



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)**

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.


SIGNATURE

DATE: 2/9/2026

CASE NO: 2022/018737

In the matter between:-

JOHANNES MARTIN EHRKE

Plaintiff

and

MASSTORES (PTY) LTD T/A

MAKRO SA, ALBERTON

Defendant

JUDGMENT

INTRODUCTION

[1] Plaintiff is Johannes Martin Ehrke, currently 72 years old, an adult male business owner/pensioner of Alberton, Gauteng.

[2] The Defendant is Masstores (Pty) Ltd t/a Makro SA Alberton ("Makro"), a company with limited liability, duly registered and incorporated according to the laws of the Republic of South Africa, with registration number 1991/006805/07 of Alberton, Gauteng.

[3] In this action plaintiff claims damages from the defendant arising from an incident on 19 December 2020 wherein plaintiff sustained multiple injuries when he slipped and fell on his way to his motor vehicle. He was negotiating a slope on the defendant's premises when he stepped on laminated pieces of paper which caused his feet to slip out from under him.

[4] Plaintiff claims the amount of R1 011 426.06 plus interest thereon at a rate of 8.25% per annum from date of letter of demand and costs of suit.

[5] Plaintiff claims the incident was as a result of the negligence of the defendant's employees as stated in the particulars of claim:

"8. The incident was caused by the negligence of the Defendant's employee's and/or agents acting within the course and scope of their employment, alternatively the wrongful and negligent breach of the legal duty as mentioned above in one or more of the following respects:

8.1 The Defendant's employee or employees and/or agents (hereinafter collectively referred to as the "Defendant") failed and/or neglected to ensure that the floor surface of the premises was safe and/or hazard free for the Public to traverse, under circumstances where the Defendant could and should have done so;

8.2 The Defendant failed and/or neglected to prevent the Plaintiff from being injured, when by exercising reasonable care, the Defendant could and should have done so;

8.3 The Defendant failed and/or neglected to take reasonable precautions to prevent an incident of this nature from occurring at the shop under circumstances where the Defendant could and should have done so;

8.4 The Defendant failed and/or neglected to display any, alternatively, adequate warning signs to inform the public and specifically the Plaintiff of the existence of a possible hazardous situation under circumstances when the Defendant could and should have done so;

8.5 The Defendant failed and/or neglected to inspect the floor surface of the shop properly, alternatively, regularly for hazardous objects which may cause injury under circumstances when the Defendant could and should have done so;

8.6 The Defendant failed and/or neglected to routinely make available staff members, alternatively sufficient staff members to timeously inspect, detect and adequately remove any dangerous objects on the floors of the shop under circumstances where the Defendant could and should have done so;

8.7 The Defendant failed and/or neglected to implement and adhere to the necessary inspection and monitoring protocols pertaining the safety of the isles and/or floor surfaces of the shop under circumstances when the Defendant could and should have done so;

8.8 The Defendant failed and/or neglected to safeguard the vicinity in which the hazard and/or obstructions occurred under circumstances when the Defendant could and should have done so;

8.9 The Defendant created a dangerous situation by erecting laminated signs in front of the shop, which could cause a hazardous situation for members of the public, should it become unattached to the position it was placed and failed to take reasonable steps to avoid injury to members of the public;

8.10 The Defendant failed to monitor the area where the laminated notices were affixed in order to make sure no dangerous situation is created;

8.11 The Defendant failed to remove the laminated notices from the floor area in front of or near the shop, in order to avoid members of the public or patrons from slipping on it."

[6] As a result of the incident, plaintiff sustained the following injuries:

- "9.1.1 right hip fracture;
- 9.1.2 T2 injury;
- 9.1.3 soft tissue injury back;
- 9.1.4 soft tissue injury right hip; and
- 9.1.5 right thumb injury."

[7] As a result of the incident and the sequelae thereof the Plaintiff:

"10.1 experienced pain, suffering, emotional shock and trauma and will in future suffer further such pain and suffering

10.2 Was fully disabled for a period of time and remains partially disabled;

10.3 had to undergo medical treatment and will possibly undergo medical treatment in the future;

10.4 suffered loss of amenities of life and will possibly suffer further loss of amenities of life in the future;

10.5 had suffered a loss of income and will in future suffer a loss of income / employability.

10.6 It is not reasonably or practicably possible for the Plaintiff to separately quantify the damages suffered pertaining to the individual heads of damages in relation to general damages."

[8] As a result of the aforesaid:

"the Plaintiff suffered damages in the amount of R 911,426.06 clearly specified in Annexure "B" attached hereto, and calculated as follows:

11.1	Past Medical and related expenses	R 21,426.06
11.2	Estimated Future Medical Expenses	R 130,000.00
11.2	Past loss of Income	R 90,000.00
11.3	Future loss of Income / Employability (estimate)	R 270,000.00
11.4	General damages	R 500 000.00

TOTAL DAMAGES

R1,011 426.06"

[9] At the start of the hearing the parties agreed that the issue of liability is to proceed only on the merits and quantum was postponed *sine die*.

[10] No expert reports were filed or experts called to testify. The trial bundle consisted of the plaintiff's Identity Document, the photographs of the scene of the accident which were admitted by the respective parties and the letter of demand with return of service.

[11] The matter proceeded with the hearing of oral evidence. Plaintiff called three lay witnesses namely the plaintiff, the plaintiff's spouse, Mrs. Ehrke, and the plaintiff's son, Johan Martin Ehrke. The defendant called two lay witnesses, Mr. Chauke and Mr. Radebe.

THE PLAINTIFF'S CASE

Johannes Martin Ehrke.

[12] He is the plaintiff. He testified that he is now unemployed and a pensioner by choice as he cannot do what he used to do anymore. He confirmed the incident on 19 December 2020 during COVID and COVID rules applied outside the defendant's premises. The time of the incident was just after 12:00. He and his wife went to the defendant to buy paint as he was busy with renovations at his house.

[13] He noticed that there was a queue, tape and notices on it. He showed on photo 4 where the queue formed outside Makro on the pavement and the yellow line that was for COVID. He and his wife went to the paint department where they mixed 2 x 5 liters of paint whereafter he paid for it and they left through the exit. They then walked past the return-cubicle on the outside of the premises towards the entrance of the premises to his vehicle that was parked close to the entrance.

