



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Reportable

Case no: 238/2024

In the matter between:

PICK 'N PAY RETAILERS (PTY) LTD

APPLICANT

and

MARIA WILIAMS

FIRST RESPONDENT

TRADESOON 1020 (PTY) LTD t/a BLUEDOT

SECOND RESPONDENT

Neutral citation: *Pick 'n Pay Retailers (Pty) Ltd v Williams and Another* (238/2024)
[2026] ZASCA 07 (26 January 2026)

Coram: PETSE, MBHA and DLODLO AJJA

Heard: 19 September 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for hand-down of the judgment is deemed to be 26 January 2026 at 11h00.

Summary: Practice and procedure – application for reconsideration in terms of s 17(2)(f) of the Superior Courts Act 10 of 2013 – whether grave failure of justice would result or administration of justice brought into disrepute if leave to appeal not granted – amendment of pleadings – requirements therefor – no circumstances warranting intervention.

Delict – customer slipping and falling on shop floor – liability of shop owner – negligence – liability for omission – whether applicant therefor discharged onus to ensure premises reasonably safe – owner having engaged independent contractor for cleaning shop floor – onus not discharged – owner of premises held liable to pay damages for its failure to take reasonable steps to guard against the harm.

ORDER

On application for reconsideration: referred to court in terms of s 17(2)(f) of the Superior Courts Act 10 of 2013:

The application for reconsideration in terms of s 17(2)(f) of the Superior Courts Act is dismissed with costs.

JUDGMENT

Dlodlo AJA (Petse and Mbha AJJA concurring):

[1] This matter concerns a claim in delict, specifically in relation to the liability of the owner of premises to third parties, instituted in the Western Cape Division of the High Court, Cape Town (the high court). The applicant in the proceedings before this Court is Pick 'n Pay Retailers (Pty) Ltd (Pick 'n Pay), against whom the first respondent, Mrs Maria Williams (Mrs Williams), seeks relief for damages arising from personal injuries sustained on the applicant's premises. The second respondent, Tradesoon (Pty) Ltd t/a Bluedot (Bluedot), a third-party service provider contracted to Pick 'n Pay under a Cleaning Service Agreement between the parties.¹ Bluedot was joined to the proceeding as a third party at the instance of Pick 'n Pay, but substantive relief against it was conditional upon Pick 'n Pay being held delictually liable to Mrs Williams.

[2] The cause of action arose on 13 November 2017 at a Pick 'n Pay store located within the N1 City Mall, Goodwood, Cape Town. On the date in question, Mrs Williams was shopping with her sister. Upon approaching the till point, she recalled that she had forgotten to collect a specific item, namely an electric fly repellent. While proceeding at a brisk walking pace (but not running) to retrieve the said item, Mrs Williams slipped and fell to the floor. She noticed that the sole of her shoe had an

¹ Cleaning Service Agreement –

'12.1 The Service Provider hereby indemnifies and holds harmless Pick n Pay, its customers, employees and workmen, against any loss, damage or injury caused or sustained by any wilful or negligent act or omission on the part of the Service Provider or any of its Staff in the course and scope of their employment by the Service Provider, whether in the execution of its duties in terms of the Agreement or otherwise.'

oily-orange substance, which was cleaned by Ms Deliwe Sitsholwane. She testified that she did not see any cleaning staff in the immediate vicinity of where she fell. However, she could not dispute that they were not present or on the premises. It is her evidence that the size of the spillage was approximately equal to an A3 piece of paper, and disputed that it was the size of a two-rand coin as was asserted on behalf of Pick 'n Pay.

[3] As a result of the fall, Mrs Williams sustained the following injuries: (a) soft tissue injury to her left hip; and (b) injury to the left acromio-clavicular joint. Immediate assistance was rendered to her by Ms Sitsholwane, a customer services manager employed by Pick 'n Pay when the incident occurred. Ms Sitsholwane, arranged for Mrs Williams to be transported to a nearby hospital for medical treatment.

[4] It was alleged that Pick 'n Pay undertook to bear the costs of Mrs Williams' medical treatment. Notwithstanding these assurances, Pick 'n Pay failed to honour its undertaking, prompting Mrs Williams to institute legal proceedings against Pick 'n Pay in the high court. Mrs Williams sought the following relief from Pick 'n Pay: payment of damages for: (a) past and future hospital, medical and related expenses; (b) past and future loss of earnings; as well as (c) general damages for pain and suffering. Bluedot did not take part in the application before this Court.

[5] On 1 September 2023, the high court (per Gamble J) delivered judgment in favour of Mrs Williams. The court held that Pick 'n Pay had failed to discharge the evidentiary burden required to rebut the prima facie case of negligence established by her. In particular, the court found that Pick 'n Pay had not adduced sufficient evidence to negate the inference of negligence arising from the circumstances of Mrs Williams' fall.

