IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN

CASE NO: 9117/2015

In the matter between:

FATIMA KING PLAINTIFF

and

ARBOUR TOWN (PTY) LTD FIRST DEFENDANT

BLACK GINGER 402 (PTY) LTD t/a
BRILLIANT CLEANING SECOND DEFENDANT

J U D G M E N T
Delivered on: Thursday, 13 June 2019

Olsen J

[1] The plaintiff in this matter sues in her representative capacity as the mother of her minor daughter who was born on 7 May 2007. The particulars of claim delivered on her behalf alleged that on 30 December 2010 the plaintiff's daughter slipped on a pool of water on the tiled floor of a toilet facility in the Galleria Shopping Centre, Amanzimtoti, and that a "head injury with sequelae" resulted, for which she must be compensated.

[2] The first defendant is the owner of the shopping centre. The second defendant is a cleaning company contracted to provide cleaning services at the centre including in and around the ablution facility within which the accident occurred. The particulars of claim advanced the case that one or the other of the defendants was, or both of them were, negligent in relation to the event because they failed to ensure that the floors of the facility were at all times dry and did not constitute a slipping hazard; because they failed to warn

members of the public of the presence of water on the floor, and/or cordon or close off the relevant area until the floor became dry; because there were inadequate inspections of the area to ensure that the users of the facility were not placed in danger; and because employees of one or the other of the defendants who were present on the day did not ensure that the floor was dry and not a slipping hazard.

[3] An order for the separation of issues was made. This judgment concerns the issues in the case other than the nature and extent of injuries suffered by the child, and the quantum of damages, if any, due in respect thereof.

[4] I will refer to the plaintiff's daughter in this judgment using that term, or as "the child".

[5] On the day in question the plaintiff was at the shopping centre with her daughter, and in the company of her daughter's aunt, a Ms August. The child wanted to go to the toilet. All three of them went to the facility. The plaintiff took her daughter into one stall and Ms August went into another. The latter emerged first and went across to a hand basin to wash her hands. Whilst she was busy there the plaintiff and her daughter emerged from the stall they had occupied with the child moving towards the hand basins about two paces ahead of her mother. She then fell forward and struck her head against the tiled edge of a protruding corner of the wall adjacent to the basin at which Ms August was busy. This much of the events of that day proved uncontentious during the trial.

[6] The essential features of the layout of the ablution facility were depicted in a series of photographs handed in by consent. They show the position of electric air dryers provided for the use of patrons. As is usual with these electrical devices, they were placed at a distance from the wet area (i.e. the line of hand basins). In this case each of them was on a wall behind the hand basins so that the user would have to turn away from the hand basins with wet hands to approach the dryer. The proposition that this layout would or might cause drops or droplets of water to fall to the floor between the hand basins and the dryers was not questioned by any of the witnesses.

[7] The first question to be considered is the mechanism of the child's fall. According to the plaintiff she did not see whether the floor was wet or dry

when she was inside the ablution facility. She accepted the proposition that had there been a pool of water on the floor she would have seen it. She said that her daughter was at the time wearing shoes which had a non-slip sole. Although her evidence was not perfectly clear on this issue the impression I gained was that the sole of the shoe had a rippled texture.

[8] Ms August confirmed in evidence that she did not see any pool of water. What she saw, she said, were "droplets" on the floor but she made it clear that the floor was not "soaking wet". She did not see these droplets until the incident occurred. As she put it she noticed them "as the reason why [the child] fell". At the end of her evidence it was not clear to me exactly what Ms August was saying about the extent of distribution of droplets of the floor. She had mentioned in evidence that at the time that they entered a cleaner was not present in the ablution facility, but that one entered the facility as soon as the fall had occurred, attracted presumably by the crying out of the plaintiff and perhaps also by the crying of the child. In response to a question from the court she stated that she was not saying that there were so many "droplets" on the floor that you could say that the cleaner had not done her job of drying the floor. That observation, as well as Ms August's choice of the word "droplets" to describe what I think must have been spots of water on the floor, do not in my view support the plaintiff's case that the child slipped on water.

