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

CASE NO: 12544/2010

SHARON GOVENDER

PLAINTIFF

And

GMP CONTRACT CLEANING CC

DEFENDANT

JUDGEMENT

Delivered: 30 September 2015

MBATHA J

[1] The Plaintiff is Sharon Govender, an adult female of [1.....] R.....] Road, Durban, KwaZulu-Natal. The Defendant is GMP Contract Cleaning CC, a Close Corporation incorporated in terms of the Close Corporation Act¹ with its registered address and principal place of business at 4 Uve Road, Kloof, KwaZulu-Natal.

¹ Act 96 of 1984.

[2] At the commencement of the trial and by consent between the parties, the Court split the issues and ordered that the merits of the liability be determined first. In regard to the merits the Court had to determine the question of wrongfulness and if established, the issue of fault (*culpa*). In respect of *culpa*, the Court had to determine if there was any contributory negligence on the part of the Plaintiff.

[3] It is common cause that:

- the Plaintiff was employed as a team leader by Nedbank and operated a branch, where most of the time she operated alone in running the bank;
- Nobuhle Zondi “Nobuhle” was employed by the Defendant to perform the Defendant’s aforesaid obligation and acted as an agent of the Defendant in furtherance of the Defendant’s obligation;
- the Defendant had been contracted to and was under obligation to keep clean and safe, inter alia, the tiled kitchen floor of the Nedbank branch situated at the University of KwaZulu-Natal, Durban;
- Nobuhle was required to decant the liquid detergent/soap from the larger bulk containers to smaller containers for use in the cleaning of the kitchen and the Nedbank branch of the University of KwaZulu-Natal, Durban;
- other than the Plaintiff and Nobuhle, no other persons utilised the kitchen between 13h00 and 13h30 on 2 November 2010;
- all the detergents utilised by the Defendant at the premises were stored in the kitchen cupboard;
- one of the liquid detergents had a pink colour; and

- there were no loose tiles in the kitchen, nor were the tiles in the kitchen slippery;
- the Defendant owed a duty of care to the users of the kitchen at the Nedbank branch to ensure that the kitchen was hazard free.

4.1 In summary, Sharon Govender's evidence was that they had a cleaner, Nobuhle, who came in twice a week at the bank to do cleaning. She was employed by the Defendant. Her duties, amongst others, included cleaning the floor. Her cleaning materials were kept in the kitchen area of the Branch in five (5) litre containers. One container had a whitish liquid, the other had a pink liquid and there was also another one with a greenish liquid. These liquids were decanted in 500ml energade bottles for use by Nobuhle. Her evidence was further that on the 21st of June 2010, an inspection team visited her branch and identified the decanting of cleaning materials into the energade bottles as hazardous. These observations were recorded in the Macrosafe report which forms part of Bundle B of the documents before Court. Sharon's evidence is that she conveyed this to Wendy Kelly, Nobuhle's supervisor as well as to Nobuhle.

4.2 The bank was divided in three (3) rooms, which were separated as follows; the bank, the kitchenette and the storage area.

4.3 On the 2nd of November 2010, Sharon was on duty from 8h00 till 13h00. The incident occurred at about 13h15 on that day. Nobuhle was to sweep, mop, dust and wash the dishes on that day. Upon her arrival, Nobuhle had

moved to the back area of the building. Shortly before 13h00, Sharon left for the kitchen area, proceeded to the DVR unit, used for monitoring the outside of the bank building. Before entering the kitchen, she had informed Nobuhle to clean her workstation at the bank and then proceeded to the kitchen. Upon entering the kitchen, she noticed a bucket which was foamy liquid in it and had a mop in it. Sharon proceeded to the DVR system and noticed that it had bird droppings whereupon she returned to take a hygiene wipe from the wall. At this place, she felt herself slipping. She grabbed the handle of the kitchen cupboard, the handle gave away. She tried to stop herself from slipping by grabbing a chair or stool, which also gave way. She tried to reach for the DVR unit, it slipped away too. Before she realised what was happening, she felt a heavy metal blow at the back of her head. As she was falling down, she had noticed a “pinkish” liquid when she tried to grab the stool.

