REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO.: 20002/2014

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

28 July 2023 [redacted]

DATE SIGNATURE

In the matter between:

GD MATHEKGA **PLAINTIFF**

And

PASSENGER RAIL AGENCY OF SOUTH AFRICA **DEFENDANT**

JUDGMENT

N TSHOMBE AJ

A. INTRODUCTION:

[1] In this case the Plaintiff[1] claims compensation arising from personal injuries suffered on 18 October 2013 when he was allegedly pushed and fell out of a moving train. The claim is against the Passenger Rail Agency of South Africa[2], the defendant. The claim was initially instituted by Mrs Smangele Maria Mathekga in her capacity as a guardian and representative of the plaintiff since the plaintiff was at the time still a minor. Upon attainment of majority when the plaintiff turned 18, the mother withdrew and the plaintiff was substituted to represent himself.

[2] At the time of the hearing the parties had already agreed to separate the merits from quantum and that the hearing on quantum be postponed *sine die.*

B. THE DISPUTE

[3] The Plaintiff's claim is based on alleged negligence by the defendant and the defendant's case is that the Plaintiff has failed to make out a proper case for the relief sought. In Paragraphs 5 - 8 of the particulars of claim the plaintiff pleads that the sole cause of him falling from the train was the negligence of the conductor alternatively the driver and further alternatively both the driver and the conductor of the train, whose full and further particulars are unknown to the plaintiff.

[4] Specifically, the plaintiff pleaded the facts set out in the paragraphs below which have been extracted from the particulars of claim:

"

5.2 The plaintiff was pushed out of a moving train by the passengers who were pushing each other for space;

5.3 The conductor failed to close the doors timeously;

5.5 He/she failed to prevent the said accident when by the exercise of reasonable care, he could and should have done so;

5.6 The doors were never closed when the train was taking off."[3]

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[1] Now GD Mathekga

[2] PRASA

[3] Case Lines 002-5

[5] In paragraph 6 the relevant facts pleaded by the plaintiff are set out below:

"6.1 The driver set the train in motion at a dangerous and/or inopportune time;

6.2 The driver failed to check whether it was safe for him to set the train in motion;…

6.6 The driver failed to prevent the said accident when by the exercise of reasonable care, he could and should have done so;

7. Alternatively, the sole cause of the minor child falling from the train was the joint negligence of the driver whose identity is unknown and the conductor whose identity is unknown who were negligent in one or more of the respects alleged in paragraphs 5 and 6 above."[4]

8. "As a result of the said collision(sic!), the minor child sustained bodily injuries consisting of the following:

8.1 De-gloving injury of the right foot."[5]

[6] In the hospital records the term 'de-gloving' was explained as the 'traumatic amputation of the Right 5th and tip of 4th toes'.[6]

[7] In its plea[7], the defendant pleaded that the plaintiff did not sustain injuries from a train accident as alleged. Specifically, the defendant disputed:

(i) that the plaintiff was a passenger in the train on the date in question as alleged;

(ii) that any injury sustained by the plaintiff had anything to do with him being a passenger on any of its trains;

(iii) that the defendant's employees were negligent as alleged;

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[4] Case Lines 002-5 – 002-6

[5] Case Lines 002-6

[6] By the Orthopaedic specialist Dr Peter T Kumbirai as appears in Case Lines 006-6

[7] Case Lines 002-39, Paragraph 6

(iv) that there is a causal connection between any injury sustained or loss incurred by the plaintiff and an incident in one of its trains.

C. THE PLAINTIFF'S EVIDENCE:

[8] The plaintiff testified that on 18 October 2013, he was on his way home from school. He proceeded to the train station, presented his valid monthly ticket to the ticket examiner. He then went down the staircase to where they normally waited for the train. When the train approached from Isando and entered the station, its doors were already open and blocked by passengers who were standing on either side of the doors. The train was so full such that plaintiff could not advance inside and away from the door but had to stand close to the door and holding onto the middle rail.

[9] According to the plaintiff the train was always full around midday on Fridays because a lot of people knocked off early, this having been his experience for the past three years that he had been a regular commuter on a morning and afternoon train from and to his home in Tembisa and to and from school in Rhodesfield.[8] His testimony was therefore to the effect that it didn't help to wait for another train because it often happened that even the next one is full.