[6] The court further held that the injuries sustained by Mrs Williams were directly attributable to the negligent conduct of Pick 'n Pay's employees, acting within the course and scope of their employment. Accordingly, Pick 'n Pay was found to be delictually liable 'to pay to [Mrs Williams] 100% of such damages as she may establish in due course arising out of the incident'.

[7] In addition, the court granted a declaratory order to the effect that Bluedot is liable to indemnify Pick 'n Pay in respect of any loss or damages incurred as a result of its employees' negligent acts or omissions committed in the execution of their contractual duties.

[8] Aggrieved by the high court's findings, Pick 'n Pay sought leave to appeal the decision to the full court of the same division on the grounds that the high court had misdirected itself. On 31 October 2023, the high court dismissed the application for leave to appeal on the basis that Pick 'n Pay had failed to show that there was a reasonable prospect of success on appeal or 'that there is some other compelling reason why the appeal should be heard. . . '.

[9] Undeterred by the high court's dismissal of its application for leave to appeal, Pick 'n Pay petitioned the Supreme Court of Appeal (SCA) for leave to appeal on the same grounds as in the high court. On 21 February 2024 the SCA, per Mokgohloa and Hughes JJA, dismissed Pick 'n Pay's petition for leave to appeal, with costs, on the basis that the proposed appeal lacked reasonable prospects of success and that no other compelling reason existed to justify the matter being entertained on appeal.

[10] On 14 March 2024 Pick 'n Pay, aggrieved by the decision refusing it leave to appeal, filed a reconsideration application. On 30 April 2024, the Deputy President of this Court ordered that the application be referred for reconsideration and possible variation in terms of s 17(2)(f) of the Superior Courts Act² (SC Act) and that the parties must be prepared to address the court on the merits, if called upon to do so.

Issues to be determined

[11] Whether the decision of the two Judges of this court refusing leave to appeal should be varied; and if so, whether the high court erred in holding Pick 'n Pay liable, in delict, to compensate the first respondent for such damages as she may prove in due course.

² Superior Courts Act 10 of 2013.

Pick 'n Pay's contentions

Duty of Care and Denial of Liability.

[12] Pick 'n Pay concedes that it owed a general duty of care to all patrons entering its premises, including Mrs Williams, to ensure that the store was reasonably safe for shopping activities. Notwithstanding this acknowledgement, Pick 'n Pay denies liability for the injuries sustained by Mrs Williams. It asserts that the main cause of the incident was the sole negligence of Mrs Williams herself, who allegedly failed to maintain a proper lookout, neglected to take reasonable precautions to avoid the hazard, and thereby failed to prevent her own injury.

Alternative plea: Contributory negligence

[13] In the alternative, Pick 'n Pay pleaded contributory negligence on the part of Mrs Williams. It contends that, should the court find any negligence attributable to Pick 'n Pay, the quantum of damages ought to be apportioned between the parties in accordance with the provisions of the Apportionment of Damages Act.³

Delegation of cleaning duties to independent contractor

[14] Pick 'n Pay further avers that it discharged its duty of care to its customers by engaging the services of Bluedot. In terms of the said agreement, Bluedot undertook responsibility for the cleaning and maintenance of the store premises and assumed liability for any injuries arising from its failure to properly fulfil its contractual obligations. Pick 'n Pay maintains that it acted reasonably in outsourcing these functions and cannot be held liable for any alleged negligence on the part of Bluedot.

Duration of spillage and reasonableness of preventative measures

[15] With respect to the duration of the spillage that allegedly caused Mrs Williams' fall, Pick 'n Pay disputes the high court's finding that the substance remained on the floor for a considerable period. It submitted that it has put adequate measures in place including monitoring protocols to ensure the cleanliness and safety of the store aisles. Consequently, the failure of Bluedot's personnel to detect the spillage and remove it is solely attributed to the latter's negligence, which, according to Pick 'n Pay, absolved it from any delictual liability. Accordingly, Pick 'n Pay contends that it had taken all

³ Apportionment of Damages Act 34, of 1956.

reasonable steps to prevent such incidents and that liability cannot be imputed to it under the circumstances.

Variance of *Probst v Pick 'n Pay Retailers (Pty) Ltd (Probst)*⁴

[16] The case of *Probst* disagrees with the high court's finding in that once a plaintiff has shown that there was a slip and fall due to a spillage on the premises of the defendant then an inference of negligence against the defendant can be drawn from the nature of an accident itself, even when there is no direct evidence of the defendant's actions. It submits that the *Probst* judgment does not affect a reversal of the legal onus resting upon the plaintiff. Rather, it imposes an evidentiary burden upon the defendant to rebut the prima facie inference of negligence. Should the defendant discharge this evidentiary burden by adducing sufficient countervailing evidence, the so-called *Chartaprops 16 (Pty) Ltd and Another v Silberman (Chartaprops)*⁵ defence remains available and may be successfully invoked.

