



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

JUDGMENT

Case No: **12062/2020**

In the matter between:

BARBARA ELEANOR MARBE N.O.

Plaintiff

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA

Defendant

Coram: MAGONA-DANO AJ

Heard: 12 & 19 November 2025

Delivered: 29 January 2026

Summary: Train incident and injury to a passenger- Duty to ensure safety of passengers-negligence and liability when doors of trains are not closed when train is moving-holding a valid train ticket not a requirement for liability

ORDER

1. In the result, it is ordered that:

- (a) The defendant is liable to compensate the plaintiff for such damage that she may prove, or agreed upon, arising out of the train incident that occurred at Eikenfontein Station on 01 October 2017; and
- (b) The defendant shall be liable for payment of the plaintiff's agreed or taxed party and party costs, which shall include costs of counsel on High Court scale B.

JUDGMENT

Magona-Dano, AJ:

INTRODUCTION

[1] This is an action for damages resulting from Mr. Ulrich Marbe's (Mr. Marbe) alleged bodily harm and injuries caused by the defendant's alleged negligence. Mr. Marbe is said to have survived the 2017 tragedy. Regrettably, he died of unrelated causes in October 2024.

[2] According to the Master of the High Court Letter of Executorship dated 11 April 2025, Mrs. Barbara Eleanor Marbe, his mother, was appointed as an executrix of the estate of the late Mr Marbe.

[3] In accordance with this Court's Uniform Rules, Rule 15(3), a notice of substitution was submitted *in casu* where the executrix substituted Mr. Marbe who was the plaintiff. For the sake of logic, I will refer to the original claimant as the "deceased plaintiff" and the executrix as "the plaintiff".

Separation of issues

[4] At the onset of the trial, it was confirmed that the issues of merits and the quantum of damages were separated and the trial proceeded on the determination of liability only. The plaintiff bears the onus in proving the case and therefore had to begin.

The Pleadings

The incident

[5] According to the particulars of claim the deceased plaintiff was a passenger on the train on the 1st of October 2017. At approximately 13h00 and at Eikefontein station, he was seriously injured when he was pushed out of a moving metro rail train which at all material times was operated by the defendant.

[6] The deceased plaintiff alleged that the sole cause of him falling off the moving train was the negligence of the defendant or its employees who at all material times were acting within the course and scope of their employment by the defendant, that such persons being negligent in one or more of the following ways:

‘They allowed the train to travel between stations without ensuring that the doors thereof were closed.

They failed to maintain the train doors adequately or at all.

They allowed the train to become overcrowded.

They failed to keep the commuters on the train under any control alternatively under any proper control.

They failed to ensure the safety of commuters on the train adequately or at all.

They failed to post security guards on the train when they should and could have done so.

They failed to avoid the incident when by the exercise of reasonable care, they could and should have done so.’

[7] The Defendant’s plea regarding the incident is as follows:

‘The Defendant denies that the Plaintiff was a fare paying passenger on board a commuter train on 1 October 2017 operated by the Defendant and puts the Plaintiff to the proof thereof.

The defendant has no knowledge of the alleged incident as pleaded by the plaintiff, accordingly, denies same and puts the Plaintiff to the proof thereof. Save as aforesaid, the further allegations contained in this paragraph are denied.¹

Further with regard to the allegations of negligence on its part, the Defendant’s plea is as follows:

The allegations contained in these paragraphs are denied and the Plaintiff is put to the proof thereof.’²

[8] I turn now to look at the evidence that was presented before me.

SUMMARY OF THE EVIDENCE

Plaintiff’s case

[9] Two witnesses were called on behalf of the deceased plaintiff’s case, and they are Ms Nathalie Lenique Marbe (“Mrs Marbe”) and Mrs. Barbara Eleanor Marbe (“the plaintiff”) testified. Both witnesses testified in Afrikaans, and I am grateful to Mr Kok who did an outstanding job with the interpretation. I turn now to look at the evidence led for the Plaintiff’s case.

[10] Mrs Marbe testified as follows:

¹ Defendant’s plea para 3, 3.1 to 3.3.

² Defendant’s Plea para 4.

