

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO:14289/14

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


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In the matter between:

MOKOENA, LINDIWE ANNAH

Plaintiff

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA

Defendant

JUDGEMENT

MBONGWE, AJ:

INTRODUCTION

- [1] The plaintiff, a passenger in a train, claims damages against the defendant following injuries she sustained after she had been pushed, inside the train, causing her to fall and then trampled upon by other commuters, disembarking and/or boarding the train. The defendant does not deny the occurrence per se, but denies liability to pay the damages claimed on the premise that it seeks a specific determination, as will appear hereunder.

ISSUE

- [2] The crisp question the defendant seeks an answer to or a determination on is whether the defendant was obliged to provide security in the circumstances.

SEPARATION OF ISSUES

- [3] By agreement between the parties and in terms of rule 33 of the rules of this court, only the specific issue raised by the defendant is to be determined in the present hearing. The aspect of the quantum of damages is to be postponed.

FACTS

- [4] The plaintiff boarded a train on the 21 June 2011 at the Johannesburg Station destined for Boksburg. She was on her way home from work and was to disembark at Angelo Station. She counted approximately ten stations between the two points of her commute. The circumstances resulting to her injuries appear to have occurred just after the train had departed from the Germiston Station, which was the last before Angelo Station.
- [5] The doors of the train had closed. The plaintiff, who had been sitting, had stood up to make her way towards the door readying herself to disembark at Angelo Station. There many people on the train, some seated and others standing. She was pushed by someone and fell as a result. She was stumbled on by other commuters ostensibly also heading for the doors. She sustained injuries, could no longer see nor breathe. She was eventually lifted up by some people and placed her near a window. It was those people who asked her if there was anyone/family they could contact and inform them of her ordeal. She had directed the people to her identity document, in her handbag, where the contact details of her boyfriend would be found. Contact was made with her boyfriend.

- [6] At Angelo Station the plaintiff was lifted and placed on the platform where her boyfriend and son were already waiting. She was then taken by car to hospital.
- [7] As stated already, the defendant seeks, as the issue in these proceedings, a determination whether it was obliged to provide security in the circumstances described above.

THE LAW

- [8] At face value this is a damages claim whose remedies are to be found in private law, the SATS Act in this instance, which governs the operations and defines the obligations of the defendant to train commuters. However, the Constitutional Court, in *Rail Commuters Action Group And Others V Transnet Ltd T/A Metrorail And Others* 2005 (2) Sa 359 (Cc), held that an Organ of State entrusted with the duty to provide public commuter services "... bore a positive obligation arising from the SATS Act read with the Constitution to ensure that reasonable measures were in place to provide for the security of rail commuters." (Paragraph [84] at 403C – D.) and "...to ensure that reasonable measures were in place to provide for the safety of rail commuters. The standard of reasonableness

required the conduct of Metrorail and Commuter Corporation to fall within the range of possible conduct that a reasonable decision-maker in the circumstances would have adopted. In assessing the reasonableness of conduct the context within which the decisions were made was of fundamental importance.”(Paragraph [86] at 403G – 404A.)

- [9] The plaintiff testified that throughout her travel there was never a security personnel insight in the coach she was in. In my view and in light of the distance the plaintiff had to travel or had already travelled, the absence of security personnel demonstrated a lack of the provision of reasonable security and safety measures to the commuters and constituted a breach, on the part of the defendant, of its obligations to ensure the safety of the plaintiff.

CONCLUSION

- [10] The absence of security personnel undoubtedly played a role in the occurrence of the circumstances leading to the plaintiff sustaining injuries. The initial push that resulted in her falling was unlikely to occur in the presence of a security guard/s. In general, people tend to behave and exercise restraint where security

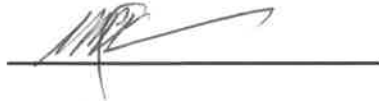
personnel is insight or the likelihood of their presence anticipated and some would do the opposite when the opportunity avails is itself such as in this case, where there had been no security personnel insight ostensibly throughout the plaintiff's travel. Further, the possibility exists that the plaintiff could have been rescued earlier, with swift action by a guard, which could have minimised the extent of her injuries.

[11] Unfortunate circumstances in commuter trains can arise at any moment. For this reason, I find, reasonable measures to counter or mitigate the effects of such circumstances have to be constantly in place. That would pale any difference, real or perceived, in circumstances demanding, of the defendant, the provision of reasonable measures to ensure the security and safety of train commuters.

[12] I consequently order as follows;

1. The defendant is liable and ordered to pay all proven damages arising from injuries sustained by the plaintiff in connection with this case.
2. The defendant is ordered to pay the costs.

3. The hearing for the determination of the quantum is postponed sine die.

A handwritten signature in black ink, appearing to be 'M. Mbongwe', is written over a horizontal line.

M. MBONGWE AJ

ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION.

APPEARANCES

For the plaintiff: Ms Sewpersath

For the defendant: Mr Raubenheimer

Date heard: 20 August 2019

Judgement: 20 September 2019