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**IN THE HIGH COURT OF SOUTH AFRICA,  
(GAUTENG DIVISION, JOHANNESBURG)**

**Case No.: 2019/44039**

**REPORTABLE: NO**

**OF INTEREST TO OTHER JUDGES: NO**

**REVISED.NO**

**08/11/2022**

In the matter between:

**MBELE CALVIN MPHONYANA**

Plaintiff

and

**PASSENGER RAIL AGENCY OF SOUTH AFRICA**

Defendant

**JUDGMENT HANDED DOWN ELECTRONICALLY BY CIRCULATION  
TO THE PARTIES AND/OR LEGAL REPRESENTATIVES BY EMAIL, AND  
BY UPLOADING ONTO CASELINES.**

DATE AND TIME FOR HAND-DOWN IS DEEMED TO BE ON: 08 NOVEMBER 2022  
AT 10H00

**Date of hearing:** 17-18 October 2022

**CONSTANTINIDES AJ:**

**Introduction**

1. This is a claim in delict by the Plaintiff Calvin Mphonyana Mbele (“the Plaintiff” or “Mbele”) for damages against the Defendant. (“Prasa”)
2. The parties have agreed to separate the issues in terms of Rule 33(4) of the uniform rules of court. This Court is to decide the question of liability in this matter.
3. On or about the 18<sup>th</sup> July 2019 and at or about 11h30 the Plaintiff was a commuter on a train moving from Johannesburg Park Station to Vereeniging Station, and the Plaintiff boarded the train with a valid train ticket allowing him to travel from Grasmere Station to Stretford Station.
4. The Plaintiff alleged that the doors of the train, particularly the coach in which the Plaintiff was a commuter, were open from Grasmere to Stretford Station and the coach was overcrowded with commuters.
5. The Plaintiff states that when he was alighting at Stretford Station after the train had stopped, he was pushed by other commuters and he fell under the train and subsequently the train was set in motion while the Plaintiff was lying in between the rail tracks and the train. The Plaintiff sustained serious bodily injuries allegedly due to the aforesaid. The issue is whether the Plaintiff had established that Prasa was negligent and whether such negligence caused his injuries.
6. The basis of liability on the part of Prasa is set out in Mbele’s Particulars of Claim.
7. As per the Particulars of Claim the driver of the train, acting within the course and scope of his/her employment with the Defendant (hereinafter referred to as “Prasa”) and furthering the interests of the Defendant:

*“12.1.1 failed to ensure that all commuters have alighted when the train was set in motion;*

*12.1.2 failed to ensure that all the doors have closed and locked when they set the train in motion;*

- 12.1.3      *failed to prevent the aforesaid train from being overcrowded;*
- 12.1.4      *failed to keep a proper lookout before setting the train in motion;*
- 12.1.5      *failed to prevent the accident when with the exercise of due and reasonable care, he/she should have done so; or*
- 12.1.6      *any other ground which may be proven at the trial of this matter.”*

8.      The Plaintiff further alleged that:

“12.2      *The conductor and/or ticket examiner and/or a security guard;*

*12.2.1 failed to have due regard to the prevailing conditions inside the train;*

*12.2.2 failed to ensure that commuters have alighted when the train was set in motion;*

*12.2.3 failed to ensure that all doors of the train coaches are properly closed and locked when the train was set in motion;*

*12.2.4 gave the train driver a signal for the train to be set in motion without ensuring that all commuters have safely alighted;*

*12.2.5. failed to ensure that there are no commuters alighting or that the doors are closed [when] the train was set in motion;*

*12.2.6 failed to keep proper lookout around the train;*

*12.2.7 failed to prevent the train from being overcrowded, especially the coach in which the Plaintiff was a commuter in;*

*12.2.8 failed to alert the train driver that the train was overcrowded and that it was chaotic inside and outside the train when commuters were*

*alighting, and thus the train driver should take extra time before setting the train in motion.”*

9. The Defendant contended that the Plaintiff was injured at Stretford Station when he was hanging between the coaches and disembarked while the train was in motion.

