**REPUBLIC OF SOUTH AFRICA**

**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

CASE NUMBER: **21832/2011**

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

..... .....
**SIGNATURE** **DATE**

**In the matter between:**

**ELIZABETH DOROTHEA KOCH** **PLAINTIFF**

**and**

**THE MINISTER OF POLICE** **1st DEFENDANT**

**M F MONANYANE** **2nd DEFENDANT**

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**JUDGMENT**

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**MALULEKE AJ**

1. In this case the plaintiff instituted a claim against the first and second defendants for damages in the amount of R 317 823.70 as a result of a motor vehicle collision. The fact of this case are set out as follows:

1.1 On the 22nd of June 2010 at or near Jorrisen and Voortrekker Roads, Polokwane a collision occurred between the plaintiff's motor vehicle being a black Mercedes-Benz CLS350 with registration [.....] and a white SAPS marked Ford Ranger with registration letters and numbers [.....], which was driven by the second defendant. The plaintiff alleged that at all material times the latter vehicle was been driven by the second defendant who at all material times was acting in the scope and cause of his duties with the first defendant and/or furthering the first defendant's interest as pleaded in paragraph 5 of the particulars of claim. According to the plaintiff the sole cause of the aforesaid collision was due to the negligent driving of the second defendant, who was negligent in one or more or all of the ways pleaded in paragraph 6 of the particulars of claim. The defendants deny negligence, in the alternative the defendants pleaded contributory negligence on the part of the plaintiff.

2. The question that I must decide is whether the second defendant was negligent and whether his negligent driving is the cause of the collision as claimed by the plaintiff.

3. At commencement of these proceedings counsel for the Plaintiff and the Defendants informed this court that there is no dispute regarding the quantum of damages claimed in this matter. Therefore the only issue in dispute are the merits of this case.

4. It was common course between the parties that the collision occurred in the intersection between Jorrisen and Voortrekker Streets in Polokwane which is controlled by traffic lights. That the traffic lights were functioning properly on the day of the collision. The weather condition was clear and visibility was very good. That Jorrisen Street is comprised of four lanes for traffic. The two lanes of Jorrisen run from the West to the Eastern direction whereas the other two lanes run from the East to the western direction. That Voortrekker Street is a two way traffic road comprised of two lanes, one lane runs from the South to North direction while the other lane runs from North to South. It is also common cause that on the day of the collision the Plaintiff was driving her motor vehicle in Voortrekker Street from south towards the northerly direction, whereas the second defendant was driving along Jorrisen Street from the West to the Easterly direction. That the sketch plan appearing on page 51 of the trail bundle 3 is accepted as a true reflection of the scene of the collision. The description of the key points of the sketch plan appear at page 44 of bundle 3.

5. The following witnesses were called to testify on behalf of the Plaintiff, namely Ms Koch, the Plaintiff herself and Mr Nico Botha. The following witnesses were called to testify on behalf of the defendant, namely Mr Frans Monanyane (the “second defendant”) and Lesetja James Chuene.

6. The plaintiff testified that on the 22nd of June 2010 at approximately 10:22am she was on her way to Game Stores travelling form her office driving in Voortrekker Street in a northerly direction. She said she was travelling at a speed of 55 km/h in an area where the speed limit is 60 km/h and that the weather was fine and visibility was 100%. As she approached the intersection at Voortrekker and Jorrisen Streets the traffic light was green for her. She

entered the intersection and saw a vehicle from her left side approaching at high speed and realised that that vehicle was not going to stop at the red traffic light. It was her testimony that the moment when she saw this vehicle she applied her brakes but collided with this vehicle causing damage to her vehicle being the full front. She also testified that the impact on the other vehicle was on the back right wheel. She said she could not see this vehicle approaching the intersection from her left in Jorrisen Street due to the high cement wall on the left corner which obstructed her view. During cross examination she confirmed the date on which the collision took place, the direction in which she was travelling as testified above, the colour of the robot being green for her and that Jorrisen Street consist of two lanes of traffic in each direction. She testified further that the robot turned green for her shortly before her arrival at the intersection. She stated that she was already in the intersection just after the box marked with a cross on page 51, Section 3 of the bundle, when she first noticed the approaching vehicle of the first defendant. She also informed the court that the intersection consist of four lanes, in other words, it is four lanes wide, crossing Jorrisen Street. She said when she saw the other vehicle she immediately applied brakes and that physically (the force of the accident, in other words, the impact) broke her foot which was on the brake and maintained that she was travelling at 55 km/h. She informed this court that point E on page 51, Section 3 of the bundle, indicates the position of her vehicle after the impact and that it is almost in the middle of the two lanes along Jorrisen Street when travelling in an easterly direction. She disagreed with the statement that had she applied the brakes she would have been able to stop and therefore avoid the collision. She also testified that she and the driver of the other vehicle entered the intersection at the same time, but that one is talking a about a matter of split seconds. She also testified that the photos on page 47 and 48 in Section 3 of the bundle

