REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case Number: 14625/2020

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

DATE: 13/11/24

SIGNATURE

In the matter between:

M[...] M[...] A[...] obo
M[...] K[...] Plaintiff

and

MEC FOR THE DEPARTMENT OF EDUCATION:

GAUTENG PROVINCE First Defendant

MRS M BOKABA Second Defendant

MRS CM MVULANE Third Defendant

Delivered: *This judgment 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 e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 20 November 2024.*

Summary: Action against the Member of the Executive (MEC) in the Department of Education in the Gauteng Province for an alleged breach of a duty of care by a public special school and its officials. In any litigation, a party is confined to the four corners of its pleaded case. The plaintiff has failed to tender evidence in support of the pleaded allegations of negligent breach. In the absence of cogent evidence in support of the pleaded case, the claim must be dismissed. Once an owed legal duty is alleged, there must be evidence in support of its breach. Where negligence is alleged, the plaintiff must show that the injury was foreseeable. The plaintiff must establish a causal link between the alleged negligent breach and the injury sustained. No evidence was led in support of the breach of the alleged legal duty of care. Held: (1) The action is dismissed. Held: (2) The plaintiff must pay the costs of the action on party and party scale taxable at scale A.

JUDGMENT

MOSHOANA, J

Introduction

[1] The melancholy appertaining this action is that it is one that involves a patient with cerebral palsy and significant intellectual abstruseness, which action was, in the Court's view, poorly litigated. There was no perspicuous endeavour, in the Court's respectful view, to present relevant and cogent testimony in support of the pleaded case. This Court expressed to both counsel during oral submissions that ostensibly the patient had a "good" case, which was presented poorly. Given the limpid significance of this case, it is one that, in the Court's view, required an experienced legal team in order to litigate it in the best interest of the patient.

[2] That said, this is an action instituted by Mrs M[...] A[...] M[...]("the mother") on behalf of Mr K[...] M[...] ("the patient"). The patient was a learner enrolled at Medicos Special School (Medicos), a school catering for learners with special needs. The patient was seriously injured on a day he had gone to attend school. The mother contends that the patient was so injured as a result of Medicos and its officials (the

Principal and the Deputy Principal) breaching a duty of care owed to the patient. The Principal and the Deputy Principal are cited as defendants in this action. The action is defended by the MEC and the cited Principals.

Pertinent background facts and evidence tendered.

[3] The patient was born on 21 March 1998. He was born with cerebral palsy. He is also hemiplegic on the left side of his body. As a result of these infelicitous birth conditions, he became severely intellectually impaired. Given those conditions, he could not be admitted at a normal public school. On or about 03 October 2007, he gained an admission as a learner at Medicos. At the time of his admission, the patient was nine years of age.

[4] On or about 26 August 2016 when the patient was 18 years of age, he sustained head injuries. He was treated at a local clinic situated at Block TT, Soshanguve, whereafter, he was transferred to George Mukhari Academic Hospital (Mukhari) for further medical treatment. In 2020, the present action was instituted against the MEC; Mrs M Bokaba, the Deputy Principal of Medicos; and Mrs CM Mvulane, the Principal of Medicos.

[5] At the trial of this action, the mother as the plaintiff and a *dominis litis*, tendered her own evidence and that of the erstwhile driver of the patient, in support of the action. I interpose to mention that the driver was present in Court when parts of the evidence of the mother was tendered. He only left the Court room after it was observed that he was sitting in the Court room and listening to the testimony delivered by the mother. The defendants, in seeking to defend the action, tendered the testimony of four witnesses. This Court, takes a view that, given the alleged breach of the legal duty of care, the testimony of the mother was of no major significance to the plaintiff's case. She was not a particularly good and impressive witness. She did not provide direct answers to direct questions. Hereunder, a brief summation of the testimony of the witnesses is provided.

Mrs M[...] A[...] M[...]

