



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Reportable

CASE NO: 11651/2022

In the matter between:

NORMA GAILIS

Plaintiff

and

WOOLWORTHS (PTY) LTD

First Defendant

J & M CLEANING SERVICES (PTY) LTD

Second Defendant

Coram: JONKER AJ

Heard: 4 September 2025, 7 and 8 October 2025 and 3 December 2025

Delivered: Electronically on 11 December 2025

Summary: Delict – Aquilian liability – Slip and fall claim – Plaintiff alleging she slipped on wet and slippery floor surface at defendant's store – Plaintiff failing to prove existence of wet, slippery or hazardous substance on floor – No witness observing any substance on floor before or immediately after fall – Foundational factual requirement for slip and fall claim not established – Claim dismissed.

ORDER

1. The plaintiff's claim is dismissed.
 2. The plaintiff is ordered to pay costs on Scale B.
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JUDGMENT

JONKER AJ:

Introduction

[1] This is an action for damages instituted by the plaintiff against the first defendant, Woolworths (Pty) Ltd ("Woolworths"), arising from a fall she allegedly sustained on 11 April 2021 at the Constantia Village Woolworths store ("the store"). The plaintiff's claim is founded in delict and she alleges that she slipped on a wet and slippery floor surface in the main thoroughfare area of the Store.

[2] The second defendant, J&M Cleaning Services (Pty) Ltd ("J&M"), was joined to the proceedings following a notice in terms of section 2(2) of the Apportionment of Damages Act 35 of 1956. However, at the close of the plaintiff's case on 8 October 2025, I granted absolution from the instance in favour of J&M on the basis that the plaintiff had failed to establish a prima facie case against it.

[3] The action was separated in terms of Rule 33(4) and the trial proceeded solely on the merits. The trial ran over three days: 4 September 2025, 7 October and 8 October 2025, and legal argument was heard on 3 December 2025. Following the grant of absolution in favour of J&M, the trial continued with Woolworths calling its witnesses.

[4] Having heard all the evidence and considered the written and oral submissions of counsel, I am now called upon to determine whether the plaintiff has proven, on a balance of probabilities, that Woolworths is liable in delict for the injuries she sustained.

THE PLEADED CASE

[5] According to the amended particulars of claim, the plaintiff was injured when she slipped on a wet and slippery floor surface in the main thoroughfare area of the first defendant's store whilst walking therein. The plaintiff alleges that Woolworths and/or J&M, through their employees or agents, owed her a legal

duty to ensure that the floor surfaces were free of dangerous obstructions, hazards, or slippery substances; that any slippery substances would be timeously mopped up; and that adequate and noticeable warning signs would be displayed.

[6] The plaintiff pleads that the defendants acted negligently by failing to comply with these duties, and that as a result of this negligence, she suffered serious bodily injuries including a three-part left proximal humerus fracture, bruising, and emotional shock.

[7] Woolworths admits that the plaintiff was in the store and that she fell, but denies that the fall occurred as alleged by the plaintiff. Woolworths' version is that the plaintiff tripped over her own feet whilst pushing a trolley. Woolworths denies that there was any wet or slippery substance on the floor and pleads that it took all reasonable steps to ensure that the floors were clean and free of hazardous substances.

[8] In the alternative, Woolworths pleads that if the court finds that the plaintiff did slip on a wet surface (which is denied), it had engaged J&M, a professional and experienced cleaning contractor, and was entitled to rely on J&M's expertise. Woolworths further pleads, in the further alternative, that the plaintiff was contributorily negligent in failing to keep a proper lookout.

COMMON CAUSE FACTS

[9] The following facts are common cause:

- (a) The plaintiff fell at the First Defendant's store in Constantia on 11 April 2021.
- (b) The plaintiff suffered injuries including a fracture to her left arm and emotional shock.
- (c) No one saw a wet, slippery or hazardous substance on the floor prior to the Plaintiff's fall.