- (a) She was the deceased plaintiff's sister-in-law. On the day of the incident, she requested him to accompany her to Brackenfell to purchase items which were on special at Fruit & Veg.
- (b) She bought two single tickets. She identified the deceased plaintiff's single ticket which was part of the exhibit bundle.³
- (c) She travelled with her baby and the deceased from Eikenfontein Station to Brackenfell where she attended to her purchases. They returned to Brackenfell Station with her purchases and boarded the train after it had arrived.
- (d) The train was very full as SASSA grants were paid on the day.
- (e) The train doors were open when the train arrived at Brackenfell Station. The train doors did not close when it left Brackenfell Station and did not close at any time until the incident occurred.
- (f) After boarding the train another passenger gave up his seat for her next to the open door. The deceased plaintiff was standing near the door. He could not move further into the train as it was too full.
- (g) As the train moved into Eikenfontein Station some of the passengers started pushing towards the door to jump out of the train. This usually happens as some of the passengers try to avoid the ticket conductors/guards on the station platform.
- (h) In the scuffle the deceased plaintiff was pushed out of the open door. He held onto a steel pipe next to the train door. The bottom half of his body however was underneath the platform whilst the top half was above the platform as the train was still moving.
- (i) She shouted to fellow passengers to assist the deceased plaintiff. Two passengers assisted by supporting him under his shoulders.
- (j) The train eventually stopped and they placed the deceased plaintiff on the platform. He could not move on his own and just lay there.

³ Witness Exhibit A: page 2.

- (k) She left her baby with a friend on the platform and ran to the deceased plaintiff's parents' home which is close to the station to report this, but they were not at home. She returned to the train station.
- (l) A security guard phoned the ambulance.
- (m) Eventually the deceased plaintiff's parents arrived as well as the ambulance. The deceased was taken away in the ambulance with the plaintiff accompanying him.
- (n) The deceased plaintiff sustained an injury to his right leg. His foot was lying at an unnatural angle and the injury eventually resulted in the right leg being amputated later on.
- (o) There was no security personnel deployed on the train.
- (p) On cross examination, she confirmed that she deposed to an affidavit on 7 August 2019 wherein she indicates the following:

‘As we approached Eikenhof (sic) Station the other passengers on the train became restless and moved around a lot. I was busy getting my baby ready to disembark the train. After I disembarked the train at Eikenhof (sic) Station I notice that Ulrich was not with me anymore and I started to look for him. I found him lying on the platform with his leg covered in blood.’
- (q) She explained that the statement was not read back to her when she signed it. She is Afrikaans speaking and would have explained in Afrikaans what had happened prior to the drafting of the affidavit.
- (r) The incident occurred as she had testified in Court. She threw away her train ticket she did not think it was ever going to be needed, she does not know why the deceased plaintiff kept his.
- (s) The tickets are sometimes issued without the relevant station you asked for, that is standard practice with ticket office. That she must have lost the time with regard to the time of the incident and the time she bought tickets but certain that she bought the tickets first.

- (t) On re-examination she further confirmed that the PRASA ticket office usually issues tickets reflecting train stations that cover the areas beyond that which you requested. In other words, your route will be covered within the train stations reflected on the ticket.

[11] Barbara Eleanor Marbe (the plaintiff) testified as follows:

- (a) She was the mother of the deceased plaintiff.
- (b) On the day of the incident when she came back from church, she was advised that the deceased plaintiff was involved in a train accident.
- (c) Upon arrival at the Eikenfontein Station she found the deceased plaintiff lying on the platform with an injured right lower leg.
- (d) She sat with him on the platform until the ambulance arrived taking him to Tygerberg hospital. A PRASA official requested the deceased plaintiff's name, address and age, as well as whether he had a valid train ticket. The deceased plaintiff showed his train ticket to the PRASA official but did not hand it over.
- (e) The plaintiff kept the train ticket and gave it to the attorney that she consulted with the next day after the incident.
- (f) The deceased plaintiff's injury eventually resulted in his right leg being amputated sometime during the course of 2018.

[12] Exhibit A was handed in and formed part of the bundle of documents proven as evidence to this court, the defendant did not contest. I will deal with the bundle's content further below.

The Defendant's case

[13] No evidence was led on behalf of the defendant and Ms Masupye for the defendant simply closed its case.

ISSUES FOR DETERMINATION

[14] Whether the deceased plaintiff was indeed in the train or within the railway danger zone when he was injured?

[15] Whether PRASA'S negligence was proven considering the standard elements for a delictual claim?

