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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)**

Case No: 2017/43129

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED

DATE: 7 March 2025

SIGNATURE

IN THE MATTER BETWEEN:

IVANE ESENGO

PLAINTIFF

And

**PASSENGER RAIL AGENCY
OF SOUTH AFRICA**

DEFENDANT

JUDGMENT

SIWENDU J

Introduction

[1] The court is asked to determine a separated issue of negligence in action proceedings instituted by the plaintiff against the defendant following an incident at Benoni train station on 19 August 2017. The plaintiff sustained an injury to the knee of his right leg when disembarking a train. If negligence is proved, quantum will be determined at a later stage.

[2] The plaintiff Mr Esengo Ivane (Mr Esengo), is from the Democratic Republic of Congo (DRC). He is in South Africa as an Asylum Seeker. He is self-employed. At the time of the incident, Mr Esengo lived at [...] Street, Corner 4th Avenue, A[...] H[...] Building, First, Room No 1[...], Springs, Gauteng.

[3] By agreement between the parties, Mr Esengo's particulars of claim were amended in January 2020. At the hearing of the trial, he sought leave to make a further amendment to paragraph 1 of the particulars, to reflect the correct Asylum Number: J[...]. The defendant, Passenger Rail Agency of South Africa (Prasa), did not oppose the application, and the amendment was granted by agreement.

[4] Prasa is a State Owned Enterprise (SOE) established under Section 22 of the Legal Succession to the South African Transport Services Act 38 of 2008. Prasa provides Commuter rail services within metropolitan areas.

[5] Mr Esengo alleges that on 19 August 2017, he boarded a train operated by Prasa at Springs train station to Benoni. The train was overcrowded and travelled between Springs and Benoni with the doors open. When it reached the vicinity of Benoni train station, "commuters started to push and shove each other around inside while the train was in motion with its doors open and as a result [the] Plaintiff was pushed through the open doors and fell out of the aforesaid moving train."

[6] He alleges that Prasa was negligent and was the sole cause of the incident in which he was injured because it "failed to take any or any adequate steps to prevent overcrowding" and "failed to take any adequate steps to prevent that the train does not move with its doors open posing danger to the commuters in particular the Plaintiff."

[7] Further grounds pleaded for negligence are that Prasa failed to exercise reasonable care “to maintain the that train doors to ensure that it closes and open at an appropriate time” “remained closed while the train was in motion” ...and “ensure that the train did not move before commuters have embarked and/or disembarked.”

[8] Prasa does not dispute the duty of care it owes to commuters. However, it disputed liability and sought a dismissal of the claim with costs. Its defence is that Mr Esengo disembarked the train while it was already motion and subjected himself to the risk of injury. Prasa averred that Mr Esengo failed to exercise reasonable care to avoid the accident. He was negligent and its sole cause.

[9] Mr Esengo testified in support of his case. He was a single witness. On the other hand, Prasa called two witnesses in employ, Ms Mnguni, a train guard on duty on the day and Mr Nkwanyana, a protection official in charge of security.

[10] It was common cause that on 19 August 2017, Mr Esengo bought a single way ticket No:11730, Operator No 20023385 from Springs to Benoni. He was a passenger on the train No 0018 at 08:21. After the incident he was taken by an ambulance called by Prasa officials to Far East Rand Hospital where he was treated and discharged the same day.

Trial Evidence

Plaintiff's evidence

[11] Mr Esengo gave evidence in Lingala, a dialect of one of the indigenous languages in the DRC. His attorneys had secured the services of a sworn translator, proficient in French Lingala and English.

[12] Mr Esengo testified in chief that he was a regular commuter on the train. As a self-employed trader in appliances and other goods, he would purchase a one-way ticket to the destination to collect the goods but use a taxi for the return trip because it is convenient and can accommodate his stock.

[13] The morning of the incident, the train was overcrowded. He found a seat not too far from the door. Some passengers were seated, while others were standing. The train doors were wide opened. As the train approached Benoni station, it slowed down. He stood up preparing to exit but was surprised by other passengers. They did not wait for the train to stop but instead pushed to exit the wagon. Passengers behind pushed him as they exited the train. He lost “a bit of control and fell.” The knee of his right leg hit the floor. He felt pain and screamed.

