



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: A2023-106898

1. Reportable: No 2. Of interest to other judges: No 3. Revised  WRIGHT J

In the matter between:

BETWEEN KACHIDZA

APPELLANT

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA

RESPONDENT

JUDGMENT – WRIGHT J

1. The appellant, Ms Kachidza issued summons against the respondent, Prasa. She claimed only general damages, in an amount of R850 000, arising out of an accident when she fell while attempting to board a train. Prior to trial, it was agreed that the issue of damages be separated. The trial proceeded only on the question of the merits.
2. In the original particulars of claim, it was alleged that Ms Kachidza sustained an “ *injury to right and left hips.* “
3. Amended particulars of claim alleged that Ms Kachidza attempted to board a stationary train while its doors were open. It was alleged that, without warning, the train jerked forward and Ms Kachidza fell and was injured.
4. An amended plea, dated 10 May 2023 alleged that Ms Kachidza tried to board a moving train. Prasa, for the first time, expressly pleaded the defence of *volenti non fit iniuria*, it being alleged that in attempting to board a moving train, Ms Kachidza, fully aware of the dangers involved, consented to the risk of injury.
5. On 10 July 2023, the attorneys for both sides signed a pre-trial minute. It was recorded that the issues to be determined related to certain aspects of negligence. No mention was made of the defence of *volenti*.
6. The minute records that, regarding documents in the trial bundle, discovered documents “ *may be used without the need to prove their authenticity*” , documents are what they purport to be “ *without admitting the correctness of their contents*” and “ *a party seeking reliance on the*

correctness of the contents of a document shall be required to lead evidence of same. “

7. A pre-trial minute, dated earlier, on 11 October 2022, deals with, among other things, the question of negligence. It makes no mention of the defence of volenti as an issue to be decided as the amendment to the plea had not yet been effected.
8. Regarding the status of documents in the bundle, it records that “*documents may be used, and the documents are what they purport to be, without admitting the correctness of the contents thereof unless one party notifies the other 10 days before the trial that such documents shall be proven. “*
9. A “ *Joint Special Practice Note* “ dated 10 July 2023, signed by both attorneys, lists the issues to be decided. No reference is made to the defence of volenti.
10. Regarding the status of documents, the Note records agreement that “*discovered documents “ may be used without the need to prove their authenticity” , “ that documents are what they purport to be without admitting the correctness of their contents” and that “ a party seeking reliance on the correctness of the contents of a document shall be required to lead evidence on same.”*
11. At the appeal hearing, Ms Mzizi for Prasa addressed us on the defence of volenti. So did Mr Shepstone. He argued that the defence could not be raised on appeal as it had not been an issue at trial.

12. I am not sure that I could find that the defence of volenti was meant to be waived as a defence but the defence is not listed as an issue needing determination in the pre-trial minutes or Note. The trial proceeded without obvious reference to the defence of volenti except for the following words of Ms Mzizi at the very end of closing argument, “ *a man who consents to suffer an injury, can as a rule have no right to complain. He who knowing and realising a danger agrees to forgo it and has only himself to thank for the consequence.*” Fisher J did not deal with the defence of volenti in her judgment.

13. In my view, the defence of volenti was not before Fisher J and it can't be raised now.

14. That said, there was really only one narrow issue. Either, the train was stationary when Ms Kachidza attempted to board the train, as she says, or it was already moving when she tried to get on, as Prasa says.

15. The action was dismissed by Fisher J and the present appeal is with her leave.

16. Ms Kachidza testified. She walked to the station from work after nightshift with a colleague, Ms Kaudikiza. Ms Kachidza had a valid ticket. A guard told them to hurry, so Ms Kachidza and Ms Kaudikiza jogged along. Ms Kaudikiza, who was slightly ahead of Ms Kachidza, got into the stationary train. It was a step up from the platform to the floor of the train. As Ms Kachidza put one foot into the train it suddenly moved without warning. Ms

Kachidza was not holding onto any handle or rail as tried to board. Ms Kachidza heard no whistle as none was blown.

17. Ms Kachidza slipped. Her legs went under the train such that both legs were straight out in front of her and going away from her while her body was on the platform. She twisted three times while the train was in motion. She was thrown onto the platform.
18. Ms Kaudikiza testified. As she made her way, fast, towards the train, Ms Kachidza jogged behind. Ms Kaudikiza got into the train ahead of Ms Kachidza. Ms Kaudikiza did not “ *notice the spot where she fell* “. It seems that Ms Kaudukiza did not see Ms Kachidza fall.
19. Mr Mahlangu testified for Prasa. He had worked for Prasa for fifteen years. He was on duty that day as a train guard. He was on the train in question. When it stopped at the station he opened the doors. Some people got out and some got in. Then it “ *was clear outside* “ so he blew the whistle. He closed the doors and then “ *gave the driver a bell, one bell, so that he could pull off.* “ The train moved slowly and then picked up speed. There was no violent movement on departure.
20. A group of four or five ladies approached the moving train. One lady tried to board the moving train but fell because the doors were closed. She got up and tried to enter the train again. Mr Mahlangu rang the bell three times to tell the driver to stop. The train stopped. There is a yellow line drawn on the platform about one metre parallel to the edge of the platform. He went to Ms Kachidza and found her beyond the yellow line, away from the edge

of the platform. Mr Mahlangu said that people force the doors open to board a moving train.