[14] He testified that they were walking on the pavement and the queue was to his right. He walked to the left of the queue with the paint carried in both hands. His wife was walking to his left. He testified it was summer and windy. He then fell at the entrance of the pavement between the bollards. There is a slight downslope. When

asked why he fell, he testified that he saw a piece of laminated paper (with hard plastic) and he stepped on it, A4 size.

[15] The paper caused him to lose his balance and it was super slippery. His feet slipped, he did a split and he fell on his back. When asked where did the paper come from, he answered it was hanging on a piece of tape to inform people to stand in the queue. The tape referred to is red and white hazard tape. He testified that as he came out, he saw the notices came loose and was lying all over. After he fell there were at least three of those papers around him, all laminated. He carried the cans of paint in each hand and weighs six to eight kilograms each.

[16] He and his wife were walking next to each other and he talked to her. When asked: "where was your attention?", he responded: "I looked at her whilst talking, slipped and fell and had no control". After he fell, people offered water, Makro called an ambulance, they brought a wheelchair and put him on it until the ambulance arrived. He could not get up.

[17] His son, Johan Ehrke, took photo 6 and 7. His wife could not go with him to hospital. She went home, called their son, who immediately went to take photos which are in the trial bundle. The witness testified they moved trolleys over the pedestrian entrance, a zebra crossing, and they put up tape after the incident. He also testified there were A4 laminated paper in front of the cone which could be seen on photo 6.

[18] I have considered what was lying in front of the cone on the photo and it was a blue folder with something in it which cannot be seen on the photo and not white laminated pages as testified by the witness.

[19] He further testified that when they came out it looked different than when they went in. The defendant should have kept the place clean and safe to control the crowd and the paper blown off could be slippery. He was asked what a reasonable person would do in the circumstances and he replied "to keep it safe for pedestrians". He testified the tape was also loose.

CROSS-EXAMINATION

[20] In cross-examination he admitted that he is not an expert on slippery substances. He also conceded that no expert notice was filed on the slippery nature of the documents. It was then put to him that his evidence on the super slippery nature of the laminated pieces of paper should be disregarded. He answered that laminated paper is very slippery from experience and after this incident he knew it was very slippery and very dangerous. It was put to him that he is not an expert on lamination and he can't give such an opinion. He conceded that he was not an expert.

[21] It was put to him that he failed to keep a proper lookout to which he responded, "I don't agree, I am a normal person, aware of my surroundings. I've been many times before at the defendant's place and did not notice a piece of paper on the floor, only after I split". It was put to him that his attention was, in his own words, talking with his wife and looking at her which he confirmed.

[22] He further testified that the tape was not up when they arrived and the tape with notices on it was next to the queue, between the queue and the outside of the building. There was no tape at the columns or at the entrance.

[23] It was put to him that the defendant's case will be that the tape was as per photo 7 and the area at the entrance was entirely cordoned off. People arriving were told to queue at the back towards the return-cubicle and from there to the entrance. The witness answered that on his arrival there was no tape, no trolleys and the tape was next to the queue.

[24] It was put to him that the trolleys were there on the zebra crossing because of COVID and the protocols, people one and a half meter apart, to wear masks and the controlling of numbers for people to enter ten at a time. The defendant answered that there was nothing to stop him to walk from the exit towards the entrance next to the people and there was nothing to prevent him from returning to the entrance and that he could walk there.

[25] It was put to him that normally, as he testified, how he walked there did not apply at that time due to COVID. The plaintiff answered that there was no sign that he

could not walk there. It was again put to him he was looking at his wife, talking to his wife, and he was not keeping a proper lookout. The witness disagreed.

[26] It was put to him that people who wanted to enter, queued with their trolleys and it was put to him that he walked there regardless of the signs. He answered that they walked there next to each other and no one said they could not walk there. He reiterated that there was no tape at the bollards when they entered. The tape was next to the queue about five meters away from the queue in the area between the queue and the outside wall of the building.

[27] It was again put to him that he failed to keep a proper lookout and the tape was in place as per photo 7 and was in place when he exited. He answered the trolleys were parked at the entrance afterwards and he also said that the tape was on the floor next to the queue. It was put to him that it was an *ex post facto* fabrication, there was no tape or papers on the floor and that the tape was up and properly fixed. The answer was "papers were on the ground after they cleared and they cleared it up".

[28] He testified that his son went there afterwards and saw the papers stacked there next to the cone. It was put to him that it looks like a folder and not papers. The witness did not respond further. He reiterated that his wife was to his left and he looked at her, but his head was not turned 90 degrees was his answer. He didn't see the paper.

[29] It was put to him that the question was where was his attention and he now amended his version and he miraculously landed on paper and saw paper surrounding. It was put to him that he cannot walk with carelessness and the evidence establishes that he did not keep a proper lookout, failing to see the paper on the ground and avoid a piece of paper, by that he was negligent and if he had seen the paper, he could have avoided it. He answered at least three pieces "were lying all over".

[30] When he came past the return cubicle he saw it. He saw the papers attached to the tape were lying on the ground and he noticed it when they passed it. It was put to him that the defendant would deny that there were tape and paper on the ground and how could he have seen the tape and the paper but not the slope and how was

that possible? He answered "it was windy and the wind took the tape down and the paper". It was put to him that he did not look further towards the slope and how was that possible? He said "I saw it".

[31] It was then put to him that if he paid attention to what was on the ground he would have seen it. He answered "it happened, it was not supposed to be there and the one I did not see I did not expect it to be there, and the defendant created a hazardous situation".

[32] It was put to him that he did not take precautions. It was also put to him that his attention immediately prior to the fall was with his wife and he did not pay attention. He answered the incident happened and he didn't expect paper to make him slip. It was put to him that the tape was in place across the bollards and he either stepped over or under it. He answered there was no tape there at the time.

[33] He was then referred to photo 8 with the non-disclaimer notice which is a very big notice right next to the left of the entrance as can be seen on the photo, not covered by any material and clearly visible. He was asked if he saw the sign and he said the first time he saw it on the photo and is always cluttered with info.