#### **Evidence of the Plaintiff, Mr Mbele**

10. Mr Mbele gave evidence that after visiting his sister thereafter, at approximately 10 and 11 a.m. he purchased a train ticket at Grasmere Station. When he got onto the train, he realised that the train was very full and he got onto the fourth or fifth coach from the rear of the train. He stated that the Stretford Station was immediately after Grasmere Station. He stated that the doors of the coach he was travelling in remained open throughout his journey and were not closed. He stated that he sat on a seat close to the open door, and when he got off the train, he was pushed to the lefthand side of the platform. He could not indicate how wide the space between the platform and the train is but he stated that the space must have been big enough because he fell underneath the train. He says then the train moved while he was lying there, he tried to stand this was when the security guard saw him.

11. When the guards enquired as to where his train ticket was he indicated inside his pocket together with his money. They thereafter found the ticket and the money and said that they were going to retain the ticket for investigation purposes and then asked how Mbele had fallen. He stated to the guards that he had been pushed while he was alighting from the train. Another guard suggested that he was “*turf riding*”, i.e. surfing the train. He provided the guards with his sister’s number which he knew from memory.

12. He was not certain as to whether an ambulance was called as he was there for two to three hours when his older brother Thabiso Mbele (“Thabiso”) came to Stretford Station to assist him. His brother Thabiso managed to borrow a wheelchair from Theta Radio Station which is situated in the shopping complex within the station and he took the Plaintiff to the Stretford Clinic which is situated across the

road from the Stretford Station. The aforesaid Clinic transferred him to Baragwaneth Hospital as they were not equipped to treat the injuries he had sustained.

13. Under cross-examination, it was put to the Plaintiff that the train was not full as it was not peak hour when he was travelling in the train. The Plaintiff rejected the aforesaid by stating that it was Mandela Day and was insistent that the train was “chock a block full”.

14. He furthermore denied that the doors of the train are on the same level as the platform and that there is no gap. He stated that if that was the case, he would not have fallen under the train. Mbele stated that the Security Guards came and assisted him and lifted him onto the platform. Mbele was emphatic that he was pushed while he was alighting from the train by other commuters.

15. It was put to Mbele that someone saw him standing between the coaches. He emphatically denied this and said that he told the security guards that he was pushed.

16. It was put to Mbele that the doors are automated and when the train starts moving, the doors close automatically. Mbele insisted that the doors were never closed.

17. Mbele said that he told the security guard that he was pushed and that another security guard asked him if he was train surfing.

### **Evidence of Thabiso Mbele**

18. The Plaintiff's brother confirmed that the Plaintiff “Calvin Mbele” is his youngest sibling. He confirmed that his sister Patricia called him to go to the station as their brother Calvin had been injured. When he asked the security guards what had happened, they allegedly told him that they saw a person underneath the platform over at Section G and they helped him onto the platform. There was no one else other than the security guards on the platform when he arrived.

19. The security guards informed him that they do not know what happened. He

confirmed that he had actually borrowed a wheelchair to take his brother, the Plaintiff, to the Clinic across the road. He confirmed there were no Police Officers informed nor did any ambulance arrive.

20. He stated that the Plaintiff was in such pain that he could not explain what had happened. When he asked the security guards whether they had called the ambulance, they stated to him that they had not called the ambulance because they did not want to be held responsible.

### **Evidence of the Defendant's Witness – Patrick Myeni**

21. Mr Myeni ("Myeni") stated that he is employed by Vusiszwe Security Company and that he was stationed at Stretford Station on the 18<sup>th</sup> July 2019. He claimed that he recalls the incident on the day and recalls the train approached 9024 from Johannesburg to Vereeniging.

22. According to Myeni when the train approached, a person was standing between the coaches and prior to the train being stationary at the end of the platform, he fell where the platform ends. Myeni allegedly walked towards the area because people had picked up the Plaintiff and put him on the platform. When he was asked by Myeni what had happened, the Plaintiff responded that he does not know what had happened. Myeni allegedly called his office to report that someone had been injured at the station.

23. According to Myeni it is his job to "observe" when a train comes in. According to Myeni he saw the Plaintiff in between the coaches. He stated that according to the company rules, he is not allowed to touch or handle an injured person. Myeni confirmed that the Plaintiff had a train ticket from Grasmere to Orange Farm and the Plaintiff showed the ticket to Myeni and Myeni wrote down the ticket number and he allegedly returned the ticket to the Plaintiff.

24. Myeni confirmed that he did not call an ambulance but he called Prasa Officials who normally arrange for an ambulance.

25. Myeni stated that he did not call the Police as he stated that only if a person was fatally injured would he call the Police or only if a person committed an offence would he call the Police.