***Chartaprops* defence**

[17] For this proposition, Pick 'n Pay heavily relied on the majority judgment of this Court in *Chartaprops*,⁶ where the majority found that the costs of damage should be against the party who is directly responsible for such damage, and holding the principal liable in circumstances where the principal employed the independent contractor based on the 'legal fiction' of the principle of non-delegability⁷ was inappropriate. The judgment noted that if the principal were to be held liable for that reason alone, that would nullify the distinction between an employee and an independent contractor under the law. Accordingly, Pick 'n Pay's reliance on *Chartaprops* is directed at reinforcing the principle that liability should follow fault, and that principals ought not be held liable for the acts or omissions of independent contractors in circumstances

⁴ *Probst v Pick n Pay Retailers (Pty) Ltd* [1998] 2 All SA 186 (W).

⁵ *Chartaprops 16 (Pty) Ltd and Another v Silberman* 2009 (1) SA 265 (SCA); [2009] 1 All SA 197 (SCA); (2009) 30 ILJ 497 (SCA) [2008] ZASCA 170; [2008] ZASCA 115.

⁶ *Chartaprops* paras 44-45.

⁷ The concept of non-delegable duty is explained as a 'personal duty'. 'A duty of this nature involves what has been described as "a special responsibility or duty to see that care is taken". Such a duty enables a plaintiff to outflank the general principle that a defendant is not vicariously responsible for the negligence of an independent contractor where the causative agent of the negligence relied on was not an employee of the defendant but an independent contractor.' See *Chartaprops* para 29.

where no direct negligence or breach of duty on the part of the principal can be established.

[18] In summary, Pick 'n Pay contended that the high court erred both in its interpretation and application of the relevant legal principles, as well as in its assessment of the facts underpinning the matter. The basis for this contention will be discussed below.

Mrs Williams' contentions

Delegation of Duties and Residual Responsibility.

[19] It was submitted on behalf of Mrs Williams that, notwithstanding the delegation of cleaning responsibilities to Bluedot pursuant to a service agreement, Pick 'n Pay retained a non-delegable duty to ensure that such services were executed in a manner that upheld the requisite standard of care. The mere outsourcing of operational functions does not of and in itself absolve Pick 'n Pay of its overarching obligation to supervise the performance of its contractors and to take reasonable steps to ensure that the premises remain safe for public use.

[20] The evidence adduced before the trial court indicates that Pick 'n Pay failed to exercise adequate oversight over Bluedot's performance, particularly in relation to the maintenance of aisle 5, where the hazardous spillage occurred. It was asserted that this failure constitutes a breach of the duty of care owed to patrons, including Mrs Williams.

Breach of duty to ensure public safety

[21] Mrs Williams further contended that Pick 'n Pay failed to discharge its duty to ensure the safety of members of the public lawfully present on its premises. It argued that the delay in identifying and remedying the spillage in aisle 5 demonstrated a lack of reasonable diligence on the part of both Bluedot and, more significantly, Pick 'n Pay. The duration for which the hazard remained unattended was, according to Mrs Williams, indicative of negligence and a failure to implement effective monitoring protocols.

Relevance of contractual arrangements between Pick 'n Pay and Bluedot

[22] It was further submitted that the contractual relationship between Pick 'n Pay and Bluedot is immaterial to the present proceedings. The lis between Pick 'n Pay and Mrs Williams is founded in delict, and any indemnity or allocation of risk agreed upon between Pick 'n Pay and its contractor does not affect the rights of third parties who suffer harm as a result of negligent conduct. Accordingly, the dispute between Pick 'n Pay and Bluedot is distinguishable from the claim advanced by Mrs Williams.

[23] Counsel supported this argument by referencing *Langley Fox Building Partnership (Pty) Ltd v De Valence (Langley Fox)*⁸ where this Court held that the party who has the responsibility to take precautions as between the principal and contractor is a contractual matter between the two parties (namely the principal and the contractor). However, as it relates to the general public making use of the principal's premises, the person who bears the responsibility is the principal.⁹ As a result, counsel for Mrs Williams submitted that the high court was correct in holding Pick 'n Pay liable for their client's damages.

[24] In order to address the two issues that arise in this application, it will be convenient to set out the sequence that this judgment will follow. First, I will examine the findings of the high court, specifically assessing whether the court erred in holding Pick 'n Pay liable for the damages sustained by Mrs Williams. Secondly, I will consider s 17(2)(f) of the SC Act with particular reference to the criteria that must be satisfied for an applicant to succeed in a reconsideration application.