[34] On photo 2 it can be seen that it is not cluttered and clearly visible and he said the notice is small and did not draw attention. I have considered the photo and it looks about a meter and a half by a meter big. The photo was taken about 20 meters away and one can almost read it from that distance.

[35] It was put to the witness the fact that he did not see the notice meant he failed to observe his surroundings and the sign was not cluttered and it's an indicator of his careless approach to Makro. He answered that his wife was to his left and he observed the bollard, but he did not observe what was behind the bollard and nothing expected to be behind the bollard and the bollard blocked his view.

[36] It was put to him that he did not look to the ground as he had in his hands about 18 kilograms of paint, he walked the slope between the bollards and he was speaking and looking to his wife. He disagreed. He was asked if Makro placed it behind the

bollard and he said it was there. He saw the papers all over and it was put to him it was not his version and then he said "no comment".

[37] It was put to him that tape was used to cordon off the entire entrance area as per photo 2, 3, 6 and 7 and he said "I don't agree, there was no tape at the entrance". Trolleys were at the entrance to prevent customers to join the queue and he disagreed and said that it was placed there afterwards. It was put to him that warning tape were fixed there at the whole entrance area with COVID-19 signs, warnings, etc. He reiterated the tape was next to the queue. It was put to him that the tape was not down, the tape was up to which he responded "I don't agree".

[38] It was put to him that the Fidelity guards were also stationed at the entrance and the exit to direct customers away from the entrance queue and he said "I don't agree". It was put to him that it was not proper or reasonable in the circumstances since he was not aware of his surroundings, he should not have exited through the entrance queue and by that not keeping a proper lookout. He said "I do not agree, people walk there every day". It was put to him that this happened during COVID and it's not every day or a normal day and he said "I agree". He further testified the yellow lines were not used on that day but the tape.

[39] It was put to him that roaming managers were on duty at the entrance, exit and kept a lookout over clientele at Makro. He answered "I remember, I saw people and when I was on the floor they came to help". It was put to him that those managers ensured that the pathway was clear of anything. He answered "it might have, but they didn't do their work".

[40] It was put to him that the tape was up at the bollards and he walked over or under the tape to the road section and he said he didn't agree, there was no tape when he passed there. It was put to him that he failed to keep a proper lookout, he was negligent resulting from the harm suffered and he said "I don't agree, I did what a normal person would do".

RE-EXAMINATION

[41] He was again asked where was his attention during the period he walked and he said "I observed and saw things happening. At that moment, my attention was with my wife when I fell". He also answered that in his peripheral vision when he talked to his wife, he could see the way was clear and not to bump pedestrians and then he fell. He further testified most stuff he buys from Makro and the normal practice is his wife is with him.

[42] From the court side there was one question. In his peripheral vision he looked left towards the parking lot when he talked to his wife and the queue was on his right. He confirmed.

Johan Martin Ehrke

[43] He was the next witness to testify. The plaintiff is his father. His mother phoned him to say that his father fell at Makro. He got in his car and went to defendant's place, spoke to management and took the camera footage. He saw the paint stains and knew where it happened. He confirmed having taken photos 6 and 7. He took it plus minus one hour after his father fell, around 13:00 the same day. He was back home at 14:00. He testified it was not the first time he visited Makro on the day. He was there just before 12:00. He went back to get a printout of his slip 11:59. He testified he had two transactions 11:59 and 12:05 and he left about 12:10. No proof was submitted of the transactions he referred to during his testimony.

[44] He was not aware that his father was there. He further testified that the tape was not there when he went there for the first time, only when he went back. The trolleys also were not there when he went there the first time and no tape was spanned at the entrance on his first visit. He also testified that the first time he was there, the tape was not on the floor. The tape was closer to the left towards the liquor store and not at the zebra crossing.

[45] People queued at the right. He was then asked if there were any tape at the queue. He answered not at the entrance and on the way out he could not remember. When asked when he left the scene at the entrance was there tape on the floor and laminated flyers on the floor. He testified there were A4 size flyers lying all over at the zebra crossing and the entrance, he assumed it was the wind that blew it.

[46] He testified there was an object in front of the cone and that was some of the flyers gathered and placed there as can be depicted on photo 7.

CROSS EXAMINATION

[47] He testified he was the first time at defendant's premises 11:50 on the day. His parents were there at the same time. His father testified the incident happened just after 12:00 and he answered possibly. He was shown photo 5 and testified there was no tape to the right-hand side between the bollards and the tape was more towards the entrance. On photo 7 the tape was from the disabled parking sign towards the liquor store to the left (the tape was up as can be depicted on the photo).

[48] He testified that the tape was lying on the floor, photo 5, to the right of that bollard and the white pillar at the dustbin and there was nothing between the bollards. According to the first two witnesses, there was no tape there.

[49] He further testified a lot of laminated pages were scattered across the floor. He could not say the specific area but noticed and he thought about the hazard behind it. It was put to him that the tape was not damaged or broken and it covered the whole entrance area as per photo 7. On the photo one can see it was broken between the bollards and tied again.

[50] It was put to the witness that the defendant's version would be that it was not broken but after the plaintiff exited it was either ripped apart or to assist plaintiff. He testified on his arrival he walked through the bollards and he walked back to the queue as he was told at the entrance. (I find this improbable. There was testimony there was not a lot of people, thus how he could not have seen his parents standing outside at the same time). He didn't know when plaintiff fell. On photo 5 tape was to the left on the floor.

[51] It was put to him that there was no hazard created on the floor and on photo 7 he showed where they were stacked, close to the cone and between the cone and the bollard on the one side and between the cone and the dustbin on the other side and from the parking pole towards the liquor store.

[52] It was put to him that the defendant's case would be that he was not returning as he testified within one hour as his father fell just after 12:00 and he would have encountered the plaintiff and the ambulance. He answered that his mother did not have her phone with her.

RE-EXAMINATION

[53] None.

[54] There was one question from the court. He confirmed the tape was spanned from the P sign to the liquor store and on the ground left of the bollard between the cone and the bollard.

