

REPUBLIC OF SOUTH AFRICA



SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO: 2008/4046

DATE:12/08/2011

- (1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

.....
DATE

.....
SIGNATURE

SUSMAN, KAREN

Plaintiff

and

MR PRICE LIMITED

Defendant

J U D G M E N T

SALDULKER, J:

A. INTRODUCTION

[1] Shopping for shoes is a popular pastime for many people, bringing them much joy. However, sometimes it can turn into an unhappy experience, as the plaintiff, Mrs Susman discovered on 26 July 2007, when she entered the defendant's premises, a popular chain of stores, Mr Price.

[2] The plaintiff instituted a claim for damages against the defendant in the sum of R450,000 for her unlawful detention, defamation and assault at their Balfour Park store. After evidence was led in this matter and during argument, the claim for assault in the amount of R100 000 was abandoned. The plaintiff also amended paragraph 7 of her particulars of claim by the addition of a new paragraph 7.3 which reads '*alternatively under the direction of the defendant*'. This amendment was not opposed.

[3] There were thus only two issues for decision before the court:

1. whether there was unlawful detention; and
- ii. the claim for defamation.

I turn to consider the evidence in some detail.

B. EVIDENCE:

FOR THE PLAINTIFF

[4] The plaintiff, Mrs Karen Susman, a hairdresser by profession, testified that on 26 July 2007, at approximately 12h00 she entered the defendant's Balfour Park store, wearing a pair of black and white 'peep-toe' polka dot shoes. At the store she made two purchases for which she paid. Before she exited the store, she was stopped by a security guard wearing the defendant's uniform, a black shirt and a Mr Price red cap with its logo. The security guard checked the items she had in her possession against her receipt and found that every item was paid for. He then asked for a receipt for the shoes that she was wearing. She did not have one, and explained to him that she had purchased

the shoes at the defendant's 'Wedge' branch the day before. The security guard accused her of stealing the shoes. She told him that she would telephone her husband to bring the receipt. The security guard did not allow her to leave the store.

[5] The manageress of the shop then approached the scene of interrogation at the door of the store. Addressing her in a derogatory manner, and using disparaging and vulgar language, the manageress pulled her by the arm and led her, in full view of the defendant's staff and customers, to a back room in the store, where she was detained. The manageress accused her of stealing the shoes, and did not allow her to leave the store. They wanted to arrest her and required proof that she had purchased the shoes. The manageress informed her that the computer at the store had been checked and a pair of shoes was missing from the shelf.

[6] The plaintiff telephoned her husband and requested him to bring the slip for the shoes. Whilst she was in the office, the security guard and the manageress were present. Her husband arrived at the store an hour later and showed the slip to the manageress, and later to Mr Miller, the Area Manager, who then apologised for the conduct of his staff. Mr and Mrs Susman then left the store. Mrs Susman had been in the store for at least two hours.

[7] The plaintiff testified that she was embarrassed and traumatised by the incident. She was on medication for anxiety and was now anxious when she went out shopping. Her reputation had been damaged. She has a close

relationship with her clients and was worried that they would view her as a 'potential thief'.

[8] Under cross-examination she stated that a Mr Price tag had been under the shoe which had attracted the attention of the security guard. The shoes were new and similar shoes were also on display at the store. She denied that she had been excused by the manageress to leave the store and that she had refused to do so. She stated that the manageress had sworn at her. The security guard had spoken to her in an aggressive manner and accused her of stealing the shoes in the presence of the public and the defendant's employees, which was defamatory. She denied that the security guard was employed by Izikathi Security as the security guard wore a Mr Price shirt.

[9] It was put to her that she had been upset by the incident and that the manageress had tried to calm her down, suggesting that they go to the office, and that she had not been detained against her will. The plaintiff denied these assertions, stating that they had required proof that she had purchased the shoes and that, only after her husband had produced the slip, was she excused by Mr Miller. She denied that she and her husband had been swearing and were upset during the incident.

[10] After the plaintiff completed her testimony, Ms Seboko, counsel for the defendant made an application to recall the plaintiff, which was not opposed. During her further testimony, the plaintiff stated that the security guard had

blocked the exit of the store, placing his body in front of her, restraining her from leaving the store.

[11] Mr Trevor Susman, the husband of the plaintiff testified that he was at work, in a meeting when he was telephoned by his wife, requesting him to bring the receipt proving the purchase of the polka dot shoes. It took him an hour after receiving the phone call, to reach the defendant's store.