THE ISSUES TO BE DETERMINED

[10] The central issue before this Court is whether the plaintiff has established, on a balance of probabilities, that Woolworths is liable in delict for the injuries she sustained. This requires consideration of the following 5 questions, in the order as they appear:

- (a) Whether there was a wet, slippery, or hazardous substance on the floor at the time and place where the plaintiff fell;
- (b) If so, whether Woolworths knew, or ought reasonably to have known, of the existence of such hazard;
- (c) Whether Woolworths breached a legal duty of care owed to the plaintiff by failing to take reasonable steps to prevent or remedy the hazard;

- (d) Whether any such breach factually and legally caused the plaintiff's fall and resulting injuries; and
- (e) Whether, in all the circumstances, delictual liability should be attributed to Woolworths.

[11] Should a wet, slippery, or hazardous substance on the floor at the time and place where the plaintiff fell, not be proven, this Court does not have to deal with remainder of the questions.

THE EVIDENCE

[12] A total of six witnesses testified during the trial. In short, the relevant part of their testimonies, can be summarised as follows:

Mrs. Norma Gailis

[13] The plaintiff testified that on 11 April 2021, she and her husband went to the store to purchase grapes. She explained that her husband was walking ahead of her, pushing a trolley, which he required for support following an accident in 1993 that affected his mobility. She stated that she was walking three or four paces behind him when her left foot suddenly slipped, causing her to fall onto her left arm and strike her head on the floor.

[14] The plaintiff sustained a cut above her left eyebrow which bled. She testified that Mr. Lindsay Basson, a Woolworths employee, arrived at the scene and arranged for a wheelchair. Her son, Brian, arrived approximately twenty minutes later and drove her to Constantiaberg Hospital, where x-rays confirmed a fracture to her left arm.

[15] Under cross-examination, the plaintiff made several significant concessions. She admitted that she had not been looking down at the floor at the time of the fall and could not identify any substance on which she allegedly slipped. When asked directly whether she had observed any water, moisture, or substance on the tiles prior to her fall, she conceded to the court that she had not. During re-examination, when asked to confirm whether she had seen any hazard on the floor, the plaintiff responded that she had not seen a hazard at all.

[16] The plaintiff could not explain why two contemporaneous statements recorded by Woolworths employees on the day of the incident differed from her own version. One statement recorded that she had tripped at the back of a trolley; the other stated that she fell over her own feet. She rejected both versions but offered no explanation for the discrepancy. She did strongly maintain that she did not push the trolley.

[17] The plaintiff could not explain inconsistencies in letters written by her attorneys. A letter from her erstwhile attorney, Ms. Tracey Babb, did not accord with the plaintiff's own recollection of events. When questioned about a letter from her current attorney, Mr. Jonathan Cohen, which stated that the incident took place "by the entrance of the store" and that she slipped on "a wet and slippery floor surface," the plaintiff acknowledged that she had never looked at the floor and therefore could not say whether it was wet. She conceded that she was not in a position to controvert the evidence of Woolworths' employees that the floor was dry after her fall.

[18] The plaintiff's memory of various details was uncertain. She could not recall that her husband had responded "trolley" when Mr. Basson asked what had happened. She initially testified that Mr. Basson had put a plaster on her wound but later said she could not remember. When challenged about the reliability of her recollection, given the shock she had experienced, the plaintiff maintained that her memory was "fine for her age."

Mr. Lionel Gailis

[19] The plaintiff's husband, Mr. Lionel Gailis, testified that on the day of the incident he had been walking ahead of his wife, pushing the trolley for support. He explained at some length that he always pushes the trolley when shopping

because he needs it for physical support and cannot walk or stand for long periods.

[20] Mr. Gailis conceded that he did not witness the plaintiff's fall. He stated that when he turned toward his wife, he found her already lying on the floor. Within approximately three seconds, he himself slipped and fell, landing partially across the plaintiff's left arm.