indicates the damage and the position of the two vehicles after the collision. She told this court that she could not have avoided the accident as she applied her brakes the moment she saw this other vehicle that in fact had she not applied brakes, her vehicle would have passed in front of this vehicle and the driver of the other vehicle would have collided with her vehicle. It was her testimony that she collided with the other vehicle and denies that the traffic light was red for her; and that she was negligent in any way. She did not dispute that she would have required to pass at least three lanes prior to the collision with the defendant's motor vehicle having regard to the point of impact.

7. Turning to the second witness that testified on behalf of the Plaintiff, Mr Nico Botha (Botha). During evidence in chief, Mr Botha testified that he was a witness during the collision on 22nd of June 2010 and that he was on his way to an appointment. That he was driving behind the black Mercedes-Benz (the plaintiff's motor vehicle) approaching the intersection of Jorrisen and Voortrekker Streets. He testified that the light was green for the black Mercedes-Benz and his vehicle. He then said that a collision occurred between the black Mercedes-Benz and a vehicle approaching from the left side in Jorrisen Street. He testified that it was approximately 20 – 30 metres from the intersection when he saw the vehicle approaching from the left side for the first time. During cross examination he confirmed that the weather conditions were clear and that there was no rain and as such visibility was very good. He testified that the space between his motor vehicle and the black Mercedes-Benz was about 80 – 100 meters. He said when he noticed the other motor vehicle approaching from the left the black Mercedes-Benz was already in the intersection. During examination in chief he testified that both the plaintiff and the second defendant were to blame for the cause of the

collision and testified that in his opinion the white bakkie was the guilty one. He informed this court that he did not see the white bakkie before the collision.

8. It was at this point that the Plaintiff closed its case. Counsel for the Defendants then brought an application in terms of Rule 39 (6) for absolution from the instance on the basis that the Plaintiff failed to put a case for the Defendants to answer and prayed for this court to save his clients the pain of having to answer in circumstances where the Plaintiff did not establish a *prima facie* case. Upon consideration of this application I was satisfied that there was a *prima facie* case upon which a court, properly applying its mind reasonably to such evidence before it, could or might find in favour of the Plaintiff. The application was accordingly dismissed.

9. The Defendants then proceeded with evidence and called Mr Frans Monanyane, being the driver of the defendants' motor vehicle, to testify as the first witness for the defendants. His testimony was that on the day of the collision he was driving the first defendant's motor vehicle. Monanyane was in the company of his two colleagues being Chuene and Baloyi who were passengers seated in the front and back seats respectively. His testimony was that he was driving the state vehicle, Ford Ranger, [.....] from west to east at a speed of between 40 and 50 km/ph while approaching the intersection. He said as he was approaching the intersection the robot was green for him allowing him to pass through the intersection. He testified that he was travelling in the far left hand lane of Jorrisen Street when he was approaching the intersection. He testified that on approaching the intersection there were two stationary vehicles at his left hand side. The two stationary vehicles were facing the southerly direction of Voortrekker Street. His testimony was that these vehicles had stopped because the traffic lights were

red and they were giving right of way to the second defendant. He told this court that when he was already in the intersection, he noticed a black Mercedes-Benz emerging from his right hand side on Voortrekker Street from south to north. He said that this black Mercedes-Benz was travelling at high speed and it passed through the red traffic lihts. According to Monanyane the collision happened in the blink of an eye and the only thing he could have done was to move away from the door and shift a bit away from the panel of the door as the collision was inevitable and that is when the other vehicle collided with the car he was driving, nearly overturning this Ford Ranger due to the impact. As testified earlier on Lt. Chuene and Sergeant Baloyi were also in the vehicle at the time of the collision. According to Monanyane he was the first person to enter the intersection when he noticed the plaintiff's motor vehicle emerging from south to north in Voortrekker Street. He testified that he was doing crime prevention patrol with Chuene and Baloyi on that day; and that they were not traveling at high speed since there was no emergency.