[12] On his arrival, he found his wife very distressed, with red marks on her arm, in an office at the back of the store with a security guard and the manageress. His wife informed him, that 'Bridget', the manageress, and the security guard had arrested her, used vulgar and abusive language towards her and accused her of stealing the shoes. When he asked the security guard and the manageress about their statements and conduct, they laughed and repeated the derogatory statements. Although he was upset, he did not swear or shout at them. He denied grabbing the telephone from the manageress to speak to Mr Miller. When Mr Miller arrived at the store, Mr Susman produced the proof of purchase. Mr Miller apologised and excused them. Mr Susman informed them that he would be taking the matter further. He and the plaintiff then left the store. Mr Susman testified that as a result of this incident his wife was on anti-depressant medication and could not 'go out' on her own.

[13] Under cross-examination he stated that he believed that the bruises on the arm of the plaintiff, were sustained as a result of the assault inflicted on

her by both the security guard and the manageress at the time, when they grabbed the plaintiff by both hands and pushed her into the office.

The plaintiff then closed her case.

EVIDENCE FOR THE DEFENDANT

[14] Ms Gugu Ngwenya testified that she is a sales assistant at Mr Price, Balfour Park. On the day of the incident, she was on the shop floor in the vicinity of the shoe isle when she observed the plaintiff fitting on shoes. She noticed that the shoes around the plaintiff were those of the defendant with the Mr Price tag, but she did not see the plaintiff's own shoes. She was about three meters away from the plaintiff and became concerned. As she was about to change posts and move to the fitting rooms, she advised her supervisor 'Johan' to monitor the plaintiff.

[15] Ms Bridget Kasankomona, testified that she has been the assistant manageress at the defendant's store since 2003. On the day of the incident she was called by the security guard, Mandla Brightman Sithole who worked for Izikathi Security, to the front door, as a customer was complaining.

[16] Upon her arrival at the door, she found the plaintiff causing a commotion. The plaintiff informed her in a high tone of voice that '*your bloody security guard is accusing me of stealing these shoes*' and that she was going to sue Mr Price. There were a lot of people present at the time and the plaintiff was

attracting their attention. She asked the plaintiff and the security guard whether the enquiry for the proof of purchase had taken place inside or outside the store. This was to establish which procedure the security guard had followed in the matter. She was told by the security guard and the plaintiff that he had asked for the slip inside the store. She explained that there were two procedures at the store. In terms of the one procedure, if you need to verify a purchase, you must stop a customer as he/she is about to leave the store, at the exit, so that in the event that the customer has forgotten to pay for an item, he/she could go back and pay. The second procedure was when a customer was suspected of stealing, the customer must first leave the store, and then stopped outside and thereafter taken back into the store.

[17] Ms Kasankomona then invited the plaintiff to accompany her to the office to resolve the problem, at the same time apologising to her, if the security guard had been wrong. But the plaintiff refused, informing her that she had the slip for the shoes and she would phone her husband to bring it. The plaintiff told her that she had bought the shoes at the Wedge branch. The manageress then offered to call the branch to fax the docket to prove the purchase of the shoes. But the plaintiff refused this offer and informed her that her husband was on his way with the slip. She then excused the plaintiff as her husband was on his way but the plaintiff refused to leave the store. She did not treat the incident as a shoplifting matter.

[18] Whilst they waited for Mr Susman to arrive, on the plaintiff's insistence, the quantity of the shoes on the shelf was checked. Johan scanned the

barcode of the shoes and discovered that there was in fact a similar pair of shoes missing. Throughout this period the plaintiff was un-cooperative, using abusive language, threatening to sue the defendant and attracting the attention of the customers in the store, informing them that she had money and did not steal the shoes.

[19] Ms Kasankomona then went into the office and telephoned Mr Miller, the Area Manager, explaining the situation to him as she could not handle the matter on her own, due to the plaintiff's behaviour. Whilst she was on the phone, the plaintiff's husband entered the office, swearing at her and grabbed the phone from her, interrupting her conversation with the area manager. The plaintiff's husband was also abusive and threatened to sue the defendant. The plaintiff stood at the door of the office and did not enter it, until Mr Miller's arrival. When he arrived, a discussion ensued and thereafter, Mr and Mrs Susman left the store.

[20] She confirmed that she had made a statement on the day of the incident. Discrepancies in regard to her testimony and the statement were put to her. She insisted that her testimony was correct, and that it had not occurred to her to mention everything in her statement.

[21] The manageress testified that they treated their customers with respect and did not swear at them. She denied that she or the defendant's staff had used disparaging and abusive language defaming the plaintiff. They also did not assault or insult her.

