



**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

**DELETE WHICHEVER IS NOT APPLICABLE**

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED: **NO**
- (4) Date: 18 August 2025

Signature: \_\_\_\_\_

**CASE NO: 29532/2010**

In the matter between:

**KHOMOTJO CHARLES MAJA**

Plaintiff

And

**PASSENGER RAIL AGENCY OF SOUTH AFRICA (PRASA)**

Defendant

---

## JUDGMENT

---

**NYATHI J**

### **A. Introduction**

- [1] This is an action for damages against the defendant arising from an incident on the 24 January 2009 at Kempton Park Station, when the plaintiff was allegedly pushed by unknown persons, while standing near the door of a fully laden moving passenger train and sustained injuries.
- [2] In January 2009 the plaintiff was staying at Ivory Park in Tembisa. Though he was not formally employed, he plied the trade of a hawker. He used to take a local taxi to either Oakmoor or Olifantsfontein station. He would go to town where he would buy stock and then walk around selling.

### **B. Plaintiff's case**

- [3] The plaintiff recounted that on Saturday 24 January 2009 he had gone to town as usual and was a passenger in a train at Kempton Park for his trip home in the afternoon. He had been standing in the train holding a steelbar at the door of the train which was in motion.
- [4] He was bumped by some person he cannot identify, who had rushed out of the train, he lost his balance and fell out of the train. The next moment he found himself in hospital. He was informed that he was brought to the hospital by ambulance. He had sustained leg injuries, and his legs were amputated.
- [5] The plaintiff displayed a copy of a ticket on file which he said he had bought at Olifantsfontein station.

- [6] Under cross-examination by Mr Hlongwane, who appeared for the defendant, there was an accusation that the plaintiff did not have a ticket on that day. This was vehemently denied by Mr Maja.
- [7] A point that stands out from the questioning is Mr Maja's insistence that commuters were boarding and alighting from the train while it was in motion.
- [8] It is the defendant's version that on the day of the accident the plaintiff had no ticket and was opening the doors as they were closing, got out of the moving train and started staff-riding, slipped and fell between the platform and the train and was amputated by the train, was put to and denied by the plaintiff.
- [9] The plaintiff's case was closed thereafter without any further witnesses being called.

### **C. Defendant's case**

- [10] On behalf of the defendant, Mr John Makgawo Khwinana was called to testify under oath. He stated that:
- [11] On the 24 January 2009 he had been a guard on duty at the Kempton Park station working for Afriguard. They were contracted to Metrorail. While he was busy at around "past-seven" in the evening, at the time of the last train, a certain man appeared, who was later identified as the plaintiff.
- [12] As the train stopped at the platform, the plaintiff opened the doors and entered the train and set next to the door. He held onto an iron bar. As the train pulled off, he started staff-riding, and the witness reprimanded him. The plaintiff got on and off the moving train twice or three times, and ultimately, he slipped and fell

underneath between the train and the platform. When the plaintiff was pulled out from the place he had fallen into at platform 4, his right leg had been amputated.

[13] The plaintiff was still conscious when the witness and a colleague pulled him out. The witness wanted to establish the plaintiff's particulars but later found that he had nothing like a valid ticket or an identification document. The witness then reported that fact to the control room. His supervisors, Metrorail photographers and an ambulance arrived. The supervisors including one Mr Gatsheni then took over the scene.

[14] Under cross-examination, Mr Khwinana denied the plaintiff's version that someone had pushed him out of the train. He reiterated that he had observed the plaintiff staff-riding.

[15] Mr Mphela put it to the witness that if the plaintiff had been staff-riding, then the train guard would have seen him and stopped the train. Mr Khwinana denied this saying that if and when a staff-rider gets into trouble, the train does not stop.

[16] The defendant's case was closed at this stage.