21. Mr Xaba testified. He was a security guard and had worked for Prasa for eleven years. He saw that Ms Kachidza tried three times to board the moving train. She grabbed the door. Some commuters shouted to her to desist. Ms Kachidza fell “ *on the side of the yellow line.* “

22. It appears from the evidence as a whole, although I make no finding thereon, that the injuries to Ms Kachidza were slight indeed. Ms Kaudikiza described Ms Kachidza’s injuries as “ *just some scratches.* “

23. A substantial part of the trial was spent analysing hospital records and comparing them to the pleaded injuries and to the evidence of the four witnesses referred to above. Mr Shepstone, for Ms Kachidza at the appeal hearing, argued that, given the wording of the pre-trial minutes and Note dealt with above, the hospital records and other documents should not have been used in the trial absent their production and proof by the maker of the document or at least a person who could otherwise prove the document. I agree. The wording of the pre-trial minutes and Note is, in each minute and Note, self-contradictory and leads one to the conclusion that very little, if anything was achieved by these pre-trial meetings. Absent clear wording to the contrary, the ordinary rules of evidence relating to the production and proof of documents applies.

24. I have canvassed the evidence in a concise manner as I am of the view that Ms Kachidza’s own evidence is the weak point in her case. Fisher J

described Ms Kachidza's evidence about how she fell under the train as "*strained*". I agree. One struggles to see how it is possible for a person, not of small physical size, to attempt to board as she says she did and then somehow slip and land with both legs straight out under the train, while she twisted three times and fell back. In my view, Ms Kachidza's evidence is improbable.

25. It is probable that Ms Kachidza attempted to board a moving train.

26. Mr Shepstone argued at the appeal hearing that even if the train was moving as Ms Kachidza tried to board it, Prasa was still liable, although perhaps subject to an apportionment against her, on the basis that Prasa or its employees had failed to ensure that the doors were closed when the train departed.

27. The difficulty here is that Ms Kachidza never pleaded a case based on her attempting to board a moving train. A conspectus of the evidence leads to the finding that Ms Kachidza tried to board a moving train but that is not her pleaded case. It would be wrong to hold Prasa liable, on the evidence, where the pleadings don't foreshadow such a finding.

28. The appellant seeks condonation for time delay and the reinstatement of the lapsed appeal. The notice of appeal was delivered nine weeks late. Difficulties with getting busy counsel to finalise the notice of appeal are blamed.

29. The test for condonation is whether it is in the interests of justice to grant condonation. We consider the nature of the relief sought, the extent and

cause of the delay, the effect of the delay on the administration of justice and other litigants, the reasonableness of the explanation for the delay, the importance of the issue to be raised in the intended appeal and the prospects of success. Condonation is not there for the taking. See *Director of Public Prosecutions, Johannesburg and another v Schultz and others*, a judgment of the Constitutional Court delivered on 23 January 2026 at paragraphs 105 and 106.

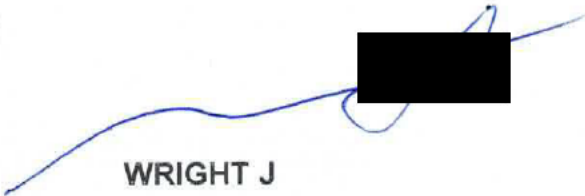
30. In my view, the case for condonation and re-instatement just passes muster. There is no prejudice to Prasa in the appeal being re-instated. Ms Kachidza is successful in gaining re-instatement but the opposition to re-instatement was reasonable. Each party should carry their own costs in this application.

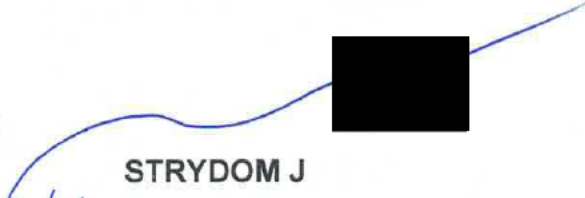
31. At the hearing, Ms Mzizi asked to hand up from the Bar a 24 page set of correspondence relating to condonation and re-instatement. We did not allow this as the correspondence should have been in a supplementary affidavit which would in any event have been very late.

ORDER

1. The appeal is reinstated. The parties are to carry their own costs relating to the condonation and re-instatement application.
2. The appeal is dismissed.

3. The appellant is to pay the respondent's costs relating to the appeal, excluding those in the condonation and reinstatement application. Scale B applies.


WRIGHT J


STRYDOM J

 I agree


SENYATSI J

 I agree

HEARD : 28 January 2026

DELIVERED : 3 February 2026

APPEARANCES :

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