[22] She did not accuse the plaintiff of stealing the shoes. The plaintiff was stopped inside the store, at the door, because she was not suspected of stealing. The police were not summoned nor was the plaintiff detained. They had waited for the plaintiff's husband to arrive with the proof of purchase. She stated that although Mr Price assigned duties to the security guards at the store, they were not employed by the defendant. They were employed by Izikathi and wore the Izikathi apparel which consisted of a blue shirt, khaki trousers with Izikathi badges on the shoulders. The security guard was not employed by the defendant.

[23] Mr Johan Venter testified that he was an assistant manager at the defendant's Balfour Park store at the time of the incident. Ms Gugu Ngwenya had drawn the plaintiff to his attention, as she was wearing shoes with the price tag of Mr Price and she was not sure whether the shoes had been paid for. He then instructed the security guard, who was wearing an Izikathi uniform, a blue shirt with the Izikathi logo, to monitor the plaintiff and to establish whether the shoes she was wearing were stolen. When the plaintiff tried to leave the store, the security guard checked the items she had bought and endeavoured to establish from her, whether the shoes on her feet had been paid for. Mr Venter was not privy to their conversation.

[24] The security guard then called the manageress. Mr Venter also approached the scene of interrogation at the door. The plaintiff told them that she had bought the shoes at their 'Wedge' branch and had forgotten to

remove the price tag, and that she would phone her husband to bring the slip which was at home.

[25] On instructions from the manageress, Mr Venter checked the quantity of the 'peep-toe polka dot shoes' and discovered that there was a similar pair missing, and he informed the manageress of this. The manageress, 'Bridget,' then apologised to the plaintiff and told her that she could leave the store. The plaintiff refused to leave, stating that she would wait for her husband to bring the slip. The plaintiff spoke in an irritated tone saying that she could not believe that she was being accused of stealing the shoes.

[26] The manageress then left the scene at the door to call the area manager. The plaintiff remained in the front of the store with a friend. The security guard also remained in the front of the store. After the plaintiff telephoned her husband, he arrived with the proof of purchase, shouting and swearing. Mr Venter directed him to the office at the back of the store as he was 'upsetting' the other customers. The plaintiff was at that stage outside the office in the passageway on a bench with a friend. Mr Susman entered the office and grabbed the phone from the manageress, who was on the telephone, to talk to Mr Miller.

[27] He denied that the manageress swore at the plaintiff or assaulted her in any manner. He stated that their customers were treated with respect. They did not swear at their customers. Mr Venter confirmed the store's policy procedures as described by the manageress with regard to the circumstances

under which a customer was stopped inside or outside the store. If the plaintiff had no proof of purchase, the centre security would have been called and they would have detained the plaintiff in a cell 'upstairs' in the centre and the police would have been summoned. He had not considered the plaintiff a 'shoplifter'. They did not call the police. Mr Venter testified that the plaintiff had been excused by the manageress 'on a guarantee' that she had a slip for the purchase.

[28] Mr Brian Miller, the Area Manager was contacted by the manageress in regard to the incident with the plaintiff. He testified that whilst he was talking to her on the phone, the call was interrupted by another voice, threatening to sue the staff and Mr Price. He tried to calm the customer and informed him that he was on his way to the store. When he arrived there, he found the plaintiff and her husband waiting in the hallway, and not in the office. A discussion ensued, and the slip for the shoes was produced. Mr Miller then told Mr and Mrs Susman that they could leave the store and that there would be no prosecution. Mr and Mrs Susman then left immediately. Had the slip not been produced, the plaintiff would not have been excused. The centre management would have been phoned and Mrs Susman would have been taken to the cell.

[29] According to Mr Miller, when customers were suspected of shoplifting, they would be stopped at the front door, after having passed the pay point, and they would then be requested to produce proof of payment for their purchases. In the event of such proof not being available, the suspect would

be removed to the back office, searched and detained there. The police would be called. If there was no proof, the suspect would be arrested. He confirmed the evidence of the two previous witnesses with regard to the two procedures to be followed in case of a suspected theft. He stated that all the security guards at the store were employed by Izikathi Security and wore Izikathi uniforms, which was a blue shirt and khaki trousers with clearly visible Izikathi logos.