[21] Mr. Gailis testified that he did not see blood on the floor and that he "was not interested in the floor." He confirmed that he never looked at the floor at any time after the plaintiff had fallen. He denied that a cleaner came to mop up blood after the plaintiff's fall.

[22] Mr. Gailis' evidence about his own fall was inconsistent. Initially, he testified that he had fallen "on top of" the plaintiff. Later, when the court asked whether he might have contributed to her injury by falling on her, he denied this and testified that he had fallen "more to the side" rather than directly on top of her.

[23] There were inconsistencies in Mr. Gailis' account of how the plaintiff was assisted into the wheelchair. He initially stated that he and Mr. Basson together "managed to get Norma into the wheelchair," but later attempted to correct his

testimony, saying that he had merely been supporting his wife while Mr. Basson actually assisted her.

[24] Under cross-examination, Mr. Gailis rejected his wife's evidence that Mr. Basson had reached her before he (Mr. Gailis) did, insisting that this was "impossible." He maintained that Mr. Basson arrived only after he had fallen and attempted to assist his wife. He further stated that his wife would not necessarily have known the sequence of events because she had been in a "total daze" and in shock, lying on the floor. When it was suggested that this meant she might not remember the incident accurately, he attempted to backtrack, stating that he "did not know" and could not answer for her.

Mr. Brian Gailis (Brian)

[25] The plaintiff's son, Brian, testified that he learned of the incident when his father telephoned him between 10:00 and 11:00 on 11 April 2021. In his evidence-in-chief, he stated that he had been at home in Muizenberg when he received the call and that it took him approximately twenty minutes to reach the store.

[26] Under cross-examination on the second day of the trial, Brian became uncertain about his exact whereabouts when the call came in. After being confronted with the transcript from the first day, he accepted that although he had

previously stated he was at home, he might instead have been on the road after dropping his daughter off. He ultimately conceded that he could not say with certainty where he had been.

[27] Brian testified that upon entering the store, he had to walk "quite sort of deep" into the first section before he could see his mother. He eventually found her seated in a wheelchair behind a pillar, with Mr. Basson kneeling beside her. He described his mother as appearing "very dazed" and "looking straight through" him.

[28] Significantly, Brian testified that he observed blood and water on the floor immediately in front of his mother, and that a cleaner was present with a mop. However, under cross-examination, he accepted that the water was probably from the cleaning of the blood. In re-examination, he clarified that the only time he actually saw water was after he had finished attending to his mother and was standing still. He confirmed that when he first walked into the store, he did not notice any water on the floor.

[29] During cross-examination, Brian made several important concessions. He confirmed that he had not been present when his mother fell, did not witness the incident, and could not say how it occurred. He accepted that his mother was the only family member capable of providing a first-hand account of the fall, and that he could not comment on whether the floor had been dry at the moment she fell.

[30] He further acknowledged that he and his parents had discussed the incident after it occurred and accepted that it was possible they might no longer be able to remember all the facts clearly. He conceded that upon arriving at the scene, his sole focus had been on his mother, that he had not been observing the floor, the cleaner, or his surroundings, and that he had been in a rush to take her to hospital. He accepted that he could not say whether there had been any substance on the floor at the time she fell, whether she had been pushing a trolley, or whether she might have tripped over a trolley wheel.

Ms. Roeleen Henning

[31] The plaintiff called Ms. Roeleen Henning as an expert witness in occupational health and safety. Under cross-examination, Ms. Henning made several important concessions that significantly limited the utility of her evidence.

[32] Ms. Henning conceded that she had never carried out an investigation into the incident. She had merely reviewed the bundle of documents provided to her to determine whether there was any issue indicating a systemic failure to comply with health and safety legislation. She admitted that she did not have any factual evidence showing the presence of a slippery surface. She conceded that the absence of video footage neither proved nor disproved the versions of the witnesses.

