THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Case No: 517/2012

Not reportable

In the matter between:

MARIA SHUMANI RAMAFAMBA **APPELLANT**

and

SCORE SUPERMARKETS (Trading) (Pty) Ltd **FIRST RESPONDENT**

ERIC NEMANAME **SECOND RESPONDENT**

Neutral Citation: ***Ramafamba v Score Supermarkets (Pty) Ltd***

(517/2012) [2012] ZASCA 162 (19 November 2012)

Coram: Brand, Lewis and Petse JJA and Southwood and Saldulker AJA

Heard: 5 November 2012

Delivered: 19 November 2012

Summary: Where a plaintiff does not prove the cause of her injury she cannot succeed in an action against the defendants for negligently causing her loss. High court should have granted absolution from the instance.

ORDER

On appeal from: Limpopo High Court, Thohoyandou (Hetisani J sitting as court of first instance):

1 The appeal is dismissed with costs.

2 The cross appeal is upheld with costs.

3 The order of the high court is replaced with:

'Absolution from the instance is granted with costs.'

JUDGMENT

LEWIS JA (BRAND and PETSE JJA and SOUTHWOOD and SALDULKER AJJA concurring)

[1] Ms Maria Ramafamba went to the Score supermarket in Sibasa, Venda, to do some grocery shopping on 21 October 2005. She tripped and fell in one of the shopping aisles, sustaining an injury to her left leg. She instituted action against Score Supermarkets (Trading) (Pty) Ltd, the owner of the supermarket, and its manager at the time, Mr Eric Nemaname, claiming damages for the injuries suffered as a result of their negligence.

[2] The sole issue for decision is whether Ms Ramafamba discharged the onus that she bore in proving that the respondents had negligently caused her injury. That, in turn, rested on whether she proved how she fell and that they were in some way responsible for the fall. This seems a simple enough thing to do. Unfortunately, because of the way in which her claim was pleaded, the inadequacy of the evidence led, and the manner in which the trial was conducted, it was not something that she succeeded in doing.

[3] Despite that, the high court (Hetisani J in the Limpopo High Court, Thohoyandou) found that she had proved that the respondents had negligently caused her injury and ensuing loss, but that she was contributorily negligent and had

to bear half the loss herself. It is against the latter decision that she appeals, with the leave of another judge acting in that court. The respondents cross appeal, also with the leave of that court, against the decision that they were negligent and the cause of her fall and ensuing injury. It should be noted that the questions of liability and quantum of loss were separated at the outset of the trial by agreement.

[4] The essence of Ms Ramafamba's case, as it unfolded during the course of a prolonged trial, was that she had gone into the supermarket and found some soup that she wanted. She took it to a teller. Then she remembered that she had intended to buy cake for one of her parents (she first said her father, then later her mother) and had proceeded down another aisle towards the bakery. On her way to the bakery she tripped and fell over loose shelves on the floor. She had not seen them before she fell, but noticed them as she fell and they were displaced. She could not get up without assistance. A woman who was promoting certain items in the aisle had assisted her and provided a stool for her to sit on. A shelf packer went to tell the manager, Mr Nemaname, who came to see what had happened to her.

[5] She had walked with difficulty to Mr Nemaname's office and he had then taken her to a nearby hospital, accompanied by Mr Matsea, an employee who remained with her at the hospital until she was discharged. Mr Nemaname had fetched her and taken her to her home. He also visited her the following day, and he paid all the hospital expenses.

[6] Mr Nemaname and Mr Matsea gave evidence denying that there had been loose shelves lying on the floor in any aisle. Neither of them had seen Ms Ramafamba fall. No witness was called, either by her or by the respondents, who had seen the fall. She said that tellers who had witnessed her falling had laughed at her. But she did not identify them and did not call them as witnesses.

[7] One of the difficulties that this court faces is that the high court did not make a credibility finding in favour of or against Ms Ramafamba. Yet it accepted the version of the respondents which was diametrically opposed to hers. And despite finding that Mr Nemaname and Mr Matsea were good and credible witnesses, who denied that there had been loose shelves lying on the floor, it found that Score and Mr Nemaname were, in part, the negligent cause of her injury because they should have taken steps to warn customers about the shelf end over which they might trip. Before

dealing with these findings and the evidence, I shall set out the case as pleaded, though not in detail.