10. Monanyane told this court that the blue lights of the vehicle he was driving were not switched on as an illustration that they were not in a hurry and not travelling at a high speed. It was his testimony that according to him, blue lights would normally be switched on when there is an emergency that the police had to attend to and in those circumstances the police motor vehicle would be travelling at high speed. He also testified that even when the police motor vehicle's blue lights are switch on, on approaching an intersection it is required of the driver to observe and only pass the intersection when it is safe to do so. He testified that the traffic lights were green on his side which permitted him to pass through the intersection and that there were two stationary vehicles on his left which gave him right of way. He also testified that the motor vehicle he was driving was next to the box marked with letter

"E" on page 51, Section 3 of the trial bundle when he saw the black Mercedes-Benz for the first time. According to Monanyane the collision happened because the driver of the black Mercedes-Benz was negligent in that she was driving at an excessive speed in the circumstances, passed through the intersection when the traffic lights were red for her, that she failed to apply her brakes in order to stop her vehicle from colliding with the defendants vehicle, she failed to see that he was about to cross the intersection and the manner in which she collided with his vehicle, all pointed to her negligence. He said the black Mercedes-Benz approached the intersection by keeping straight at a high speed and there was no time to avoid the collision. He testified that the point of impact of the motor vehicle driven by him was between driver's door and the passenger door and at the back of his vehicle. He denied that he was travelling at a high speed as testified by the plaintiff and also denied the fact the two vehicles entered the intersection at the same time.

11. During cross examination Monanyane was referred to a sketch plan on page 51, Section 3 of the bundle to the box marked with letter "E" which according to him indicated the position of his vehicle when he first saw the plaintiff vehicle approaching the intersection. If regard is had to the fact that the box marked with letter "E" is the position of his vehicle when he first noticed the approaching vehicle of the plaintiff it means he was already in the intersection and almost crossed the lane, in fact he was about to pass the middle lane of Voortrekker Street. He agreed that point "C" on the sketch plan, page 51 Section 3 of the bundle, is an indication of the point of impact. It was put to him that considering the point of impact, his vehicle already passed the first lane in Voortrekker Street when the collision occurred according to the sketch plan. According to him the point of impact should be in the centre lane of

Voortrekker Street, in other words in the middle of the intersection. In terms of the sketch plan point “D” indicates the position of the police vehicle after the impact and point “E” the position of the plaintiff’s vehicle after impact. However, he disagreed with the position of these two vehicles. He was then given the sketch plan which indicated the place of the collision which he marked with the letter X indicating the position of the plaintiff’s vehicle when he first saw this vehicle. Letter Y being a point which indicates the position of his vehicle when he first noticed the plaintiff’s vehicle approaching at letter X. Letter Z as the correct point of impact if one has regard to this letters. Letter Y indicates the position of his vehicle when he first noticed the plaintiff’s vehicle approaching at letter X, which is the middle lane in Voortrekker Street, direction south to north. The point of impact indicated by him, being letter Z is in the middle of the road between the two lanes of Voortrekker Street. Based on this evidence, it was put to him that his vehicle therefore travelled half a lane from the point when he first noticed the approaching vehicle of the plaintiff to the point of impact. The plaintiff’s vehicle consequently travelled the distance between letter X and the start of the intersection as well as across three lanes in Jorrisen Street prior to impact. When he was asked why he did not include or make any reference to the two stationary vehicles in Voortrekker Street in his statement to the investigating officer at the police station, he testified that he did not find it necessary to do so. However he informed this court that he mentioned in consultation with his advocate that there were two stationary vehicles, the fact that his evidence would be that he entered the intersection before the plaintiff and that according to his testimony, she was travelling at a high speed.

12. The second witness of the defendants was Mr Chuene, who testified that he was a passenger in the defendants’ vehicle, sitting on the left side in the front.

