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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case number: 36147/2020
(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES / NO
(3) REVISED: YES
DATE 22 May 2026
SIGNATURE

In the matter between:

ADV P J VAN DER BERG N.O.
(*Curator Ad Litem* for and on behalf of
I[...] M[...] –
ID NO. 0[...])

PLAINTIFF

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA

DEFENDANT

JUDGMENT

VAN ROOYEN, AJ:

Introduction:

- [1] Plaintiff, in his capacity as the *Curator ad Litem* for I[...] M[...], a major person with date of birth 24 February 2003 (“M[...]”) instituted an action for damages relating to an incident which allegedly occurred on the 26th of March 2018. According to Plaintiff’s latest pleaded version, M[...] suffered injuries when he was allegedly pushed and/or bumped out of the open exit doors of a train operated by the Defendant and hit by an approaching train¹.
- [2] Apart from admitting that an incident occurred on the 26th of March 2018 concerning a young male at Millsite Station, the Defendant denied each and every other allegation².
- [3] At the commencement of the trial and at the request of the parties I ordered a separation of the issues of liability and quantum in terms of Rule 33(4) of the Uniform Rules of Court. The trial proceeded on the issue of liability only.
- [4] M[...] was the only witness to testify in the Plaintiff’s case, whilst the Defendant called two witnesses to testify in its case, one Mr Marutla and Mr Mmulutsi.
- [5] After being informed that M[...] will be testifying, I enquired from counsel for Plaintiff whether M[...] was in fact capable of testifying, since a *curator ad litem* was appointed for him. I was assured that M[...] could testify.
- [6] Before dealing with the evidence presented during the trial, it is necessary to first deal with the pleadings filed in the action.

Pleadings:

- [7] The Plaintiff pleaded in the initial particulars of claim³ that M[...] boarded a train departing from the Randfontein Station. Both the train and the platform were overcrowded. The doors to the coach compartment were still open when it was departing from Randfontein Station. The train entered Millsite Station and came to a standstill. M[...] was still seated when other commuters suddenly and unexpectedly stood up and threw him out of the exit door on the track side.

¹ Case Lines 0003-102 par 6 Plaintiff’s Fourth Amended Particulars of Claim dated 30 January 2026

² Case Lines 0003-65 par 6 Defendant’s Amended Plea

³ Case Lines 0003-6 Particulars of Claim dated 3 August 2020 par 6

When M[...] was thrown off the train, he was hit by an approaching train before he hit the ground.

[8] Further particulars were requested by the Defendant on the 26th of May 2021⁴. A question was *inter alia* posed whether M[...] “was thrown out by one specific commuter or were more than one involved”. (my emphasis)

[9] The Plaintiff’s answer to this question (by way of Plaintiff’s Reply to Defendant’s Request for Further Particulars for purposes of Trial, dated the 30th of June 2021) was “*one or more commuters*”.⁵

[10] The Plaintiff subsequently caused a further amendment to the particulars of claim on the 30th of January 2026 (the fourth amendment)⁶ and pleaded, in summary, the following facts relating to how the incident occurred:

10.1. M[...] boarded a train at the Randfontein Station on the 26th of March 2018.

10.2. The doors of the coach in which M[...] travelled remained open when the train departed from the Randfontein Station. The train switched tracks and the doors on the righthand side of the coach through which M[...] boarded the coach compartment became the trackside door.

10.3. The train entered Millsite station and came to a standstill. M[...] was still seated when other commuters in the coach in which he was travelling, started arguing with each other. They became involved in a physical altercation with each other and M[...] felt uncomfortable and intended to change coaches. When M[...] passed the physical altercation, he was pushed and/or bumped out of the open exit door on the trackside which was still open.

10.4. M[...] was then hit by an approaching train.

⁴ Case Lines 0003-24 par 2.5 Defendant’s Request for Further Particulars

⁵ Case Lines 0003-29 Plaintiff’s Reply to Defendant’s Request for Further Particulars par 2.5

⁶ Case Lines 0003-102 Fourth Amended Particulars of Claim par 6

Evidence presented by the Plaintiff

[11] M[...], with the assistance of an interpreter, Mr Royce Buda testified that an incident occurred on the 26th of March 2018 at Millsite Station. He confirmed that he was residing in Homelake and that he was on his way to Westgate to buy clothing. He was 15 years old at the time. He was in possession of a monthly train ticket which he had shown upon entering the train.