Did the high court err in holding Pick 'n Pay liable, in delict, to Mrs Williams?

Summary of the relevant evidence

[25] For purposes of the analysis set out in this part of the judgment, the most important evidentiary material comprises the testimonies of the following individuals:

- (a) Mrs Williams, the plaintiff in the proceedings before the high court, whose account forms the basis of the claim in delict;
- (b) Ms Sitholwane, an employee and representative of Pick 'n Pay, whose evidence pertains to the operational practices and response protocols of the defendant;

⁸ *Langley Fox Building Partnership (Pty) Ltd v De Valence* [1990] ZASCA 128; 1991 (1) SA 1 (A); [1991] 3 All SA 736 (AD) (*Langley Fox*).

⁹ *Ibid* at 14D-F.

- (c) Ms Nozuko Naka (Ms Naka), an employee and representative of Bluedot, whose testimony is relevant to the execution of the cleaning services and the delegation of duties under the service agreement concluded with Pick 'n Pay.

These witnesses collectively provide the factual foundation upon which the court's findings on liability were made and are central to the assessment of whether the high court erred in its determination on the issue of liability.

[26] On the day of the incident, Ms Sitsholwane was informed by a field marketer that Mrs Williams had slipped and fell to the shop floor in aisle 5. She immediately instructed that a cleaner should attend to aisle 5. The aisle in question generally stocked condiments. She also examined the area where Mrs Williams had fallen. She testified that at first, she was unable to see any spillage; however, upon a proper examination of the area she noticed a small jam-like substance, the size of a two-rand coin. It felt oily rather than sticky. She did not notice any broken item in the immediate vicinity from which the spillage might have come. While still examining the area, a cleaner arrived as well as other staff members. She then proceeded to clean the sole of Mrs Williams' shoe with a paper towel. The cleaners then cleaned up the spillage and placed a wet floor sign. She completed an incident report in which she recorded that the spillage had been there for a few minutes. She based her information on the fact that the cleaners were in aisle 6 at the time before the incident and would have naturally, according to their cleaning sequence, have come from aisle 5.

[27] For her part, Ms Naka testified that she was assigned to clean aisle 4-7. About an hour before the slip and fall took place, she was called by a merchandiser while in aisle 6 to come and clean aisle 5. There, she saw a small teaspoon-sized spill of mayonnaise on the floor, which the merchandiser had covered with a cardboard. She testified that she removed the cardboard and wiped the spill with a cloth and thereafter placed a wet sign. She resumed her duties in aisle 6 and returned to aisle 5 about 15 minutes later to check if the floor was dry and, if so, to remove the signage. Satisfied that the floor was dry, she continued to make her rounds when, about an hour later, she was informed that someone had fallen. By the time she arrived at the scene in question, the spill had already been attended to, and the floor was dry.

[28] It is trite that 'he who asserts must prove, and not he who denies'.¹⁰ Accordingly, Mrs Williams, as the plaintiff, bore the onus to establish, on a balance of probabilities, that Pick 'n Pay was negligent in failing to discharge its duty of care towards her while she was lawfully present on its premises.

[29] This required Mrs Williams to adduce sufficient evidence demonstrating that Pick 'n Pay, as the party in control of the premises, failed to take reasonable steps to prevent foreseeable harm, and that such failure constituted a breach of the legal duty owed to her. The mere occurrence of injury does not, in itself, give rise to liability; rather, it must be shown that the harm suffered was a direct consequence of Pick 'n Pay's negligent act or omission.

[30] All that was required for Mrs Williams to discharge the onus, as set out by this Court in *Cenprop Real Estate (Pty) Ltd and Another v Holtzhauzen (Cenprop)*,¹¹ with reference to the earlier decision in *Probst* is the following:

'When the plaintiff has testified to the *circumstances in which he fell, and the apparent cause of the fall, and has shown that he was taking proper care for his own safety*, he has ordinarily done as much as it is possible to do to prove that the cause of the fall was negligence on the part of the defendant who, as a matter of law, has the duty to take reasonable steps to keep his premises reasonably safe at all times when members of the public may be using them. . .'

Once Mrs Williams has adduced the requisite evidence as set out above, such evidence is sufficient to establish, on a balance of probabilities, that Pick 'n Pay, being the shopkeeper, was negligent in the circumstances. Accordingly, Mrs Williams would have discharged the onus of proof required to sustain a claim in delict for damages arising from such negligence.