[16] Whether PRASA's defence on paper that the plaintiff had no valid ticket, can absolve it from liability for failing to prevent foreseeable harm?

LEGAL PRINCIPLES

[17] It is trite that the party on whom the onus lies is required to satisfy the court that he is entitled to succeed on his claim or defence.⁴

[18] In *Mashongwa v PRASA*⁵, the Constitutional Court, following the principle established in *Rail Commuters*⁶ case, confirmed that the defendant owed a public duty to rail commuters and described this duty as follows:

‘[26] Safeguarding the physical and well-being of passengers must be a central obligation of PRASA. It reflects the ordinary duty resting on public carrier's and is reinforced by the specific constitutional obligation to protect passengers' bodily integrity that rests on PRASA, as an organ of state. The norms and values derived from the Constitution demand that a negligent breach of those duties, even by way of omission, should, absent a suitable non-judicial remedy, attract liability to compensate injured persons in damages.’

⁴ *Pillay v Krishna and another* 1946 AD 946 952- 953.

⁵ (CCT03/15) [2015] ZACC 36.

⁶ *Rail Commuters Action Group v Transnet Ltd t/a Metrorail* 2005 (2) SA 359 (CC) para 82.

[19] Therefore, there can be no denying that a public carrier like the defendant has a legal duty towards its passengers to protect them from any form of harm while they make use of their transport services. This duty includes, inter alia, ensuring that:

(a) the doors of the train are properly closed when the train is in motion;
and

(b) there is no overcrowding on the trains and the list goes on.⁷

[20] In *Rail Commuters Action Group and Others v Transnet Limited t/a Metrorail and others*⁸ inter alia held that:

‘In these circumstances, I conclude that Metrorail and the Commuter Corporation bear a positive obligation arising from the provisions of the SATS Act read with the provisions of the Constitution to ensure that reasonable measures are in place to provide for the security of rail commuters when they provide rail commuter services under the SATS Act. It should be clear from the duty thus formulated that it is a duty to ensure that reasonable measures are in place. It does not matter who provides the measures as long as they are in place. The responsibility for ensuring that measures are in place, regardless of who may be implementing them, rests with Metrorail and the Commuter Corporation.’

[21] Our Constitutional Court has dealt with the duty of PRASA towards its passengers in *Baloyi v Passenger Rail Agency of South Africa (PRASA)*⁹ it was repeated at para 27 that:

‘It was a basic fundamental requirement for the safe operation of a passenger train in any country that “a train should not depart with a door open”. The prohibition of trains travelling with open doors keeping the doors of the train closed whilst in motion is an “essential safety procedure” (paragraph 26). Travelling with open trains doors is a negligent act.’

⁷ *Mashongwa* supra note 5; *Rail Commuters Action Group v Transnet Ltd t/a Metrorail* 2005 (2) SA 359 (CC).

⁸ 2005 (2) SA 359 (CC).

⁹ 2018 JDR 2044 (GJ) para 20.

[22] The claim *in casu* is delictual in nature and accordingly the plaintiff bore the onus to prove, on a balance of probabilities, all the elements necessary to sustain a finding that the defendant is liable in delict for the damages the plaintiff suffered. Conversely, the defendant bears a burden of rebuttal in respect of its defence.

Discussion and Evaluation of the Evidence

Submissions by the legal representatives

[22] Mr Du Toit for the plaintiff submitted that they have presented a watertight case proving the incident and the basis for alleging that the accident occurred as a result of negligence of the defendant and/or its employees.

[23] I was referred to various parts of Mrs Marbe's evidence. That she was the only person who could narrate the story about how and when the incident took place. She was detailed as to the sitting arrangements inside of the train, the capacity of the carriage they were in and how everyone stood, including the deceased plaintiff. She could also give an account of when the incident took place and how it took place. Her evidence remained unrefuted.

[24] She gave a reasonable explanation as to why her earlier affidavit did not contain certain information that she testified in court.

[25] Mrs. Marbe's evidence confirmed that the train doors were open at all material times, that the train was allowed to become overcrowded and that no security personnel were deployed on the train.

[26] Mr Du Toit made further submissions to the effect that PRASA should be held delictually liable for damages that flow from a breach of its public law duty to provide safety and security measures for its commuters, I was also referred to the case of *Mashongwa v PRASA*.¹⁰

[27] The issues of wrongfulness, negligence, and causation where a train travels with open doors and a passenger falls out for whatever reason have been dealt with comprehensively in *Mashongwa*.