[5] After receiving the heavy blow on her head, she lost consciousness and could not recall what happened thereafter. It is her evidence that the detergent on the floor caused her to fall. Though she lost consciousness, she recalls that she had screamed for Nobuhle, that she was wet after falling on the floor, and was in pain. She informed this Court that she was familiar with the place, there was no water on the floor and did not expect to find a detergent on the floor. She was adamant that though the bucket was there, the cleaning had not yet taken place.

Bundle A and B were handed in by consent. Bundle A relates to various documents and bundle B depicts the scene of the incident through various photographs.

[6] Her evidence was challenged under cross-examination in various respects. I do not intend to repeat everything that was posed to her save that it elicited that she was adamant that no one else could have used the pink liquid on that day except for Nobuhle; that she had reported that she had seen the pink liquid to her employers after the accident; that no danger sign was used by Nobuhle to indicate that the floor was wet on that day or on any other day; that the presence of the bucket indicated that Nobuhle was just about to start cleaning the floor; and that the detergents are stored in the kitchen.

It had also been suggested to her that the liquid before being diluted with water, it emits a unmistakable strong smell, which ought not to have missed by her and that if it was spilled on the floor it loses its pinkish colour.

[7] Karen Pearce was called as a witness by the Plaintiff and she described how they found her after falling, that she was lying in water and it was not apparent from where this water came from.

[8] The Defendant's sole member, Wendy Louise Kelly, gave evidence on behalf of the Defendant. She confirmed that Nobuhle Zondi worked at the branch where the Plaintiff was injured. She had been with them since the 1st

of October 2007 until February 2008, when she was retrenched. Wendy stated that the detergents are decanted into five (5) litre containers, in an undiluted form. The concentrate is pink in colour when undiluted, but retains a pinkish shade when diluted. The five (5) litre containers are delivered to various premises where she has the cleaning contract. Her evidence was that if the liquid dropped against a white area, it would show a light shade of pink. She had no idea what Nobuhle used to decant the liquid, but the liquid had to be measured by use of a cup, before was poured into the bucket. She was unaware of the incident until she received a letter of demand dated the 16th of May 2012.

[9] The Cross-examination elicited that the Defendant was insured for such eventualities. She also conceded to have received a call from a Plaintiff about Nobuhle's decanting from energade bottles and that it was in Nobuhle's statement taken shortly after the incident that she had been informed of the incident relating to the Plaintiff. That was the Defendant's case.

10.1 There are safety reports compiled at the instance of the Plaintiff's employer regarding the safety of the detergents. The reports are specifically directed to the use of the detergents on the premises. The reports categorically state the unsafe use of energade bottles in decanting the liquid from five (5) litre containers. This does not require a rocket scientist to realise that if this method was used, there was a likelihood of the fluid spilling into the floor or dripping from the smaller bottles and creating a hazard. The

Defendant failed to adhere to such warnings, though it owed a duty of care to the Plaintiff and other people who had access to the premises.

10.2 The Plaintiff's evidence remained unchallenged as to the non-presence of any warning signs that were supposed to be used by the Defendant to indicate that the floor was wet. The bank is a public place, irrespective where the incident took place, care ought to have been taken by the Defendant that the detergents it used did not cause danger to the people using the place.

10.3 Wendy Kelly, had no direct knowledge of what happened on the 2nd of November 2010, save for what is in Nobuhle's statement. However, her evidence is material in confirming the presence of the pink detergent amongst those that she supplied to this particular branch, that it came in five (5) litre containers, that it had to be measured by use of a cup, that it retained the pink colour at every stage when it was diluted and that it retained a light pink shade even when it was on the floor.

10.4 It also remained undisputed that the bucket was filled with foamy water indicating that indeed the liquid detergent had been put to the water. The mop was already inside the bucket, indicating that Nobuhle was ready to clean the floor. The foam could only have been generated by the detergent.

10.5 It is clear to me that there was presence of the slippery liquid on the floor whether in its concentrated form or diluted form. The pink detergent

could only have been used by Nobuhle, who already had foamy water in the bucket.

[11] It is my view that the use of smaller containers in decanting the detergent, made it possible for it to spill on the floor. Nobuhle, an employee of the Defendant failed to take reasonable steps to remove the spill, as a result that it became a danger to other persons using the kitchen. She was also negligent in failing to warn the Plaintiff of the presence of the liquid on the floor, thus creating a dangerous situation for other users.