According to his evidence, the defendants vehicle was at point E, page 51 Section 3 of the bundle, when he noticed the approaching black Mercedes-Benz. Chuene testified that the black Mecedes-Benz was travelling at high speed and that the traffic light was green for them, when they entered the intersection. That the traffic light was red for the black Mercedes-Benz. He also testified that visibility was good, the sun was shining and there were no clouds on the day of the collision. He testified that the first defendant's motor vehicle entered the intersection prior to the plaintiff's fast moving vehicle. He testified that after the defendant's motor vehicle entered the intersection, the black Mercedes-Benz emerged from the right, travelling from south to north along Voortrekker Street. It was his evidence that the plaintiff's motor vehicle was travelling at a high speed and passed through the red traffic light thereby colliding with the defendant's motor vehicle. Chuene confirmed that on the day in question they were doing crime prevention patrol in the Polokwane area and that the defendant's motor vehicle was not travelling at high speed when approaching the intersection as they were not in a hurry for anything. According to Chuene, on arrival at the intersection there were two stationary vehicles on their left on Voortrekker Street. The two vehicles had stopped because the traffic lights were red at the side of Voortrekker Street. He testified that the driver of the black Mercedes-Benz was negligent and caused the collision. He was not able to say the exact speed that the plaintiff's motor vehicle was travelling at, but testified that the second defendant was traveling at a speed of 40 km/h. According to him had the second defendant known that the plaintiff's motor vehicle was not going stop at the intersection when the traffic lights were red the second defendant would properly have accelerated to move away. It was his testimony that the second defendant did not anticipate that the black Mercedes-Benz was not going to stop and that this black Mercedes-Benz collided with the first defendant's motor vehicle.

According to Chuene the plaintiff is responsible for the collision because she was supposed to stop and she travelled at a high speed. He denied that the second defendant passed through a red robot and thereby causing the collision through his negligence.

13. During cross examination Mr Chuene testified that travelling at a high speed, or speeding, is travelling faster than the speed limit of 60 km/h. He was also referred to the sketch plan to indicate where the plaintiff's vehicle was when he saw it for the first time and with a pink marker he marked letter O on page 51, Section 3 of the bundle as the point where the plaintiff's vehicle was when he saw it for the first time. It was his testimony that he did not mention the two stationary vehicles on the left side of Voortrekker Street during consultation with the advocate because he was afraid to contradict himself because he wrote many things and that the other cars were not part of the collision. It was his testimony that the two stationary vehicles on the left side in Voortrekker Street is evidence that the light was green when they entered the intersection and that these vehicles allowed them to pass. He said his evidence that the second defendant could have avoided the accident had he known that the plaintiff would not stop by accelerating, was based on the distance between point C, being the point of impact on page 51 Section 3 of the bundle and point O, being the point of the plaintiff's motor vehicle when he saw it for the first time.

14. During arguments Counsel for the defendant's submitted that the plaintiff gave contradictory versions which are mutually exclusive regarding the sequence of events leading up to the collision which are improbable and she thus rendered herself to be an unreliable witness. He submitted that the first version by the plaintiff was that she noticed the defendant's motor vehicle being driven at high speed when she entered the intersection and that she was the first

person to enter the intersection while the second defendant was approaching the intersection at high speed. Having seen the defendant's motor vehicle driven at high speed and which was not going to stop at the red traffic light, she applied brakes, but could not stop and collided with the defendant's motor vehicle. If the plaintiff was travelling at a speed of 55 km/h, Counsel submitted that her version is improbable that she could not stop when she noticed the defendant's motor vehicle if one has regard to the wideness of the intersection. It was submitted that Jorrisen Street is comprised of four lanes which would have meant that for the plaintiff to have collided with the defendant's motor vehicle, she would have had to pass three lanes of Jorrisen Street before she reaches the fourth lane wherein the defendant's motor vehicle was travelling. He said that the plaintiff was driving a Mercedes-Benz CLS 350 which is a factor that this Honourable Court must take into account on the probabilities of the plaintiff's version given the above. It was counsel's submission therefore that the version is clearly improbable and that the court should reject the plaintiff's version as not credible. Counsel for the defendants proceeded to state that under cross examination the plaintiff introduced a second version namely that she arrived at the intersection simultaneously, with a difference of split seconds with the second defendant. He said it is so bizarre that the plaintiff could have collided with the defendant's motor vehicle when she was driving at a speed of 55 km/h and the second defendant was driving at high speed when they reached the intersection simultaneously. He submitted that if indeed the second defendant was travelling at high speed and the plaintiff was travelling at 55 km/ph when they reached the intersection at the same time, it follows that the second defendant would have long passed the intersection before the plaintiff could even pass the first two lanes of the four lanes of Jorrisen Street. According to counsel the second defendant had a shorter distance to cover in order to pass the intersection in view of the fact

that he was travelling from west to east along Jorrisen Street and he only had two lanes of Voortrekker Street to pass. It was his submission further that if the plaintiff and the second defendant reached the intersection simultaneously while the second defendant was driving at a high speed it would have taken longer time to reach the fourth lane of Jorrisen Street. The first and second versions of the plaintiff are mutually exclusive.

