

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE Number: 23147/2018

|                   |                                 |
|-------------------|---------------------------------|
| (1)               | REPORTABLE: NO                  |
| (2)               | OF INTEREST TO OTHER JUDGES: NO |
| (3)               | REVISED: NO                     |
| Date: 26 May 2025 |                                 |

*[Handwritten signature and initials over a redacted area]*

In the matters between: -

Makhubela Sydney

Plaintiff

And

PRASA

Defendant

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**JUDGMENT**

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**BOTHA, AJ**

Introduction

- 1.1 This is an action for damages that arose from the alleged negligence of the Defendant causing physical harm and bodily injuries to the Plaintiff.
- 1.2 According to the Particulars of Claim<sup>1</sup>, the Plaintiff was a passenger on train no 0506 at 6:30 on the morning of 23 February 2018 en route from Tembisa to Isando station for which he had a valid ticket to ride.
- 1.3 Whilst the train was in motion and approaching Isando station, other passengers on the overcrowded train, the doors of which were open at that stage, pushed the Plaintiff out and he fell on the tracks and as a result sustained serious injuries for which he had been hospitalised. He was disabled and disfigured, suffered pain and a loss of amenities of life.<sup>2</sup>
- 1.4 The Plaintiff avers that the sole cause of him falling off the moving train was the negligence of the Defendant.<sup>3</sup>
- 1.5 The Plaintiff also pleaded that the driver or conductor of the train, whilst executing their duties to the Defendant, were negligent on a number of grounds which ranged from opening the doors on the wrong side of the train (non platform side) to driving at an excessive speed.<sup>4</sup>
- 1.6 In its amended plea, the Defendant denied any negligence on its part and also denied that the incident occurred at all.<sup>5</sup>

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<sup>1</sup> CL 02-6

<sup>2</sup> CL 02-8

<sup>3</sup> CL 02-6 par 4.1

<sup>4</sup> CL 02-7 paras 4.2-4.3

<sup>5</sup> CL 02-30 para 1

1.7 Alternatively-if found that the incident did occur, then, and in that event, the Plaintiff wilfully jumped of the moving train,and the Defendant also lists a plethora of willfull actions whereby the Plaintiff puts himself in danger which constitutes the defence of *volenti non fit iniuria*.<sup>6</sup>

1.8 As a last alternative, the Defendant pleaded contributory negligence in accordance with the Apportionment of Damages Act 34 of 1956.<sup>7</sup>

1.9 At the onset of the trial the issues of merits and the quantum of damages were seperated in terms of Rule 33 and the trial proceeded on the determination of liability only.

1.10 The Plaintiff bears the onus in proving his case and therefor had to begin.

## 2

### The evidence presented in the Plaintiff's case

#### 2.1 Sydney Makhubela

2.1.1 He testified that he stays in Tembisa. On 23 February 2018 he woke up at 4:30 in the morning and went to the train station at Tembisa in order to go to work. He had a monthly ticket to ride on the train which was accepted into evidence as Exhibit "B"

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<sup>6</sup> CL 2-30 par 2.1 – 2-33 par 3.5

<sup>7</sup> CL 2-33 par 3.5

2.1.2 He testified that the train was full even before he boarded, but he got a seat next to the door. While the train was in motion, the doors were closed.

2.1.3 At Kempton Park station it seemed as if the train had a problem as it had difficulty of pulling out of the station. Lots of people had boarded the train and the doors remained open as it eventually pulled out of the station.

2.1.4 The train did not stop at Rhodesfield as it was supposed to and therefor the passengers that wanted to disembark there started pushing and shoving each other.

2.1.5 Chaos reigned as the train approached Isando. The Plaintiff stood up, left his seat and took a step towards the open door while the train was still moving and some of the passengers pushed him out of the train.

2.1.6 He fell between the tracks at approximately 50 meters from the platform. Later it was established that the distance was actually 500 meters. A bundle of photographs was handed in and accepted as Exhibit: "A" Photos 12-1 and 12-2 indicate the place where the Plaintiff allegedly fell off the train. On photo 12-17 it was agreed between the parties that the place where the Plaintiff fell was 500 meters from the station.

2.1.7 He testified that he was injured and bleeding. He thought that his leg was fractured as he could not walk. He phoned a friend who is also a colleague of



his who was commuting on another train behind him. His friend disembarked at Isando and walked along the railway lines to come to his assistance.

2.1.8 His employer sent a driver to pick them up. He was treated at his workplace and later taken to hospital. He was on sick leave for a month.

2.1.9 He did not call emergency services. He testified that he reported the incident to PRASA about a week later.

## 2.2 Abraham Ndobeni

2.2.1 The Plaintiff is his co-worker. The witness also stayed in Tembisa, and he also commutes to work with the train to Isando station.