[31] Mrs Williams adduced sufficient evidence to establish the factual and legal basis of her claim. The following material facts were not placed in dispute: Mrs Williams sustained injuries as a result of a fall which occurred within the premises owned, occupied, or under the control of Pick 'n Pay. During the course of her testimony, Mrs Williams provided a clear and credible demonstration of the manner in which the fall

¹⁰ *Pillay v Krishna* 1964 AD 946 at 952.

¹¹ *Cenprop Real Estate (Pty) Ltd and Another v Holtzhauzen* [2022] ZASCA 183; 2023 (3) SA 54 (SCA) para 22.

occurred. This account was not challenged or contradicted. It was further common cause that the proximate cause of the fall was an oily or slippery substance present on the floor of the premises, which had been negligently left unattended by Pick 'n Pay and/or its cleaning contractor, Bluedot.

[32] Mrs Williams established, on a balance of probabilities, that at the material time she exercised reasonable care for her own safety. Although she was walking briskly, she successfully navigated aisle 4 without incident until she encountered the hazardous substance. The fall occurred solely as a result of her stepping on the aforementioned oily substance, which by then had not been identified, removed, or wiped off.

[33] In light of the above, it is evident that Pick 'n Pay failed in its duty of care owed to lawful patrons of the premises. The presence of the hazardous substance, coupled with the absence of any warning or remedial action, constituted negligence. Accordingly, liability for the injuries sustained by Mrs Williams rests with Pick 'n Pay, as was found by the high court.

The negligence test

[34] The doctrine of premises liability imposes a legal obligation upon individuals or entities who exercise control over immovable property to uphold a duty of care towards members of the public who lawfully enter or utilize such premises. This duty encompasses the responsibility to take reasonable measures to prevent or mitigate foreseeable risks of harm, thereby ensuring the safety and welfare of such persons while on the premises.

[35] The well-known case of *Kruger v Coetzee*,¹² which is the foundation for testing negligence, has been referenced with support by this Court in recent cases such as *Chartaprops*¹³ and *Cenprop*,¹⁴ both of which dealt with premises liability claims. The test for negligence is set out as follows:

‘For the purposes of liability culpa arises if –

¹² *Kruger v Coetzee* 1966 (2) SA 428 (A) (*Kruger*).

¹³ *Chartaprops* para 22.

¹⁴ *Cenprop* para 17.

- (a) a diligens paterfamilias in the position of the defendant –
 - (i) would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss; and
 - (ii) would take reasonable steps to guard against such occurrence; and
- (b) the defendant failed to take such steps.¹⁵

In order to answer the question whether Pick 'n Pay was liable or not, the above-mentioned negligence test would have to be applied to the facts of this matter.

The test entails a two-stage inquiry:

First inquiry: Foreseeability of Harm

[36] The first leg of the inquiry entails an assessment of whether a reasonable person in the position of the defendant would have foreseen the reasonable possibility that their conduct might cause physical harm to another, resulting in patrimonial loss. This foreseeability must be evaluated in light of the surrounding circumstances and the nature of the defendant's conduct.

[37] In *Gordan v Shoprite Checkers (Pty) Ltd and Another*,¹⁶ the court held that: 'It is trite that *negligent omissions on the part of a shop owner, to clear hazardous matter from the shop floor is actionable*. Moreover a reasonable person in control of a shopping mall would clearly foresee that spillages might occur in the passages and cause harm if they are permitted to remain, and would take reasonable steps to guard against harm occurring . . .'

[38] It is evident from the facts that Pick 'n Pay did, in fact, anticipate the potential risk of harm arising from spillages on its premises. In response to this foreseeable risk, it engaged the services of an independent contractor, Bluedot, to perform cleaning duties. Hence its reliance on the *Chartaprops* defence, where this Court held that the owner could not be held liable for the negligence of the independent contractor.¹⁷ However, the principle does not absolve a property owner of liability in all instances of delegation. As clearly stated in *Kruger*, '[w]hether a *diligens paterfamilias* in the position of the person concerned would take any guarding steps at all and, if so, what steps would be reasonable, must always depend upon the particular circumstances of

¹⁵ Ibid.

¹⁶ *Gordan v Shoprite Checkers (Pty) Ltd and Another* 2015 JDR 2028 (GP); [2014] ZAGPPHC 773 para 20.