[12] M[...] entered the train on the right-hand side where the platform was and sat down on the left-hand side of the train. He mentioned that there were two gentlemen on the left side.

[13] As the train departed, it switched tracks from the right hand to the left-hand track. The train doors remained open on the right-hand side where he entered the train. When the train arrived at Homelake, the platform was on the left-hand side. No commuters embarked or alighted from the train.

[14] The next station was Robinson Station, and the platform was still on the left-hand side of the train. The next station was Millsite Station where M[...] testified he got injured. He stated that between Robinson and Millsite Stations, the two gentlemen inside the train were having an altercation. Whilst the men were having the altercation, M[...] decided to rise with the intention to switch coaches. Whilst he was walking past them, he was bumped by them and that is how *"I fell out of the train"*. He stated that he fell *"on the right-hand side, the side on which the door was open."*

[15] He got injured when a train coming from the opposite direction collided with his head.

[16] In cross-examination, M[...] agreed that the initial version of how the incident occurred was a detailed version and done on his instructions to the lawyers. He also agreed that the version given in evidence was different to the initial pleaded version and he admitted having reconstructed the version. His explanation for this difference was that he only started recalling *"quite clearly"* after the *inspection in loco* took place and photographs were taken at the

station. He then came to realise that the incident did not occur as initially stated.

[17] M[...] also stated that he was “young and tender” and it was only after visiting the scene that his memory started to come back.

[18] In cross-examination, M[...] was confronted with a statement dated the 1st of June 2021.⁷ He confirmed that this statement was prepared after he visited the scene with the assessor and after photographs were taken. The statement *inter alia* reflects that M[...] boarded the train at Randfontein station. The doors of the train were open – when he boarded the train it was around 10:00 in the morning. The train was not full – there were plus minus 20 people in the carriage. The statement continues with an explanation that two gentlemen drank on the train, and they were having an argument – the one was standing and the other one was seated. When the train came into Millsite Station the man that was seated stood up. The statement continues: *“I also wanted to stand up just before the train stopped because I wanted to board another coach because the two men that were arguing the whole time scared me and I was afraid they were going to hurt me. I walked in order to walk past them and they were pushing each other while arguing. While I attempted to walk past them and they were pushing each other and they argued and when I was across the open door I lost my balance because they pushed me in the process of their argument and I fell from the train while it was moving”*. (sic) (my emphasis)

[19] When confronted with the statement that the train was *moving* in contrast with the amended particulars of claim where it was stated that the train came to a *standstill*, M[...] confirmed that the train was not in motion, it stopped. He stated that the assessor misunderstood him. The misunderstanding by the assessor apparently also related to the incorrect date of the incident reflected in his statement and the confusion with regards to the photographs taken by the assessor (0007-12 and 0007-13) during the inspection. M[...] testified that the assessor “made a mistake” with reference to the direction in which he wanted to exit the coach and the position of the so-called “drunk men”.

⁷ Case Lines 0007-5 Statement of M[...]

- [20] The statement referred to above contains a detailed explanation of the incident and M[...] confirmed that he consulted with the assessor to provide information contained therein. After being showed the report and photographs taken by the assessor, M[...] confirmed that he indeed alerted his attorneys that it was not a true reflection and that the assessor made a mistake.
- [21] M[...] could however not provide an explanation as to why his mother would depose to an affidavit on the 18th of June 2021 (in support of an application for the appointment of a *curator ad litem*) confirming that he was suddenly and unexpectedly pushed out of the train by other commuters. M[...]’s mother was not called as a witness, despite her being present at court during the trial. The affidavit by M[...]’s mother dated the 18th of June 2021 (after the inspection) largely corresponds with the initial pleaded version.
- [22] M[...] was confronted with the version of the train driver that he saw M[...] jumping from the stationary train. M[...] denied jumping and stated that he was pushed. He later clarified that he was bumped from the train by the two men.
- [23] It was put to M[...] that it was recorded that the incident occurred after 4pm whereas in his statement he mentioned that he boarded the train at 10am. He could not provide an explanation for this discrepancy.
- [24] It was further put to M[...] that a witness, Mr Mmulutsi would be called to testify on behalf of the Defendant. M[...] was referred to a statement by Mr Mmulutsi (0007-29) who would confirm what is contained in the statement. Paragraph 2 of the statement reflects: “*The brother B[...] K[...] alleged that they were playing on the moving train hanging outside, when the train stop at Millsite Station platform, I[...]’s cap fell on the opposite site between the rails and he jump to get the cap and hit by another train come from Johannesburg, trian no 0244 to Randfontein*”. (sic)
- [25] M[...] denied this version and stated that he does not have a brother, only sisters.