[12] The Defendant tried to persuade this Court that there was no pink liquid detergent on the floor, though it was never disputed that Nobuhle's bucket had foamy water in it, indicating the use of such a detergent. The Defendant could not even suggest what else could have made her to fall, save to say that she ought to have kept a proper lookout.

[13] I was referred to various authorities by both parties, which I have all considered. I am relying on the old authority, **Kruger v Coetzee**² to establish if the Plaintiff has established the element of fault where Holmes JA at page 430E-G held that:-

“For purpose of liability culpa arises if –

(a) A diligens paterfamilias in the position of the Defendant

² [1966] 2 All SA 428 (A).

- 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 occurrences; and*
- (b) *The Defendant failed to take such steps. This had been constantly stated by this Court for some 50 years. Requirement (a) (ii) is sometimes overlooked. Whether a diligens paterfamilias in the position of the person concerned would take any guarding steps at all and, if so, what steps would be reasonable, must always depend upon the particular circumstances of each case."*

[14] I have applied these principles to the relevant facts of this case. In applying the test for negligence as stated in abovementioned **Kruger v Coetzee** judgment, it is my view that the incident was reasonably foreseeable, that reasonable steps could have been taken to prevent the occurrence of the incident and that the Defendant failed to take steps to prevent the occurrences of the incident. On the facts of the case, the Plaintiff has proved the requirements of *culpa*.

The Court further held that the Defendant's legal duty having been established, the next question which arose was whether a reasonable person, in the position of Defendant, would have:-

- (i) foreseen the possibility of his conduct leading to injury to others; and
- (ii) would have taken reasonable steps in guarding against such injury.

[15] The suggestion that the detergent became invisible when it was on the tiles, suggesting that she would not have seen a pink liquid at all, is untenable in the light of the evidence of Wendy who said that even when it was on the floor, having been diluted, it still retained a pinkish colour. It could only mean that the liquid that had

dropped on the floor was in its thickest form or diluted form. Furthermore, if this was within the knowledge of the Defendant that a dangerous liquid becomes invisible when on floor, it is an admission on its own, that the Defendant was negligent in not warning the Plaintiff and other users of the kitchen of the dangerous situation created by its use of this type of the detergent. It failed to do so. The Defendant owed a duty of care to the persons who had access to the kitchen.

This is in line with the judgment in **Avonmore Supermarket v Venter**³, where the Court held that there can be no doubt that the reasonable possibility of a person slipping and falling as a result of a damp floor was foreseeable. Such accordingly obliged the Defendant to take such precautions as were reasonable to guard against that eventuality.

The SCA held further that the cleaner ought to have ensured that the area was dry before moving on.

[16] There is no merit to the criticism of the Plaintiff's evidence. She gave her evidence in a clear and unequivocal manner. She was a credible witness. There are no four (4) versions to her evidence as alluded to by the Defendant. The Plaintiff, when she unexpectedly slipped, could not have been expected to calculate the seconds, the distances of the chairs etc., which I all find to be immaterial to the essence of the case. It is clear that everything happened very fast. Defendant's case was based on hearsay evidence of Nobuhle, who was not even called as a witness about how she found the Plaintiff on the floor. Ms Kelly's neglect to look at the inspection reports and act upon showed her lack of care.

³ 2014 (5) SA 299 (SCA).

[17] There is also no evidence to suggest that Nobuhle had started to mop the floor when the Plaintiff moved to the kitchen. The Plaintiff could not have foreseen or expected to find the spills of the pink detergent on the floor.

[18] Consequently, it is my view that the Defendant failed to exercise reasonable care in the execution of its duties and it failed to take reasonable steps to prevent harm occurring to other kitchen users. The Defendant's defence throughout was that she failed to keep a proper look out. I do not agree and find that there was no contributory negligence on the Plaintiff's part.

[19] In the result the order that I make is as follows:-

- (a) The Defendant is ordered to pay the Plaintiff such damages as either agreed or as the Plaintiff may establish at trial.
- (b) The Defendant is ordered to pay the Plaintiff's costs of hearing to date.

MBATHA J

Date of hearing : 06 August 2015

Date delivered : 30 September 2015

Appearances:

For the Applicant : Adv. A.C. Camp

Instructed by : Berkowitz Cohen Wartski
Durban

For the Respondents : Adv. G. Reddy

Instructed by : Nolan Naicker & Company
c/o Messenger King
Durban