Mrs. Ehrke

[55] Plaintiff is her husband. She was present with the incident after they purchased the paint. She testified that she was walking to the right of her husband and confirmed the queue outside. She reiterated that she was on his right-hand side and he was walking towards the edge of the pavement. She saw tape on the ground. They turned at the slope between the bollards. She talked to her husband and suddenly he fell backwards. Maybe he slipped or something. He was right beside her. The incident happened on the slipway.

[56] She didn't see what happened or what caused it and she just saw paint and tried to pick it up and she ran to him and tried to pick him up as he said he was sore. She testified the tape was on the ground when they walked in. She testified the tape was up as on photo 2, where her husband was standing, the tape was up behind him, for the queue to follow. She didn't notice something attached to the tape at the time.

[57] She confirmed the ambulance took him to hospital. She couldn't go with and was waiting because of COVID. Someone came and said they will replace the paint. She left and went straight home. She was shocked. She phoned her son immediately. He said he will go and have a look. When he fell, he was lying backwards against the pavement. As they were walking, she looked in front and talking. She did not look on the ground, but in front.

[58] She testified her husband did pay attention where he was walking and she was too. She testified on photos 6 and 7 there was no tape when they arrived there and no trolleys either and when they came out there were also no trolleys. They were walking between the bollards when he slipped. She was beside him.

CROSS-EXAMINATION

[59] She confirmed the plaintiff was to her left and she to his right when they walked on the sidewalk. They exited between the bollards when he fell. There was no big queue at the entrance at that time. No one told them that is not the place to be. She testified his legs was on the crossing, his upper body on the pavement. On photo 6 it shows that the paint is quite some distance away.

[60] It was put to her that the trolleys were there. She said "I don't agree". Photo 3 shows where the paint starts, and if she was on her husband's right, should the paint not have caught her? She answered "I didn't see him slip, his fall looked like a slip". She saw laminated paper where he was falling and more lying around and she remembered the white spots of the papers lying around, and there was one on the pavement.

[61] When asked where it was exactly lying, she said she can't for sure tell but she saw one between the parking lot and the pavement and there were a lot of people there. She testified that when she walked with her husband, she did not look at the tar between the bollards and she testified that she didn't look down when they're going down the kerb stone.

[62] She couldn't recall the time between the fall and the ambulance's arrival. She couldn't remember if the sun was shining. The paint was replaced after her husband was in the ambulance. The time span, again, she couldn't confirm.

[63] She testified that when she arrived the tape was up as she was standing in the queue behind the tape. She testified that the tape was, on photo 2 behind her husband, from the sanitary station to the returns-cubicle. She did not know how it was fastened. It was put to her that her version contradicts her son's evidence regarding the tape that was up and she answered "I know what I saw". It was put to her that there was a

commotion after the fall and someone could have moved the papers. She answered "I didn't see, I saw what I saw".

[64] She reiterated that it was windy and the wind might have blown the papers. She wasn't looking at the tar and therefore couldn't answer whether her vision was not obscured at the bollards. She confirmed that she didn't look at the bottom. She didn't notice anything that could obscure her and her husband's view. It was put to her that the plaintiff testified the bollard obscured his view, to which she answered "no it cannot, that is what I saw".

[65] She testified that she did not speak to anyone. It was put to her that the defendant will testify that plaintiff missed a step. She answered that she did not look down. She was to her husband's right. She saw tape fluttering. She didn't take further notice of the paper and proceeded with walking. She then said "I think I said look here". She did not see the slip or anything.

[66] She reiterated that there was no tape at the entire front and the trolleys were not parked there as per photo 7. When it was put to her that the floor and the ramp was clear of any hazards, she said "I don't know, paper was lying there". When it was put to her that she did not keep a proper lookout, she said "I don't agree".

[67] It was further put to her that had both of them looked down, they would have recognized if there was any hazard. She answered "if I looked down, yes, but I did not". It was put to her that if she saw tape on her left lying there that was a reasonable warning and she answered "I was focused on the tape alone". She didn't agree that there were no hazards on the floor. It was put to her that the paint made him less stable, 16 kilograms, and he could have used one of the trolleys, but he didn't. There was no comment from the witness.

RE-EXAMINATION

[68] None.

[69] There was one question from the court. On photo 7 there was something lying in front of the cone and the witness was asked what it was. She answered it looked

like white paper. The witness was asked if it can be a folder. She confirmed that she knows what a folder is and she said "not sure, maybe it can be".

[70] Photo 7 was magnified and it showed it was flat on one side and bulky on the other side and when observed from the other side towards the building the one flap looked up of the folder and in the court's view that is a blue folder and not white paper as proffered in court. There also seems to be a time delay between photo 6 and photo 7, taken by the son, since the trolleys weren't on the same place from the one photo to the next photo and the flap standing up on the one photo was not up on the other photo.

[71] That was the case for the plaintiff.

THE DEFENDANT'S CASE

Dumisani Joseph Chauke

[72] He recalled the incident. He is employed by the defendant. He is the loss prevention manager. He is responsible for, amongst other, managing, health and safety, food investigation, investigation team, maintenance of the store and managing the facilities. He testified the health and safety protocols during COVID included barricading the area in front of the entrance, to make sure there are enough sanitizers, barrier tape at the entrance and 1.5 meters distance for the customers to queue.

[73] He testified the tape was placed as per photo 7 to direct customers to go to the queue at the returns-cubicle. The tape ran from the left of the photo to the dustbin and that was to assist people with access. People were also orally told to queue to the right and there were also directional signs pointing them to the right. Signs were stapled to the danger tape. The trolleys were placed on the zebra crossing as backup for the store in the front and to blockade.

[74] Part of their maintenance and upkeep is to deal with hazards and he confirmed five COVID officers were employed to deal with hazards on the floor area as per the protocols. One was appointed at the main entrance and one at the back of the queue. They walked around the area to clean it of clutter. People did not enter as

normally, but as guided. He also had a senior manager there, most of the time responsible to direct and assist customers. He testified if there were objects, same would have been cleared within a reasonable time.