[6] She is the mother of the patient. She enrolled the patient at Medicos since she considered it to be a safe and secure school for the patient, regard being had to his birth conditions. On 26 August 2016, as per usual, the patient was collected from his home, by the driver, who transports the patient and other learners, to Medicos. At around 14h10, she received a call from the driver informing her that the patient was injured. Subsequent thereto, she received a call from Medicos, confirming that the patient was indeed injured and that he is being transported to the clinic situated at Block TT Soshanguve for medical attention.

[7] She agreed to meet with the officials of Medicos at the clinic. Indeed, she arrived at the clinic, where the patient was offered primary medical treatment. Owing to the fact that an ambulance to be summoned by the clinic to transfer the patient to Mukhari would delay, as it is usually the case, she engaged the services of a private transportation, to convey the patient to Mukhari. Whilst at the clinic with the school officials, she attempted to obtain answers as to how and where was the patient injured, to no avail.

[8] She testified that at some unspecified point, when she visited the patient, she noticed that the gates of Medicos were no longer being locked as it used to be the case, the security guard who was employed had left and access to the premises of Medicos was free and unrestricted. Her version in this regard was disputed and contradicted by the testimony of the defendants' witnesses. I interject to mention that, notwithstanding the unrestricted and free access to the premises of Medicos, she continued to keep the patient as a learner at Medicos. When she allegedly raised the issue, on an unspecified date, with Mrs Bokaba, she was told that the school is safe nevertheless.

[9] On 27 August, she visited the local police station to lay a criminal charge against the assailants of the patient. She later established that the criminal case was not investigated and the docket was inexplicably closed. On 29 August, she visited Medicos and met with the Principal, who accepted responsibility for the injury sustained by the patient and actually apologised. This testimony was vehemently disputed and challenged during her cross-examination.

[10] She again met with the Principal at the district offices of the Department of Education, who again confirmed to her that the injury to the patient happened inside the school premises and she admitted guilt for that. Similarly, this testimony was vehemently challenged and contradicted. She testified about some old injuries on the eye, hand and chin, allegedly sustained by the patient at Medicos. Ultimately, in due course, she deregistered the patient at Medicos and enrolled him at some other school.

[11] During cross-examination, she testified that the averments made in paragraph 8 of the particulars of claim annexed to the combined summons was mistakenly made. She, however, testified that she only heard as to where and how the patient was injured, as she was not present when he got injured. She could not positively comment to the number of versions contradicting hers put to her on behalf of the defendants due to the undisputed fact that she was never at Medicos on the day in question and that some of the facts she testified to were told to her by third parties.

Mr Jan Molatelo Maboya

[12] He testified that from 2011, he had the patient as one of the learners he transported to Medicos. On 26 August 2016, he arrived at Medicos, at around 13h40 and whilst approaching the premises of Medicos, he was confronted by some of the learners he transports together with the patient, who conveyed to him that the patient was injured. He also observed that the patient was bleeding from the head. He then proceeded to the offices, together with the patient, to inform the officials that the patient was badly injured and he cannot transport him back home in that state. He confirmed that on that day he arrived late for a pick up since his vehicle had gone in for a service. The officials he encountered at the offices insisted that he must transport the patient home. He refused, given the state in which the patient was at that point in time.

[13] He did not witness how and where the patient was injured. Given the medical conditions of the patient, who has speech challenges, the patient was not in a position to clearly relate to him as to what had happened to him and where. Having

refused to take the patient with him, he proceeded to call the mother and informed her that he is not bringing the patient home, since the patient was badly injured.

[14] He testified as to how handing over of the learners usually happened. At a particular stage, a security guard would open the remote controlled gate and learners would be identified and picked up by the respective drivers, including him. At some stage, one Mr Nkosi, an educator at Medicos, told them as drivers that the school was searching for a security guard since one Mr Sekgobela had left. Mr Nkosi told them nothing thereafter and since the departure of Mr Sekgobela the gates remained open the whole day with unrestricted movement in and out of the school premises. I pause to mention that his testimony on this aspect magically mimics that of the mother.