[33] Ms. Henning acknowledged that the mere fact that she did not receive written protocols did not mean they did not exist, and that nothing in section 8(d) of the Occupational Health and Safety Act required written documents to be produced. She also accepted that if there was no spillage, then the trigger for generating a record would not arise.

[34] In my view, Ms. Henning's evidence does not assist the plaintiff's case. Her expert opinion was premised on the assumption that a slippery substance existed on the floor, an assumption that, as will be demonstrated, lacks evidentiary foundation.

Mr. Cameron Jacobs

[35] Mr. Cameron Jacobs testified that in April 2021 he was employed as a merchandiser at the store, responsible for replenishing stock. On the morning of the incident, he had been unpacking avocados in the fresh produce area when he noticed the plaintiff near the fruit section.

[36] Critically, Mr. Jacobs testified that he saw the plaintiff fall and that she had been pushing a trolley at the time. He confirmed that his colleague, Mr. Leslie Flowers, had also witnessed the event and had provided a written statement. When confronted with Mr. Flowers' version, that the plaintiff fell over her own feet

while walking with the trolley, Mr. Jacobs maintained that their angles of observation differed: Mr. Flowers had been positioned behind the plaintiff, while Mr. Jacobs was positioned toward her.

[37] After the plaintiff fell, Mr. Jacobs immediately went to call Mr. Basson because he had more experience in handling such incidents. Mr. Jacobs then accompanied Mr. Basson back to the scene. Upon returning, he observed only drops of blood on the floor. He testified that he did not see any water, liquid, or other substance on the floor. He further testified that the trolley was approximately one meter from the plaintiff, just in front of her, after the fall.

[38] Mr. Jacobs explained Woolworths' internal "buddy-buddy system" for spills: when an employee notices a spill, one staff member stands guard to warn customers while another fetches a cleaner. He could not recall whether anyone later came to clean the blood.

Mr. Lindsay Basson

[39] Mr. Lindsay Basson testified that he had been employed by Woolworths for approximately 34 years and, in 2021, held the position of Operations Group Manager at the store. His responsibilities included overseeing safety, security, and store hygiene. He confirmed that J&M had been contracted to clean the store at the time.

[40] Mr. Basson testified that there were two cleaning shifts: one from 06:00 to 13:00 with four cleaners, and another from 12:30 to 19:00 with three cleaners. He stated that all areas in the store were monitored equally.

[41] Although Mr. Basson did not witness the plaintiff's fall, he was called to the scene shortly afterward. When he arrived, he found the plaintiff sitting on the floor with Mr. Gailis standing beside her. He asked what had happened, and Mr. Gailis responded with the single word "trolley." Mr. Basson then took the trolley, which was in close proximity, and tested its wheels, but found the trolley to be in working order.

[42] Mr. Basson observed that the plaintiff had sustained a cut above her eye and that droplets of blood were visible on the floor. He asked a staff member to fetch Dettol and a plaster, which he handed to Mr. Gailis so that the wound could be dressed. He then summoned a wheelchair and, together with Mr. Gailis, lifted the plaintiff into it. Mr Basson testified that, whilst attempting to lift Mrs. Gailis, she complained that her left arm was hurting and Mr Gailis, who was supporting her left arm, released her and when doing so fell to the back. Mr Basson managed to then transfer Mrs. Gailis to the wheelchair.

[43] After securing the plaintiff in the wheelchair and clearing her from the immediate area, Mr. Basson instructed a cleaner to mop up the blood on the

floor. He explained that, in accordance with Woolworths' procedures, he later requested that relevant employees prepare written statements about the incident. He stated that it was only after the plaintiff had been taken to hospital that he established which staff members had directly witnessed the fall, and at that point he learned that Mr. Jacobs was one of the eyewitnesses.

[44] Mr. Basson confirmed that he recorded the incident in Woolworths' internal logging system and that the initial entry reflected only what he had been told at the time, namely, that the plaintiff had "fallen with the trolley."