[30] Mr Barend Liebenberg was employed by Izikathi Security since March 2008. He testified that their security guards wore a blue shirt and khaki trousers. They were employed at *inter alia*, Mr Price, Outdoor Warehouse and Dischem stores. The security guards at Mr Price did not wear Mr Price uniforms but Izikathi Security apparel. He did not know the security guard in this matter but confirmed that the security guard at the time of the incident was Brightman Sithole, an employee of Izikathi Security. From the dismissal letters, the security guard had been dismissed for absconding.

C. ASSESSMENT

[31] It is common cause that the plaintiff walked into the defendant's store wearing a new pair of shoes which bore the defendant's price tag. Similar shoes were displayed on the defendant's shelf. In these circumstances, the defendant was entitled to question her as to whether the shoes on her feet were paid for, and to investigate her claims that she had purchased the shoes the day before, at another branch.

[32] It is common cause that proof for the purchase of the shoes was requested from Mrs Susman by the security guard at the door of the store, which she did not have in her possession. It is common cause that the plaintiff remained at the store for at least two hours, until her husband arrived with the slip. The police were not called. No prosecution followed.

[33] The plaintiff's version is that she was detained against her will in the office of the defendant by the defendant's employees for at least two hours until her husband arrived with the slip. According to the defendant's employees she was not detained in their office. She had been told to leave the store but refused to do so. The plaintiff was never accused of shoplifting. Thus there are two mutually destructive versions. In the often quoted *dictum* of Wessels JA in *National Employers' Mutual General Insurance Association v Gany* 1931 AD 187 at 199, the following is stated:

'Where there are two stories mutually destructive/before the onus is discharged, Court must be satisfied upon adequate grounds that the story of the litigant upon whom the onus rests is true and the other false'.

[34] If the plaintiff was detained, in the manner that the plaintiff described, in the back office, by the defendant's employees, the issue is whether it was unlawful or whether the employees of the defendant were justified in doing so. The law provides that the plaintiff must allege and prove that the person who committed the delict was a servant of the defendant, acting within the course and scope of his or her employment in the execution of those duties and what those duties comprised at the time of the incident.

[35] According to the plaintiff's pleadings, the security guard '*at all relevant times was an employee, acting in the course and scope of his employment, and acting on the instructions of the defendant, alternatively on the directions of the defendant*'. The plaintiff's case in her pleadings is that it was only the security guard who publicly accused the plaintiff of having stolen the shoes, restrained and detained her and that his actions were unlawful and were made in the presence of members of the public, and infringed upon the dignity of the plaintiff. Furthermore, that his statements were intended by the defendant to mean that the plaintiff is a thief.

[36] However, the plaintiff's testimony was in stark contrast to her pleadings. During her evidence, the plaintiff, not only accused the security guard but also the manageress of unlawfully restraining and detaining her and damaging her reputation. She imputed most of the wrongdoing to the manageress, Ms Bridget Kasankomona, whom she accused of making disparaging and derogatory remarks in front of the customers and the defendant's employees.

[37] The onus was on the plaintiff to prove that the security guard was an employee of the defendant, acting under its instruction or under its direction. The security guard was not called to testify. According to all of the defendant's witnesses, the security guard wore the uniform of Izikathi Security, was not employed by Mr Price and did not wear the defendant's uniform. This was supported by the evidence of the manageress, Mr Venter and Mr Liebenberg, the latter, an employee of Izikathi Security. There is no reason to reject their evidence that the security guard was not an employee of Mr Price, but

employed by Izikathi and acted in the course and scope of his employment with Izikathi. Thus, the plaintiff has failed to show that the security guard was an employee of the defendant.

[38] The security guard's formal employer at the time of the incident was Izikathi Security. The manageress testified that his duties in the store were assigned to him by the defendant. It is clear that for practical purposes the security guard was carrying out his duties for the advancement of defendant's interests¹, in the store, and in doing so, he acted reasonably in all the circumstances of this case.

[39] There is a dispute between the parties as to whether the plaintiff was in fact detained in the office at the back of the defendant's store. The defendant's case is that the plaintiff was not detained. She was told that she could leave the store, but did not, and remained outside the offices at the back of the store, waiting for her husband to bring the proof of purchase. The plaintiff contends that she was physically restrained from leaving the store, and was detained in the back office, being guarded by the manageress and the security guard, awaiting the proof of purchase.