[75] It was put to him that plaintiff said the incident happened just after 12:00. He answered "I did not see, I was called by the senior manager at the entrance, I was at the reception". He went to the customer that fell to check on him. He spoke to his wife. She said to him "that the plaintiff missed a step". She was on the phone. Plaintiff was in pain. First Aid was already there assisting. He saw the paint on the floor and also the tape on the floor. He testified that the senior manager must have taken off the tape to assist and his name is Mr. Vincent Radebe and told him he'd torn the tape to assist.

[76] He confirmed the tape and the laminated paper was on the ground after that. When asked if there were any other interaction with the plaintiff or his wife, he answered, he spoke to the son. The son came the following day and introduced himself as the son of the plaintiff. The son approached the witness, was furious and said his father fell because of laminated paper. The son visited him at the reception. The son then walked out through the customer entrance.

[77] It was put to him that the plaintiff plus the other two witnesses testified that there were no warning tape blocking the entrance on the day. He denied this and testified the tape was there to barricade. It was put to him that the plaintiff said that if there was tape, it was lying on the ground when he entered Makro. The witness answered "not correct". It was put to him that the laminated papers were scattered. He said it was stapled to the tape and it is incorrect that it was loose. He confirmed that the trolleys were there at the zebra crossing.

[78] It was put to him that the trolleys were placed there after the plaintiff fell, as on photo 7. He answered "it is standard practice that the trolleys and the tape had to be there and was always there". They put back the tape after the incident. When he was asked how does it make sense to him how the plaintiff fell, he answered a lot of customers would insist walking past towards the entrance, but they should exit on the far side and he must have had to insist to walk back to the entrance.

CROSS-EXAMINATION

[79] He confirmed that they get acknowledged for a clean record for incidents. On photo 7 he was shown the trolleys and the paint spillage from the yellow parking line. He testified the cleaners had to come and they used a broom and water to scratch it off. The plaintiff was lying on the area below the cone on the tar and below the cone is also the area where he has fallen. He fell in front of the cone on the tar. The cone was not there at the time.

[80] It was put to him that the plaintiff fell between the bollards. The witness answered it was to the left of the bollard and the cone, looking towards the building, and the plaintiff's wife confirmed to him. It was put to the witness that the paint in his right hand spilled, to which he answered "no, the paint that spilled was in his left hand". The paint containers had handles. He confirmed the tape was between the bollards. He testified the laminated A4 paper signs were multiple times stapled over the whole area. He didn't know about the signs not showing when the photo was taken, but it was stapled. He confirmed no signage could be seen on the photo.

[81] It was put to him that the son took the photo the same day to which he answered "no, he came the following day". It was put to him that the son took the photo after 13:00 on the day. He answered that the signs were there and someone could have removed the signs to take the photo. He was then referred to what was in front of the cone and it was put to him that it's A4 papers. He answered their laminated A4 papers were red with black arrows. It was put to him that even from another angle it looks white. The witness disagreed and said that it is not the color of their signage. He then testified that whatever is there, if someone removed it and put it there, that was the person's version.

[82] He was at the reception when this happened. From time to time, they would go outside and plus minus 20 to 30 minutes before the incident he was on the outside. It was put to him that Me. Ehrke's phone was at home to call her son and she did not have her phone. He answered "I engaged with her, she was on the phone. She stopped talking, spoke to me and then was on the phone again".

[83] It was put to him that it was not put to her that she was on the phone to which he answered "she was on the phone and said he missed the step". It was put to him that she denied having said that and he reiterated what she said. He was asked about the incident report and he said it was recorded, but he doesn't know why it was not discovered. At the time there were no cameras at the entrance or outside. There are now cameras at the entrance area.

[84] The protocols applied was what was applicable at the time. The tape, the signage, the COVID officer, the senior manager and the tape was at the back. He was asked about the queues and stated there were one queue demarcated and another queue for elderly, disabled and pregnant persons with chairs in a queue closer to the wall of the building. He testified that the people will stand in the queue 1.5 meters apart in a demarcated area towards the patio area. He does not know when the photo was taken.

[85] It was put to him that someone can walk to the right to the patio side of the queue. He testified someone was not to walk there as per the protocols and what his team executed. When they enter, they got numbers to ensure that those exit not to go to the entrance again. As far as the queue is concerned, he testified that if plaintiff and his wife walked to the left of the queue, between the queue and the patio, towards the entrance they could not have walked next to each other as it is too narrow and should have walked one behind the other.

[86] He testified you cannot walk on the pavement to the liquor store as it is blocked off. He confirmed at the time the liquor store was closed. It was put to him that all three witnesses for the plaintiff testified that there was no tape there. He answered, they must have jumped the tape because the tape was there. He reports to the store manager, he was on duty and reported to him. The store manager said to replace the paint. He confirmed the signage again. He testified it was important to keep a clear space, a safe environment and to pick up everything to make it safe for the customers and if laminated paper were lying around, it could be unsafe for customers.

RE-EXAMINATION

[87] He testified the paint spillage, as it looks on the photo, came from the cleaners and the paint spill was not as put to him. The tape was put back together afterwards and there were two knots there. He disagreed that the photo could have been taken one hour after the incident. On photo 5 and 7 people could stand to the right of the tape. The demarcation tape was 1 meter in length and 1.5 meters apart at the entrance area on the pavement.

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[88] He recalled the incident. He was employed at the time as marketing manager. He does not work there anymore. He was responsible for the image, ambiance, service cleanliness and interacting with the promoters. At that time, it was during COVID and there were measures at Alberton, customer numbers limited, cards with numbers were curated and issued, and how the cards were utilized, entering and exiting by customers.

[89] Space was created outside and customers would queue in the demarcated area for social distancing. He confirmed the queue where the elderly queued and the chairs for the elderly between the normal queue and the walls. He testified it was a critical time, signage on the pillars, red and white tape to cordon off and signage against the wall. There was tape from the entrance to the left towards Wiesenhof and the liquor store, each cordoned off separately, so that it cannot be entered from the other area on the pavement.

