identified the correct person whom they should take a statement from? in my view the probabilities of the Defendant's version outweigh that of the Plaintiff by far. I am there not convinced that the Plaintiff has succeeded on a balance of probabilities to prove his matter and I therefore make the following order.

26.1 The Plaintiff's claim is dismissed with costs.

20

.....

HOLLAND-MUTER, J

JUDGE OF THE HIGH COURT

DATE: