

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: 88925/2019

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

DATE **21/02/2025**

SIGNATURE

In the matter between:

SAINT PATRICK ALFRED

PLAINTIFF

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA

DEFENDANT

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 12 March 2025.

JUDGMENT

MANAMELA, AJ

[1.] The Plaintiff, Saint Patrick Albert, claims delictual damages against the Defendant, the Passenger Rail Agency of South Africa (“**PRASA**”) resulting from injuries sustained by the Plaintiff following an incident which took place at

Isando train station on 30 November 2018. The claim is disputed by the Defendant.

[2.] The Plaintiff alleges that he fell onto the platform and sustained injuries as a result of being shoved and pushed out of an overcrowded moving train whilst the train was departing from Isando station heading to Tembisa station.

[3.] The Defendant, PRASA, contends that the Plaintiff tried to embark on a train that was already moving off the platform.

[4.] The parties agreed on separation of issues of merits and quantum in terms of Rule 33(4) of the Uniform Rules of Court.

Undisputed facts

[5.] It is common cause between the parties, firstly, that:-

- a. The Plaintiff was in possession of a valid train ticket from Isando station to Tembisa station,
- b. The incident occurred on 30 November 2018,
- c. The incident occurred at Isando station,
- d. The incident relates to train number 1[...].
- e. The approximate time of the accident was between 5:52am and 06:20am.

The facts in dispute

[6.] What is disputed by the Defendant is mainly the manner in which the accident occurred, which affects the following evidential aspects of the case

–

6.1. Whether the Plaintiff was pushed off a moving train.

6.2. Whether there was Negligence/Wrongfulness on the part of the Defendant.

6.3. Whether the Defendant did not take reasonable measures to provide for the safety of commuters and whether the Plaintiff proved that the incident

would have been prevented if the Defendant indeed took reasonable measures relating to the protection of commuters on trains more in particular on the specific train and/or coach that the Plaintiff travelled in.

The Plaintiff's case

- [7.] The Plaintiff testified that he was coming from work in Isando, going to his place of residence in Tembisa, on the day of the incident. He testified that he uses a train everyday from work to home, and that he was with his friend and colleague, Frank Kashindi, who also testified as a witness for the Plaintiff.
- [8.] The Plaintiff testified that he bought his ticket at 5:52 at Isando station, and waited for a train for approximately 10 to 15 minutes at the platform before an overcrowded train arrived at the platform. After entering the overcrowded train, he was standing close to the open doors with his back facing towards the open doors. When the train started to depart (moving), there was still a lot of pushing and shoving and as a result, he was pushed from the moving train and fell onto the platform.
- [9.] The Plaintiff testified that that there was a lot of pushing and shoving between passengers. Passengers were holding on to each other and were standing whilst the train was preparing to depart from the platform. He further testified that he would not have been pushed if the doors were closed. He mentioned that the train had not started moving by the time he embarked onto the train.
- [10.] He testified that he got injured on his right shoulder as he fell and landed with hands on the ground.
- [11.] The train stopped as there were screams and shouting by other passengers soon after the accident. The Plaintiff's friend Kashindi got off the train and assisted the Plaintiff as he was lying on the platform. After 2-3 minutes a female security officer arrived to assist the Plaintiff.

[12.] The Plaintiff testified that the female security officer did not ask for a statement and did not witness the incident. The Plaintiff testified that there were no guards around the platform to manage commuters prior to the incident.

[13.] Mr Kashindi was a witness who testified on behalf of the Plaintiff that he witnessed the Plaintiff being pushed off the moving train. He testified that he was working for Bad Boys Security company, whilst the Plaintiff testified that they were both working for Velvel security.

[14.] In the particulars of claim the Plaintiff pleaded that the Defendant is in breach of its legal duty owed to the Plaintiff, or acted negligently in carrying out the terms of the agreement and/or legal duty in the, *inter alia*:

14.1. The Defendant failed to ensure the safety of the Plaintiff in allowing the relevant train coach to have become overcrowded;

14.2. The Defendant failed to control the number of passengers and failed to ensure that personnel be placed at the train coaches to regulate the number of passengers boarding;

14.3. The Defendant failed to ensure that the doors of the train coach were working orderly and were properly maintained;

14.4. The Defendant failed to ensure that the doors of the relevant train coach closed before the train coach departed;

14.5. The Defendant failed to prevent the Plaintiff from suffering physical harm while he was a passenger on the relevant train coach.

The Defendant's case

[15.] From the Plea, the Defendant pleads that the incident was caused as a result of the sole negligence of the Plaintiff, who was negligent in one or more of the following ways, firstly that he stood at an open door of a moving train, which

pose danger to himself, secondly, that he failed to take any adequate steps to prevent the incident when by reasonable case, he could have done so, thirdly, that he voluntarily got onto an overcrowded train where there was no space for anyone to get into the train, and fourthly, that he forced the doors of the train open before the train operator could stop open the doors, thereby posing a danger to himself and other members of the public.

[16.] Based on what was pleaded by the Defendant, it is evident that the Defendant denies that it was or its employees were negligent in anyway alleged by the Plaintiff.

[17.] The Defendant further pleaded in the alternative, that in the event of this court finding that the Defendant was negligent, the Defendant pleads that the Plaintiff was also guilty of contributory negligence and damages suffered by the Plaintiff should be reduced proportionate to the degree of his own negligence.

[18.] The Defendant called one witness, Ms Boshomane, who was the security officer at the time of the incident who worked for the Defendant's subcontractor, Changing Tides. Ms Boshomane testified that she witnessed the Plaintiff trying to embark on a moving train.

[19.] She testified that she was working as a security officer and her duties entailed patrolling and observing activities around the station. She testified that she was walking toward the platform on the staircase when the Plaintiff suddenly ran past her towards the train, where she told the Plaintiff not to chase the moving train. The Plaintiff continued running towards the moving train that was busy departing the Isondo Train Station whilst the train doors were closed. She further testified that while the Plaintiff then fell and injured himself whilst trying to board a moving train. She stated that she was 2m away from the Plaintiff when the incident occurred.

Analysis

- [20.] The test to determine delictual liability is trite. It involves, depending upon the particular circumstances of each case, the questions whether (a) a reasonable person in the defendant's position would foresee a reasonable possibility of his or her conduct causing harm resulting in patrimonial loss to another; (b) would take reasonable steps to avert the risk of such harm; and (c) the defendant failed to take such steps. But not every act or omission which causes harm is actionable.
- [21.] For liability for patrimonial loss to arise, the negligent act or omission must have been wrongful. And it is the reasonableness or otherwise of imposing liability for such a negligent act or omission that determines whether it is to be regarded as wrongful¹.
- [22.] Primarily the Plaintiff's case is that the Defendant is in breach of its obligation to members of the public and in particular the Plaintiff in that it failed to take reasonable measures to prevent the Plaintiff from being injured. The Plaintiff places reliance on the duty enjoined upon the Defendant to ensure that passengers are protected from physical harm whilst making use of the public transport services.
- [23.] The main question is whether the Plaintiff provided enough evidence on the balance of probabilities in light of the sequence of events to prove that the Defendant did not take reasonable measures to comply with its obligation to protect members of the public and in particular the Plaintiff himself.

Whether the Plaintiff was pushed off a moving train

- [24.] When one considers the evidence led by the Plaintiff, it is apparent that the averment that the doors of the train were open and that it was overcrowded with no space to embark or disembark, is common cause.

¹ *South African Rail Commuter Corporation Ltd v Thwala* (661/2010) [2011] ZASCA 170

- [25.] It is therefore expected that the defendant ought to have foreseen the consequences of allowing a train moving with open doors when it is also overcrowded, as this is what a reasonable person in the defendant's position would have foreseen, consequentially, the defendant should have also foreseen the possibility causing harm resulting in patrimonial loss to another. In this regard I align myself with the view in *Mazibuko*, Weiner J said that "no train should be in motion unless all the doors are properly closed"².
- [26.] On the question of whether the Plaintiff was pushed off a moving train, it is evident from Defendant's Plea that that the Defendant made a concession about this aspect. It is trite that an admission in a plea cannot be withdrawn or otherwise amended by an ordinary notice of intention to amend (or notice of amendment) as a substantive application to court is required. It is required for Defendant to show under oath that the admission was made in error, and that Plaintiff will not suffer material prejudice if the amendment is granted.
- [27.] I find that the Defendant failed to take reasonable steps to avert the risk, in that it failed to ensure that the train doors can close, and it failed to restrict overcrowding by just having personnel to monitor and manage passengers' movement.

Whether there was Negligence/Wrongfulness on the part of the Defendant

- [28.] The legal test for negligence was explained as follows in *Kruger v Coetzee*:³
For the purposes of liability culpa⁴ arises if –

- (a) *a diligens paterfamilias⁵ 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.*

² *Mazibuko v Passenger Rail Agency of South Africa*, 2011/40493 para 33.

³ *Kruger v Coetzee* 1966 (2) SA 428 (A) 430E-F.

⁴ I.e., negligence.

⁵ *The reasonable man, travelling on the proverbial bus to Putney.*

- [29.] The onus to prove negligence rests on the plaintiff and it requires more than merely proving that harm to others was reasonably foreseeable and that a reasonable person would probably have taken measures to avert the risk of such harm. The plaintiff must adduce evidence as to the reasonable measures which could have been taken to prevent or minimise the risk of harm.
- [30.] The Defendant pleaded that the incident was caused as a result of the sole negligence of the Plaintiff who was negligent in, amongst other reasons, that - the Plaintiff stood at the open door of the moving train which posed a danger to himself at that moment; that the Plaintiff voluntarily got into an overcrowded train where there was no space for anyone to get into the train.
- [31.] The question is, what is there for the Plaintiff to do when a train is running with open doors and is overcrowded. I am of the view that if there is anyone to rectify this it would only be the Defendant, I support the view by AJ Pangarker in *Maphela v Passengers Rail Agency of South Africa*⁶, that -

“[54] In my view, all that was required of the defendant was to comply with its own operating instructions. Yet, the defendant failed to do so and operated its train from Mutual to Nyanga stations with its carriage doors open; put another way, the defendant’s employees omitted to close the train doors, and such conduct is not acceptable. In allowing the train doors to be and remain open while the train was in motion, the defendant failed in its legal duty towards the plaintiff as a commuter. The resultant finding is that the defendant failed to ensure that the safety precaution (closing the train doors) was complied with and such failure amounts to negligence on its part. A reasonable organ of state in the defendant’s position, which owes a public law duty to commuters, would have ensured that the train doors were kept closed to prevent the plaintiff’s fall or slip from the train onto the railway tracks. Thus, the reasonable possibility of the plaintiff, a commuter, falling from

⁶ (834/021) [2023] ZAWCHC 137 (9 June 2023)

the packet, moving train whistly the doors were open, was foreseeable.”

Reasonable measures to provide for the safety of commuters

[32.] From the evidence led and what was pleaded, I find that it is most probable that Counsel for the Defendant illustrated that the Plaintiff was not train surfing but train stuffing.

[33.] This is typically a case where the court is facing two conflicting versions which are mutually destructive. The correct approach would obviously be to draw an inference that two versions cannot be both true. When there are conflicting versions, the Court stated in *Stellenbosch Farmer’s Winery Group Ltd and Another v Martell & Cie SA and Others*⁷:

“[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 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

⁷ (427/01) [2002] ZASCA 98 (6 September 2002) at paragraph 5.

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."

- [34.] I find that the evidence given by Ms Boshomane had inconsistencies when she testified that the Plaintiff ran past her towards the moving train whilst she was at the staircase walking down towards the platform where the train was. She further testified that she merely told the Plaintiff not to attempt to board the moving train. She was unable to answer the question as to how far the staircase was from the train which the Plaintiff allegedly attempted to board. The Defendant, did not plead that the Plaintiff was stuffing or trying to embark on an already moving train when he ended up falling, but led that evidence during trial to that effect.
- [35.] It is very unusual for a security officer who had been working at the train station for some time not to be able to give some sort of indication of the distance between the staircase where she was and the train. This is relevant due to her testifying that she was merely 2 meters from the Plaintiff when the incident occurred and able to attend to him immediately.
- [36.] Counsel for the Plaintiff argues that it is impossible that even if the distance between the staircase and the train was merely between 10 or 15 metres, Ms. Boshomane could not have been 2 meters away from the Plaintiff at the time of the incident.
- [37.] It should be noted that Ms. Boshomane's testimony deviated materially from what was pleaded by the Defendant. The two versions (version pleaded and version testified) are materially destructive.

[38.] The Plaintiff testified that he did not make any statement as to how the incident occurred on the day in question, to either the security officer, the paramedics and hospital staff upon admission.

[39.] It would be unjustifiable to consider both such evidence, in fact, where there is no pleading there is no evidence. I am of the view that failure to plead should weight against the party who ought to have pleaded.

[40.] The only place where it was mentioned that the Plaintiff fell whilst trying to get inside of a moving train was in general notes made by the hospital staff.

Conclusion.

[41.] I have come to the conclusion that the plaintiff has discharged the onus that he bears and therefore the defendant is liable for the damages suffered by the plaintiff.

The following order is made:

1. The Defendant is liable for 100% of the Plaintiff's proven damages resulting from the incident of falling from a train at Isando train station on 30 November 2018.
2. The Defendant is ordered to pay the Plaintiff's agreed or taxed costs to date;
3. The trial on quantum is postponed *sine die*.

P N MANAMELA
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of hearing:

APPEARANCES:

Counsel for the Applicant: Adv. A Ras.

Attorneys for the Applicant: Campbell Attorneys.

Attorneys for Defendant: Makhubela Attorneys.