[90] On photo 3 he indicated that the tape went from the main entrance towards the pillar at the dustbin and from there to the right at the wall where it was fixed to the trolleys. He testified the retail have a standard and the yard had to be cleaned and in-store as well. The tills had to be opened, the store clean, radio at the right volume before it opens and the cards had to be checked which Fidelity would give to customers. The cleaning crew will be on duty when the store opens and during the day they will roam to clean where necessary. He was responsible for the outside area. He would rove between the entrance and the back. He could not recall if the day was windy. He did not witness the incident. He was informed after the fall.

[91] When he heard it, he gave a call to the risk manager, Mr. Chauke, and First Aid was called as well. He went to the incident and the plaintiff was down. First Aid was there. Plaintiff did not speak and his wife did not speak to the witness either. The plaintiff was lying close to the cone on the tar, as per photo 7. There was paint on the tarmac and there were people. He testified the first responders cut the tape. It was cut and laid down. He confirmed the tape was affixed with notices.

[92] It was put to him the plaintiff said there was no tape as per photo 7. He disagreed and disputed that there were a number of laminated pieces on the ground. He confirmed the trolleys were there on the zebra crossing. It was put to him that the plaintiff said they could walk out at the zebra crossing at the entrance. The witness answered "no, they avoid interaction and customers exit behind the queue where there is a separate zebra crossing. The correct pathway would be to exit through that zebra crossing and on the tarmac to the customer's car".

[93] The demarcation was to ensure customers follow instructions as per the COVID protocols. They were also outside to advise customers to adhere to the protocols. It was put to him that when the plaintiff and his wife walked back after shopping towards the entrance the wife saw tape on the building side on the ground which he disputed. The tape was in the shaded area on the pavement, which he disputed.

[94] It was put to him that upon their exit there were laminated loose pages on the floor. He disputed this. It was put to him that the plaintiff believes he stepped on one where he fell. The witness also disputed this. The witness was asked if he could guess what would lead to the fall. He answered "I think he came the wrong direction at odds with customers who gave him an eye. Colleagues would have told him also. He went under the tape, he got tired of being told what to do. He had paint and then he fell".

[95] He was shown photo 5. The queue extends to past the return-cubicle and it is much narrower at the returns area. He was shown photo 2, on the far right there was a man, basically to explain that plaintiff and his wife could walk side by side. The witness answered "the space is narrow and with the queue there, they would have to follow each other".

CROSS EXAMINATION

[96] He was inside and outside. 70% on the outside, 30% on the inside. He would walk around, check, exit and have an overview over the cards, sanitizer and the wipes. He was inside at periods. It happened six years ago. It's possible that he could have forgotten things. He confirmed that he was outside, he cannot remember exactly when. He confirmed on photo 3 the tape was attached to the trolleys in the direction of Wiesenhof at the time and to the left of the entrance.

[97] The trolleys for customers were placed in front of the entrance to avoid contact and sanitized. This formed the primary bay and also trolleys in the parking lot and, unless they ignored this, they would take one on the left. There can be a lot of customers on a regular day, month end, etc. He testified if the trolleys on the left of the zebra crossing would have been taken then someone would close that gap putting trolleys there again. He testified that the notices were put up in the morning in pairs of three, stapled to the tape some horizontal some vertical hanging from the tape. He was then asked how could an elder person duck below the tape that is waist high. The witness answered "I said I wouldn't know".

[98] The witness disputed that the tape was not there. On photo 7 he showed the black chair in front of the signage and that's usually where the chairs are for the elderly, etc. He was asked why the main entrance was not the same as per Wiesenhof. He said at Wiesenhof customers were sitting down and social distancing. Every area has its own queue and there was never a queue at the restaurant. If the other two areas, the liquor store and the restaurant, would have had as much customers as the defendant, they would have provided a longer area for them to queue.

[99] They adhered to the COVID regulations until it was uplifted. He couldn't remember when it was uplifted. Customers were told many times where to queue. If the three witnesses for the plaintiff got under the tape to that area, they would have been told to queue from the outdoor area. He reiterated the tape was at the entrance and cordoned it off. They stopped many people at the tape even though the trolleys were there, some people did not even wear masks.

[100] He testified that if people broke the COVID rules, they were taken out of the queue. When the witness arrived, the customer was already assisted by First Aid. It was necessary to cut the tape to get the wheelchair through. He didn't know how it was cut or why it was cut in two places. A lot could have happened on that day. He again testified he don't know if they cut it or if it was in two places and the First Aid can answer on that. He did not cut the tape.

[101] It was put to him that the first witness said he cut the tape. The witness answered "I did not tell him that, First Aid did it". He disputed that the plaintiff and his wife had ample space to walk. Two people cannot walk side by side with paint to the left of the queue and the patio area. The witness did not see the plaintiff walking. He was shown photo 7 and what was in front of the cone and answered "I cannot agree that it's the papers". He said what he could see and he did not see laminated papers lying around.

[102] On photo 6 he was again referred to what was in front of the cone and he said it might be a folder, looks like that, if paper it does not lie flat on the left. It was put to him that those papers were put there. He said he cannot dispute it. It was put to him that the plaintiff slipped between the bollards. He disputed it, and none of the papers were lying around, was his answer.

RE-EXAMINATION

[103] They supplemented the pamphlets from time to time. He was inside when he was notified. He confirmed different printing is used against the wall, portrait and landscape. He confirmed that they printed signs as many as needed, at least three. Photo 2 and 3 was taken in February 2021. It shows a chair behind plaintiff and behind the white pillar and photo 7 was magnified and behind the person with the reflective jacket, chairs were identified.

[104] Then from the court side the witness was asked if it was windy. He couldn't remember. It was put to him that it does not look like that on photo 7. On this photo one cannot see any wind influence that might have caused a distraction on the trees and shrubs at the time the photo was taken. On this photo one can also see that it was a sunny day.

[105] That was the case for the defendant.

DISCUSSION

[106] The defendant denied any allegations of negligence and liability and pleaded that "the accident was caused solely through the negligence of the plaintiff who was negligent in one or more of the following respects: He failed to keep a proper lookout; he failed to take any or adequate steps to avoid his fall, when, by the exercise of reasonable care he could and should have done so."

[107] The secondary issue for determination is whether or not the defendant took sufficient reasonable precautions to prevent any potential danger and particularly the danger allegedly emanating from laminated papers on the concrete and tar surfaces. It is not disputed that the defendant owed a duty of care to the members of the public entering the premises and to ensure their safety.