[28] Adv. Masupye for the defendant submitted that the first witness Mrs Marbe's testimony ought to not to be accepted as she was not a credible witness.

[29] That her testimony that the train was full as SASSA grant recipients who were paid on that day, 1st October 2017 on a Sunday was untrue. SASSA grants are never paid on a Sunday; it cannot therefore not be true that the train was full on a Sunday mid-morning.

[30] Further, Mrs. Marbe testified that the incident took place at around 11:30, yet the train ticket was bought at 11:47, and she could not explain to the court how it is, that the incident occurred before the train ticket was bought.

[31] Mrs Mabe was asked why the train ticket was written that it was a 'Bellville to Klapmuts' train ticket instead of 'Eikenfontein to Brackenfell', the latter were her departure and destination stations. She could not provide the Court with an answer but said to date that the PRASA ticket office issues tickets

¹⁰ 2016 (3) SA 528 (CC).

in this manner. Her example given was that she recently travelled from Paarl, the train ticket did not reflect Paarl but further stations. She had no exhibit to back her statement to show the Court that indeed that is the practice on issued tickets around Cape Town.

[32] That Mrs Marbe was cross examined about the Affidavit that she deposed on 7 August 2019, her affidavit did not correlate with her testimony. In her testimony in court she testified that she saw people holding Ulrich (the deceased plaintiff) in an attempt to assist him onto the platform, yet in the Affidavit she stated that she was busy getting her child ready to disembark the train and noticed that the deceased plaintiff was not with them anymore and started to look for him where she found him already lying on the platform, injured.

[33] Further that she confirmed in court that the content of her Affidavit was not correct, that her claim that the statement was not read and translated back by her Attorney (from English to Afrikaans) was far from the truth. Ms Masupye further submitted that she stated so because both Counsel and the firm of Attorneys were Afrikaans speaking, it was improbable that they did not understand her when taking the statement and writing it down in English.

[34] Ms Masupye further argued that there was no train ticket discovered on behalf of Mrs Marbe, the first witness to confirm that she was with the deceased plaintiff on the day of the incident. Therefore, the absence of a train ticket should raise doubt whether she was even on the train. Moreover, regarding the plaintiff's testimony, she testified that the Attorneys visited the deceased plaintiff and her the day after the incident (not "a couple of days later" as per

plaintiff's heads of argument reflected). This was when the train ticket that allegedly belonged to the deceased plaintiff was handed over to the Attorneys.

ANALYSIS OF EVIDENCE

Was there a train accident?

[35] I have considered the evidence and submissions made by both Counsel.

[36] The case for the plaintiff was supported by the only witness, the deceased plaintiff's sister-in-law, who gave a clear account of what took place on the date of the incident.

[37] She was the sole individual to provide testimony regarding the events that occurred inside the train, both prior to and following the incident. She offered a detailed account of the positions of the passengers inside the train including the deceased plaintiff. She described the sequence of events during the incident, as well as the actions taken by those who attempted to assist and rescue the deceased plaintiff upon arrival at their intended destination, Eikenfontein station. This evidence was not refuted.

[38] She clarified the discrepancy between her statement and what was recorded, noting that the latter was never read back to her. She also addressed the train ticket issue, explaining that tickets often display different station names than the actual route but broad enough to cover it, which is frequent practice with PRASA's ticket issuing offices.

[39] In my view she was a credible witness and testified in a candid manner. Her demeanor gave the impression that she was giving an honest and sincere account of what took place.

[40] Mrs Marbe's unrefuted evidence confirmed that there was a train accident, the carriage doors remained open throughout the journey, it was full, people started pushing as the train approached the platform which led to the deceased plaintiff becoming a victim sustaining an injury to his one leg and was later taken to the Tygerberg hospital.

[41] This witness's evidence was corroborated by Exhibit A¹¹ submitted on behalf of the plaintiff's case which reflects PRASA's incident report entered at 12h50 and again at 14h57 confirming of a train incident that took place, with the description of the nature of the victim's injury as a 'left leg is broken' and the deceased plaintiff's name reflected thereon. He was then taken to Tygerberg Hospital.

