

SUPREME COURT OF APPEAL OF SOUTH AFRICA

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE
SUPREME COURT OF APPEAL**

SIPHIWE ALTON SHABALALA AND METRORAIL CASE NO 062/07

From : The Registrar, Supreme Court of Appeal

Date: 28 November 2007

Status: Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

The Supreme Court of Appeal today dismissed the appeal of Mr Sphiwe Shabalala whose claim for damages against Metrorail had been rejected in the Johannesburg High Court.

On 21 May 2004 Mr Shabalala was shot and robbed while a passenger on a train travelling between Dunswart and Benoni stations. After boarding the train three men whose appearance suggested they were ordinary passengers, stood up and demanded money from the passengers in the coach. When Mr Shabalala said he had none, one of the men drew a handgun and without further ado fired three shots at him, hitting him twice in the leg and once in the arm.

It appeared that Metrorail employed security guards on its trains and on station platforms. The Court considered that the attack could possibly have been averted had there been a security guard in that particular coach. But having regard to the willingness of the robber to shoot Shabalala in response to no more than the latter's statement that he had no money, the Court noted that the presence of a single security guard, even if armed, may well have made no difference. It noted, too, that attacks by armed robbers on

security guards, even when armed, are not uncommon.

While accepting that Metrorail was obliged to take reasonable steps to prevent criminal activities on its trains, the Court held that Metrorail could not be expected to go so far as to place a security guard in each and every one of its coaches. This was particularly so, the Court said, having regard to the large number of coaches employed by Metrorail to convey commuters many kilometres each day. Such a requirement, said the Court, would exceed by far the precautionary measures that could reasonably be expected of an enterprise operating a commuter train service.

The Court held that the position may have been different had evidence been adduced that that particular line was notorious for criminal activity and that special precautions were, therefore, necessary. But no such evidence was produced and Shabalala's claim had to fail. The Court held in the circumstances that the High Court should have granted an order of absolution from the instance (ie an order declaring the claim not to have been proved) rather than judgment in favour of Metrorail. It altered the High Court's order accordingly.

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