15. Counsel also pointed out that the plaintiff conceded that she is the one who collided with the defendant's motor vehicle during her evidence. He submitted that the plaintiff's evidence was full of contradictions, mutually distractive versions and unreliable and that the probabilities of the plaintiff's version are zero. Therefore this court is urged to reject the plaintiff's versions of events in their entirety as she was not a reliable and credible witness and gave contradictionary versions of events. Counsel concluded by saying that the plaintiff has not succeeded in proving negligence on the part of the second defendant.

16. With regard to Botha's testimony, Counsel for the defendants submitted that Botha was called to testify on behalf of the plaintiff and that he was referred, throughout the proceedings, as an independent witness to the collision. He argued that it has emerged during cross examination that Botha did not in fact witness the collision taking place and that to the extent that evidence was sought to be elevated because he was referred to as an independent witness, counsel found it necessary to refer this court to the judgement of Colman J in the matter between ***Gomes vs Visser, 1971(1) SA 276 (T)*** at page 278 where it was held was follows:

> *"In weighing up conflicting evidence at a trial it is, of course, proper for the presiding officer to have regard to the fact that some of the witnesses may*

*have a motive to misrepresent the facts whereas others appear to have no such motive. It does not follow from that, however, that the litigant who calls an independent witness to support his version should necessary succeed against an opponent who has no such witness available to him. Even an apparently impartial and independent witness can be mistaken or untruthful, while the testimony of an admittedly interested witness can be impressive and convincing."*

It was argued for the defendants that Botha's evidence was full of contradictions, inconsistent and that his version should be rejected. It was his submission therefore that Botha was not of any assistance to this court in that his evidence is irrelevant and should accordingly be rejected and that on consideration of the evidence given on behalf of the Plaintiff there is no case made against the defendant for the relief sought.

17. In argument Counsel for the plaintiff submitted that Botha is an independent witness who confirmed that he did not know the plaintiff prior to the collision and that his evidence in essence corroborated the evidence of the plaintiff and importantly that the traffic light was green for her when she entered the intersection and contented that there is no motive as to why Mr Botha will come to court on his own time to testify on a version that is not true when he has no interest in the matter. Botha's evidence was also straight forward, forthcoming and at no time did he contradict himself or even the evidence of the plaintiff.

18. As regards, the evidence of Mr Frans Monanyane, the second defendant in this matter, it was submitted that his evidence should be disregarded by this court for the following reasons. When he was faced with certain points where he needed to make certain concessions, he became evasive and vague in his answers, one had to repeat not only the questions, but also the previously

given answers. He would give evidence on a certain point just to go back on his evidence once he realised that same will not favour his version of events. The following examples were pointed out to the court:

a. Initially in his evidence in chief as well as in cross examination he would testify that his vehicle was next to the box marked with letter E on page 51, Section 3 of the bundle. However in cross examination he later on moved this point to the mark letter Y.

b. He initially in cross examination agreed to the point of the impact marked with letter C as per page 51, Section 3 of the bundle. However later on in cross examination he moved the point of impact to the middle of the road, in other words Voortrekker Street marked with letter Z.

c. He initially agreed that his vehicle travelled half a lane (point Y – point Z) from the time he saw the plaintiff until impact. However, later on in cross examination he did not want to commit to this answer and kept on referring to the fact that he is not good with distances. When pressured on the fact that he was not asked to give a specific distance and merely to confirm, his previous evidence on this point, he reluctantly agreed on.

d. He refused to concede to the fact that if his vehicle had travelled half a lane from letter Y to letter Z and plaintiff's vehicle travelled three full lanes plus the portion from mark X to the start of the intersection to mark Z, his version is improbable that a collision would have occurred as the plaintiff would have already passed his vehicle by the time she

reached the point of impact. Counsel for the plaintiff submitted further that it should also be considered that the evidence of the second defendant and the evidence of Mr Chuene as to the point of impact differs furthermore and importantly according to Mr Chuene the defendant's vehicle was at the box marked E when he first noticed the plaintiff whom was at that stage at mark O, marked with a pink marker. The honourable court would note that mark O and mark X are at the exact same point. However the point of the defendant's vehicle seems to differ. One can but just speculate as to the exact point agreed on of the plaintiff's vehicle that different points are pointed out by the two witnesses of the defendant's vehicle at the same time. Counsel further argued that it is also important to mention the fact that certain aspects of his evidence was never put to the plaintiff, nor the independent witness and thereby same could never be tested before court. It therefore follows that the honourable court cannot give any weight to any of the evidence being the following:

(i) That there were two vehicles stationary on the left side in Voortrekker Street waiting for them to enter and cross the intersection because the light was green for him;

(ii) That the plaintiff was travelling at a high speed;

(iii) That the second defendant entered the intersection prior to the plaintiff. Mr Monanyane could never explain why the aforesaid was never put to the plaintiff, nor the independent witness, nor can he really explain same was not included in his statement to the investigating officer two days after the collision.

19. It was contended by Counsel for the plaintiff that on the evidence of Mr Chuene one can again argue that this witness was not credible, neither reliable on his version of how the collision occurred. Again, when this witness was pressured on certain aspects he would become vague, evasive and would just not give a straight answer, she argued. Of importance she submitted, is the contradiction of the evidence of Mr Chuene and the evidence of Mr Monanyane as to the point of impact and the position of the defendant's motor vehicle when the plaintiff was allegedly at points X and O as reflected on page 51 of section 3 by Mr Monanyane and Mr Chuene themselves. Counsel argued that it is furthermore important that although Mr Chuene allegedly indicated to the defendants' counsel that the plaintiff was travelling at a high speed (speed according to this witness), the speed travelled by the plaintiff on her evidence of 55 km/h was never placed in dispute by the defendants.

20. Counsel for the Plaintiff argued that it seems on the evidence that the Honourable court is faced with two irreconcilable versions. It is however respectfully contended that after having considered the evidence of the witnesses with specific reference to their credibility, reliability and probabilities, the honourable court should find in favour of the plaintiff for the following reasons:

20.1 There is no basis for arguing that the plaintiff should be regarded as an incredible and unreliable witness based on her evidence;

20.2 As already pointed above there is nothing improbable in the evidence of the plaintiff;

20.3 Mr Botha, an independent witness with nothing to gain by testifying before court is without a doubt a credible and reliable witness and in fact assisted the court through his testimony;

20.4 Mr Monanyane is clearly not credible, nor reliable, considering the fact that a criminal record will affect him personally and in his career, also important aspects of his evidence was never put to the plaintiff, nor the independent witness and the fact that he was evasive and vague in answering certain questions. Furthermore, counsel argued his evidence of the distance between his vehicle when he saw the plaintiff for the first time is improbable considering the fact that from that point to the point of impact his vehicle travelled half a lane whereas he expects the honourable court to believe that in that same time the plaintiff's vehicle travelled three lanes plus the distance between X and the start of the intersection. In other words, the plaintiff travelled more than 6 times the distance his vehicle travelled. In this regard the court should have regard to the fact that according to him, he was travelling between 40 and 50 km/h whereas according to the plaintiff she was travelling at 55 km/h, which is undisputed. Considering the two distances between Y and Z, and Y and X, the aforesaid clearly does not make sense and is improbable.

21. Counsel further submitted that Mr Chuene's evidence should also be guarded against and it is respectfully submitted that this witness was not credible, definitely not reliable and as discussed above, the evidence of the distance between the point of the defendant's vehicle and the point of the plaintiff's vehicle when he first noticed her, is improbable as the defendant's vehicle would have passed the point of impact by the time the plaintiff reached this point. It was therefore submitted that the plaintiff proved her case on a

balance of probabilities and that the Honourable court should find that the traffic light was green for the plaintiff when she entered the intersection and thereby the second defendant was negligent and his negligent driving caused the collision. Counsel contended further that there is no evidence to indicate that the plaintiff was contributory negligent. She concluded that in light of the aforesaid the plaintiff seeks judgement against the defendants in the amount of R 317 823.70, together with interest and cost. Counsel for the defendant's argued in closing that the witnesses on behalf of the defendants presented the most credible and reliable events on the probabilities of how the collision occurred. He argued that the witnesses corroborated each other on material aspects relating to the collision whereas evidence on behalf of the plaintiff was full of contradictions and mutually distractive versions. He argued that this honourable court is therefore urged to accept the defendants' version as the most reliable and credible on the probabilities of how the collision occurred and that the plaintiff's version of events should accordingly be rejected. It was his submission that on the basis that was set out above, it is clear that the plaintiff has failed to prove her case on a balance of probabilities and in the circumstances the plaintiff's claim should be dismissed with costs. He submitted further that in event that the court were to find that the second defendant was negligent, which is denied, the defendants' pleaded in the alternative that the plaintiff's negligent driving contributed to the collision. In this regard, the defendants stand by their evidence as set out above. The court is requested to assess and apportion negligence 80% against the plaintiff and 20% against the defendants. It is accordingly within the court's discretion to grant an order of costs and accordingly the court is requested to grant an appropriate order related to the costs, argued counsel for the defendants.