[42] Further, Exhibit A carries an 'Emergency Medical Services Report' which records the ambulance personnel's report of attendance to the scene on 1 October 2017, the deceased plaintiff's name reflected as the victim. It is further stipulated that there was an injury to his 'leg' and he was 'in severe pain', the time was recorded as about 12h47, his next of kin was entered as the plaintiff.

[43] I detailed the evidence of Mrs. Marbe who was inside the train as and when the incident took place, the doors of the train from take-off were ajar and there were no security personnel on the train to ensure that the train carriage doors were closed while the train was in motion.

¹¹ Page 3-4.

[44] In my view based on all the above, it cannot be seriously argued that the incident never took place or that PRASA had no knowledge of it. In that regard I find that on a balance of probabilities the plaintiff has proven that the incident did take place.

[45] Next would be whether PRASA's omission to provide all relevant safety measures to its passengers was negligent on its side and whether this failure was the direct or proximate cause of the injury sustained by the deceased plaintiff. I consider each of these issues in turn.

Legal Duty- (Wrongfulness)

[47] In *Shabalala v Metrorail*¹² it was held that, Metrorail owed commuters a legal duty to take such steps as were reasonable to provide for commuter safety and that the failure to take such steps would render it liable in delict.

[48] It is trite that as a public carrier, operating in the public interest, PRASA is expected to operate trains which are safe for the purpose of conveying passengers, and it has a legal duty to the public at large to take such steps that are reasonably necessary to ensure the safety of commuters whilst travelling on any of its trains.

[49] The public law duty to provide transport that is safe and secure for commuters manifests itself in the private-law legal duty to prevent harm to commuters.¹³ The facts above reflect PRASA's failure in its legal duty to prevent the type of harm sustained by the deceased plaintiff.

¹² 2008 (3) SA 142 (SCA). See also *Rail Commuters* supra note 6 para 20.

¹³ *Mashongwa* supra note 5 paras [28]-[29].

[50] In my view, PRASA was required to take reasonable steps to ensure the safe passage of commuters (including the deceased plaintiff) and any failure to take such steps rendered it liable in delict.

[51] This leads to the question whether or not, in this case, PRASA complied with its legal obligations; in other words, whether or not, it was negligent in relation to the deceased plaintiff.

Duty of Care (Negligence)

[52] The classic test for establishing the existence or otherwise of negligence is that formulated by Holmes JA in *Kruger v Coetzee*¹⁴ that:

‘(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.’

[53] With regard to the facts of this matter, PRASA’s alleged negligent conduct was that it had operated a moving train without ensuring that the doors were closed.

[54] It has been found in many courts as well as in *Passenger Rail Agency of South Africa v Moabelo*¹⁵ that an open train door is a potential danger while the

¹⁴ 1966 (2) SA 428 (A) at 430E-G.

train is in motion and that potential danger exists in relation to every commuter on board the train.

[55] In *Mashongwa*¹⁶ it was emphasised that the defendant's duty to keep the train doors closed while the train was moving existed to prevent passengers from falling out of the train. Doors exist not merely to facilitate entry and exit of passengers, but also to secure those inside from danger.

[56] In *Transnet Ltd and another v Witter*¹⁷, the SCA also held that a train leaving a station with open doors constitutes negligence.

[57] Therefore, for PRASA to meet the minimum safety standards required of it as a commuter rail operator, it had to ensure that a commuter train does not depart from the station with open carriage doors, and that the doors thereof must remain closed while the train is in motion.

[58] In my view, *in casu* as far as the doors are concerned, in failing to ensure that the doors of the moving train were closed, PRASA failed in its duty. The unrefuted evidence before this court is that the doors were opened whilst the train was in motion, Mrs Marbe testified that they were always open even as they alighted the train coach in Brackenfell.

[59] If the doors were closed, as they should have been, and could easily have been, when people started pushing inside the carriage, the accident would never have occurred since the doors would have been shut.

¹⁵ [2017] 4 All SA 648 (SCA).

¹⁶ Supra 5 note para 60.

¹⁷ *Transnet Ltd. t/a Metrorail and Another v Witter* [2008] (6) SA 549 (SCA).

[60] Therefore the open doors resulted in the occurrence of the train accident in question and in this regard, negligence is attributed to the defendant.

[61] On a preponderance of probabilities, the deceased plaintiff would not have sustained the injuries that later led to the amputation of his leg, had PRASA kept the doors of the train closed on the date of this incident. PRASA failed in its duty of care.

