

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE Number: 99978/2015

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
2024 31/07/24 [Redacted Signature]	

In the matters between: -

ABRAHAM MANDHLAZI

PLAINTIFF

And

TRANSNET SOC LTD

FIRST RESPONDENT

JUDGMENT

BAQWA.

Introduction

[1] This is an application for leave to appeal against the order and judgment of this court granted on 8 April 2024.

Background

[2] The plaintiff claimed damages arising out of injuries sustained in a train collision on 1 January 2011, whilst plaintiff was 11 years old. The basis of the claim is the negligence of Transnet or its employees. Liability and quantum were separated and in the above judgment plaintiffs action was dismissed with costs.

Grounds of appeal

[3] The applicant makes an attempt to re-argue the case in 16 pages which can be summarised as follows:

3.1 The collision was the result of the failure of Transnet to re-install a fence which had been removed by members of the community and to put up warning signs.

3.2 Those omissions were negligent

3.3 The trial court was wrong to find that those omissions did not cause the collision as the "evidence shows that the cause of the plaintiff's injuries was a criminal act of another person, Hakalani."

The Law

[4] Section 17 (1) (a) of the Superior Courts Act 10 of 2013 (the Act) provides that leave to appeal may be granted where the judge concerned is of the opinion that

4.1 The appeal would have a reasonable prospect of success (Sec 17 (1) (a) (i))

4.2 There is some other compelling reason why the appeal should be heard (Sec
17 (1) (a) (ii))

The test

[5] In the matter of *MEC For Health , Eastern Cape v Mkhitha and Another* ¹ the Supreme Court of Appeal expressed the test for granting leave to appeal as follows:

"[16] Once again it is necessary to say that leave to appeal especially to this court must not be granted unless there truly is a reasonable prospect of success. Section 17 (1) (a) of the Superior Courts Act 10 of 2013 makes it clear that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success or there is some other compelling reason why it should be heard.

[17] An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal."

[6] In *Lee v Minister for Correctional services*² Nkabinde J said:

"The point of departure is to have clarity on what causation is. This element of liability gives rise to two distinct enquiries. The first is a factual enquiry into whether the negligent act or omission caused the harm giving rise to the

¹ [2016] ZASCA 176.

² 2013 (2) SA 144 (CC).

claim. If it did not, then that is the end of the matter. If it did, the second enquiry, a juridical problem, arise. The question is then whether the negligent act or omission is linked to the harm sufficiently closely or directly for legal liability to ensue or whether the harm is too remote. This is termed legal causation,”

[7] In this matter, whilst the plaintiff was physically injured by the train, it was not the alleged omission by Transnet that caused him to be so injured. The plaintiff unequivocally testified that it was a person with whom they stood next to the train, one *Hakalani*, who pushed him under train. There is no evidence to even remotely suggest why Transnet should, shoulder the responsibility for Hakalani’s action. Both the plaintiff and Hakalani were standing there out of own choice and plaintiff and his grandmother testified that she had warned him of the danger of being in and around the railway reserve. In the circumstances, the negligent and/or intentional act of Hakalani is linked sufficiently closely or directly for legal liability to attach to Hakalani and not to Transnet. Hakalani’s action was the direct cause of his injury according to the plaintiff. That is the factual and legal situation regarding the second leg of the enquiry suggested in the *Lee decision (Supra)* regarding causation.

[8] The plain facts testified to by the plaintiff cannot by any stretch of imagination be made to encompass the postulate that the collision was the result of the failure of Transnet to reinstall a fence and to put up warning signs. This would be in Justice Nkabinde’s words in *Lee*, “too remote” or alternatively speculative.

[9] Plaintiff bore the onus of proving conduct, causal negligence and causation. On all

three aspects he failed to discharge that onus to establish the legal *nexus* to Transnet.

[10] It is an established principle that generally we expect and are entitled to expect reasonableness, rather than unreasonableness, legality, rather than illegality from those who live near a railway line. See *Santam Insurance Co Ltd v Gouws*³, endorsing *Walton v Rondalia Assurance Cooperation of SA Ltd*⁴ that relied on *Moore v Minister of Posts and Telegraph*.⁵

[11] Further, the law does not oblige the reasonable operator of a line to anticipate that people living near the line will act recklessly, grossly negligently or even criminality in relation to that lien. *Griffiths v Netherlands Insurance Co of SA Ltd*.⁶

Conclusion

[12] In the premises and in light of the above I conclude that an appeal would not have a reasonable prospect of success and that there are no compelling reasons why an appeal should be heard.

Order

[13] In the result I make the following order:

The application for leave to appeal is dismissed with costs.

³ 1985 (2) SA 629 (A) at 635.

⁴ 1972 (2) SA 977 (D) at 779.

⁵ 1949 (1) SA 815 (AD) at 826.

⁶ 1976 (4) SA 691 (A) at 696-7.

Date of judgment: 25 July 2024

Appearance

On behalf of the Applicants

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