[108] The central issue before court is whether the plaintiff has established, on a balance of probabilities, that the defendant is liable in delict for the injuries plaintiff sustained. Defendant argued that the questions to be considered are whether there was any hazardous situation created by allegedly "slippery" laminated papers lying on bare concrete/cement/tar floor surface outside the premises and were such slippery or hazardous items on the floor at the time and place where the plaintiff fell and if so, whether the defendant knew or ought reasonably to have known of the existence of such hazard.

[109] Furthermore, whether the defendant breached a legal duty of care owed to the plaintiff by failing to take reasonable steps to prevent or remedy the hazard and if so, whether such breach fatally and legally caused the plaintiff's fall and resulting injuries and whether in all the circumstances the liability should be attributed to the defendant.

[110] The defendant further argued that should a slippery or hazardous laminated paper was lying on the floor and what caused the paper to fall not be proven, this court does not have to deal with the remainder of the questions and ought to dismiss the claim.

[111] In the case of *Skilya Property Investments (Pty) Ltd v Lloyds of London Underwriting* **2002 (3) SA 765 (T)** it was said on page 780: "In *S v Mtsweni* **1985 (1) SA590 (A)** at 593E - F Smalberger AJA emphasised that inference must be distinguished from speculation and must be based on properly proved objective facts. He quoted, with approval, the following passage from *Caswell v Powell Duffryn Associated Collieries Ltd* **[1939] 3 All ER 722 (HL)** at 733E - F: 'Inference must be carefully distinguished from conjecture or speculation. There can be no inference unless there are objective facts from which to infer the other facts which it is sought to establish. In some cases the other facts can be inferred with as much practical certainty as if they had been actually observed. In other cases the inference does not go beyond reasonable probability. But if there are no positive proved facts from which the inference can be made, the method of inference fails and what is left is mere speculation or conjecture.'

It must also be emphasised that the inference sought to be drawn must comply with the first rule of logic stated in *R v Blom* **1939 AD 188** at 202 - 3: '(1) The inference sought to be drawn must be consistent with all the proved facts. If it is not, the inference cannot be drawn.'

See *AA Onderlinge Assuransie Assosiasie Bpk v De Beer* **1982 (2) SA 603 (A)** at 614H. Where more than one inference is possible on the objective proved facts the Court may by balancing probabilities select a conclusion which seems to be the more natural, or plausible, conclusion from amongst several conceivable ones, even though that conclusion be not the only reasonable one. And in this context 'plausible' has the connotation of 'acceptable, credible, suitable' - *Govan v Skidmore* **1952 (1) SA 732 (N)** at 734C - D; *Ocean Accident and Guarantee Corporation Ltd v Koch* **1963 (4) SA 147 (A)** at 159C - D; *AA Onderlinge Assuransie Beperk v De Beer* (*supra* at 614H - 615B); *Spes Bona Bank Ltd v Portals Water Treatment South Africa (Pty) Ltd* **1983 (1) SA 978 (A)** at 981A - D."

[112] In the case of *Kruger v Coetzee* **1966 (2) SA 428 (A)** on page 430 it was said:

"For the purposes of liability *culpa* arises if -

(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.

This has been constantly stated by this Court for some 50 years. Requirement (a) (ii) is sometimes overlooked. Whether 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 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.” (Own emphasis)

ARGUMENT FOR THE PLAINTIFF

[113] It is plaintiff's case that their witnesses were credible and the evidence reasonably possibly true, and no ulterior motive emerged from them to lie about the events of the day. It was also argued that the son's evidence provided confirmation as to how the scene looked like earlier in the day when the plaintiff had the incident and that he also visited the store earlier just before his father had the fall.

[114] It was argued that he printed his receipt from that day and could indicate the exact time he paid for the last item, being 12:05. No substance was proffered that the son was in fact in the store on the date and time as he testified. The photos he allegedly took on the day also did not have any date and time on the photos themselves or further substance proffered that the photos were in fact taken on the date and time as testified by the son.

[115] It was further argued that on photos 6 and 7 the object in front of the cone was identified by the son as “a stack of A4 laminated papers”. It was conceded that it was difficult to precisely identify the object as such from the photo. I have considered the object from the photos and also questioned witnesses in this regard. Me. Ehrke as well as a witness for the defendant agreed that it could possibly be a folder. In my view the object is a blue folder, viewed from the side, of approximately A4 size and of which the top part was a reflection from the sun making the top look white.

[116] The evidence for the plaintiff was that there were white laminated paper lying around which is inconsistent with what could be established on the photos as well as the evidence of the defendant that they used red laminated papers with black printing on it.

[117] It was further argued that the scene was cleared after the incident by placing tape in front of the entrance bollards and placing trolleys at the zebra crossing as per photos 6 and 7. On the evidence before me, it cannot be said that the photos were taken on the date and time as alleged. Evidence for the defendant was that the son

only attended at the store the following day and he was furious. The evidence for the defendant was that there were trolleys there at all relevant times and tape due to the COVID protocols and not only at the time the photos were taken.

[118] It is plaintiff's case that the entrance to the restaurant and liquor store had an opening in front of the entrances and probably the entrance to the main store as well. The defendant's witnesses testified that the entrance to the main store was regulated differently in terms of the COVID protocols due to the number of customers visiting the main store in comparison to the liquor store that was closed at the time and the number of customers visiting the restaurant. At the main store the entrance was closed at the bollards with tape and trolleys and the queue started at a different place on the sidewalk or pavement and where people did approach the entrance from the wrong direction, they were directed to fall in the queue demarcated one and a half meters apart on the pavement.

[119] Plaintiff's case further was that the defendant's evidence had material contradictions namely that no pieces of paper came loose from the tape and on the photos no notices remained fastened or could be seen fastened to the tape.

[120] Mr. Chauke's evidence was that he spoke to Me. Ehrke when she was on her phone and told him that her husband missed a step. She testified that she went home to phone her son and did not have her phone with her. No substance was proffered, such as a phone record, confirming from which phone the call was made and when. No evidence was led whether the plaintiff had a phone with him on that day. Evidence was only led that Me. Ehrke did not have her phone with her. The son was around the same time at the store, inside and outside, but did not notice anything or saw his parents, whilst it was not busy.