[14] A security guard approached him while he was lying on the floor. Mr Esengo explained to the security guard what had transpired. He showed his train ticket. The security guard took notes of the incident. An ambulance was called, and he was taken to the Far East Rand Hospital. He had no recollection of speaking to any other person from Prasa other than the security guard. Although he testified that he recalls speaking to one person, when questioned by his counsel he stated that “I was on the ground, and they asked me what happened, and I informed them what I told the court.” He disputed that he jumped from a moving train.

[15] During cross examination, he confirmed his personal details were correctly recorded by Prasa personnel who attended at the scene. On entering the train, he found a seat next to the door and could see the doors from where he was seated. He disputed he was standing in the middle of the coach shortly before the accident. The only time he stood was when the train was about to stop. When pressed about the precise position relative to the train doors shortly before the accident, he stated that his seat was “a bit away” but not “right next” to the door. On a pointing out in court, the parties agreed the distance was approximately 2.2meters away from the doors.

[16] He confirmed there are 7 stations between Springs and Benoni and it had stopped at each of the station. Passengers were able to find seats as some passengers embarked while others disembarked. He agreed the train made provision for standing passengers.

[17] He was challenged about the overcrowding claim. Although his evidence in chief was that there were “many people on the train” he could not tell the number but testified that the train was “fuller and fuller and overcrowded.” It was pointed his

evidence indicates there was sufficient space for commuters, and this was inconsistent with an overcrowded train. The only basis he could offer was that all seats were occupied, people squeezed with others, and it was difficult to pass through.

[18] Questioned on how the accident occurred, he stated that the passengers did not wait for the train to stop completely but disembarked while it was in motion. He did not push through to exit from where he was. The passengers close to the door were pushed out of the moving train. He did not land on platform on his feet. His knee hit the concrete platform first. Although he did not try to break the fall, his hands were next to follow, he felt pain but there were no bruises on his hands. He did not sustain any other bruises other than to the knee.

[19] His evidence was challenged as a fabrication. He was the only passenger injured during the incident. There were other passengers who were closer to the door than he was. He could not say if other passengers fell because he was focused on himself. It was suggested that if he was pushed out of a moving train by other commuters, it would have been with force. He would have sustained other injuries other than to the knee. Mr Esengo stood by his account of the incident.

[20] Mr Esengo confirmed, he gave a report of the incident to a security guard at the scene. He later conceded that there were two security guards. The version of the statement recorded in the Liability Report was put to Mr Esengo during cross examination that:

- i. When the train arrived in Benoni, he tried to disembark. The train doors could not open
- ii. He went to the next coach and still, the doors would not open
- iii. He went to the third coach and managed to open the doors
- iv. By this time, the train was already in motion.
- v. He disembarked but lost balance and fell on the platform

[21] He denied Prasa's version of the incident recorded in the statement and liability report. He did not read what they wrote but accepted that his personal details

obtained from him were correctly recorded. Although he later accepted that he saw two security personnel, he denied he saw Mr Nkwanyana. He confirmed he did not go back to the station or think it necessary to identify the security guard after the accident to assist him corroborate his account of the incident. He denied the version by Prasa's witnesses put to him, which I turn to below.

Prasa's evidence

[22] Ms Tembani Mnguni (Ms Mnguni), a train guard employed by Prasa was on duty on the day. It was a Saturday. She took over Train 0018 in which Mr Esengo was travelling. This was confirmed by an entry in the Daily Journal.

[23] Her duties are to ensure the safety of passengers by (a) checking the station platform is clear to ensure that the train can depart after commuters have embarked or disembarked, (b) communicating with the train driver using bells, (c) releasing the train door operating button so the door can open and close, (d) investigate and report train faults like low vacuum between pipes to ensure there is no loose pipe between coaches.

[24] Her evidence was that being a Saturday, outside of the usual week peak hours, the train was not overcrowded. She denied the train doors were open throughout the journey. She would have known this at the time of handover. The previous train driver and the team which she took over from would have informed her if there was a fault. The fault would have been recorded by the train driver during the hand over. She would have reported the problem between Springs and Polla Park stations for a technician to resolve it. Furthermore, open train doors pose a risk, and passengers themselves would have been aggressive and shouted about the danger posed by the doors.

[25] The procedure is that once the train stops, her duty is to release the open door buttons. The commuters open the doors from inside, manually. She would wait a while to allow passengers to embark and disembark. Thereafter, she would press the close button. Once the close button has engaged, the train doors slide automatically and cannot open manually once they are closed.