26. Myeni was insistent that the doors are never open while the train is in motion and stated that the doors automatically close when the train moves. Myeni was insistent that 9024 is a train that travels during the day at about 12 o'clock and is never full during those times of the day.

27. Myeni asked the Plaintiff whether he was "train surfing". Myeni explained to the court that "train surfing" means when one stands between the two coaches and normally alights before the train stops and then the train surfers run away and disappear through "a hole" at the end of Stretford station in order to get away from the security guards as they travel without purchasing train tickets. Myeni gave evidence that he saw the Plaintiff standing between the two coaches and then jumping off the train before the train stopped. Myeni confirmed that the Plaintiff's brother had come to the station and confirmed that the brother had asked him what had happened.

28. Myeni was asked to look at a document which appears in **CaseLines, page 88** of the Court bundle. He was asked whether he wrote the report that appears therein. Myeni confirmed that the statement on **page 88 (2 – 92 of CaseLines)** was actually written by a "PRASA person". He stated that Ivy from Prasa had arrived before the Plaintiff was taken to the clinic. When Ivy asked the Plaintiff what had happened, the Plaintiff allegedly said "*he does not know what happened*". Myeni was then questioned and he informed Ivy that he saw the Plaintiff standing between two coaches when the train entered the platform.

29. On page 88 of the court bundle the following is stated:

*"Injured person at Stretford Platform 1 incident occurred at 12:43 from Train No. 9024 from Jhb to Vereeniging, identified herself as Calvin Mbele, I.D.: [...], resided at No. [...] S [...] Ext 1, Orange Farm, contact number: ..... , sister Patricia Mbele. According to the injured, she alleged that she was*

*standing between coaches and tried to disembarked whilst the train was departing from the platform and she fell between the train and platform and she sustained injuries of deep cut ....”*

30. Under cross-examination Myeni stated that he stands on the station on the platform and he can see a person in the coach at the door. There are approximately 12 coaches to the train and he stated that he has to check to see if anyone falls off. According to Myeni the Plaintiff was injured because he disembarked while the train was still in motion.

31. Myeni stated that in ten years he has never seen doors open when the train is moving and he stated that if the train is faulty, it goes straight to Braamfontein.

32. Myeni repeatedly stated that the Plaintiff told him that he did not know what happened. The report quoted and referred to above states that the Plaintiff had told the Official writing the report that he was between the coaches. According to Myeni the Plaintiff tried to jump off the train before the train stopped while train surfing and he fell off and the other commuters assisted him and took him onto the platform.

33. Myeni confirmed that the 16<sup>th</sup> June which is Youth Day and a public holiday, the train is normally full. According to Myeni the person who is injured is only touched by ambulance officials. Myeni stated that the Plaintiff “**did not mention to be in-between the coaches**. I saw him”. Myeni stated that a passenger would never admit to doing something wrong. Myeni says they report an incident to their office and their office would make arrangements relating to calling an ambulance.(Emphasis added)

34. Myeni confirmed that he had never seen the Plaintiff previously.

**The PRASA Protection Officer’s Evidence – Ivy Mashele Dintswalo (“Ms Mashele”)**

35. Ms Mashele has confirmed that she has been the Senior Protection Official under Protection Services at PRASA since June 2005. She deals with “contract management”, security companies, security officers and other issues relating to her



sector. She placed on record that she recalls the incident that occurred on the 18<sup>th</sup> July 2019 at Stretford Station.

36. When she was shown the statement on page 88, (**CaseLines 2-91**) she stated that, that was not her handwriting. She normally would interview the person that was injured and then go back to her office and inform the office what had happened and they would make entries into an occurrence book. She confirmed the she was told that the incident occurred at approximately 12h:43.

37. She interviewed the Plaintiff and he allegedly said that the “gadu” meaning “a train” has injured him. Ms Mashele stated that the platform edge is parallel to the door of the train so people would never be able to fall under the train. Ms Mashele furthermore stated that the trains are normally full from 3h30 in the afternoon and at 8h30 in the morning. Ms Mashele normally compiles the accident reports. Ms Mashele stated that when she was told that the doors of the train remained open the entire time, she stated that normally the doors are regulated and no person opens and closes the doors. When the train departs, the doors automatically close.