22. It is trite law that a party seeking relief in a civil suit has a duty or an onus so to speak to satisfy the court on a balance of probabilities that he/she is entitled to succeed on his/her claim. The Plaintiff in this case bears the onus to prove, on a balance of probabilities that the first Defendant's driver was negligent and that it was his negligence that caused the collision which caused the Plaintiff damages (See ***Ntsala & Others V Mutual & Federal Insurance Co. Ltd 1996 (2) SA 184 (T) at 190E-F)***. This court must therefore decide whether on all of the evidence, probabilities and inferences before it, the plaintiff has discharged the onus of proof on the pleadings on a preponderance of probability. It is a well-established principle that the court does not adopt a piecemeal approach of first drawing the inference of negligence from the occurrence itself and then regarding this as a *prima facie* case and then deciding whether it has been rebutted by the Defendants' explanation.

23. The Plaintiff was in my view a credible witness who remained calm and steadfast in providing her version of events which preceded the collision in question. She answered questions spontaneously and displayed a good demeanour in answering all questions put to her and she did so without much hesitation. Her testimony that she was driving at 55km/h was never placed into dispute. Mr Botha corroborated her version that the traffic light was green for her when she entered the intersection where the collision occurred. The fact that she conceded to the fact that she collided with the Defendants' motor vehicle is a factual issue which in my view does not on its own point to any *culpa* on her part. I therefore find her version reliable.

24. Although Mr Botha in cross examination conceded that he did not see the motor vehicle of the Second Defendant prior to the collision, I found him to be a good and credible witness. His testimony which was not placed into dispute

was that the traffic light was green for the Plaintiff and himself. This evidence is important. I cannot reject his entire testimony merely because he did not see the motor vehicle of the Defendants' prior to the collision as this does not detract from what he saw namely, that the traffic light was green for the Plaintiff and himself. This is a fact which the Defendants never disputed. I am also not convinced that he came here to give testimony that will support the Plaintiff's case as was suggested by the Defendants' Counsel. His statement that he thinks both the plaintiff and the Second Defendant caused the collision testify to his independence and lack of any personal motive to mislead this court in favour of the Plaintiff.

25. The Second Defendant ("Monanyane") was also in my view calm and steadfast in his version. However he did not impress me in his testimony as being entirely honest and candid in his version that was corroborated by Mr Chuene that the robot was green for him and red for the Plaintiff. My difficulty with this evidence is the reference to the stationery vehicles facing South in Jorrisen street. This witness and Chuene referred me to these stationery vehicles in an attempt to convince me that these vehicles were a further support of their version that the robot was green for them and that the Second Defendant's vehicle had a right of way. It should be noted that both these witnesses are senior members of SAPS with many years of service and experience. They both conceded to the importance of these two stationery vehicles in supporting their version in court that the traffic light was green for them, yet they did not put this in their respective statements to the Police when reporting the incident. Neither was this put to the Plaintiff's witnesses by their Counsel. Suffice it to say that Monanyane could not explain this glaring and important omission. If I must attach any weight to this evidence it should have been put in the statements to the Police and at the very least it should

have been put to the Plaintiff's witnesses during evidence so that it can be tested. In this regard I reject as an excuse, the testimony of Chuene that because they do not work in the office they do not know how to take down a statement. Monanyane testified that if he was to be found guilty of negligent and reckless driving he will have a criminal record and also have a negative record which may impede prospects of future growth and employment within the SAPS. Surely a person with so much to lose will make sure he put all the evidence and information in support of his case before Court especially in a collision like this where a state vehicle is involved. His evidence and that of his witness Chuene differ significantly regarding material aspects of the same collision they are testifying about. This relates to the point of impact of the 2 vehicles. Having regard to where the Plaintiff's vehicle was when he first saw it to the point of impact it is improbable at the speed of 40 to 50 km/h that the collision would have occurred where he suggest it did. I did not find Monanyane to be a credible and reliable witness and therefore do not believe him.