[45] He testified that Woolworths conducted quarterly Occupational Health and Safety checklist inspections in accordance with labour law requirements, and that these inspections addressed potential hazards affecting customers and staff.

LEGAL PRINCIPLES APPLICABLE

[46] The plaintiff's claim is founded in delict. Aquilian liability, Harms JA said in *Telematrix*¹ is an exception to the general rule that "*skade rus waar dit val*". In order to fall within the exception, a plaintiff must establish the following elements on a balance of probabilities: (a) Conduct (either an act or omission); (b) Wrongfulness (breach of a legal duty); (c) Fault (negligence or intention); (d) Causation (both factual and legal); and (e) Harm (patrimonial loss or damage).

¹ *Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority* SA 2006 (1) SA 461 SCA at para 12.

[47] The onus rests on the plaintiff to prove each of these elements. Where there are two mutually destructive versions before the court, the approach to be adopted was authoritatively set out in *SFW*². The court must make findings on the credibility and reliability of witnesses and evaluate the probabilities. Where the probabilities are evenly balanced, the plaintiff can only succeed if the court believes her evidence and is satisfied that the defendant's version is false.

[48] As stated in *Baring Eiendomme*³:

"...where there are two mutually destructive stories, [the plaintiff] 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."

Slip and fall cases

[49] In slip-and-fall cases, the foundational factual requirement is proof of the existence of a hazardous condition. This principle emerges consistently from various authorities.⁴

² *SFW Group Ltd and another v Martell et cie and others* 2003 (1) SA 11 (SCA) at para 5.

³ *Baring Eiendomme v Roux* [2001] 1 All SA 399 (SCA) at para 7.

⁴ *Montoeli v Woolworths (Pty) Ltd* 1999 JDR 0632 (W); *Holtzhausen v Cenprop Real Estate (Pty) Ltd and Another* 2021 (4) 221 (WCC); *Brauns v Shoprite Checkers (Pty) Ltd* 2004 (6) SA 211 (E).

[50] The distinguishing feature of the cases relied upon by the parties is that the existence of a hazardous or slippery substance was established by clear and credible evidence, whether by admission, direct observation, or common cause agreement. Only once such a hazard is proven does the enquiry shift to whether the defendant knew or ought to have known of it, and whether reasonable steps were taken to address it.

[51] The principle that a retailer owes a duty of care to customers to maintain safe premises is well-established. In *Chartaprops*⁵ Nugent JA stated:

"A person who invites the public to frequent a shopping mall will be expected by members of the public to have ensured that the floors of the premises are reasonably safe and will expect to look to that person if they are not."

[52] The same judgment confirms that a retailer cannot readily hide behind the fact that cleaning was delegated to an independent contractor. However, this principle presupposes that a hazardous condition has been proven to exist. The existence of a legal duty does not remove the plaintiff's burden of proving the factual predicate for a breach of that duty.

[53] The doctrine of *res ipsa loquitur* may apply in slip-and-fall cases, but only after a plaintiff has established that the fall was caused by a proven hazard. As

⁵ *Chartaprops 16 (Pty) Ltd v Silberman* 2009 (1) SA 265 (SCA) at para 18.

explained in *Probst*⁶, the doctrine allows a court to infer negligence where the plaintiff has testified to the circumstances of the fall and the apparent cause, and has shown proper care for his own safety. However, the doctrine "cannot be used to infer the existence of the hazard itself." There must first be evidence of a hazardous condition before negligence can be inferred.

Applying the law to the facts:

Was there a wet, slippery, or hazardous substance on the floor?

[54] The central and fatal deficiency in the plaintiff's case is the complete absence of evidence establishing that there was a wet, slippery, or hazardous substance on the floor at the time and place where she fell.