[8] In her particulars of claim, Ms Ramafamba stated that her 'tripping and falling was caused by the negligent placing of a *shelf end* on the path of customers by the employee of the 1st Defendant and was under the direct supervision of the 2nd Defendant [Mr Nemanane] who was negligent in one or more of the following respects: . . ' (my emphasis). These included failing to place a warning sign 'to alert customers of the danger the shelf end was posing'; putting the shelf end in a place where it did endanger customers; and failing to warn customers orally of the danger'. (In their plea the respondents denied any negligence on their part and made no allegations of fact.)

[9] The particulars echo the letter of demand (dated 24 February 2006) delivered to the manager of the supermarket, in which Ms Ramafamba's attorney stated that while she was shopping in the store 'she tripped and fell because of the shelve which was negligently placed on the path for customers'. And in listing outstanding issues for the purpose of the pre-trial conference in terms of rule 37 Ms Ramafamba's legal representatives asked the following questions: 'Is it admitted or denied that the Plaintiff had fallen as a result of tripping over a lower shelf at' the store? And 'Is it admitted or denied that the shelf was not properly placed/installed on or around 21 October 2005?'

[10] The particulars and these questions were framed after Ms Ramafamba's attorney had taken instructions from her, but also after he had delivered the letter of demand to the store and discussed what had happened with store employees. Furthermore, in an affidavit resisting an application by the respondents for the rescission of default judgment against them, Ms Ramafamba referred to the cause of her fall as 'the negligent placing of a shelf end on the path of customers'.

[11] But the claims and questions do not tally with Ms Ramafamba's evidence during the course of the trial. As indicated, she testified that she had tripped over a pile of loose shelves on the floor of a shopping aisle. The shelves had been stacked on the floor and she had fallen over them so that they had moved. She had not seen the shelves before she fell. One reason for that was that they were a similar colour to the floor – cream.

[12] Much was made about the discrepancy between a shelf end (whatever that may be – this court was not given any graphic representation, or lucid explanation, of what a shelf end is) and loose shelves that were allegedly on the floor. Her attorney testified to explain the way in which her case was pleaded: but all that he said, in the end, was that a shelf end and a loose shelf were the same things as far as he was concerned. Counsel for Ms Ramafamba argued that after a so-called inspection in loco of the store (it was not the same store, which was no longer in Sibasa at the time of the trial, but a similar one) the trial judge and all parties concerned knew full well what she had tripped over: loose shelves piled up on the floor. That argument does not accord with the trial court's continued reference to shelf ends.

[13] Both Mr Nemaname and Mr Matsea, a shelf packer at the store, denied, when testifying, that there were any loose shelves left lying in an aisle. They had not seen them. They had not seen Ms Ramafamba fall. They speculated that she might have tripped on a pallet at the end of a row of shelves that displayed packets of rice. And since they did not know of any loose shelves they could not say how they got there or when and whether they were removed after the fall. Both were found to be credible witnesses and indeed the record shows no contradictions in their evidence. Ms Ramafamba had testified that after the event, Mr Nemaname had told her that the shelves had been left in the aisle by a casual worker, and that he had told workers to remove them that morning. Both Mr Nemaname and Mr Matsea denied that there were any casual workers employed at the time, and the former said that despite doing an inspection of the store earlier that morning he had not seen any loose shelves on the floor.

[14] In addition to the changing version of Ms Ramafamba, the probabilities do not support her version given in evidence. There was no reason for loose shelves to be left on the floor. Shelves had not been removed for cleaning nor had any been replaced. No one else saw loose shelves on the floor. There were no casual workers. When she fell she did not point out any shelves to Mr Nemaname or anyone else, let alone make a fuss about them. She did not alert anyone to the obstacle that had been put in her path and over which she had tripped.

[15] Ms Ramafamba's attempt during the course of the trial to suggest that Mr Nemename, by taking her to and from hospital, paying her medical expenses, and

visiting her after her fall, amounted to an admission of liability for negligence, is to be rejected. His conduct (mandated by his supervisor) was no more than that of a humane man who came to the assistance of a person who had fallen in the store he managed.

[16] In all the circumstances Ms Ramafamba did not discharge the onus of proving that the respondents had negligently caused her injuries. The high court should have granted absolution from the instance.

[17] I make the following orders:

1 The appeal is dismissed with costs.

2 The cross appeal is upheld with costs.

3 The order of the high court is replaced with:

‘Absolution from the instance is granted with costs.’

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C H Lewis

Judge of Appeal

APPEARANCES

Counsel for Appellant:	T P Snyman
Instructed by:	Mathiva Attorneys
	Thohoyandou
	Molefi Thoabala Attorneys
	Bloemfontein
Counsel for Respondent:	M A Kruger (First Respondent and Second Respondent)
Instructed by:	Whalley Van Der Lith Inc
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