#### **D. Discussion and Analysis**

[17] The parties agreed that merits be separated from the quantum aspects of this action, with the latter to be postponed *sine die*.<sup>1</sup>

[18] The contested issue in this matter is whether Mr Maja has established any negligence on PRASA's side, and whether such negligence (if proven) caused his injuries. Furthermore, was the plaintiff a fare paying commuter with a train ticket or whether he was staff-riding.

---

<sup>1</sup> Uniform Rule of Court 33(4).

[19] As summarized above, there is a chasm between parties' versions. The defendant alleges that the plaintiff had been misbehaving by forcing the train doors open and staff-riding, which led to him slipping and sustaining the injuries on the evening of 24 January 2009.

[20] I have to deal with two irreconcilable versions of the incident at the core of this action. In these circumstances, resort is had to the technique laid out in the Supreme Court of Appeal decision of *Stellenbosch Farmers' Winery Group Ltd and Another v Martell and Others*.<sup>2</sup> Nienaber JA explained that in order to resolve factual disputes a court must make findings on:

- (a) the credibility of the various factual witnesses;
- (b) their reliability; and
- (c) the probability or improbability of each party's version on each of the disputed issues.

[21] The court concluded that, "*...In light of the assessment of (a), (b) and (c), the court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it. The hard case, which will doubtless be the rare one, occurs when a court's credibility findings compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors equipoised probabilities prevail.*"

---

<sup>2</sup> 2003 (1) SA 11 (SCA) at para 5.

[22] In *National Employers' General Insurance Co Ltd v Jager*<sup>3</sup>, the court expressed itself as follows:

*"It seems to me, with respect, that in any civil case, as in any criminal case, the onus can ordinarily only be discharged by adducing credible evidence to support the case of the party on whom the onus rests. In a civil case the onus is obviously not as heavy as it is in a criminal case, but nevertheless where the onus rests on the plaintiff as in the present case, and where there are two mutually destructive stories, he can only succeed if he satisfies the court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the other version advanced by the defendant is therefore false or mistaken and falls to be rejected. 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."*

[23] In a weighing exercise when faced with two mutually destructive versions, it stands to reason that acceptance of the one means of necessity a rejection of the other.<sup>4</sup>

---

<sup>3</sup> 1984 (4) SA 437 (ECD) at 440D-441A.

<sup>4</sup> Adams J in *Komako v PRASA* [2022] ZAGPJHC 822 (21 October 2022).

[24] Having regard to the probabilities, there are many an inconsistency in Mr. Maja's version of events as contrasted with the version tendered by the defendant's witness, Mr. Khwinana. The interaction between the Mr. Khwinana and the plaintiff preceded the unfortunate events that followed. The plaintiff plainly disregarded the reprimands from Khwinana to desist from unlawful conduct, which ended up endangering the plaintiff's well-being.

## **E. Conclusion**

[25] The probabilities are not in favour of the plaintiff, his cause of action cannot prevail in the outcome of the matter.

## **F. Costs**

[26] When it concerns the issue of costs, the rule is well established. Even though there were no submissions or argument on behalf of the plaintiff in that regard, the facts are clear to me that the plaintiff is in no position to bear that burden regard being had to his situation holistically, I will exercise my discretion in accordance thereto.

## **G. Order**

[27] The plaintiff's action is dismissed. There is no order as to costs.

  
— —  
J.S. NYATHI  
JUDGE OF THE HIGH COURT  
GAUTENG DIVISION, PRETORIA

Date of hearing: 13/03/2025.

Date of Judgment: 18 August 2025

On behalf of the Plaintiff: MR. RB Mphela  
Plaintiff's attorneys: MHP Malesa Attorneys, Pretoria  
e-mail: [malesa@mhpmalesa.co.za](mailto:malesa@mhpmalesa.co.za)

On behalf of the Defendant: Mr. J. Hlongwane  
Defendant's attorneys: Diale Mogashoa Attorneys, Pretoria  
e-mail: [yumile@dm-inc.co.za](mailto:yumile@dm-inc.co.za)

**Delivery:** This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 18 August 2025.