[26] The mechanism for opening and closing the doors differs in this manner: after releasing the button to open the doors for passengers to embark or disembark, passengers inside the train can manually open the doors. But once the doors closed for the train to leave the station, passengers cannot open them manually unless they use force. After checking the platform is clear, she would signal to the train driver using the whistle that the train can depart but keep a close observation of the platform as the train would be in slow motion until it leaves the platform.

[27] At Benoni station, the rail and the platform curves slightly to the left. The curve obstructs a complete view of the whole platform. On the day, as the train left the Benoni Station platform, she saw a male lying on the platform screaming “the doors, the doors.” She was puzzled and asked him “what about the doors?” Their exchange was in English, the train was already in motion albeit slow. A security officer was approaching the screaming man.

[28] When the train reached Dunswart Station, she walked between the coaches to inspect the train doors. She found some of the doors did not release when she pressed the open door button. What the screaming man at Benoni Station meant to convey to her made sense. She understood this to be that he could not get out of the train because after the release of the “open doors” button, the train doors could not open manually.

[29] Asked what option a passenger has if train doors do not open. She informed the court that the passenger will either move to the next coach to find a door that opens or disembark at the next station and catch the next train back to their original destination. This is what Mr Esengo could have done. She assumed this is what other commuters did as the coach was empty when she got to Dunswart Station. She put a door lock sticker on the coach doors so that they were not open for use by commuters. She informed the train driver about the problem and the train was taken for repairs once it arrived in Johannesburg. The Wits Metrorail: Faults Report dated Monday, 21 August 2017 refers to the incident and records “repaired.”

[30] Ms Mnguni testified she was not aware that Mr Esengo was injured. He was sitting down during their exchange, and the train was already in motion. There were no other passengers in sight. She could not have reported the incident because all she saw was “a guy screaming the doors the doors.” Hence, she investigated the doors when she reached Dunswart. She did not inform the train driver about the incident involving the man. There was no need to ask the train driver to stop the train. The man she saw was not within the yellow line which is recognised as a dangerous zone of the platform.

[31] She accepted that when a commuter is injured, she is required to inform the train driver to stop the train and hand over the issue to the train security guard at the relevant station. In this instance, since a station security guard from Sinqobile was moving towards Mr Esengo after their exchange, she did not report the incident.

[32] She did not speak to the security guard. She did not consider whether what had occurred, was an “incident or an accident.” Her evidence was that often, commuters open the doors illegally. Since the doors are automated, one must use force to do so. It was only on 26 February 2018, six months after the incident, during the investigation of the claim, when called to make a statement that she became aware Mr Esengo was injured.

[33] Mr Nkwanyana, a protection official within Prasa's Protection Services Department in Brakpan was the next witness called. He is responsible for Asset Protection, escorting and dealing with personnel and contract management. He attends to incidents at Prasa's premises and compile liability reports in respect of train related accidents.

[34] Prasa contracted Sinqobile Security Services (Sinqobile) to provide it with security personnel at its stations. The Brakpan Segment Occurrence Book (“Segment OB”) recorded at 9:56am that:

“Injured Person: Sinqobile Controller [phone number] reported that at Benoni Station at about 9:45 am an African male person fell from a moving train at

platform 2 ...PO Nkwanyana informed and ASS Khumalo informed. Awaiting feedback..."

[35] Mr Nkwanyana received a call about the incident and attended the scene at Benoni Station. He met with Mr Esengo and Mr L. Cingo, a security guard employed by in terms of the contract was placed at Benoni Station on the day. He introduced himself to Mr Esengo and completed the Protection and Security Services Liability Report (Daily Report) based on information obtained from Mr Esengo. The incident is recorded as:

"fell while disembarking from a moving train."

The Daily Report goes further to state:

"According to the Injured male person he was inside train no 0018 and it arrived at station he disembarked on moving train because doors were not opening and fell on the platform injuries and sustained painful right knee and no visible injuries."

[36] Mr Nkwanyana confirmed the contents of the Railway Occurrence Reporting (Liability Report) he compiled on the date and within an hour of the incident at Benoni Station. The Liability Report recorded Mr Esengo's personal details. It had a statement about the incident, recorded to have occurred at 9:45 am. The statement also recorded that Mr Esengo sustained a painful right knee with no other visible injuries.