[55] The plaintiff herself conceded under cross-examination that she had not been looking at the floor before her fall and did not observe any water, moisture, or substance on the tiles. When asked directly by the court whether she had seen any hazard on the floor, she responded that she had not seen a hazard at all. Whilst it is acceptable that a patron looks at the products the retailer has to offer, it is noteworthy that not the plaintiff, her husband, or any other staff member of Woolworths noticed any substance on the floor.

⁶ *Probst v Pick 'n Pay Retailers* 1998 (2) All SA 186 (W).

[56] Mr. Gailis did not witness the plaintiff's fall. He only turned toward her after she was already on the ground. He confirmed that he never looked at the floor at any time after the plaintiff fell, despite allegedly waiting approximately twenty minutes for their son to arrive. His evidence that he "was not interested in the floor" speaks volumes. He cannot, and does not, provide any evidence that the floor was wet or slippery.

[57] Brian arrived approximately twenty minutes after the incident. He observed blood and water on the floor near his mother. However, under cross-examination, he accepted that the water was probably from the cleaning of the blood. More importantly, he clarified in re-examination that when he first walked into the store, he did not notice any water on the floor, he only saw it later, after he had finished attending to his mother and was standing still.

[58] Counsel for the plaintiff submitted that the presence of blood still visible twenty minutes after the incident supports the inference that the cleaner had not yet mopped the area, and therefore the water observed by Brian must have been present before the cleaner's arrival and, on the probabilities, before the plaintiff's fall. I cannot accept this submission.

[59] First, the evidence establishes that Mr. Basson instructed a cleaner to mop up the blood after the plaintiff had been moved. Brian's observation of blood twenty minutes later is entirely consistent with ongoing cleaning activity, the

cleaner may have been in the process of cleaning when Brian arrived, which would explain both the presence of blood and water. The water he observed is far more consistent with water deposited by the cleaner's mop than with water that had been lying on the floor before the fall. Also, as canvassed with both counsel during argument, it could be possible that Mrs. Gailis was still bleeding from when she fell up to moments before Brian arrived. That could also explain why the mopping was still ongoing.

[60] Brian did not witness the fall. He could not say whether there had been any substance on the floor at the time his mother fell, whether she had been pushing a trolley, or whether she might have tripped over a trolley wheel. His evidence is purely circumstantial and relates to observations made well after the incident.

[61] The plaintiff led no other direct evidence of a wet or slippery surface. Ms. Henning, the expert witness, candidly conceded that she had no factual evidence whatsoever that there was a slippery surface at all. Her opinion was premised on an assumption, an assumption that has not been proven.

[62] I note that Mr. Gailis testified that he himself slipped and fell approximately three seconds after his wife, landing partially across her left arm. The plaintiff's counsel submitted that this supports the inference that the floor was wet or slippery. However, I reject this submission for the following reasons. First, Mr. Gailis has significant mobility impairments requiring the use of a trolley

for support when walking. Second, the evidence establishes that he had just turned toward his wife, who was lying injured on the floor in front of him, a sudden movement likely made without his usual trolley support. Third, the evidence shows he fell again later while attempting to assist his wife into the wheelchair (as testified by Mr. Basson in paragraph 42 above). The fact that Mr. Gailis fell twice in circumstances where he was without his trolley support and was moving suddenly or awkwardly is entirely consistent with his mobility limitations, and does not establish that the floor was wet or slippery. No other witness observed any slippery condition, and Mr. Gailis himself never examined the floor to verify what caused his fall.

[63] Moreover, the fact that he fell twice but no other person, including staff members who walked through the area, experienced any difficulty further undermines the suggestion that the floor presented a slipping hazard.

[64] By contrast, Mr. Jacobs, who witnessed the fall, testified that after the plaintiff fell he observed only drops of blood on the floor and did not see any water, liquid, or other substance. His evidence is clear, direct, and unshaken in cross-examination.