[40] On the plaintiff's own version, she was in the privacy of the defendant's back office, waiting for her husband to prove her innocence. In my view, this cannot be viewed as 'detention'. It was part and parcel of the investigation being conducted by the defendant in the privacy of their office, to determine the veracity of the plaintiff's claims, that when she entered the defendant's

¹ *Midway Two Engineering & Construction Services v Transnet Ltd* 1998(3) SA 17(SCA) at 28

store, she was wearing shoes which bore the defendant's price tag , which had been purchased at another branch, and it was not shoes that she had not paid for. In my view, in these circumstances, the defendant's employees and the security guard had a valid basis for stopping the plaintiff at the door after monitoring her movements, and were justified in carrying out their investigation to verify the plaintiff's claims. In my view the procedure they followed in questioning her, was reasonable in the circumstances. Significantly, the defendant's witnesses testified that the plaintiff was not regarded as a thief or a shoplifter. This is not improbable as plaintiff was not arrested or detained at the management centre holding cell, which was the normal procedure in the case of theft or shoplifting. No prosecution took place.

[41] The manageress testified that she questioned the plaintiff about the shoes and invited her to the privacy of the defendant's office to resolve the problem, but to no avail. The plaintiff refused to enter the office, was abusive and threatened to sue the defendant because she maintained that she was innocent, and had not stolen the shoes. The defendant's version is that they excused her after she had explained that her husband was on his way with the slip. The plaintiff contends that this is improbable as the defendant's initial investigation revealed that a pair of similar shoes was missing from the shelf. In my view, the defendant accepted the plaintiff's explanation that she had proof that she had purchased the shoes the day before and her husband was on his way with the slip. Clearly, the defendant's employees believed her as at no stage did they resort to police action, not even when they discovered that

there was a pair of similar shoes missing from the shelf. According to the defendant's witnesses the plaintiff was abusive after she was stopped by the security guard. She was clearly upset, attracting the attention of the customers in the store. It was reasonable in these circumstances, for the manageress to excuse her from the store as she was causing a commotion. The plaintiff refused to leave and the manageress then resorted to telephone the area manager for advice. In my view the defendant's version that the plaintiff refused to leave the store after she was excused, is probable and true.

[42] Furthermore, even if this court were to find that the defendant's employees questioned the plaintiff in the privacy of their office, and waited there with her for the proof of purchase, they were entitled to do so, and they acted reasonably in the circumstances. This cannot be regarded as unlawful detention. The plaintiff spent time at the store, whether it was inside the defendant's office or in the hallway, because she was waiting for the slip, to prove her innocence. When she was proved innocent, she left the store. In my view, her presence in the store for two hours was thus, of her own free will. Thus, the plaintiff failed to establish with cogent evidence that she was unlawfully and wrongfully detained in the store.

[43] In assessing the probabilities, the conclusion is inescapable that of the two versions before the court, the defendant's is the more probable and true. It was reasonable for the defendant's manageress to form a suspicion of wrongdoing on the plaintiff's part, and she would have been justified, even on

the plaintiff's version to make the enquiries in the privacy of the defendant's office at the back of their store. The conduct of the employees of the defendant, as well as that of the security guard, was not unlawful nor was it unreasonable in the circumstances of this case.

[44] Under cross-examination, it was put to Mr Miller that the reference to the word "*prosecution*" in his evidence is indicative of a suspicion of theft. In my view, even if the plaintiff was suspected of stealing, reasonable steps were taken by the defendant to ensure that the plaintiff would not be prematurely and wrongfully arrested. The police were not called and no prosecution followed.

[45] Defamation is the wrongful, intentional publication of words or behaviour concerning another person, which has the effect of injuring his/her status, good name and reputation. The defence to defamation is justification. A person's good name is the respect and status he/she enjoys in society and any action which has the effect of reducing his/her status in the community and consequently infringes his/her good name is in principle an *iniuria*².

[46] The plaintiff's case against the defendant is that the security guard and the manageress referred to her in derogatory and vulgar terms and accused her of stealing in full view of all the customers and the staff. According to the manageress she phoned her manager because of the appalling behaviour of the plaintiff who was swearing and threatening them. She had invited the plaintiff to discuss the matter in the privacy of their offices, but she refused. In

² *Argus Printing and Publishing Co Ltd v Esselen's Estate* 1994 (2) SA 1 (A).

her pleadings the plaintiff alleged that the security guard had defamed her, yet in her testimony she imputed the wrongdoings to both the manageress and the security guard. The plaintiff testified that she was concerned that her clients would regard her as a potential thief. However no evidence to this effect was led.