[37] Mr Nkwanyana testified the Liability Report was based on information obtained from Mr Esengo. After recording the incident, he called the Ambulance Services to take Mr Esengo to Far East Rand Hospital. The ambulance driven by Mr Buthelezi arrived at 10:40am and departed at 10:48am. The Liability Report records Mr Cingo as the security guard present at the scene and was later joined by this Supervisor Mr Kubheka who arrived at the scene at 10:15am.

[38] Mr Nkwanyana was challenged about inconsistencies recorded as the time of the accident. The Daily Report seemingly placed the time of the incident at 10.09am while Mr Nkwanyana's hand-written report stated it was at 9:45am. The incident was reported by the security guard who had called his controller who in turn called Prasa. He clarified that the time of the incident differed from his time of his arrival which was at 10:17am. He left at 10:55am.

[39] Mr Nkwanyana testified that the security guard would have also spoken to Mr Esengo and recorded the information in their Occurrence Book (OB). He disputed that he did not speak to Mr Esengo in addition to the security personnel. He had personally attended at the scene.

[40] A question posed to Mr Nkwanyana concerned an entry about negligence. The Liability Report has a series of questions which required Mr Nkwanyana to mark the answers. In section 10 deals with the behaviour of the injured or deceased person. One of these questions was whether the injury or fatality was "due to own negligence." Mr Nkwanyana marked this as a "no". It was suggested this must be interpreted to mean the injury was not due to Mr Esengo's negligence. Mr Nkwanyana's answer was that he could not comment about negligence since he did not see the accident. He wrote what was told to him.

Issue for Determination

[41] The question for determination is that of negligence, based on the time-honoured test stated in *Kruger v Coetzee*.¹ The case turns on how the accident occurred, and whether Prasa caused or contributed to the accident. It is whether:

- i. Prasa allowed an overcrowded train to travel between Springs Train Station and Benoni Train with its doors open.
- ii. That conduct resulted in Mr Esengo being pushed out of the moving train by other commuters.

¹ 1962 (2) SA 428 (A) at 430 E

- iii. Prasa should have foreseen the reasonable possibility that an overcrowded train travelling with open doors would result in Mr Esengo being pushed out by other passengers causing him injury to his right knee and,
- iv. Should have taken reasonable steps to guard against the occurrence of the incident but failed to take reasonable steps to prevent it.

[42] The questions must be objectively assessed, and the onus to prove negligence on the balance of probabilities that the incident was due to Prasa's negligence rests with Mr Esengo.

Applicable Principles

[43] The account of how the accident occurred differs. Throughout the trial and during argument, parties advanced diametrically opposed versions.

[44] Mr Esengo was unwavering and maintained that the train was overcrowded when he boarded at Springs Station. The train doors were wide open as it travelled to Benoni. He was steadfast that he was pushed out of the train by other passengers before it came to a complete standstill. Counsel for Mr Esengo contends that open door speaks to Prasa's negligence as found in *Maduna v Passenger Rail Agency of South Africa*.²

[45] There is no quarrel with this principle, but Prasa denies the allegation. It persists that Mr Esengo was negligent, alleges he voluntarily assumed the risk, alternatively, contributed to his injuries by disembarking a moving train. Where the versions advanced are mutually destructive, Coetzee J in *African Eagle Life Assurance Co Ltd v Cainer*,³ stated that:

² 2017 JDR 1039 (CJ) at para [28]

³ *African Eagle Life Assurance Co Ltd v Cainer* 1980 (2) SA 234 (W) at 237D–H [also reported at [1980] 1 All SA 122 (W) – Ed]. applied the principle set out in *National Employers' General Insurance Association v Gany* 1931 AD 187

"Where there are two stories mutually destructive, before the *onus* is discharged the Court must be satisfied that the story of the litigant upon whom the *onus* rests is true and the other false. It is not enough to say that the story told by Clarke is not satisfactory in every respect, it must be clear to the Court of first instance that the version of the litigant upon whom the *onus* rests is the true version..."

[46] The court in *National Employers' General Insurance v Jagers*⁴ stated that:

"In deciding whether that evidence is true or not the Court will weigh up and test the plaintiff's allegations against the general probabilities. The estimate of the credibility of a witness will therefore be inextricably bound up with a consideration of the probabilities of the case and, if the balance of probabilities favours the plaintiff, then the Court will accept his version as being probably true. If however the probabilities are evenly balanced in the sense that they do not favour the plaintiff's case any more than they do the defendant's, the plaintiff can only succeed if the Court nevertheless believes him and is satisfied that his evidence is true and that the defendant's version is false.'