[15] It is unsurprising because he remained in the Court room when the bulk of the testimony of the mother was tendered. He confirmed that once the gates are opened after school hours, it became the duty of every driver to collect the learners he transports. On the admitted sketch plan contained in the joint bundle of documents, he pointed the collection point to be just after what was identified by the mother as gate 2. He disputed the version of the defendants as to how the handover of learners happened. For obvious reasons, he disputed that gate 2 was always locked and was only opened when learners are allowed to exit the school premises after the school hours. He insisted that the Principal was at the school premises on the day in question. I interject to remark that the driver did not leave a good impression to the Court. He was not forthright. He appeared apprehensive as and when he presented his testimony. It was as if he was hiding something. The day before, he could not tender his testimony, because he was allegedly struck by a lightning the previous day.

Mrs Constance Mokgadi Mvulane

[16] She commenced employment with Medicos as a Principal in 2013. Medicos is a school that admit learners with severe intellectual disability (SID); epilepsy; and cerebral palsy (CP). The school starts at 07h30 and teachers arrive at 7h00 in order to assist with the supervision when learners with those special needs arrive at

school. The school ends at 13h30 and teachers would leave after 14h00 after having completed the supervision of the handing over of the learners. Daily, supervision is done by four educators at different points of the school premises including at the exit and entrance gate. Supervision of entrance and exit of the learners happens at the identified gate 2.

[17] Learners at Medicos used different modes to travel back home once school time ends. Some learners use a school bus whilst others, like the patient, use private transportation. Other learners, who live nearby the school, would walk home. Normally, those learners whose transportation does not arrive would be collected back into the school premises until their respective transportation arrive. On the day in question, she was not at the school premises. She had attended another school function outside the premises of Medicos. On 29 August, the Deputy Principal related to her the events of the 26th. She disputed as being impossible, the averments made at paragraph 8 of the particulars of claim.

[18] During cross-examination, she testified that the school carried the duty of care until the learner is handed over to the respective drivers or leave the school premises. She also testified that at 12h00, on the 26th, the school was still in session, as such it was impossible that the patient would leave the school premises at that time. She further testified that the investigations, conducted by the school *ex post facto* the incident, yielded nothing with regard to what could have happened to the patient and whereit could have happened.

Ms Zulile Bridgette Masuku

[19] She is an educator at Medicos since April 2015. On the day in question she was on duty. She left the school premises just after 13h30. Whilst driving outside the school premises on the road opposite the Z[...] C[...] C[...] (ZCC), she encountered a person who was walking improperly in front of her vehicle. On closer look, she observed that the person was a learner at Medicos and was injured. The two boys who were nearby, who were also learners at Medicos, informed her that the patient was assaulted by some other boys who had ran away. He requested the two boys to assist the patient back into the school premises whilst she drove back slowly

alongside the boys. Back at the premises, she encountered another educator who went with her to the Deputy Principal's office. At the Deputy Principal's office, she later encountered the driver of the patient. She reported to the Deputy Principal as to where she encountered the patient. She reiterated the supervision procedure as testified to by the Principal. She actually encountered the other educator at gate 2 whilst engaged in the supervision process. After having handed over the patient to the Deputy Principal she left.

Mrs Matlakala Bokaba

[20] She is the Deputy Principal. On the day in question, after around 13h30, whilst in her office, Ms Kutumela and Ms Masuku came to her office together with the injured patient. She was told where the patient was encountered. Whilst listening to the narration, the driver also walked in. She called the mother to meet her at the nearest clinic. At the clinic she met the mother, who was shouting all the time and was uncooperative. Since the patient was handed to a professional nurse, she left the clinic. On the 29th she had to report to the Principal since the Principal was not on duty on the day in question.

Ms Mercy Kutumela

[21] In 2007, she commenced employment at Medicos as an educator. On the day in question she was part of the educators who performed supervision duties after school hours. She was stationed at gate 2. She was rostered with three other educators on the supervision duty. She explained the duties of supervision. Once all the learners have left, the supervisors would also leave. On that day, at around 13h45, Ms Masuku accompanied by some two boys came to the gate together with the patient. The patient was injured at that time. She and Ms Masuku took the patient to the office of the Deputy Principal, whereafter she returned to her supervision duties.