Evaluation of M[...] as a witness

[26] It appears that the initial version provided by M[...] to his attorneys differed materially from the later version after he visited the scene with the assessor and after photographs were taken. He admitted having reconstructed the version after visiting the train station with the assessor.

[27] The statement by M[...] (taken after the inspection) also contained material contradictions with the version testified to under oath. Despite having alerted his attorneys that the statement was not a true reflection, the statement still formed part of the merits documents.

[28] M[...] was a single witness who testified on behalf of Plaintiff. I unfortunately have to say that M[...] did not impress me as a witness. He failed to satisfactorily explain the discrepancies and contradictions in his evidence referred to above.

Evidence presented on behalf of Defendant:

[29] The first witness on behalf of the Defendant was Mr Marutla. He testified that he was the driver of a train on the 26th of March 2018 operating from Johannesburg to Randfontein. When he approached the Millsite Station and preparing to stop at the platform, there was a stationary train facing the opposite direction at the platform Randfontein to Johannesburg.

[30] As he was preparing to stop, he saw a schoolboy appearing between the coaches and in full control of his body jumping in front of his train. He applied brakes and “released the bell” but could not stop in time to avoid a collision with the boy. After his train came to a standstill he alighted and found the injured boy between the tracks.

[31] The visibility was good and the trainlines were in a straight line. The incident occurred between the platforms at Millsite Station between 16h00 and 16h15.

[32] In cross-examination it was put to Mr Marutla that he was hesitant to explain how the incident occurred. He disagreed with counsel for Plaintiff and answered that he recalled the incident quite clearly.

- [33] Mr Marutla was referred to his statement (0007-44) and questioned why this statement did not make mention of “a schoolboy in full control jumping between the coaches”. Paragraph 3 of the statement reflects: “As I entered with train in the platform, I saw a schoolboy jumping off the stationary train on the opeside of the platform.” (sic)
- [34] Mr Marutla could not explain why the statement omitted the reference to “between the two coaches” and “in full control of his body” and again confirmed that he saw the boy jumping from between the two coaches.
- [35] The next witness who testified on behalf of the Defendant was Mr Mmulutsi. He testified that he was a protection officer and was informed about an incident that occurred at the Millsite Station at approximately 16h15.
- [36] His evidence can be summarised as follows: he was on duty on the specific day and received a call from JOC (Joint Operations Centre) that a boy was injured at Millsite Station. On arrival, he found an injured boy and enquired as to the identity of the victim. He spoke to another young man, B[...] K[...] who was able to provide particulars of the victim. B[...] stated that he was the victim’s brother. He further testified that he requested the emergency personnel to search for a train ticket, but that none was found. Mr Mmulutsi confirmed the contents of his statement (0007-29).
- [37] The incident was reported and the detail referred to above was stated in the relevant records corroborating his version of what he was told about the incident.
- [38] It can be mentioned that counsel on behalf of Plaintiff objected to the evidence relating to the records and what was conveyed to Mr Mmulutsi as being hearsay evidence.
- [39] It is noted that M[...] denied this version during cross-examination when the version of B[...] K[...] was put to him.
- [40] B[...] K[...] was not called as a witness.

Evaluation of Defendant's witnesses:

[41] Despite counsel for Plaintiff's criticism against Mr Marutla, he did not strike me as an unreliable witness. Mr Marutla gave a clear and coherent version of how the incident occurred and I find no contradictions between his statement and his evidence in court. The omission of the reference in his statement to "in full control of his body" and "between the two coaches" is in my view not material and not in contrast with his evidence. The crux is that he witnessed a schoolboy jumping from a stationary train.