¹⁷ *Chartaprops* fn 3 para 28.

each case. No hard and fast basis can be laid down. Hence the futility, in general, of seeking guidance from the facts and results of other cases'.¹⁸

[39] Having regard to the specific factual circumstances of this matter, the question arises as to whether the steps taken by Pick 'n Pay to mitigate foreseeable harm were reasonable in the context of the second leg of the negligence inquiry. This leg of the inquiry requires an assessment of whether a diligens paterfamilias in the position of Pick 'n Pay would have taken steps to prevent the harm, and if so, whether the steps actually taken were adequate in the circumstances. It is not sufficient merely to demonstrate that some precautionary measures were adopted; the court must determine whether those measures meet the standard of reasonableness expected under the law of delict. Thus, the inquiry turns on whether Pick 'n Pay, having foreseen the risk of spillages and potential injury, took reasonable steps – not only in appointing Bluedot, but also in supervising, monitoring, or ensuring the efficacy of the cleaning operations – to prevent such harm from occurring. This analysis is central to determining whether Pick 'n Pay acted negligently in the circumstances.

Second inquiry: Failure to take reasonable preventative measures

[40] The second leg of the test considers whether the reasonable person, having foreseen the potential harm, would have taken steps that are reasonably necessary to prevent such harm from materialising. A failure to take such steps, where harm was foreseeable, constitutes a breach of the duty of care and amounts to negligence. Accordingly, if it is established that Pick 'n Pay foresaw the risk of harm and nonetheless failed to implement reasonable safeguards to avert such harm, the conclusion must follow that Pick 'n Pay acted negligently.

[41] The evidence emerging from the record reveals that, on the day in question, Pick 'n Pay – represented by its employee, Ms Sitsholwane – was made aware of Mrs Williams' injury not by its own staff, but by a field marketer employed by a third party. This fact is material in evaluating the adequacy of Pick 'n Pay's internal safety

¹⁸ *Kruger* at 430G. See also P Q R Boberg *The Law of Delict* vol 1 (1984) at 333: it has been repeated by numerous South African courts that the precautions taken by a reasonable man depend on the circumstances and that there is no general rule set out.

protocols and its responsiveness to hazardous conditions on the premises as and when they arose.

[42] Ms Sitsholwane testified that Pick 'n Pay had implemented a system referred to as the “mule train”, which supposedly involved daily inspections of each aisle, including:

- (a) Walking the floors;
- (b) Checking for cleanliness;
- (c) Identifying expired goods; and
- (d) Verifying price accuracy against promotional signage.

While this system was presented as a routine safeguard, it is notable that, at the time of the incident, no Pick 'n Pay employee was present in aisle 5 to conduct such an inspection. Mrs Williams’ undisputed testimony confirms that no cleaner was visible in the aisle, and that the incident was only brought to the attention of Pick 'n Pay by Severiano Jehoma, an external party. The absence of personnel undermines the reliability of the mule train system and suggests a lapse in the execution of the store’s safety procedures.

[43] Corroborating this deficiency is the testimony of Ms Naka, the cleaner assigned to aisle 5, who stated that she had attended to a prior spillage in the same aisle but only became aware of Mrs Williams’ fall approximately one hour after it occurred. This delay in response, despite her designated responsibility for that area, suggests a lack of real-time monitoring and inadequate communication between cleaning staff and the store management.

[44] Moreover, the mule train system itself appears to be inherently flawed. As described by Ms Sitsholwane, the system requires employees to simultaneously perform multiple tasks – cleanliness checks, expiry monitoring, and price verification – which may compromise their ability to detect small but hazardous spillages. Indeed, Ms Sitsholwane conceded that the spillage in question was approximately the size of a two-rand coin, a detail that underscores the ease with which such a hazard could be overlooked amidst competing duties.

[45] Additionally, Ms Sitsholwane confirmed that Pick 'n Pay employees did not review or audit the cleaning logbook maintained by Bluedot's staff. The logbook remained exclusively in the possession of Bluedot's supervisor, Mr Ronald. While Ms Sitsholwane described the relationship between Pick 'n Pay and Bluedot as 'good', she acknowledged that Pick 'n Pay did not engage in any form of oversight or verification of Bluedot's cleaning activities. Instead, reliance was placed on the general checks conducted through the mule train system, which, as demonstrated above, was inadequate.

[46] Taken together, these facts suggest that Pick 'n Pay failed to implement a sufficiently robust and reliable system to detect and respond to hazardous spillages. The absence of aisle-specific monitoring at the time of the incident, the lack of oversight over the contractor's cleaning records, and the operational inefficiencies inherent in the mule train system all point to a breach of the duty of care owed to patrons. These shortcomings fall short of the standard expected of a diligens paterfamilias and support a finding of negligence in the circumstances.