[22] On the 29th, she encountered the parents of the patient at the waiting area of the office of the Principal. She gave her own account of what transpired on the day in question. During cross-examination, she was quizzed about her supervision duties at the gate. She testified that on the day in question, she arrived at gate 2 at around 13h30. She never interacted with the patient since he is not a learner in her phase.

She knew that the patient was using a private transport but did not know which one specifically. On the day in question, she did not see the patient. She saw the driver after the patient was reported injured. She testified that at the gate, when it is opened around, 300-400 learners would exit the gate to their respective transportation or homes, for those who walk home. Her role is to guide them out of the premises through the gate. She ordinarily will collect the little ones and sit with them under a shelter next to the gate and continue to supervise them. Whereafter, hand them over to their respective transportation. At times, the supervision process would end at 16h00 or thereafter. If, for any reason, the transportation of the learners collated back to the shelter does not arrive at the school, parents of the specific learners would be contacted telephonically. The school keeps a record of the telephone numbers of the parents.

Documentary evidence

[23] Some of the documents contained in the joint bundle were handed in and marked as exhibits respectively. It is obsolete for the purposes of this judgment to tabulate those exhibits. It suffices to simply state that those identified documents then served as evidence before Court. Their probative value shall be taken into account when the entire evidence is assessed.

Argument

[24] At the conclusion of the evidence stage, both counsel sought to be indulged with a few days in order to prepare for argument. At the commencement of the trial, this Court informed both counsel that a continuous trial inclusive of arguments is going to happen and no adjournment will be accommodated specifically to allow for the preparation of written arguments. Both counsel were urged to prepare for legal submissions as and when the evidence stage progresses[1]. Nonetheless, this Court

[1] Chris Maverick SC in Forum 2010 December Volume 23 p67-69 said: "*Closing argument ought to be prepared in advance of the trial*. Everything the advocate does during the preceding phases of the trial is intended to serve that argument. So one has to know what argument is intended to be made before opening statement is made… An argument, of course, is a series of propositions which are supported by the law, the facts and the evidence and are connected to each other by a string of logic to justify a conclusion. Heads of argument prepared before the trial are an invaluable step. *The heads of argument could be refined each evening as the trial progresses…"*

indulged them for half a day and overnight to prepare for oral argument[2]. This Court must take this opportunity to expressly state that there is no rule or practice directive in place to the effect that after hearing of evidence in a trial, parties deserve an indulgence for few days in order to prepare for argument.

[25] If this Court allows a practice of that nature, such, in my view, is a recipe for endless partly-heard matters being accumulated by judges in this Division. A trial must start and finish and where judgment is reserved, only a judgment and its hand down should remain. This apparent luxury of affording practitioners time to prepare for argument, must end, in my view. It is something that will obliquely justify further legal costs at the expense of consumers of legal services. It is inimical to social justice, in my view. It delays finalisation of cases. A trial of three days, inadvertently, becomes a trial of five or more days. Of course, a practitioner may be indulged by a Court to make supplementary submissions on an issue a Court seek to be addressed on. Such is an exception and not a norm.

[26] On the day of hearing oral arguments, both parties furnished the Court with well researched and helpful written heads of argument. This Court is indebted to both counsel for those written heads. Briefly, counsel for the plaintiff argued that Medicos breached its duty of care in respect of the patient, as such, the MEC must be held liable for 100% of the patient's proven damages. On the other hand, counsel for the defendants argued that no evidence was led to support the pleaded case. On that singular basis, this Court must dismiss the action with costs. In retort, counsel for the plaintiff conceded that there is no direct evidence in support of the pleaded case but implored this Court to draw certain inferences in favour of the plaintiff.

Analysis

[27] At the commencement of the trial, the merits of the action were separated from the quantum issue, within the contemplation of rule 33(4) of the Uniform Rules. This judgment only concerns itself with the merits of the instituted action. Before this Court considers the evidence tendered, it is essential to have regard to the pleaded

[2] Ordinarily, in a trial action, parties are not required to submit written heads of argument.

case that the defendants were required to meet. The particulars of claim annexed to the combined summons made the following pertinent averments:

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"On or about the 26th August 2016 at approximately 12h00 and at Medicos, Block L Soshanguve, Gauteng Province, *K[...] left Medicos premises unassisted and unaccompanied* by the Second Defendant, Third Defendant and/or members of the First Defendant and sustained a head injury.