2.2.2 He boarded his train a little later than the Plaintiff and as the train approached Rhodesfield station, the Plaintiff phoned him and reported that he was pushed off the train and that he fell on the railway lines and was still laying there between the tracks.

2.2.3 The witness disembarked at Isando station and walked backwards on the platform. He looked for security officers but found none.

2.2.4 He climbed off the platform and walked on the tracks backwards until he saw the Plaintiff laying on the tracks. He assisted the Plaintiff to get off the

lines, through an opening in the palisade fencing.<sup>8</sup> They waited on the side of the road for the driver who then took them to their workplace. He then proceeded with his work duties, and he did not see when the Plaintiff was taken to hospital.

2.2.5 He testified that he started commuting with the train in 2012. At Isando station there is no security personnel stationed. There are also no security people on the train itself.

### 3

Both the witnesses were cross examined, and the following came to the fore:

#### 3.1 The Plaintiff

3.1.1 He was aware that any incident that occurred on the train must be reported to the security.

3.1.2 He did not ask his friend to assist him in reporting the matter.

3.1.3 He admitted that if he had remained seated, he would have been safe.

3.1.4 He willingly stood up, did not hold on to anything and stood in a dangerous place on a crowded moving train.

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<sup>8</sup> See Ex "A" photo 12-4

3.1.5 He agreed that he got injured because of his own negligence.

3.1.6 It was put to him that his injuries did not emanate from an incident that occurred on PRASA's premises; and

3.1.7 It was also put to him that his version is improbable, and that the incident did not happen at all, hence the reason for the absence of a report.

### 3.2 A Ndobeni

3.2.1 The plaintiff is his friend, and they know each other since 2012.

3.2.2 He knows that there is a train guard on every train and that the guard sits in the last coach of the train.

3.2.3 He said although he walked backwards on the platform and passed the last coach of his train, he did not inform the train guard about his friend laying on the tracks because the train does not stop for a long time.

3.2.4 It was put to him that the ticket examiners sit in a kiosk at the exit of the station, and he could have reported the incident. He stated that there were no examiners in the kiosk or any security officers on the platform.

3.2.5 He then testified that he actually looked around for any security personnel for 10 minutes and it took him 25 minutes to reach the Plaintiff.

3.2.6 The witness indicated on photo 12-12 of Ex “A” the platform on which he disembarked. The importance of this testimony will be highlighted later on.

3.2.7 He testified that it did not cross his mind to ask other commuters for help with the plaintiff but contradicted himself later by saying he did ask for help, but no one was willing to help.

3.2.8 It was put to him that the train from Tembisa does not stop at the platform he indicated he disembarked and that his testimony cannot be true. Also, that Isando is a very busy station and very profitable for the Defendant and therefore there is always security and ticket examiners present at the station. He nevertheless stood by his testimony.

#### 4

#### The witnesses for the Defendant

##### 4.1 Jonas Chabalala

4.1.1 He is a Chief Protection Officer and is employed at PRASA since 1997.

4.1.2 One of his duties is to protect the property and employees of PRASA and the passengers on the trains and station.



4.1.3 Security officers are posted at all stations, and the quantity depends on the size of the station. At Isando on the dayshift there are two officers, and, on the nightshift, there are four officers.

4.1.4 In the instant case he is the investigating officer. He explained the process when a claim is received. Claims are referred to the risk department who in turn allocate them to a specific investigator. This claim was referred to him.

4.1.5 At PRASA there are systems in place to record incidents and accidents. At the Joint Operations Centre (JOC) there is an occurrence book similar to the OB used by the SAPS, wherein all incidents are recorded. He checked the book and found nothing with regard to this incident. Each segment of the stations also has their own occurrence book for anything out of the ordinary that happened in that particular segment. Excerpts of both books were handed in as exhibits “D” and “E”. Nothing relating to this case was recorded.

4.1.6 Thereafter he went to the “Train Ops” department where all faults and all incidents are reported- Ex “F” He perused the whole document and found nothing pertaining to this case.

4.1.7 He also handed in a daily posting sheet which indicates which security guards were posted where and when as Ex “G”. Ex “G” shows that two guards were on duty at Isando station on 23 February 2018 on the day shift.

4.1.8 As the train was identified in the summons, he consulted with the train guard, Me LM Khomolo. She reported that she did not see anyone laying on the tracks that morning and no report was made to her. Her daily journal was handed in as Ex “H”. This document also states that no such incident was reported and that there was no problem or fault with the train on the relevant date.

4.19 The witness was shown Ex “A” photo 12-12 and he stated that platform 2 is only used by trains arriving from Pretoria and the evidence of Mr Ndobeni cannot be possible.

#### 4.2 Lorraine Khomolo

4.2.1 She is a Metro guard at PRASA since 2007 to date. She confirmed Ex “H”

4.2.2 She described her duties as a train guard. On 23 February 2018 she was on duty and there was no fault on train #0506. If there was a problem as alleged by the Plaintiff, she would have known and reported the problem with a reference number.