38. However, she conceded that it is possible that the doors may have been faulty as she does receive reports when there are accidents of this nature. She confirmed that on occasion the doors may be faulty and not working properly. She stated there was no reason to ask the Plaintiff about the doors as he had allegedly stated to her that he was between the carriages when he fell.

39. Ms Mashele was asked to comment on a document which appears in **2 – 84 and 2 – 85, pages 81 and 83 Caselines of the trial bundle** which is headed “*PRASA claims investigations: checklist: liability.*” Door test report states: “No, the doors were never tested. She could not comment in this regard. Furthermore she stated that the train “was without any doubt not crowded”.

40. It was put to the witness that, that day was Mandela Day and she stated that normally there would be Police and security operations on certain public holidays more particularly on Youth Day, the 16 June.

41. In the amended pleading, the Defendant states:

*“9.2.1 The sole cause of the accident was the Plaintiff’s exclusive negligence, being negligent in the following respects:*

*9.2.1.1 he failed to keep a proper lookout;*

*9.2.1.2 he allowed himself to travel by a train while hanging between the coaches and disembarked on a train that was already in motion;*

*9.2.1.3 he disembarked a train when it was neither safe or opportune to do so;*

*9.2.1.4 he failed to avoid the accident, when by exercise of reasonable care, he could and should have done so;*

*9.2.1.5 he failed to act diligently or skilfully like a reasonable train passenger by allowing himself to endeavour to travel by a train while hanging between the coaches and disembark a train when it was in motion;*

*9.2.1.6 He was fully aware of the risk involved in travelling by a train while hanging between the coaches and attempting to disembark a moving train;*

*9.2.1.7 Despite his knowledge of the danger associated with his conduct of travelling by a train while hanging between the coaches and whilst appreciating the risk, he nevertheless engaged himself in a reckless and dangerous behaviour of travelling by a train while hanging between the coaches and attempting to disembark a moving train.”*

### **Evaluation of the Evidence**

42. The Plaintiff stated that he had been pushed by other commuters while trying

to alight from the train, which resulted in his fall whereby he ended up under the platform.

43. The Plaintiff stated to the security officer Mr Myeni that he did not know what had happened. Despite Mr Myeni's insistence that it is impossible that anyone can fall between the train and the platform and that there is no space in between, the Defendants did not provide any form of evidence or a sketch plan or photographs to confirm this statement.

44. The Plaintiff clearly and concisely detailed his version of what had happened and the Court has no reason to question his credibility.

45. The evidence of Thabiso Mbele, the Plaintiffs brother was confirmed by the evidence of the Defendants witness Mr Myeni.

46. Mr Myeni's evidence bears certain contradictions. He stated that despite the fact that he had not assisted the Plaintiff as they are not allowed to touch anyone, he nevertheless took a statement from the Plaintiff and confirmed that the Plaintiff did have a train ticket and he noted the train ticket number on his statement.

47. Mr Myeni stated that in fact people travel between the coaches and they try to disembark while the train is in motion and run to exit the station at some "hole". This does not tie up with the fact that the Plaintiff had a valid ticket and there was no reason for him to do so in order to evade the security personnel.

48. Furthermore, Mr Myeni took the telephone number of the Plaintiff's next of kin who was his sister Patricia in order to ensure that she is informed of the accident. Mr Myeni stated that he did not call the Police as the Police are only called when someone is fatally injured or when they need to charge someone and they did not intend charging the Plaintiff.

49. The Plaintiffs brother confirmed that no ambulance had arrived albeit many hours had passed since the incident and he had to take it upon himself to take his brother across the road to the Stretford Clinic for assistance.

### **Evidence of Mr Myeni**

50. There was no sketch plan or photographs of the layout of Stretford Station. What is relevant is that some of the Plaintiffs' evidence was corroborated by Myeni as he stated that the Plaintiff had repeatedly stated that he did not know what had happened. However, the aforesaid evidence was contradicted by Prasa's Ms Ivy Mashele who confirmed that the written statement she was referred to on page 88 of the Trial Bundle, **2 – 92 CaseLines** was not in her handwriting. However she stated that she had forwarded the details to her office and the people in her office had filled the details in the occurrence book.