[10] When the train started to move, people started panicking, jostling and pushing towards the inside of the train and plaintiff was pushed by other passengers, lost his grip on the rail, fell on the train track and sustained injuries as alleged in the particulars of claim.

[11] Plaintiff testified that after he had fallen onto the train track, he rolled and rolled on the railway line and after a while he fainted and was woken up by a fellow student who saw him on his way to the taxis. The testimony continued that the fellow student picked plaintiff up and took him to a safer spot, which, according to the plaintiff was past a traffic circle on the road pavement outside PRASA premises.

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[8] Rhodesfield Technical High School

[12] This is where the plaintiff was picked up by the parent of one of his fellow students, taken to the school where some first aid in the form of bandaging the bleeding toes was administered.

[13] During cross examination, the defendant challenged the plaintiff's testimony that the train was so full that there were passengers standing at the door and blocking the doors from closing and yet when there was panick and jostling inside the train, he was the only passenger that fell off. To this the plaintiff explained that he lost his grip on the steel pillar when people started jostling and he further stated that he doesn't know how the other passengers managed to hold on.

[14] Secondly, it was pointed out to the plaintiff that it was strange for someone who fell on the track from a moving train, rolled thereon but emerged without any injury other than on his toes, to which plaintiff answered that he doesn't know how it happened that he did not suffer any other injuries. Plaintiff was confronted with further questions relating to the explanation he provided in the hospital records of how he was injured.

[15] Thirdly, the cross examiner challenged the plaintiff with reference to the evidence that he was taken to the street, outside of PRASA premises next to a traffic circle on the road and the question was why the plaintiff was removed from the premises of PRASA. Plaintiff's answer to this was that his fellow student wanted to remove him from the trains, to a place of safety and where they could potentially get help from cars passing by. Plaintiff was then faced with a myriad of questions relating to why he was taken outside of PRASA premises without reporting the accident to PRASA officials as it had happened within PRASA premises. According to defendant, the so-called removal of the plaintiff from PRASA premises was supportive of the defendant's view that the plaintiff was not injured within the said premises.

[16] The questions continued as to why the PRASA security personnel was not notified, the reasoning being that such personnel would have taken control of the situation, called an ambulance and compiled a report. To this line of

questioning the plaintiff advised that there were no PRASA security officers at the point of the accident. Plaintiff further advised that he was a victim, bleeding, his fellow student was only concerned about removing him from any further potential danger and he (plaintiff) was in no position to take any decision.

[17] Once again making reference to the injuries sustained by the plaintiff, Counsel for the defendant then put it to the plaintiff that the incident was not reported to PRASA security officers because it was not caused by falling from a train and did not happen within PRASA premises. Counsel for the defendant insisted with this line of questioning adding the fact that there was no PRASA security informed about it and that the plaintiff was taken outside of PRASA premises. To this the plaintiff could not take his responses further than his initial testimony to the effect that his colleague wanted to remove him from any further potential danger, that there were no PRASA officers in sight and that he (plaintiff) was not in a position to take decisions about anything as he was injured and in pain

[18] The plaintiff's second witness was Mr Vincent Dlamini ("**Dlamini**"), who was the school security officer. Dlamini testified that he was approached after school, at about 13h35 by a student that came rushing and reporting that Derrick ("the plaintiff") had been injured. According to Dlamini the school is close to the station and one can see the station from the school. Dlamini went to the scene together with his colleagues and found the plaintiff seated on the ground, surrounded by other students. By this time there was also a female parent who had just picked up her child at the school. The parent was busy calming the plaintiff who advised that he had been injured by a train.

[19] With Dlamini's assistance the plaintiff was taken to the school where:

(i) Photo's were taken;
(ii) First aid was administered via bandaging;
(iii) The plaintiff's parents and the ambulance were called.

[20] Dlamini testified that when the ambulance arrived, plaintiff was put on a stretcher, infused with a drip and taken to Tembisa hospital and that was the end of his involvement. He also identified the photographs that were taken, which were all admitted into evidence as Exhibits A to C. There is nothing that turns on the photographs and as such these will not be dealt with in any further detail.