[9] The child was only three and a half years of age on the day in question. It is well known that small children sometimes fall without that necessarily being caused by any obstacle or a slippery surface. Small children do not keep their footing as well as adults for want of fully developed upper body control. Although the plaintiff said in evidence that the child "slipped" she was unable to give a description of the mechanism of the fall which persuaded me that it was more probable than not that the child had slipped on a slippery surface. Ms August had her back to the child at the time of the fall. She claimed to have seen the child slipping in the mirror placed above the wash hand basin at which Ms August was busy. Whilst there was no evidence before me that anyone had tested this proposition, it strikes me as unlikely, having regard to the photographs, that Ms August would have been able to see in the mirror how precisely the child fell.

[10] Each of the plaintiff and the first defendant called an expert to give opinion evidence concerning the floor in question. Each of the experts tested the floor by wetting it to establish whether that rendered the tiles slippery. Mr Gregersen, who was called by the plaintiff, said that he conducted the experiment by sprinkling a good coating of water from his water bottle onto the floor. He found that it did not render the tiles slippery. The summary of his evidence puts it this way.

'Some of the floor tiles were very shiny and although they appeared to be slippery, when I splashed water on them and tried to cause my shoe to slip on the wet shiny tiles, they were not slippery and my shoe would not slip on them.'

He postulated that perhaps some sort of non-slip coating had been applied to the tiles, subsequent to the event, to put them in this condition. That was mere speculation, and the evidence for the defendants contradicted that proposition.

[11] Mr Caramanus who was called by the first defendant delivered a report pointing out that some tiles are constructed in a way which renders them unlikely to become slippery when wet. He also tested the tiles, the precise specification of which he was unable to establish. He tested the area by wetting the tiles and, according to his summary, 'getting various shoe types of different sole materials to apply moving pressure as if walking'. The tiles did not become slippery.

[12] When he gave evidence Mr Gregersen, presumably pressed by the evidence of the tests which both he and Mr Caramanus had conducted, and by Ms August's description of a not significant distribution of "droplets" on the floor, ventured a suggestion not canvassed in the summary of his evidence delivered to the defendants. The theory he advanced was that a child is very light, and has small shoes, as a result of which there is a lower co-efficient of friction rendering it a possibility (he did not put it higher than that) that very few drops in an area could cause a small shoe to slide very easily. This theory was not supported by any calculations reflecting a comparison of co-efficients of friction generated under the soles of the feet of adults and

children respectively. I do not regard this theory as having any value in the adjudication of this case. For what it is worth, my sense is that the force generated by a body of a small light child is applied on a very much smaller contact area under the child's small feet than is the force imposed by the heavier body of an adult with larger feet. It is not perfectly obvious to me that the friction for, say, every square centimetre of the underside of a child's shoe will be markedly different to the friction per square centimetre generated between the sole of an adult's foot and the floor. One would think that, given a three and a half year old child's lesser weight, the child does not require the same overall friction force underneath the soles of her shoes as an adult would require, in order to keep her footing.

[12] I reach the conclusion that the plaintiff has not established that her daughter fell because she slipped on a wet floor.

[13] I should say something about my findings with regards to negligence, upon the assumption that the conclusion just stated is incorrect.

[14] It is convenient first to examine the case against the second defendant. Counsel's argument for the proposition that the second defendant was negligent was advanced with difficulty because of Ms August's description of what I will for the sake of convenience call the "wetness" of the floor as

(a) being comprised of "droplets"

(b) not present in such quantities as to suggest that the cleaner had not done her job of drying the floor.

[15] Counsel conceded that it could not be argued that the cleaner responsible for the female toilet in the ablution facilities had to follow each user from the hand basin to the hand dryer, mopping up any water droplets, as it were on the heels of each patron as she turned to the hand dryer.