### **Evidence of Ms Mashele**

51. Ms Mashele stated that the Plaintiff had informed her that he was standing between the coaches and tried to disembark while the train was departing from the platform and fell between the train and platform. Ms Mashele however, contradicted the evidence of the security guard (Myeni), that the doors of the trains are always closed when the train departs and confirmed that she did not deem it necessary to consider a door test report. In the Claims Investigations Checklist it is evident that none of the checks were completed in regard to Prasa's investigations checklist for liability **2 – 84 and 2 – 85 and 2 – 86 of CaseLines**. This list reflects that the investigation was not complete and the checklist was not completed more particularly in regard to the door test report.

52. Furthermore, the investigation report was compiled by one R Rafado which was not canvassed at the hearing.

53. The Plaintiff's version is corroborated by the fact that he was a legal passenger as he did indeed have a train ticket. The Defendant was obliged to lead evidence in rebuttal.

54. The Defendant did not provide proper sketch plans, photos or evidence relating to train door control systems, but merely utilised the security guard Myeni to give evidence who stated that train doors were never open in the ten years that he

worked there. Contradictory evidence was given by Ms Mashele, the Defendant's Security Manageress who said that on occasion, they did have problems with the doors not closing.

55. Therefore, the Court is justified in not taking into account Myeni's evidence that the train doors are never open while the train is in motion.

56. According to the Myeni's evidence, he was on the platform and had to always observe the train on arrival at the station and to guard against incidents and safety. Mr Myeni was evasive when asked precisely where he stood on the platform when this specific train conveying the Plaintiff arrived and he eventually stated that he was in the centre of the platform and he could see the entire train, including the tail end of the train which does not appear to be possible. Furthermore, he stated he could see between each compartment from where he was standing and could see if anyone was surfing the train.

57. Despite the fact that there are shortcomings or defects in the Plaintiff's testimony, more particularly in that Myeni stated the fact that the Plaintiff may have his times wrong this inaccuracy on the part of the Plaintiff is justified, as according to the Plaintiff's brother he was in a lot of pain and could not even explain what happened. The Defendant has not produced any evidence to confirm that an ambulance had indeed been called and the facts speak for themselves as no ambulance ever arrived on the scene to assist the Plaintiff.

58. The Court was requested by the Plaintiff's legal representative to be cautious as to the evidence that was given by the Defendant's witnesses. The Court has weighed the evidence of Myeni and Mashele as against the evidence of the Plaintiff and his brother and after considering the merits and demerits and upon having done so, the court is satisfied that the Defendant has failed to rebut the Plaintiff's version. **It is material to the case that the Defendant pleaded that the Plaintiff had no train ticket yet the Defendant's witness Mr Myeni confirmed that the Plaintiff indeed was in possession of a train ticket.** The Plaintiff's version appears to be more probable than that of the Defendant.(Emphasis added)

59. The Plaintiff has discharged the onus of proof on a balance of probabilities and the Defendant has failed to lead sufficient evidence to rebut the Plaintiff's version. More particularly what is of relevance is the fact that the Defendant has failed to provide expert evidence and/or photographs or a sketch plan to portray precisely what its evidence is relating to the gap between the train door and the platform and has attempted to use only the security officer and the Counsel for the Defendant to describe this very relevant fact.

60. There are two mutually destructive versions before the Court more particularly that the Plaintiff's version is that he was injured by being pushed out of the overcrowded train by commuters and fell underneath the train's track and the Defendant's version is that the Plaintiff stood between coaches on the train and disembarked from the moving train and fell underneath the train platform.

61. It was common cause that the Plaintiff indeed did fall and was injured after falling underneath the train platform.

### **The Law**

62. The test for negligence was formulated in *Kruger v. Coetzee* which summarizes the test for negligence as follows:<sup>1</sup>

*"For the purposes of liability, culpa arises if –*

*(a) A diligens paterfamilias in the position of the defendant*

*(i) would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss; and*

*(ii) would take reasonable steps to guard against such occurrence; and*

*(b) the defendant failed to take such steps."*

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<sup>1</sup> *Kruger v. Coetzee* 1966 (2) SA 428 (A) at 430 E - G

63. In **Mahlunga v. PRASA**<sup>2</sup> the Constitutional Court held that PRASA has by being a public carrier a duty to protect its passengers from suffering physical injury while using the trains.