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The aforesaid injury occurred *during school hours whilst K[...] was under the care and supervision of* the Second and Third Defendant and/or members of the First Defendant.

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The injuries sustained by K[...] were as a result of the *negligent breach of a legal duty of care that rested* on the Second and Third Defendant and/or members of the First Defendant in the employ of the First Defendant…"

[28] Regard being had to the pleaded case and on application of the old adage that s/he who alleges must prove, it was incumbent on the plaintiff to present evidence in support of the allegation that the patient left Medicos premises at approximately 12h00. None of the witnesses who testified for the plaintiff tendered any evidence in support of this allegation. The mother was never at the premises of Medicos on that day. The driver arrived after the school had ended. It is settled law that the purpose of pleadings is to define the issues for the other party and for the Court. It is impermissible for a Court to decide issues outside the pleadings.[3]

[29] During the argument, when faced with the reality that there is no direct evidence in support of the pleaded case, counsel for the plaintiff attempted an argument that there is circumstantial evidence to support the pleaded case. I disagree. In assessing circumstantial evidence, the evidence should not be approached in a piecemeal fashion but in its totality. Once approached in that

[3] *DHB v CSB* 2024 (8) BCLR 1080 (CC).

fashion, then the two cardinal rules of logic, as suggested in *R v Blom*[4] must be applied. This Court takes a view that the onus was not discharged because the inference advanced is not the most readily apparent and acceptable one from a number of possible inferences.[5]. On the totality of the evidence before this Court, it cannot be reasonably inferred that Medicos and its officials negligently allowed the patient to leave the school premises in order for him to foreseeably be assaulted and injured.

[30] Additionally, the plaintiff was required to tender evidence which will support the averment that the patient was injured during school hours whilst he was still under the care and supervision of Medicos. No scintilla of evidence was tendered as to when and where was the patient injured. On the evidence of the driver, when he observed that the patient was injured and was still bleeding, it was after school hours and outside the school premises. On the uncontested evidence of Ms Masuku, the patient was encountered outside the school premises and after the school hours. When the patient was returned to the school premises, as testified by Ms Masuku, he was already injured and the school hours had ended at that time. On the strength of this evidence, it is more probable than not that the patient was injured outside the school premises and after the school hours had ended. Axiomatically, at the time of injury, the patient was no longer in the care and supervision of Medicos. No amount of circumstantial evidence can gainsay this axiom.

[31] This Court must say that the evidence of the driver is suspect in many respects. Firstly, where his evidence coincides with sufficient exactitude with that of the mother, it can only be attributed to the fact that he sat in the Court room and listened to her testimony so that his own must be tailor-made to corroborate hers. On the uncontested evidence, when the learners exit gate 2 they are received by the transportation people who from that point on, assume control and responsibility of the to be transported learners. On his own version, he was not there to receive the patient as per usual after the school time had ended. He made no arrangements with the school regarding his unavailability to assume control and responsibility of the

[4] 1939 AD 188.
[5] AA *Onderlinge Assuensie Assosiasie Bpk v De Beer* 1982 (2) (SA) 603 (A).

learners he transports. There was no way in which the supervisors on duty that day would have known nor foreseen that he will fail in his usual duties of receiving the learners he transports.

[32] To my mind, the driver also stands in *loco parentis* from the time the *loco parentis* of the school ends until he hands the patient back to his mother. According to Black Law Dictionary (1983:403) *in loco parentis* means in the place of the parent; instead of parent; charged factitiously, with a parent's rights, duties and responsibilities. There is no doubt in my mind that for all and intended purposes of the transportation of the patient, the driver's care that is exacted from him is that which the *diligens paterfamilias* would have taken in similar circumstances. The duties of the driver under those circumstances must be compared to that of a reasonably careful parent in relation to his or her own obligations. A diligent parent of an intellectually challenged child shall not arrive late to receive his or her child after the school hours. Having failed, due to late arrival at the school premises, to assume his own *loco parentis*, it suited his selfish reasons for him to testify that the entrance and exit was at some unspecified time free and unrestricted. Somewhat, this testimony was exculpatory in nature, given his known and accepted duties and responsibilities after the school time ends.]