4.2.3 It is her duty to make sure the doors are closed before the train pulls away. If there was an issue with the doors she would have reported it.

4.2.4 500 meters before a station the train moves very slow, and she would have noticed somebody laying on the tracks. She is looking down on the railway lines.

5.1 Both the witnesses were subjected to cross examination. It was put to Mr Chabalala that his report was incomplete which he denied. He believed the incident did not occur.

5.2 Me Khumolo was tested on the visibility she had to see outside the train with regard to her seat in the last coach of the train. She testified that she will not fail to see if someone is sitting or laying on the tracks, and she did not see the Plaintiff on the tracks that morning.

## Legal Principles

### 6.1 Burden of Proof

It is trite that in civil cases the onus or burden of proof generally falls on the plaintiff (the party initiating the lawsuit) to prove his or her case. This means the Plaintiff must demonstrate to the court, on a balance of probabilities, that his claim is true and probable, and that the Defendant is therefor liable. In the instant case there can be no doubt that the Plaintiff bears the onus. He must convince the

court that his version is the most probable and that the Defendant was negligent, even to the extent of only 1%.

## 6.2 Probabilities

During his evidence in chief the Plaintiff testified that the train experienced problems resulting in panic when departing from Kempton Park station. He testified:

6.2.1 The train could not pull out of the station.

6.2.2 Then the train moved a bit but stopped again.

6.2.3 When it started moving again it was much slower than before.

6.2.4 The doors did not close and remained open.

6.2.5 The train did not stop at Rhodesfield as it should have, and the passengers started panicking and chaos ensued.

6.2.6 The people started pushing each other and Plaintiff was pushed off the train as it approached Isando station.

6.3 The relevance regarding the testimony of Mr Ndobeni is the aspect of the absence of security personnel, ticket examiners and what platform he supposedly disembarked from.

6.4 All these allegations were refuted by the witnesses for the Defendant.



6.4.1 Mr Chabalala proved to the court by way of documentary evidence that there were two security guards on duty at Isando station on 23 February 2018.<sup>9</sup>

6.4.2 He also handed in a Metro rail “Faults Report” for 23 February 2018 which showed that there was no fault reported with the train at either Kempton Park station or Isando station.<sup>10</sup>

6.4.3 It needs to be mentioned that all the documentary evidence handed in by Mr Chabalala was not disputed in the least by the Plaintiff

## 6.5 The legal duty of PRASA

There can be no denying that a public carrier like the Defendant has a legal duty towards his passengers to protect them from any form of harm while they make use of their transport services. This includes the duty that the doors of the train are properly closed when the train is in motion, no overcrowding on the trains and the list goes on.<sup>11</sup>

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<sup>9</sup> See Ex “G”

<sup>10</sup> See Ex “F”

<sup>11</sup> Mashongwa v PRASA (CCT 03/15) [2015] ZACC36; Rail Commuters Action Group v Transnet Ltd t/a Metrorail & Others 2016 (3) SA 528 CC

7.1 The Plaintiff stated that he reported the incident one week later. He did not elaborate and informed the court to whom the report was made, where or at which station or office of the Defendant this was done, was he given a reference number or anything of the like.

7.2 Mr Chabalala testified, and the documentary evidence show that no such report exists. As a matter of fact, the Defendant came to learn about the alleged incident when summons was served.

7.3 Me Khumolo testified, and she was corroborated with the documentary evidence that that there was no problem with the train in question that day.

7.4 The Plaintiff also testified that he laid on the tracks with a broken leg for more or less 30 minutes before help arrived. In that time many trains passed him as it was the morning rush hour. If that was true, somebody, either one of the many passengers or a train driver or a train guard must have seen him laying there in broad daylight and made alarm.

7.5 Instead, the Defendant came to learn about the alleged incident more than a year later when summons was served.

7.6 It is in my opinion highly improbable that the incident could have happened as per the testimony of the Plaintiff and his witness. I therefor reject the evidence

of the Plaintiff as totally improbable, and it is the finding of the court that the Plaintiff did not discharge the burden of proof resting on him to convince the court that his version is more probable.

7.7 In light of the above the plea of *volenti non fit iniuria* and also the issue of contributory negligence, became moot.

### Order

I therefor make the following order:

- a) The action is dismissed.
- b) The Plaintiff to pay the costs of suit on High Court scale B.



G Botha Acting Judge of the  
Gauteng Division of the High Court  
Pretoria

Date of hearing: 17 March 2025 to 20 March 2025

Date of judgment: 26 May 2025

For the Plaintiff: Adv Ramukhesa

Instructed by: Rapfumbedzani Attorneys

For the Defendant: Adv Sobekwa

Instructed by: State Attorney