Causation

[62] No legal system permits liability without bounds. It is universally accepted that a way must be found to impose limitation on the wrongdoer's liability. The imputation of liability to the wrongdoer depends on whether the harmful conduct is too remotely connected to the harm caused or closely connected to it.

[63] When proximity has been established, then liability ought to be imputed to the wrongdoer provided policy considerations based on the norms and values of our Constitution and justice also point to the reasonableness of imputing liability to the defendant.¹⁸

[64] The incident took place from a moving train whose doors were ajar throughout and as it entered the platform of Eikenfontein station, the opened doors resulted to the deceased plaintiff sustaining an injury to his leg, as there was pushing inside the carriage, all that later led to the leg being amputated (harm caused). All this can be said to be legally connected to PRASA's failure

¹⁸ *Mashongwa* supra note 5 para [68].

to take preventative measures of keeping the coach doors closed as the train was moving (harmful conduct).

[65] This points to negligence on the part of PRASA. The deceased plaintiff, being the holder of a valid ticket on the day of the incident and being a person lawfully on the train.

[66] In the present matter, PRASA failed to display or observe the degree of care required by law, of which the standards required are those of a reasonable man in the position of PRASA. The liability arises if a reasonable man would foresee the likelihood of his conduct injuring another in his person or property and would take reasonable steps to avoid the injury but failed to take such steps.¹⁹

As PRASA failed to take reasonable care, such resulted in the injury to the plaintiff, it should be held liable for his damages.

[67] PRASA is further under a public law duty to protect its commuters, such cannot be disputed, but the courts have gone a step further to pronounce that the duty concerned, together with constitutional values, have mutated to a private law duty to prevent harm to commuters.²⁰

[68] There is thus a duty on PRASA to take active steps to guard against harm which may come to commuters. In this case, PRASA failed to take such steps, specifically failing to ensure that the doors of the coach remained closed at all times.

¹⁹ *Mthombeni v Passenger Rail Agency of South Africa* (13304/17) [2021] ZAGPPHC 614 (27 September 2021) para 14.

²⁰ *Shabalala v Metrorail* (062/07) 2008 (3) SA 142 (SCA); *Transnet Ltd t/a Metrorail and another v Witter* 2008 (6) SA 549 (SCA).

Train Ticket

[69] I turn now to look at PRASA's contention that the plaintiff's claim ought to fail because the deceased plaintiff allegedly did not possess a valid train ticket at the time of sustaining injuries on the PRASA train.

[70] In terms of Section 12 of the Constitution every person the right to freedom and security of the person, including the right to be free from all forms of violence, whether from public or private sources.

[71] In *Mashongwa*, it was held that PRASA bears a positive constitutional duty to take reasonable measures to protect passengers from foreseeable harm while using its services.

[72] The Court emphasised that the duty arises because of the nature of PRASA's operations, not because of the existence of a ticket. In *casu* Ms Masupye made submissions that the deceased plaintiff had no valid ticket as a result he was a trespasser.

[73] In my view this argument cannot stand, this defence is misconceived, legally untenable, and irrelevant to the question of PRASA's delictual liability. The absence of a ticket is not a statutory requirement for liability and does not extinguish the duty of care owed by PRASA to commuters.

[74] In any event and for completeness sake, *in casu* a ticket allegedly belonging to the deceased plaintiff was handed in court as part of exhibit A, the plaintiff - as his mother testified that the ticket belonged to the deceased

plaintiff as it was in her safe custody for a while before it was handed over to the Attorneys - the day after the incident.

CONCLUSION

[75] On the conspectus of evidence presented, I am satisfied that the plaintiff has discharged the onus (on behalf of the deceased's plaintiff) on a balance of probabilities.

[76] In the result, the following order stands to follow:

[2]. The defendant is liable to compensate the plaintiff for such damages that she may prove, or be agreed upon, arising out of the incident that occurred at Eikenfontein Station on 01 October 2017; and

[3]. The defendant shall be liable for payment of the plaintiff's agreed or taxed party and party costs, which shall include costs of counsel on High Court scale B.

MAGONA-DANO, AJ

Acting Judge of the High Court of South Africa

Western Cape Division, Cape Town

Appearances:

For the Plaintiff:

Adv. Albie Du Toit

Attorney Marzahn Fourie Attorneys Inc.

For the Defendant:

Adv. Masupye

Attorneys Nthambeleni Inc.