[21] During cross examination, Dlamini confirmed that he did not see the incident happen, he doesn't know how it happened and whether it happened where the plaintiff says it happened. Secondly, Dlamini's testimony is that he found the plaintiff inside PRASA premises, next to a platform which is closest to the PRASA entrance. Dlamini then clarified that just outside the premises of PRASA there is a circle and this is where the car of one of the plaintiff's schoolmates was parked and to which he was carried.

[22] In answer to a question as to why he took the injured person to the school without informing the PRASA security, he answered that he is assigned to guard the school security issues and the plaintiff is a student at the school which he is appointed to look after. The witness further testified that he was disturbed that PRASA security had not attended to the victim and added that if he had found them attending to the victim, he would not have interfered but would have told the principal that the issue is in the hands of the PRASA security.

[23] The witness was further asked what his reaction would be if it emerged that the plaintiff was not injured at the train station to which the witness answered that he would have a problem as to why a student would come and tell lies and say he was injured at the train station. The witness was further asked if he saw any PRASA security officers at the station or close to the area of the injury, to which he answered that there were officers that he could see but they were stationed at an upstairs area.

[24] Plaintiff testified that at the hospital he was seen by a doctor who he referred to as a student doctor. The doctor dealt with the bleeding and advised the

plaintiff that there is a bone protruding from one of the wounds where he lost a toe and he's going to have to be operated upon to correct this.

D. DEFENDANT'S EVIDENCE:

[25] The defendant called two witnesses, Mr Dives Chauke ("**Chauke**"), who was employed by the defendant as a protection officer and was the defendant's shift member of the day for the region called the East Kaalfontein segment and which encompassed the defendant's stations from Elandsfontein to Tembisa.

[26] He testified that he has been employed by PRASA for about 16 years as a protection officer and was on duty on 18 October 2013. He testified as to his responsibilities as follows:

(a) making sure that there are securities allocated and that they are all on duty in the segment;
(b) he was the one to be called when there is an incident and had a duty to respond;
(c) he would then go and take over from the securities on the scene
(d) he was responsible for relaying information received from the securities on duty at various stations and to relay such information to the Joint Operations Centre at the defendant's head office (JOC);
(e) he would attend to any incidents reported;
(f) Securities were posted on a 6 to 6 shift, this understood to mean 6am to 6pm and 6pm to 6am daily;
(g) on the day in question there was no incident reported and there were no incident reports in either the shift member's pocketbook, the occurrence book at the station and the JOC.

[27] Chauke testified that Rhodesfield is a core station and it thus gets 4 security officers, two to patrol the platforms and the other 2 remain upstairs at the access point. He added that Rhodesfield station is new and was constructed for the Gautrain. The securities patrol the platform, provide reports every 30

minutes and the security access point is upstairs with the platforms downstairs.

[28] He testified furthermore that there can be no incident that takes place at any of the stations and not get reported in the occurrence book and JOC. The securities report to a Controller via base radio which is attached to the vehicle used by the protection officer, making the reporting simultaneous.

[29] The second witness was Mr Ephraim Mathibe ("**Mathibe**"), who was employed by the defendant as a train guard or train assistant and whose duties are to ensure the safety of commuters by:

(a) checking that the doors of the train are functional;
(b) ensuring that the train doors are open at a station and when the train is stationary;
(c) making an announcement where train comes from and going to ensure that the right commuters board the train;
(d) blowing a whistle to warn commuters that train is about to depart;
(e) observing the platform to ensure that all travelling commuters are inside; and
(f) warning the driver that the train is ready to go, while still observing the platform until train has left.

[30] This witness testified that he did not witness any incident on 18 October 2013, he actually went on to say that he is sure there was no incident as alleged by the plaintiff on his train and had there been one, he would have seen it. The witness also denies that there is a tendency for trains to be full on Fridays from 13h00; according to him the peak hours are from 06h00am – 08h00am and in the afternoon peak hour starts from 16h00pm.

Assessing the evidence as a whole:

[31] Hospital records/Documentary evidence: One of the documents produced by the plaintiff in response to the defendant's notice in terms of Rule 36(4), is the TEMBISA HOSPITAL CASUALTY (Temporary Form), which reflects under A.

NURSE'S NOTES "*he fell while climbing the (sic!) moving train (his hands slipped and he couldn't hold)"*[9] When cross examined on this hospital record plaintiff's answer was that he advised the hospital that he fell off a moving train.