[47] In *Chartaprops*, Nugent JA stated the following:

*'A defendant might nonetheless be liable for harm that arises from negligent conduct on the part of an independent contractor but where that occurs the liability ... arises instead from the breach of the defendant's own duty (I use that term to mean the obligation that arises when the reasonable possibility of injury ought to be foreseen in accordance with the classic test for negligence articulated in Kruger v Coetzee). It will arise where that duty that is cast upon the defendant to take steps to guard against harm is one that is capable of being discharged only if the steps that are required to guard against the harm are actually taken. The duty that is cast upon a defendant in those circumstances has been described (in the context of English law) as a duty that is not capable of being delegated: 'the performance of the duties, but not the responsibility for that performance, can be delegated to another. Or as it has been expressed on another occasion, it is 'a duty not merely to take care, but a duty to provide that care is taken' so that if care is not taken the duty is breached.'*¹⁹

¹⁹ *Chartaprops* para 7.

[48] In the same judgment, Nuget JA also referred to *Langley Fox* which was also another matter where the defendant had employed an independent contractor to do work on its behalf. The majority held that ‘the defendant should have realized that the work was inherently dangerous and was under a duty to take reasonable steps to guard against the danger. I think it is clear from the following passage that the majority considered that duty to require the defendant to ensure that adequate precautions were taken (and it held the defendant liable because they were not taken): ‘whether such precautions were to be taken by the [defendant] or the contractor, as between them, is a matter depending on their contract. As far as the duty to the public in general and the [plaintiff] in particular is concerned it matters not. That duty rested upon the [defendant]’.²⁰

[49] Therefore, it was not enough, based on the circumstances of this case, for Pick 'n Pay to merely hire out the cleaning services of Bluedot. They also had a duty to do more on their part, rather than passively relying on Bluedot to do their work. They, too, had the responsibility of double-checking and supervising Bluedot by actively reviewing its logbooks and implementing effective systems to ensure the safety of their customers.

[50] According to *Avonmore Supermarket CC v Venter*²¹ ‘the owner of a store, had a legal duty to ensure that its premises were safe for those who use them’ and must have functional systems in place to safeguard the safety of shoppers. In *Probst*, the court held that ‘[t]he duty on the keeper of a supermarket to take reasonable steps is not so onerous as to require that every spillage must be discovered and cleaned up as soon as it occurs. Nevertheless, it does require a system which will ensure that spillages are not allowed to create potential hazards for any material length of time, and that they will be discovered, and the floor made safe, with reasonable promptitude’.²²

²⁰ Ibid para 11.

²¹ *Avonmore Supermarket CC v Venter* [2014] ZASCA 42; 2014 (5) SA SA 399 (SCA) para16.

²² *Probst* at 20.

[51] The absence of any Pick 'n Pay personnel in the immediate vicinity of the spillage at the relevant time suggests that the prescribed safety protocol was not adhered to. Moreover, this also indicates that the spill had been present for a considerable amount of time, which supports the inference that the hazardous condition was not promptly addressed.

[52] Such a failure to implement or enforce routine checks, particularly in a human high-traffic retail environment where spillages are reasonably foreseeable, constitutes a material breach of the duty of care owed to patrons. The prolonged presence of the spill, coupled with lapses in procedural oversight, amounts to conduct that falls short of the standard expected of a diligens paterfamilias. Accordingly, Pick 'n Pay's omission in this regard is indicative of negligence. It must be borne in mind that:

'It is trite that a defendant is negligent if a reasonable person in this position would have acted differently and if the unlawful act causing damage was reasonably foreseeable and preventable.'²³ Therefore 'the true criterion for determining negligence is whether in the particular circumstances the conduct complained of falls short of the standard of the reasonable person.'²⁴

[53] Accordingly, a reasonable person in the position of Pick 'n Pay would have definitely acted differently under these circumstances. They would have ensured that a Pick 'n Pay employee was immediately available to conduct spot floor checks/mule train once the cleaning staff from Bluedot had finished cleaning aisle 5. This would have prevented Mrs Williams' fall, as the said spillage would have been spotted timeously. Pick 'n Pay, in my view, failed to take the reasonable steps required of it to ensure that no harm was caused to any person, in particular Mrs Williams, and as such Pick 'n Pay was correctly held liable by the high court.

²³ *Morrison v MSA Devco (Pty) Ltd* 2025 JDR 0896 (WCC); [2025] ZAWCHC 21 para 29.

²⁴ *Sea Harvest Corporation (Pty) Ltd and Another v Duncan Dock Cold Storage (Pty) Ltd and Another* [1999] ZASCA 87; [2000] 1 All SA 128 (A); 2000 (1) SA 827 (SCA) para 21. See also *Minister of Justice and Constitutional Development v X* [2014] ZASCA 129; 2015 (1) SA 25 (SCA); 2015 (1) SACR 187 (SCA); [2014] 4 All SA 586 para 21.

Whether leave to appeal in terms of s 17(2)(f) should be granted?