[65] Viewing the evidence as a whole, I am satisfied that the plaintiff has failed to prove, on a balance of probabilities, that there was a wet, slippery, or

hazardous substance on the floor at the time of her fall. This finding is fatal to her case, **as liability in delict cannot be established without proof of the foundational factual basis for the claim.**

Credibility and reliability of witnesses

[66] Beyond the absence of direct evidence, the plaintiff's case is further undermined by significant concerns regarding the credibility and reliability of her witnesses.

[67] The plaintiff's own evidence contained material inconsistencies. She could not reconcile her testimony with contemporaneous statements recorded by Woolworths employees, nor with letters written by her attorneys. She could not recall key aspects of the incident, including who reached her first and what was said. Her evidence that Mr. Basson reached her before her husband did was flatly contradicted by Mr. Gailis, who insisted this was "impossible."

[68] The plaintiff initially testified that her husband turned back toward her and slipped and fell partly onto her. She later changed this evidence and stated adamantly that Mr. Basson reached her before her husband did. This inconsistency is material and cannot be explained away. If Mr. Basson had

reached the plaintiff before Mr. Gailis did, he would have witnessed Mr. Gailis's fall, yet neither Mr. Basson nor any other witness mentioned seeing Mr. Gailis fall.

[69] Mr. Gailis' evidence was similarly problematic. His account of his own fall shifted from falling "on top of" the plaintiff to falling "more to the side" of her, when asked by the court whether he could have worsened her injuries. His description of how the plaintiff was assisted into the wheelchair changed repeatedly. He stated that his wife had been in a "total daze" and in shock, which raises questions about the reliability of her recollection, yet he then attempted to backtrack when confronted with the implications of this concession.

[70] Brian's evidence about his whereabouts when he received the call also shifted between the first and second days of trial. While this may not be a material inconsistency, it does illustrate the fallibility of recollection. More significantly, he acknowledged that he and his parents had discussed the incident after it occurred and accepted that it was possible they might no longer be able to remember all the facts clearly.

[71] In contrast, the evidence of Woolworths' witnesses was consistent, coherent, and supported by contemporaneous records. Mr. Jacobs provided an eyewitness account of the fall and testified that the plaintiff was pushing a trolley.

Mr. Basson's evidence about what he was told at the scene, that Mr. Gailis responded with the word "trolley", accords with Mr. Jacobs' observation and with the written statements prepared shortly after the incident. Mr Basson also testified that he tested the trolley and the wheels to ascertain whether the trolley was faulty. This was not canvassed in cross-examination.

[72] Mr Basson testified that he and Mr Gailis assisted Mrs. Gailis to the wheelchair. This is where Mr Basson testified that Mr Gailis fell, when he released his support of Mrs. Gailis's arm in an attempt to help her into the wheelchair. Mrs. Gailis also recalled her husband and Mr Basson helping her into the wheelchair.

[73] Having found the evidence of Woolworths' witnesses to be more credible and reliable, I turn now to consider the specific issue of the trolley.

The trolley issue

[74] Woolworths' version is that the plaintiff tripped over her feet while pushing a trolley. The plaintiff denies this and adamantly maintains that she never pushes the trolley when shopping with her husband because he requires it for support.

[75] There is no doubt that Mr. Gailis requires a trolley for support due to injuries sustained in a cycling accident. His evidence on this point was credible

and unshaken. However, this does not conclusively establish that the plaintiff was not pushing the trolley at the moment of the fall.

[76] Mr. Jacobs, an independent eyewitness, testified that the plaintiff was pushing the trolley when she fell. This evidence was not seriously challenged in cross-examination. Mr. Flowers, another employee, recorded in a contemporaneous statement that the plaintiff fell over her own feet while walking with the trolley. Mr. Basson testified that when he asked what had happened, Mr. Gailis responded with the single word "trolley," and that the trolley was found in close proximity to the plaintiff after the fall.

[77] Against this, the plaintiff and Mr. Gailis insist that she was not pushing the trolley. However, their evidence on this point must be viewed in the context of the shock and trauma of the incident, and the fallibility of human recollection. It is entirely possible that in the immediate aftermath of the fall, neither of them accurately recalled the precise positioning of the trolley or the mechanics of what occurred.