[16] Mr Mntambo was a shift supervisor employed by the second defendant, and on duty at the material time. He described the ablution facilities in question. The female toilet is off a short L-shaped passage which is also used to give access to the male toilet facilities, the paraplegic facilities and what is called the "baby room". Mr Mntambo informed the court that for cleaning purposes the building is divided into zones to which trained workers

are allocated. The toilet facilities in question were at the time allocated a male and a female cleaner. The latter had the responsibility of looking after the baby room and the female toilet facility, and the two cleaners shared responsibility for the common passage. It was not argued that this allocation of resources was unreasonable. Mr Mntambo pointed out that the cleaners allocated to these facilities do not wash the floors whilst the shopping centre is open. Whilst the shopping centre is open and the facilities are open for use, a cleaner's duty as far as the floors are concerned is to dry any spots of water on the floor using a dry mop. Patrons do not have to cross floors wetted by a cleaning process.

[17] Mr Mntambo was able from the records to identify the cleaner who was responsible for the female toilet area on this occasion. He had no complaints regarding her work at the time. (She is no longer employed by the second defendant.) As supervisor he walked the mall on a regular basis ensuring that the necessary work was being done properly.

[18] Counsel for the plaintiff argued that signs should have been put up warning of a wet floor. That submission rests upon a prior finding that in fact the floor was in such a condition as called for the placement of a warning sign. The opinion evidence tendered by both parties establishes that the floor is not slippery when wet. Ms August's evidence establishes that the floor could not be described as wet. And one should not overlook the fact that it is counter-productive to put up warning signs when there is nothing to warn against, as that is likely to contribute to a reduction in the level of significance the public attaches to such signs.

[19] I conclude that if the plaintiff's daughter did slip on one or more of the droplets of water described by Ms August, that was an unfortunate accident not caused by any negligence on the part of the cleaner employed by the second defendant, or by the second defendant in performing its management of the cleaning of the building.

[20] Counsel for the plaintiff conceded at the outset of his argument that he had difficulty advancing any argument for the proposition that the first defendant had been negligent. The first defendant employed the second defendant to undertake the cleaning of the Galleria Shopping Centre. From the evidence before the court the second defendant was a well-established

and reliable cleaning company. It had been in business for some years. It still is in business, and is responsible for about 20 large shopping malls at the present time.

[21] Referring to *Chartaprop 16 (Pty) Limited and Another v Silberman* 2009 (1) SA 265 (SCA) at paras 46 – 48, counsel for the first defendant argued that there was no evidence to contradict the proposition that the first defendant, as owner of the centre, took all reasonable steps required of it to guard against foreseeable harm to the public. I agree with that proposition.

[22] I conclude that the plaintiff has failed to establish liability on the part of either defendant. In the case of the first defendant I am satisfied that, even if the child did slip on a wet floor, the occurrence was not caused in any way by negligence on the part of the first defendant.

I accordingly make the following orders:

1. **The claim against the first defendant is dismissed with costs.**

2. **The second defendant is granted absolution from the instance with costs.**

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OLSEN J

Date of Hearing:	MONDAY, 20 MAY 2019; TUESDAY, 21 MAY 2019; and WEDNESDAY, 22 MAY 2019
Date of Judgment:	THURSDAY, 13 JUNE 2019
For the Plaintiff:	Mr W Shapiro
Instructed by:	AC De Sousa Attorneys Plaintiff's Attorneys 198 Tenth Avenue Morningside Durban…KZN (Ref.: AS/JM/PI/KIN 1/0001) (Tel.: 031 – 303 5581) (Email: Aveena@ACDSattorneys/co.za)
For the 1st Defendant :	Mr KC McIntosh
Instructed by:	Messrs Askew & Associates First Defendant's Attorneys 20th Floor, Eagle Building 357/363 West Street / Dr Pixley Kasema Street Durban (Ref.: JW Adrain/ESG/MUT4876) (Tel.: 031 – 306 2401) (Email: Noelene@askew.co.za)
For the 2nd Defendant :	Ms CL Markram
Instructed by:	Messrs Leon Swanepoel Attorneys Second Defendant's Attorneys 111 General Alberts Avenue Randhart Alberton (Ref.: Mr Swanepoel) (Email: leonslawchambers3@gmail.com) (Tel.: 011 – 864 8593)