[54] It is trite that, once a court has made a final decision, such decision typically remains in effect.²⁵ But in very rare and special cases, there is a way to ask the court to look at the decision again – especially if not doing so would result in a grave failure of justice. Section 17(2)(f) was amended with effect from 3 April 2024 by the deletion of the phrase ‘in exceptional circumstances’ and the substitution therefor with the phrase ‘in circumstances where a grave failure of justice would otherwise result or the administration of justice may be brought into disrepute’.²⁶ The test has stringent requirements as the threshold is higher.²⁷

[55] Pick 'n Pay submitted that should this application not be granted, a grave failure of justice would result and the administration of justice may be brought into disrepute on the following basis:

- (a) The high court misdirected itself in its application of the law, in that it set a legal precedent which attracted academic criticism;
- (b) There appears to be relatively few reported cases on the application of *Chartaprops* in the context of so-called slip and fall cases; and
- (c) There were two fundamental misdirection's of fact by the high court.

[56] Firstly, the high court's finding that the spillage had been on the floor in aisle 5 for a considerable period of time is based on the reasoning that Pick 'n Pay did not call Jehoma, who is the only person who witnessed Mrs Williams' fall and would have been able to tell how long the spillage had been present on the floor. This argument, according to Pick 'n Pay cannot stand based on unfairness. They contend that Jehoma was a third-party employee. Ms Sitsholwane had not seen him in a while, as explained in her testimony, and other than the name of his employer, his contact details were not known to Pick 'n Pay. Even if contact could have been made, Pick 'n Pay contended that there was no evidence that Jehoma would have known how long the spillage was present, nor was it evident that he, in fact, saw the said spillage. They contend that they acted reasonably as set out in the *Chartaprops* defence. And if the spillage had

²⁵ *Cloete and Another v S* 2019 (2) SACR 130 (CC) para 40.

²⁶ Section 28 of the Judicial Matters Amendment Act 15 of 2023 (the 2023 amendment), effective 3 April 2024,

²⁷ *Notshokovu v S* [2016] ZASCA 112; 2016 JDR 1647 (SCA) para 2.

been there for a longer period, as found by the high court, then that was a reflection on Bluedot's negligence and not Pick 'n Pay.

[57] Secondly, the high court erred in its finding in para 45 and 3 that Ms Naka's evidence added little value. Pick 'n Pay submitted that the cardboard could not have been in place before the fall, because then a fall would not have occurred. Furthermore, it also could not have occurred before the fall and have been the same spillage on which Mrs Williams slipped, because Ms Naka said she had cleaned up the spillage. Also, the fact that she only heard later about the fall was irrelevant to the time for which the spillage was on the floor. These submissions, according to Pick 'n Pay, are exceptional circumstances which justify the s 17(2)(f) referral for reconsideration and variation of the order of the two Judges of this Court refusing leave to appeal.

[58] The Constitutional Court remarked in *Liesching and Others v S*²⁸ that 's 17(2)(f) is not intended to afford disappointed litigants a further attempt to procure relief that has already been refused. It is intended to enable the President to deal with a situation where otherwise injustice might result and does not afford litigants a parallel appeal process in order to pursue additional bites at the proverbial appeal cherry'.

[59] The determination of 'exceptional circumstances' for the purpose of s 17(2)(f) of the SC Act is a factual inquiry, rather than a matter of judicial discretion. The existence of such circumstances must be assessed on a case-by-case basis, having regard to the unique factual matrix of each matter. What may qualify as exceptional in one instance may not necessarily be regarded as such in another. Crucially, the applicant bears the onus of demonstrating with sufficient certainty that another court, considering the same factual and evidentiary material, would reasonably arrive at a different conclusion. Alternatively, the applicant must show that there exists information that is unusual, novel, or otherwise out of the ordinary, which would justify reconsideration of the matter.

²⁸ *Liesching and Others v S* [2018] ZACC 25; 2018 (11) BCLR 1349 (CC); 2019 (1) SACR 178 (CC); 2019 (4) SA 219 (CC).

[60] In the present case, the applicant has failed to discharge this burden. No factual or evidentiary basis has been advanced to suggest that another court would reach a different outcome from that of the high court. The record reveals no extraordinary or unusual circumstances warranting intervention by this Court. The applicant's petition amounts to a mere attempt to reargue the merits of its case which, as demonstrated above, lacks substantive merit.

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

The application for reconsideration in terms of s 17(2)(f) of the Superior Courts Act is dismissed with costs.

D V DLODLO
ACTING JUDGE OF APPEAL

Appearances

For the Appellant:	J Butler SC with D Murote
Instructed by:	Norton Rose Fulbright SA Inc. Webbers Attorneys, Bloemfontein
For the Respondent:	PC Eia
Instructed by:	A Batchelor & Associates Inc. McIntyre van der Post Attorneys, Bloemfontein