[78] Counsel for the plaintiff submitted that Woolworths has produced no CCTV footage depicting the plaintiff pushing a trolley anywhere else in the store, and invited me to draw an adverse inference from this omission. I decline to do so. Mr. Basson testified that there were no CCTV cameras covering the precise area where the plaintiff fell. The absence of footage showing the plaintiff pushing

a trolley elsewhere in the store does not prove she was not pushing one at the time of the fall. The contemporaneous employee observations and internal records provide positive evidence of trolley involvement that cannot be displaced by the absence of video evidence.

[79] On balance, I find that the probabilities favour Woolworths' version that the plaintiff's fall was associated with the trolley, whether by tripping over her feet while pushing it, or tripping over the trolley itself. However, I do not need to make a definitive finding on this point, because the plaintiff's case fails on a more fundamental basis: she has not proven the existence of the hazard upon which her entire claim is premised.

[80] The plaintiff cannot establish wrongfulness without first proving that a hazard existed. Wrongfulness in this context arises from a breach of a legal duty to take reasonable steps to address a known or foreseeable hazard. Where no hazard has been proven to exist, there can be no breach of duty, and hence no wrongfulness.

[81] The plaintiff's reliance on *Chartaprops* and *Williams* is misplaced. Those cases address whether a retailer may rely on an independent contractor after a hazard has been established. They do not remove the plaintiff's foundational obligation to prove that a hazardous condition existed in the first place.

[82] Similarly, the contention that Woolworths failed to produce cleaning logs or risk assessments impermissibly reverses the onus. Woolworths is not required to prove that its floors were safe; the plaintiff bears the burden of proving that they were not. The absence of documentary records cannot prove the existence of a hazard that no witness observed.

[83] The plaintiff's reliance on *res ipsa loquitur* is equally misplaced. As explained in *Probst*, the doctrine applies only after a plaintiff has established that the fall was caused by a proven hazard. It cannot be used to infer the existence of the hazard itself. Because no hazard has been established in this case, the doctrine does not arise.

[84] Without proof of a hazardous condition, the plaintiff cannot establish factual causation. Factual causation requires application of the "but-for" test: would the harm have occurred but for the defendant's negligent omission? This question cannot be answered in the absence of proof that there was something on the floor that Woolworths negligently failed to detect or remove. The existence of an alternative, equally probable cause, interaction with the trolley, further undermines the plaintiff's ability to establish causation on a balance of probabilities.

[85] Legal causation does not arise for consideration given the failure to establish factual causation.

CONCLUSION

[86] The plaintiff has failed to discharge the onus resting upon her. She has not established the fundamental factual element upon which a claim for delictual liability depends: the existence of a wet, slippery, or hazardous substance on the floor at the time of her fall.

[87] In the absence of proof of a hazardous condition, there can be no wrongful or negligent failure by Woolworths to address such a condition, nor any causal link between alleged negligence and the plaintiff's injuries.

[88] This Court is mindful that the plaintiff is an elderly person who sustained serious injuries in a traumatic incident. I have sympathy for her. However, the law requires that a plaintiff prove her case on a balance of probabilities, and this the plaintiff has failed to do.

COSTS

[89] Costs ordinarily follow the result. The plaintiff has been unsuccessful and must therefore bear the costs.

[90] Woolworths seeks costs including the costs of counsel on scale B. There is no basis for departing from the ordinary scale. The costs of counsel are justified given the three-day trial and the complexity of the matter.

ORDER

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

1. The plaintiff's claim is dismissed.
2. The plaintiff is ordered to pay costs on Scale B.

E JONKER

ACTING JUDGE OF THE HIGH COURT

Appearances:

For plaintiff: Adv Barlow

Instructed by: Jonathan Cohen & Associates

For defendant: Adv Bosman

Instructed by: Mellows de Swardt

