

REPUBLIC OF SOUTH AFRICA



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

Case No: 72237/2019

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

1 November 2023

In the application for leave to appeal:

GABRIEL MASIKO BHIYA

Applicant

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA

Respondent

In re:

GABRIEL MASIKO BHIYA

Plaintiff

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA

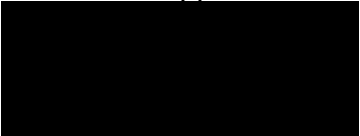
Defendant

JUDGMENT

SK HASSIM AJ

1. The applicant, the plaintiff in the action, seeks leave to either the Full Court or the Supreme Court of Appeal to appeal the order absolving the defendant from the instance. The parties are referred to as cited in the action.

2. The plaintiff pleaded that he was at all material times in possession of a valid train ticket but failed to discharge the onus in this regard. The plaintiff's action was however unsuccessful not because he could not produce a ticket. It was unsuccessful because he was unable to prove that he paid the requisite fare to lawfully travel on the train and therefore that the defendant owed to him a duty of care. The finding on this issue was dispositive of the matter.
3. Mr Maphutha who appeared with Mr Marema on behalf of the plaintiff submitted that the defendant's public law duty is to ensure the safety of all commuters on a train. And that this duty is not confined to fare paying passengers but extends to commuters whose presence on the train constitutes an offence. He argued that the dictum in *Farmer v Robinson Gold Mining Company Limited*¹ finds no application because in that case there was no positive duty on the owner of premises to prevent injury to persons trespassing on his property, whereas the defendant has a public law duty to protect rail commuters from suffering physical harm while using its transport services.
4. I am satisfied that the plaintiff has a reasonable prospect of success on appeal. I have considered whether leave to appeal to the Supreme Court of Appeal or to the Full Court should be granted. In my view the legal question in this case is deserving of the attention of the Supreme Court of Appeal.
5. Consequently, I make the following order:
 - (a) The applicant is granted leave to appeal the whole of the judgment and the orders to the Supreme Court of Appeal.
 - (b) The costs of the application for leave to appeal shall be costs in the appeal.


S K HASSIM AJ
Acting Judge: Gauteng Division, Pretoria

¹ 1917 AD 501

Counsel for the applicant/plaintiff: Adv Maphuta and Adv Marema

Counsel for respondent/defendant: Adv Nsthangase

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties' legal representatives by e-mail and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 2 November 2023.