[33] Given the types of learners at Medicos, the version of the mother and that of the driver that access was free and unrestricted for a considerable period of time is not only improbable but it is preposterous to the extreme. If that was the case, there would have been dozens of incidents where learners had bolted out of the premises. The mother having observed this practice, and with safety and security being her primary concern, hence she enrolled the patient at a safe and secure premises, it is improbable that she would have availed to the defendants a *volenti non fit iniuria* defence on a silver platter. Why she would compromise the safety and security of the patient, this Court would ask. Regard being had to her demeanour when she testified before Court, undoubtedly, such an observation of obvious and serious security lapse would have led her to the immediate deregistration of the patient from the school. She would not have adopted a nonchalant attitude she suggestively took at the time of the observation.

[34] It is clear to my mind that this version that the school premises were free for all is nothing but a recent fabrication fabricated to suit the narrative that the patient left unassisted and unaccompanied on the day in question. If this narrative were to stick, it must have been the hope of the driver that he shall be exonerated from the possible negligence from his own *loco parentis* duties. If the gates remained unlocked and with unrestricted access, why would the patient only on this fateful day grab an opportunity to bolt as opposed to earlier when the opportunity was, on the evidence of the duo, proverbially a perennial low hanging fruit.

[35] Their version on this aspect is simply improbable. This Court, without any hesitation, rejects the testimony of the mother and the driver on this aspect of unrestricted access and accepts the corroborated and probable version of the defendants' impressive witnesses. To a large degree, other than the recently fabricated evidence of free for all access, the evidence of the mother and that of the driver with regard to the injury, as to how and where it happened, is hearsay and ought to be excluded because it does not satisfy the requirements of the law as recently confirmed in *Kapa v S*[6].

[36] It was also incumbent on the plaintiff to lead evidence that will support the averred negligent breach of a legal duty. Owing to the fact that there is no evidence as to where and how the injury happened, it is impossible, in my considered view, to attribute any *culpa* on the part of the school officials. Negligence is an incident aligned to a particular conduct or an act. The act or conduct must be one that foresees the possible injury but continues recklessly or in complete ignorance of the possible injury. Even if this Court were to infer negligent breach of the duty of care, as implored by the plaintiff's counsel, it would not have been foreseeable that when the patient bolts he would probably be assaulted by some boys outside the school premises. It was daylight, and the worst that could have perhaps foreseeably happened to him was him being knocked down by a motor vehicle. If the patient bolted because the gates were not locked it seems incongruent that he will then

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[6] 2023 (4) BCLR 370 (CC).

return to the school premises and be assaulted inside the premises thereafter return to where he was indisputably encountered.

[37] If indeed he bolted given the free for all access then it must be so that the patient was assaulted outside the school premises. That being so what is it that a school could do or have done to prevent a common law assault from happening outside its premises. To my mind nothing. It was not suggested through any evidence or pleadings that the patient left unassisted and unaccompanied then returned being followed by his assailants, who gained access through the unrestricted access to the school premises and assaulted him in the premises whereafter returned him to the place where he was, on the objectives evidence, encountered still oozing blood from the back of his head. There is simply no basis laid for negligent breach of a legal duty. The test for negligence, as perfected by the erudite Holmes JA in *Kruger v Coetzee*[7], is very far from being met in the present case.

[38] In an action of this nature it is not sufficient to simply allege that another party owes a legal duty. A breach of that duty must also be proven in order to succeed. It is rested law that at the school premises, the school owes a legal duty since the teachers stand in *loci parentis* during school hours. The question whether a school breached the owed legal duty is a factual one. Ordinarily a breach in a duty of care would occur in a failure of supervision. There was no evidence to suggest that any of the educators observed that the patient as he exited gate 2 did not among the sea of other learners proceed to his transportation. There is no categorical duty to provide constant supervision. In *Carmarthenshire County Council v Lewis*[8] Lord Oaksey stated that to hold that education authorities are bound to keep children under constant supervision throughout every moment of their attendance at school is to demand a higher standard of care than the ordinary prudent schoolmaster or mistress observes. I fully concur with the sentiments of the erudite Lord Oaksey.