[32] The second document of note is headed: Emergency Medical Service PATIENT REPORT FORM.[10] The document has two columns, the left column has a sub-heading: PATIENT DETAILS parallel to which the right-hand column has a sub-heading that reads: INCIDENT DETAILS. On the right-hand column one of the details recorded is INCIDENT TYPE and in hand script this is indicated as ***"Domestic incident"***. Below these two columns are two further right- and left-hand side columns sub-headed CLINICAL NOTES. On the left-hand side column there is a detail of HISTORY/MECHANISM OF INJURY required and in hand script this is indicated as once again ***"Domestic incident"***. A further detail required on the left-hand side column is CHIEF COMPLAINT against which is indicated in hand script ***"Patient complain of broken two toe and laceration on right leg and laceration on top of leg"***. The same document reflects "***Rhodesfield Technical"*** as the Incident location.

[33] The above document was not referred to by the defence, neither were the contents thereof put to the plaintiff or Dhlamini. There does not seem to have been any investigation relating to the contents of this document, which I find disappointing, unhelpful to the court and the proper administration of justice. This is an important document which should have been of interest to both parties as it is a hospital document, with information that is in contrast with the narrative that the plaintiff has provided as the cause of his injuries.

[34] The investigation of the veracity of the contents of this document and in the event that such investigation would have shown that the plaintiff's injuries had nothing to do with an incident in a train, would have put an end to all the time and costs spent in progressing this matter. However, for purposes of

[9] CaseLines 002 - 30

[10] Initially Case Lines 002-29 and after request for clearer copy became 002-63

determining the question of whether the plaintiff has made out a case for the relief sought against the defendant, I am going to accept without finding that the plaintiff's injuries arose from being pushed and falling from a moving train. I will thereafter deal with the central legal question that arises in the matter. Before I do so I find it necessary to consider whether it can be said that there is a version that has emerged from the defendant's evidence.

[35] The major comment to make about the defendant's evidence is that both witnesses testified as to their duties, their processes and procedures that take place when there is an incident and how incidents are recorded and reported to the head office. Mr Chauke, who testified as the protection officer was nowhere near Rhodesfield train station and his duties did not require him to be in that specific vicinity.

As a result, in cross examination he conceded the following:

(i) He has no way of knowing where the securities are when they report for duty, that is, whether they are at the station or elsewhere;

(ii) He was not physically present at Rhodesfield station on the day of the alleged incident – 18 October 2013;

(iii) He has no control over the train drivers as these are deployed by train operations;

(iv) If a train driver does not sound the horn before a train departs he would not get to know about that;

(v) The sounding of the horn is communication between the train assistant and driver is intended only for that – thus it is not intended to be communication with the passengers.

[36] The second witness, Mr Mathibe was employed by the defendant as a train guard. He testified that he was on duty on the day in question and did not see or hear about the incident. Accordingly, he also had no version about the incident and his evidence did not take the defendant's case further than to advise that his duties are to ensure the safety of commuters; a few of which are incidentally to ensure that the doors of the train are functional; that the train doors are open at a station and when the train is stationary and that all travelling commuters are inside the train when the train departs.

[37] In evidence and in the plea, the defendant states respectively the above general duties and makes reference to the incident report, the submission being that if the incident is not listed in the incident report, that means the incident did not take place at the defendant's premises or at any of the defendant's train stations. I have already alluded to the fact that the defendant is unable to put together a version of how the plaintiff suffered his injuries and this is not surprising if the incident was not witnessed by or reported to the defendant's staff. Therefore, the defendant pleaded a non-admission. This is why it was so important, particularly for the defendant to have conducted a proper investigation during which the veracity of documents like the one referred to in paragraph 32 would have assisted in the proper administration of justice and the saving of judicial time from having to research issues that should be addressed by counsel in their closing arguments.

[38] While still working on the basis that the plaintiff's injuries arose from falling out of a moving train as per his evidence, several questions started to emerge as I assessed all of the evidence, for instance the following:

(a) Is it possible that none of the other passengers saw the plaintiff fall and if yes why did they not raise the necessary alarm?;

(b) Why was the fellow scholar who allegedly found the plaintiff in a fainted state not called to give evidence as he would have been the first contact with the plaintiff after the incident?