[47] These principles mean, Mr Esengo "can only succeed if he satisfied the Court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the version advanced by Prasa is therefore false or mistaken and falls to be rejected."

[48] However, the court in *Koster Kooperatiewe Landboumaatskappy v SA Spoorwee en Hawens*⁵ read together with *African Eagle Life Assurance Co Ltd v Cainer*⁶ held that such an approach can only apply in cases where there are no probabilities one way or the other, and that where there are probabilities, inherent or otherwise, there is no room for this approach.

⁴ 1984 (4) 437 (E) at 440D-G,

⁵ 1974(4) SA 420

⁶ [1980] (1) ALL SA 122 (W)

[49] In assessing probabilities, the court makes a finding on the credibility of the factual witnesses, their reliability, and the probabilities. The Court in *Stellenbosch Farmers Winery Group Ltd and Another v Martell et Cie and Others*⁷ guides the assessment to include impressions about “the veracity of the witness,” based on “subsidiary factors” such as (i) the witness' candour and demeanour in the witness-box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extracurial statements or actions, (v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events.

[50] The whole evidence must be considered to determine the probabilities or improbability each version of the disputed facts. Thereafter, decided whether Mr Esengo discharged the onus to prove negligence.

Analysis

[51] The conditions before the accident, the journey between stations and his arrival at Benoni Station are a material starting point. His evidence was that the incident occurred on a weekday, and he boarded an overcrowded train. An examination of the train ticket shows it was purchased on a Saturday. The denial is at odds with objective facts.

[52] Then there is the claim that the train doors were open. It was common cause that there are approximately 7 stations between Springs and Benoni Stations. There was no evidence of incidents reported between stations or a record of complaint about open doors by passengers. Ms Mnguni whose evidence I accept would have been informed.

[53] As to the claim that the train was overcrowded, there were inherent contradictions between the reply to further particulars delivered on his behalf, which

⁷ 2003 (1) SA 11 at 141-15D

placed the time of the incident at 13h00, and the evidence by Prasa that the incident occurred at 09h45. Ms Mnguni's evidence that, it being a Saturday and the time of the incident fell outside of the peak hours when trains are full aligns common cause facts at the trial, of the time when he purchased the ticket and record of the incident that it occurred at 09h45.

[54] I am prepared to give Mr Esengo the benefit of doubt, that the time provided in the reply to further particulars was attributable to an error by his attorneys. However, his persistence that the incident occurred on a Saturday and the train was overcrowded is not supported by the objective facts and probabilities. Mr Esengo was able to find a seat in an overcrowded train. He admitted other passengers were able to find seats as they embarked and disembarked at various stations. This has a bearing on Mr Esengo's version of how the accident occurred.

[55] Mr Esengo plea is he fell and was pushed "when commuters started to push and shove each other around inside this overcrowded train." His account is that he fell forward on his right knee. He did not use his hands to balance the fall. His hands were not injured or bruised. Mr Esengo was the only passenger injured or who fell that day. He was unable to provide an explanation why his hands were not injured or why he did not fall over other passengers given where he was seated inside the train and his account that commuters were squeezed next to each other.

[56] His Counsel contended on the strength of the decision in *Mokoena v Gert Swart Transport CC*⁸ that it is preposterous to argue that he must have been the author of his own misfortune because he was the only person who was injured during jostling to get off the train.

[57] When examined in relation to where he was situated inside the train in relation to the open doors, there were conflicting answers. In the reply to the request for further particulars it is said he was "seated in the middle of the coach" but later, said he was "standing in the middle of the coach." At the trial hearing he agreed he was seated 2.2m away from the door.

⁸ 2014 JDR 0286 (DSJ)

[58] If his evidence that he was seated 2.2m away from the train doors in an overcrowded train and everyone was rushing as alleged, Mr Esengo would have been surrounded by other passengers at the time he was pushed from the train. He would not have been the only passenger amidst the pushing and shoving since on his own account, passengers were rushing. There is no evidence that he fell over any other passenger. He was the only passenger seen lying on the floor.

[59] When Mr Esengo's version is juxtaposed with Ms Mnguni's evidence, that she saw a passenger on the platform screaming "the doors the doors," and there was a security official approaching this man, that evidence is supported by contemporaneous reports compiled by amongst others Mr Nkwanyana who attended at the scene. The section of the Liability Report with several descriptors and options of how the accident occurred records: "Disembark from a moving train" crossed as "yes". Ms Mnguni's evidence that she inspected the doors at Dunswart Station, found fault in the train doors read with the reports was not challenged in cross examination. Prasa's version that Mr Esengo could not open the doors is consistent with the factual account in the reports. It is in dissonance with the claim that the train travelled with doors open.