[47] The plaintiff should have known that walking into the defendant's store wearing shoes which bore the defendant's price tag could attract attention or suspicion. The defendant's witnesses and the security guard monitored her movements in the store, suspected something was amiss, and were then justified in stopping her and questioning her. They testified that they did not accuse the plaintiff of theft and were at all material times courteous when talking to the plaintiff and did not verbally or physically abuse her. Both Mr Venter and the manageress testified that they treated their customers with respect. There is no reason to disbelieve them. Mr Venter testified that the plaintiff was with a friend. The plaintiff could have called her friend to corroborate the alleged defamatory statements that were made against her by the defendant's employees and the security guard or the physical and verbal abuse she suffered at their hands. Because of the contradictory nature of the plaintiff's testimony I find that the plaintiff failed to prove her claim for defamation against the defendant.

[48] The plaintiff testified that she is presently on medication because she is suffering from anxiety, and reluctant to go shopping on her own because of the incident. However the plaintiff did not submit any medical evidence to

corroborate these allegations, nor did she call her doctor to testify to the diagnosis.

[49] Having regard to all of the evidence I find the defendant's version of the events in the store is more reliable and credible than that of the plaintiff. There is nothing inherently improbable in the version of the defendant's witnesses. In my view all the defendant's witnesses testified in a consistent and satisfactory manner. They corroborated each other in material respects. They withstood the rigours of cross-examination and there were no contradictions of a material nature to put their credibility into question. They were impressive witnesses who gave their evidence with confidence and candour. There are no reasons to disbelieve their testimony. In contrast, the plaintiff and her husband were not satisfactory witnesses. They were neither credible nor convincing. It is improbable that the defendant's employees would accuse the plaintiff of stealing the shoes, use abusive language and pull her by her arm, to the back office in full view of their customers, referring to the plaintiff in derogatory terms. Mr Susman testified that the plaintiff had marks on her arms, as a result of being assaulted by the manageress and security guard. This was however not borne out by the testimony of the plaintiff and clearly led to the plaintiff's claim for assault being abandoned. Mr and Mrs Susman's version of the events at the defendant's store is rejected as improbable and untrue.

[50] In view of all the foregoing, I find that the defendant acted reasonably and lawfully by first investigating the circumstances of the case before taking any decision whether to detain, arrest and prosecute the plaintiff, all of which

did not take place. I find that the plaintiff failed to prove that she was unlawfully and wrongfully detained in the defendant's office at the back of the store. Furthermore she has failed to prove that she suffered *contumelia*, inconvenience, deprivation of her liberty and an affront to her dignity. Her reputation was not injured.

[51] A store owner cannot be prevented from carrying out an investigation at his store. If he suspects a customer of theft or shoplifting it would be reasonable for him to approach such a customer inside the store or at the exit and to request from the customer, as in this case, to produce proof of purchase for the item that is in the possession of the customer which bears the store owner's price tag. To make such enquiries would be lawful, and to make the enquiries at a convenient place in the privacy of its offices in the store would be reasonable and justified. Such conduct by a store owner would not be tantamount to unlawfully detaining the customer. In this way customers would be given an opportunity to prove their innocence and to pay for the item in their possession, if it has not already been paid for, whilst they are still inside the store or they could produce the proof of purchase at the door.

[52] As was stated in *Damon v Greatermans Stores Ltd and Another 1984(4) SA 143 (W)*:

'In the case of suspected shoplifting it is not practicable to arrest the suspected person until he has left the premises without paying for the goods which he has taken. It will not be practicable for the person in charge of security to decide whether a charge should be made unless subordinate or

other employees are entitled to take an arrested person back to the premises before he is handed over to the police. What is of considerable importance is that it is in the interests of an arrested person himself that he should not be charged without being given the opportunity of offering any explanation or making any representation to a responsible officer. It is to his own advantage that this opportunity should be given in the privacy of an office with the minimum possible number of persons present'. (my underlining)

D. CONCLUSION

[53] Having regard to all of the foregoing, the plaintiff has failed to prove her case against the defendant on a balance of probabilities and has therefore not succeeded in discharging the *onus* resting on her. The plaintiff's claim against the defendant must therefore fail.

[54] In the result, I make the following order:

'The plaintiff's action is dismissed with costs'.

JUDGE H SALDULKER

**SOUTH GAUTENG HIGH COURT,
JOHANNESBURG**

ATTORNEY FOR THE PLAINTIFF: SNAID & EDWORTHY

ATTORNEY FOR DEFENDANT: MADLELA GWEBU MASHAMBA

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COUNSEL FOR THE PLAINTIFF: ADV RILEY

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DATE OF HEARING: 18 FEBRUARY 2011

DATE OF JUDGMENT: 12 AUGUST 2011