(c) How probable is it for the plaintiff to fall onto the train track from a moving train, roll and roll on the track until he faints and emerge from that ordeal with no bodily injuries other than the two toes;

(d) How is it possible and reasonable that neither Plaintiff nor plaintiff's parents reported the incident to the PRASA security officers or any PRASA office especially given the fact that the plaintiff was not seen by, nor attended to by any PRASA official and could have been crushed to death if there had been a train coming into the station in the same direction as the one he allegedly fell from;

(e) How is it possible and reasonable that none of the school authorities (those that administered first aid to him), the school security officer, the

principal of the school whom I assume would have received a report of the incident – none of any of these people of authority thought of reporting the incident to PRASA, on the day or any other day thereafter? I can think of a number of reasons why the school situated adjacent to the station and some of whose students use the train to commute to and from school would want to speak to PRASA; if not for any other reason – for the fact that the plaintiff was not attended to by PRASA staff?

(f) The prudence of calling the school security officer to testify; when he did not witness the event, neither did he find the plaintiff at the train tracks. His testimony did not have much value in support of the plaintiff's cause of action given that all he knew about the incident is what he was told;

(g) While on the point above, one of the questions that were not dealt with by either the plaintiff or the defendant is whether the route to the taxi rank was inside PRASA premises and/or visually positioned such that the fellow student who found the plaintiff could have seen that there was someone on the train track.

(h) The Patient Report Form, to which no attention was given, records the incident as a "domestic incident" and records further injuries, that is, lacerations on right leg.

[39] While the plaintiff's attorneys provided to the court what appeared to be a valid ticket which the court had to request, there was no corroborative evidence that:

(a) the plaintiff did in fact board the train on the day in question;
(b) the train was in fact full; so full that its doors were open when it approached Rhodesfield station;
(c) That passengers were blocking the doors of the train from being closed;
(d) the said doors remained opened as the train pulled out of Rhodesfield station.

[40] The above are clearly facts that needed to be investigated and established to support the plaintiff's cause of action.

E. THE LAW

[41] The plaintiff's claim against the defendant is based on alleged negligence of the defendant's employees as set out in the particulars of claim. Negligence can be defined as the failure to take reasonable care to avoid causing a loss or injury to another person. Negligent action is determined by applying the reasonable person test, that is, testing the person's conduct (action or omission) against the conduct expected of the reasonable person acting under the same or similar circumstances. If the person's conduct does not meet the standard expected of a reasonable person the conduct can be considered negligent.[11]

[42] The classic test for negligence was formulated in Kruger v Coetzee 1966(2) SA 428 (A)[12] where the court stated that:

> *"Liability for negligence arises if a reasonable person in the position of the defendant would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss and would take reasonable steps to guard against such occurrence and the defendant failed to take such steps."*[13]

[43] Being a civil matter, the plaintiff bears the burden of proof on a balance of probabilities. The defendant has no onus to prove its non-liability. While the defendant seems to have pleaded a non-admission in that it does not have a version with regard to the incident, the defendant does not have the burden of proving that the incident did not occur in one of their trains, and it has submitted that the plaintiff has failed to make out a proper case for the relief sought. In dealing with whether the plaintiff made a proper case for relief

[11] Classic test in Kruger v Coetzee 1966(2) SA 428 (A)

[13] At page 430 E-F

sought, the court must consider whether the plaintiff's pleadings satisfy the requirements in terms of Rule 18(4)[14], that is, pleadings that are required to contain a 'clear and concise statement of the material facts upon which the pleader relies for his claim…'

[44] This subrule is critical in that the conclusions of law which a pleader has a duty to set out must follow from the pleaded facts otherwise the summons will be excipiable as having failed to disclose a cause of action. The definition of a *'cause of action'* is to be found in: McKenzie v Farmer's Co-operative Meat Industries Ltd[15] as meaning:

> *"every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment of the court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved."*[16]

[45] In so far as the material facts on which the plaintiff in this matter relies, he was a single witness, that is, he had no witness that could corroborate the material facts for purposes of the credibility of his evidence. The second witness, Dhlamini; (i) is the only other witness that the plaintiff called; (ii) did not see the occurrence of the incident; (iii) did not find the plaintiff at the train track; and (iv) could not testify as to how the incident took place.