[60] The probabilities are that Mr Esengo moved to the next coaches and forcefully opened the doors to disembarked while the train was in motion. This is consistent with the evidence that Mr Esengo was heard screaming "the doors-the doors." It is also consistent with the reports referred to above.

[61] Prasa kept meticulous record of the incident which were discovered during the trial. All these contemporaneous reports of the incident are of material with probative value. It bears emphasising that the Joint Operations Centre Occurrence Book (JOC-OB), and the Brakpan Segment occurrence Book recorded the same facts reflected in Mr Nkwanyana's report.

[62] Although Mr Esengo denied speaking to Mr Nkwanyana, he accepted that two Prasa security officers came to talk to him. Records confirm that Mr L Congo and Mr

Nkwanyana were at the scene. The information about the incident could not have been obtained from any other source other than from Mr Esengo.

[63] Mr Esengo attempted to suggest that his evidence is supported by the evidence of Mr. Nkwanyana who recorded that the accident was “not on Plaintiff’s own negligence.” The entry has a dual meaning and could refer either to Prasa or Mr Esengo. It was not probed further. Mr Nkwanyana’s answer was it is to the court to determine negligence. He also attempted to challenge Ms Mnguni’s about initiating the conversation with Mr Esengo as a fabrication. The criticism is not justified. Her statement must be seen in the context of her responding to past events. The challenges do not tip the probabilities.

[64] Another material record which cannot be ignored, and which could have only emanated from Mr Esengo, independently of Prasa is hospital records. The entry states that:

“A male patient came to the triage with a history of he fell in a train when he was getting out and injured his right leg by the knee its painful as he hit on the ground by the knee. To be seen by casualty doctor...

[65] Confronted with these challenges, Mr Esengo’s Counsel tactically sought to impeach Mr Nkwanyana and Ms Mnguni as credible witnesses, suggesting there was a possibility they had discussed each other’s evidence, and Mr Nkwanyana listened to Mr Esengo’s cross examination. The difficulty with this is that it was not raised immediately with the court or counsel for Prasa who was taken by surprise. The tactic is without substance. Demonstrably, Ms Mnguni and Mr Nkwanyana got involved at different stages of the incident, thus testified on different facts, coalescing to the assessment of the incident. That left room for tailoring the evidence to favour Prasa.

[66] Mr Esengo was not a credible witness. He refused to make concessions even when objective facts pointed to the contrary. The refusal was designed to bolster his claim about the overcrowded train, leading to a highly improbable unsatisfactory account. He was evasive when challenged about how the incident occurred and his

location inside the train. He could not offer a cogent explanation why his personal details, obtained from him where correctly recorded while according to him the balance of the information in the same reports was false. His evidence at all levels lacked credibility, was improbable, at odds with the objective evidence and wholly unreliable. I find it not to be true.

[67] On the other hand, Ms Mnguni and Mr Nkwanyana were credible and reliable witnesses, with probable account of what occurred, corroborated by contemporaneous records as said.

Conclusion

[70] Accordingly, the probabilities do not support Mr Esengo's version and his account of the incident. He has failed to discharge the onus to prove the required elements of negligence which rest on him. He also failed to establish any contributory negligence by Prasa. For the reasons stated, his claim stands to be dismissed with costs.

[71] The costs of the action must follow the result. Mr Esengo's claim was unmeritorious and there is no reason to relax the rule. He is liable for Prasa's cost which are to be determined based on Scale B.

[72] In the result, I make the following order:

- a. The action is dismissed.
- b. The plaintiff is liable for the costs, determined based on Scale B

NTY SIWENDU
JUDGE OF THE HIGH COURT
GAUTENG DIVISION,
JOHANNESBURG

This Judgment is handed down electronically by circulation to the Plaintiff's Legal Representative and the Defendant by email, publication on Case Lines. The date for the handing down is deemed 7 March 2025

Date of appearance: 21, 22, 23 and 24 January 2025

Date Judgment delivered: 7 March 2025

Appearances:

For the Plaintiff: Advocate T. L. Matimbi

Instructed by: Ramunasi Attorneys

For the Defendant: Advocate Opperman

Instructed by: Padi Attorneys