64. Strydom AJ in the unreported case of **Motloung v. PRASA (2019/13557) [2022] ZAGP JHC 331 (16 May 2022)** concisely set out the law as follows:

*“[37] It is trite that there exists a legal duty on the defendant to ensure that rail commuters who make use of its railway public transport system are safe: measures that ought to be taken in order to comply with the public law of ensuring the safety and security of passengers including the following:<sup>3</sup>*

*37.1 Ensuring that their passenger trains are not overcrowded when transporting passengers;*

*37.2 Ensuring that all train doors are closed when the train is in motion;*

*37.3 Ensuring that there are adequate security personnel both on the train and on station platforms.”*

65. Where there are conflicting versions, the Court stated in *Stellenbosch Farmers' Winery Group Ltd and Another v Martell & Cie SA and Others*<sup>4</sup> :

*[5] ‘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*

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<sup>2</sup> Passenger Rail Agency of South Africa 2016 (3) SA 528 CC

<sup>3</sup> Rail Commuters Action Group and Others v. Transnet t/a Metrorail and Others 2005 (2) SA 359 (CC)

<sup>4</sup> Stellenbosch Farmers' Winery Group Ltd. and Another v Martell & Cie SA and Others (427/01) [2002] ZASCA 98 (6 September 2002)

*in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness's 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 extra curial 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's 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 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.*

66. Therefore, based on the investigation report, PRASA did not conduct the necessary checks in regard to site plans, sketch plans and measuring, nor did it provide photos of the platform. The checklist was not ticked off relating to the claims investigations and check lists as required by PRASA.<sup>5</sup>

67. It is common cause that the Plaintiff was travelling on the train operated by PRASA. It was confirmed by the Defendant's witness that the Plaintiff held a valid ticket thereby confirming that he was lawfully travelling on the train. The Plaintiff's evidence tends to establish a probability in favour of the Plaintiff in that it is likely that if there were many passengers exiting the train, if the doors of the train were indeed open before the train came to a full stop, then the Plaintiff would have been pushed out by the other commuters thereby causing him to fall.

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<sup>5</sup> 2 – 84 to 2 – 84.



68. The fact that the Defendant failed to provide photos of the alleged gap between the doors of the train and the platform at Stretford Station or a site sketch as to precisely where the security officer was standing at the time of alleged injury of the Plaintiff indicates that the Defendant has failed to rebut the evidence of the Plaintiff

69. The second witness for the Plaintiff, his brother, was clear and concise. He stated that the Security Officer informed him that they did not know what had happened. The Defendant, despite stating in the pleadings that the Plaintiff was travelling on the train, was not a commuter on a train and had no valid train ticket but was standing between the coaches, has been rebutted and in effect, the security officer ("Mbele") of the Defendant confirmed that the Plaintiff indeed did have a train ticket.

70. Furthermore, no evidence was led by the security guard as to why after he had allegedly seen the Plaintiff try to jump from between the carriages onto the platform and had fallen, why he did not immediately inform the train driver to immediately stop the train. The train driver was not brought to Court to give evidence in this regard.

71. Due to the fact that the train was set in motion while the Plaintiff was lying underneath the platform, the injuries that he had sustained can be seen to have been a direct consequence of the Defendant's negligence. Had the train driver been informed by the security officer that there was someone lying underneath the platform and not proceeded to put the train in motion these injuries could have been prevented.

72. The parties did not argue contributory negligence, and the Defendant's Counsel moved for an order that the Plaintiff's claim be dismissed with costs.

73. Based on the evidence presented I am of the view that a person in PRASA'S position would have reasonably foreseen harm to the Plaintiff and PRASA did not take reasonable steps to avert the foreseeable harm which occurred.

74. Therefore I make the following order:

1. The Defendant is liable for 100% the Plaintiff's proven or agreed damages resulting from the injuries sustained by the Plaintiff in the incident at Stretford Station on the 18<sup>th</sup> July 2019;
2. The Defendant is ordered to pay the Plaintiff's costs in respect of this hearing on a party and party scale within 90 days of this order;
3. The determination of the issues relating to quantum is postponed *sine die*;

**H CONSTANTINIDES**

Acting Judge of High Court

Gauteng Division

JOHANNESBURG

**Heard on:** 17<sup>th</sup> and 18<sup>th</sup> October 2022

**Judgment:** 08 November 2022

**Attorneys for the Plaintiff** NDZALANA NGOBENI INC

**Counsel for the Plaintiff:** M MOTUBATSE

**Attorneys for Defendant:** PADI INC ATTORNEYS

**Counsel for the Defendant:** N G KHUMALO