[42] I disagree with counsel for Plaintiff that Mr Marutla appeared to be hesitant or nervous and that he asked for a water break during cross-examination. Mr Marutla did not ask for a water break but merely accepted same when offered by counsel for Plaintiff. Mr Marutla denied that he was nervous when it was put to him that he appeared to be nervous.

[43] Mr Mmulutsi did not witness the incident and only arrived at the scene after the incident. I do not place any reliance on the hearsay evidence ostensibly obtained from one B[...] K[...].

[44] I find the witnesses who testified on behalf of the Defendant to be satisfactory witnesses and there are no material contradictions and/or inherent improbabilities in their versions.

[45] The criticism levelled by counsel for Plaintiff against the testimony by these witnesses is also in my view not warranted.

Evaluation of the evidence: Mutual destructive versions:

[46] The court is confronted in this case with what has been referred to as two mutually destructive versions. On the one hand is the version of M[...] who testified that he was bumped / pushed off the train by more than one commuter (whether the train was moving or stationary is not clear) and on the other hand

the version of Mr Marutla who testified that he witnessed a young boy jumping off a stationary train.

[47] The approach that a court should follow in instances where it must deal with mutually destructive versions has been authoritatively stated in a number of cases.⁸

[48] The approach can be summarised as follows:

48.1 The court will first evaluate the credibility and reliability of witnesses;

48.2. Secondly the court will evaluate the probabilities in a specific case;

48.3. In the event that the court is unable to make a finding when applying the above two principles the court will consider the question of *onus*. The party who bears the *onus* in a particular case must persuade the trial court that his or her version is the true version.

48.4. If a court is not in a position to choose a version based on the abovementioned principles, the party who bears the *onus* in a particular case cannot succeed.

[49] The following dictum by Wessels J A in ***National Employers Mutual General Insurance Association v Gany***⁹, is of some assistance in the above regard:

"Where there are two stories mutually destructive, before the onus is discharged, the Court must be satisfied that the story of the litigant upon whom the onus rests is true and the other false. It is not enough to say that the story told by Clark is not satisfactory in every respect. It must be clear to the Court of first instance that the version of the litigant

⁸ See: National Employers Mutual General Insurance Association v Gany, 1931 AD 187; Stellenbosch Farmer's Winery Group Ltd & Another v Martell et cie & Others 2003 (1) SA 11 (SCA), par 5; National Employer's General Insurance Company Ltd v Jagers 1984 (4) SA 437 (E) at 440 D; African Eagle Life Assurance Company Ltd v Cainer 1980 (2) SA 234 (W) at 237; Oosthuizen v Van Heerden t/a Bush Africa Safaris 2014 (6) SA 423 (GP) at 430, par 31 - 32

⁹ Fn 8 ibid

upon whom the onus rests is the true version and that in this case absolute reliance can be placed upon the story as told by A."

(My emphasis)

[50] It is further significant that the discrepancies relating to the initial version pleaded in Plaintiff's particulars of claim, the version in the later statement by M[...], the version in the fourth amended particulars of claim and the version by M[...] on trial under oath were not satisfactorily explained. The mother of M[...] was further not called to explain where she obtained the facts, set out in her affidavit deposed to for purposes of the application to appoint a *Curator ad Litem*.

[51] When considering the evidence, it is material to keep in mind that the Plaintiff bore the *onus* to prove the case on a balance of probabilities against the Defendant. In the event of doubt in the above regard, it should be found that the Plaintiff failed to discharge his *onus*.

[52] When applying the principles applicable when dealing with two mutually destructive versions referred to above, I can come to no other conclusion than that the Plaintiff failed to discharge the *onus* and that the claim should be dismissed.

[53] I therefore need not deal with the other defences of contributory negligence or *volenti non fit iniuria*.

[54] I make the following order:

54.1 The Plaintiff's claim against the Defendant is dismissed.

54.2 The Plaintiff is ordered to pay the costs of the action on a party and party scale, Counsel on scale B.

M VAN ROOYEN
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

This judgment was prepared and authored by the judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 22 May 2026.

APPEARANCES:

For the Plaintiff : Adv PM van Ryneveld SC

Instructed by : Snyman Lotz Inc. c/o
S Roux Attorneys

For the Defendant : Adv B Lukhele

Instructed by : Stone Attorneys

Matter heard on : 9,10 and 11 February 2026

Judgment date : 22 May 2026