[7] 1966 (2) SA 428 (A).
[8] [1955] A.C 549.

[39] Similarly, it cannot be said that at the gate, where 300-400 learners exit, there is a much high duty of constant supervision expected. A submission to that effect must fail. Besides, it is not the plaintiff's pleaded case that there was failure of supervision at that point – at the exit gate after school hours. In *Geyer v Downs*[9] it was held that a reasonable parent formulation will be somewhat unreal in the case of a school master who was in charge of a school with some 400 children, or a master who takes a class of thirty or more children. The plaintiff's pleaded case does not suit the after school hours situation. It suggests a within school hours situation. All the authorities cited and relied to by the plaintiff's counsel relate to incidents which happened at the school premises (*Mageni v Minister of Education of the Western Cape Education Department*[10]; *Rusere v The Jesuit Fathers*[11]; and *MEC Education North West Province v Foster and others*[12]). In *casu*, the evidence overwhelmingly suggests that the injury happened outside the premises of Medicos and after school hours.

[40] More recently Mabuse J in *Mhlongo v MEC of Gauteng Department of Education*[13] correctly, in my view, reverberated the following sentiments:

> "[43] There is no evidence by the Plaintiff that when patrolling the playgrounds, the Defendant's educators could and should have adopted an alternate method and what that method is that they failed to adopt. *There is no evidence by the Plaintiff that even if the Defendant had deployed all the teaching staff at Nantes, which they failed to do, the said incident could have been avoided.* This Court is left in doubt as to whether there were other reasonable steps which the educators could and should have taken to prevent the incident in which the Plaintiff was involved from taking place. *This means that the negligence on the part of the Defendant has not been proven.*"[14]

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[9] [1975] 2 NSWLR 835, 841.
[10] [2021] ZAWCHC 79.
[11] 1970 (4) SA 537 (R).
[12] [2023] ZASCA 11.
[13] [2024] ZAGPPHC 1056.
[14] Id at para 43.

[41] Congruently, the question of adequacy of supervision is often linked with the question whether supervision would have prevented the injury which occurred. Unless the plaintiff can show that the supervision which allegedly should have been provided would more probably than not have prevented the injury, the plaintiff must fail[15]. The plaintiff must still show that there is a causal link between the alleged negligent breach of legal duty and the injury sustained by the patient. Based on the evidence before this Court, there is nothing that unsuggested alternative "adequate supervision" at the gate 2 would do or have done to prevent the patient from being assaulted next to ZCC outside the school premises.[16]

[42] As a parting shot and *en passant*, this Court harbours an uneasy feeling that the patient was short changed in this action. For that, all this Court can do is to pour out its sympathy with the patient. It would be stretching the interests of justice project to find in favour of the patient in the absence of evidence in support of the punted for case. With proper and seemingly available evidence being tendered, this Court would have been sufficiently positioned to deliver justice to the patient. Ostensibly, the rights of the patient were one way or another compromised. Either by the school or the members of the South African Police Services (SAPS). The duty of this Court is to resolve legal disputes and not to give legal advice to the parties. Sadly, absent cogent and reliable evidence the Court's hands are tight at the back.

[43] For all the above reasons, I am constrained to make the following order:

Order

1. The plaintiff's action is dismissed.

2. The plaintiff is to pay the costs of this application on a party and party scale taxable or to be settled at scale A.

GN MOSHOANA

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[15] *Victoria v Bryar* (1970) 44 ALJR 174, 175.
[16] *Barker v State of South Australia* (1978) 19 SASR 83.

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES:

For the Plaintiff:	Mrs K Mashaba
Instructed by:	Mphela and Associates, Pretoria
For the Respondent:	Mr TC Kwinda
Instructed by:	State Attorney, Pretoria
Date of the hearing:	7 November 2024
Date of judgment:	13 November 2024