[46] The above takes the court to the caution with which the evidence of a single witness needs to be approached. The second witness could not even testify as to whether the plaintiff boarded the train or not; whether the train was full or not, because he was not there when the plaintiff boarded the train; neither could he testify as to whether the doors of the train were open or not as it approached and pulled out of the station. Even though the defendant has no burden of proof, there is also no substantive evidence that supports a

[14] Of the Uniform Rules of court
[15] 1922 AD 16
[16] At 23

particular version by the defendant. The defendant's plea is therefore unhelpful on any of the material questions.

[47] Accordingly, the evidence in the matter has to be assessed in accordance with a qualitative assessment of the truth and/or inherent probabilities of the evidence led as well as the ascertainment of the probability of the plaintiff's evidence, being the only evidence that can be assessed with respect to the occurrence of the incident. This brings us neatly to the quality of the pleadings, which, in this case are extremely important given that the plaintiff relies on his evidence and his evidence alone.

[48] The object of pleading is to ascertain definitively what is the question at issue between the parties as was confirmed in Durbach v Fairway Hotel Ltd[17]

> *"The whole purpose of pleading is to bring clearly to the notice of the court and the parties to an action the issues upon which reliance is to be placed"*[18]

[49] In Makgae v Sentraboer (Kooperatief) Bpk 1981(4) SA 239 (T) the court set out the position with regard to the Rules as follows:

> *"Word Reels 17(2), 18(4), 20(2) en 23(1) saamgelees dan kom dit my voor dat 'n gedingvoerder, ten einde te verseker dat besonderhede van vordering nie eksipieerbaar is op grond daarvan dat dit 'bewerings mis wat nodig is om die aksie te staaf' nie, moet toesien dat die wesenlike feite (dit wil se die facta probanda en nie die facta probantia of getuienis ter bewys van die facta probanda nie) van sy eis met voldoende duidelikheid en volledigheid uiteengesit word dat, indien die bestaan van sodanige feite aanvaar word, dit sy regskonklusie staaf en hom in regte sou moet laat slaag tav die regshulp of uitspraak wat hy aanvra."*[19]

[17] 1949(3) SA 1081
[18] at 1082
[19] At 245D

[50] In terms of Rule 23(1) a pleading is vague where the admission of one or two sets of contradictory allegations in the plaintiff's particulars of claim would destroy the plaintiff's cause of action.[20]

[51] While it is true that the plaintiff cannot be expected to know why he suffered injuries on two toes only after having fallen from a moving train and rolled on the train track until he fainted, the plaintiff nonetheless carries the onus of proof on a balance of probabilities that the injuries suffered were caused by the negligence of the defendant. In order to do so, not only must the plaintiff prove that he was lawfully a passenger in the train but he must prove all the *facta probanda* (facts which must be proved to disclose a cause of action).

[52] Accordingly, there are certain allegations that needed to be stablished in order to find negligence on the part of the defendant on a balance of probabilities in this matter. At the very least, it needed to be established that the train was so full that the doors could not be closed, the doors were thus not closed when it approached and pulled out of the station, the consistency of the plaintiff's injuries with those of a person who fell off a moving train; and last but not least the report of the injury in the defendant's incident report. Had the above facts been independently established, the plaintiff would have sufficiently pleaded his case on a balance of probabilities.

[53] As it is, the plaintiff's case rests on allegations that have no corroboration, either from another witness, the incident report or from the nature of his injuries. Further, the fact that the incident was not even reported to PRASA makes it worse because there is thus no record of at least the occurrence of the event and any evidence that may have been obtained from the PRASA officer/s who would have handled the incident. It is trite from the rules of court state that pleadings are about facts from which legal conclusions may be drawn. It is further trite from the rules that a conclusion, opinion or inference must be supported by facts to justify it.

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[20] See Levitan v Newhaven Holiday Enterprises cc 1991(2) SA 297 (C) at 298 and 300G

[54] None of the above were established in a manner that supports the plaintiff's claim and in the circumstances the claim against the defendant fails.

F. ORDER

[55] In the circumstances it is ordered that:

55.1 The plaintiff's claim against the defendant fails;

55.2 No order is made as to costs.

N TSHOMBE AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Counsel for the Plaintiff:	Adv B.P Geach Sc
Instructed by:	Mashapa Attorneys
Counsel for the Respondent:	Adv C Rangululu
Instructed by:	Makhubela Attorneys
Date of the hearing:	14 October 2023
Date of judgment:	28 July 2023