26. Mr Chuene on the other hand was not very forthcoming with straight forward answers. I have already pointed out that he contradicted Monanyane with regard to the point of impact, a very material aspect. This witness was indeed vague and somewhat evasive too. This is besides the fact that he said he did not want to contradict himself because they wrote many things during evidence when he was sked about his omission of the reference to the 2 stationery vehicles referred to above. This raised serious alarm bells as regards his reliability and credibility as a witness because his fear of contradiction means he wanted to tailor a version which supported his testimony. I therefore reject his testimony.

27. Counsel for the Defendants referred me to the decision of Colman J in the ***Gomes v Visser*** supra at Page 279:

> *"…..That being so it is, in my view, proper for a Court to take a judicial notice of the facts that when the traffic lights facing in one direction at a right angled intersection are green for those facing at the right angles of them should be, and probably are red.*
>
> *That of course, is no irrebuttable presumption. Any mechanical or electrical device can be faulty at times. But if there is no evidence of malfunction the Court trying a civil case should, in my view, take into account as a probability that if the lights facing in one direction were green at a particular point of time, those at right angles to it ere red*".

28. Ultimately the decision of this Court will turn on whether the traffic light was green for the Plaintiff or the Second Defendant at the time immediately preceding the collision based on the versions of evidence tendered by each of the witnesses. I am faced with two irreconcilable versions by the litigants. The Plaintiff may have been inconsistent or contradicted herself on one aspect of her testimony which pertains to her assertion that she and the Second Defendant arrived at the intersection at the same time with only the difference of split seconds. Apart from that she was a very good witness. Her testimony that she was travelling at 55km/h speed is undisputed. Her version that the traffic light was green for her when she was approaching the intersection was corroborated by Mr Botha. On the other hand Monanyane and Chuene assert that the traffic light was green for them and red for the Plaintiff. In support of this they refer to two stationery vehicles on their left hand side in Voortrekker Street. I have already pointed out the difficulty that I have with this evidence. Even if I were to consider for a moment that their version that the traffic light was green for them has some truth to it I cannot sustain that argument

because they also differ materially with regards to the point of impact of the collision notwithstanding that the sketch plan on page 51 section 3 of the bundle was accepted as a true reflection of the accident scene. Based on their different versions regarding the point of impact and where they place the Plaintiff's motor vehicle when they saw it for the first time it is very improbable that the traffic light was green for them. I do not even want to attach any value to the story about the blue lights and their significance given the aforesaid. I have also given views of my impression of them as witnesses. I reject their version that the plaintiff was negligent as they advanced no evidence to support this. When I take all the versions in terms of inferences, probabilities and improbabilities of the same I am of the view that the defendants failed dismally to convince me that they are entitled to succeed on their defence. I think that it is more probable that the traffic light was green for the second defendant when he was a distance away from the intersection, it turned orange and he wanted to beat the caution by driving faster to pass through the intersection before the traffic light turned green for the other side and that is when the collision happened. It is therefore my view that the version they put before this Court is simply not true let alone probable.

29. On the other hand I am satisfied that the Plaintiff proved its case on a balance of probabilities and that its claim ought to succeed. I am convinced on the totality of the evidence before me that the Second Defendant crossed a red traffic light which was green for the Plaintiff.

30. Accordingly I am of the view that the Second Defendant was negligent and that the collision happened as a result of his negligence.

31. In the circumstances, I make the following order:

31.1 The first defendant and second defendant jointly and severally, the one paying the other to be absolved, shall pay to the plaintiff the sum of **R317 823.70 (Three Hundred and Seventeen Thousand Rand Eight Hundred and Twenty Three Rand, Seventy Cents)**.

31.2 The first defendant and second defendant jointly and severally, the one paying the other to be absolved, is liable for the interest on the aforesaid amount at a rate of 9% pa *a tempora morae* from 20 October 2010 until date of payment.

31.3 The amounts in paragraph one and two above shall be paid to plaintiff's attorney of record, Erasmus Scheepers Attorneys, into the following trust account: **Erasmus Scheepers Attorneys, Absa Hatfield, Account Number: , Branch Code: 335545 / 632005.**

31.4 The defendants, jointly and severally, the one paying the other to be absolved, shall pay the plaintiffs costs on a party and party scale which costs shall include the costs occasioned by the employment of counsel.

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**MALULEKE**
**JUDGE OF THE HIGH COURT**
**GAUTENG DIVISION, PRETORIA**

**Date of hearing** : 3 August to 5 August 2015

**Representation for the Plaintiff:**

Counsel : M Van Antwerpen

Instructed by : Erasmus Scheepers Attorneys

**Representation for the Defendant:**

Counsel : T B Hutamo

Instructed by : The State Attorney