[121] It is plaintiff's case that the paint stain should be accepted as proof where the plaintiff fell between the bollards. No expert evidence was led that the paint stain, as could be seen on photo 6, could be attributed by its looks to the fall of the plaintiff. The defendant testified that the paint was cleaned and swept which makes it look different. No substance was also proffered as to the elevation of the parking lot and whether the

direction of the paint could be attributed to the fall or to the elevation of the parking lot or the cleaning thereof.

[122] It is common cause that the plaintiff had a can of paint in each hand. It is the plaintiff's case that the right hand can of paint had the result whilst the defendant's case was the left hand can of paint. There is also a contradiction as to where the plaintiff fell. The plaintiff's case is he fell between the bollards. The defendant's case is, looking towards the entrance, to the left of the left bollard where the pavement is higher and not the same downslope as between the bollards.

[123] It is plaintiff's case that one could walk in the opposite direction to the right of the queue towards the exit from the entrance as there was a person standing looking in the opposite direction where one could walk, photo 7. My understanding is that this goes against plaintiff's version that he and his wife walked in the same direction as the queue, to the left of the queue, towards the entrance side by side whilst talking to each other and against COVID protocols. From the photo, and photo 5, it is therefore not reasonably possibly true that two people could walk side by side with the plaintiff carrying two five litres of paint in each hand taking more space than just the width of two human beings.

ARGUMENT FOR THE DEFENDANT

[124] The plaintiff argued that the defendant "failed to take any or adequate steps to avoid his fall when, by the exercise of reasonable care, he could and should have done so". It is defendant's case that it employed strict COVID-19 protocols which included social distancing, customer entrance management, crowd control and notification and communication strategies.

[125] The defendant also employed usual strategies to market, communicate, warn and notify customers of the prevailing circumstances. The defendant employed senior managerial staff at its premises to ensure that the COVID-19 protocols were strictly observed and adhered to. The defendant's staff made continuous observations and physical checks of its premises to ensure the absence of any hazardous situations from arising.

[126] Where a plaintiff fails to keep a proper lookout, or did not take reasonable steps to avoid a visible hazard such conduct can be treated as contributory negligence on such a scale as the court may determine in terms of the Apportionment of Damages Act 34 of 1956.

[127] In the instant case the plaintiff is expected to act as a reasonable person, *diligence paterfamilias*, by keeping a proper lookout and failing to take reasonable care to do so constitutes carelessness, recklessness, and negligence, possibly contributory negligence.

[128] The defendant argued that plaintiff's case rests on an inference rather than on direct observation since plaintiff and his wife admitted that they did not witness the plaintiff step on anything causing him to slip and trip. No eyewitness was called in this regard either. Plaintiff testified that he never looked down to the ground at the time he fell as his attention was with his wife who he said was walking to his left, talking to her and looking in her direction. She testified that he was walking on her left and thereby looking to his right towards the customers which is in itself contradictory.

[129] Neither the plaintiff nor his wife could confirm what caused his fall and when plaintiff became aware of a laminated page after he fell, he assumed that it was this paper laminated with hard plastic. Plaintiff's wife did not see the cause of the plaintiff's fall and she did not look down either. Both plaintiff and his wife therefore did not look down when they were negotiating the pavement towards the parking lot and the gradient of the pavement at the bollocks. The laminated paper allegedly to blame was not before court and the parties are in disagreement as to how it looked. No substance was proffered as to the footwear plaintiff was wearing on the day either.

[130] Defendant further argued about the warning tape plaintiff's wife saw lying on the ground to the right-hand side of the couple fluttering in the wind as it was a windy day. She pointed out this hazard to the plaintiff. The queue was to the right of the couple and the tape to their right. Plaintiff paid no further attention to this hazard either.

[131] On the probabilities of the evidence before me this hazard was to the right-hand side of the couple, but on the right-hand side of the couple there was the queue of

customers and to their right hand side the queue of seniors, pregnant women etc. and then the wall of the building. If it was there, it was therefore two queues to the right of the couple whereas in the testimony the tape was to the left of the couple, be it on the ground or up.

[132] Furthermore, as per photo 6 before me I have considered whether it was a windy day and at least at the time this photo was taken no wind could be observed by looking at the trees or any person on the photo's clothes that there was in fact wind. The testimony was that it was a windy day and not that there were gusts of wind from time to time. No substance was proffered to substantiate other than the oral testimony and the photos.

[133] The mechanism of plaintiff's fall remains undetermined, unproven and unverified and only averted through *ex-post facto* conjecture and reconstruction of which the credibility materially is in question. The defendant also averred to the contradictions in plaintiff's case regarding the warning tape placed across the entrance area in the vicinity of the bollards where plaintiff fell, whether a hazard was created by loose laminated pages lying in a path the plaintiff took, where he fell and whether the plaintiff himself acted negligently to not take any precautions, care or cognizance of his surroundings to avoid such hazardous situation.

[134] The plaintiff's version was that the tape was up alongside a queue for the customers from the entrance towards the returns-cubicle when he entered the store. He testified that as they came out it was windy and he noticed that these notices had come loose and were lying all over and denied that there was tape at or near the two bollards. In contradiction, the plaintiff's son testified in his evidence in chief when he entered the store a few minutes before the plaintiff the danger tape was already lying on the floor and already ripped. The son's evidence in chief was that there were loose tape lying on the ground both sides of the bollards.

[135] The son's version is therefore that the tape was already down and torn before plaintiff arrived at the entrance which contradicts the plaintiff's version regarding the location and orientation of the tape. Both versions cannot be correct.

[136] The plaintiff's evidence was that he did not deem it necessary or reasonable to keep a proper lookout upon exiting the store and leading to the scene of the accident and did not look down upon approaching the scene where he fell. His attention was focused at his wife, who was walking to his left, and he was talking to her and it was not to the surrounding areas or the floor. In re-examination this version changed that his wife was in his general field of vision leading to the scene of the accident.

[137] Plaintiff's wife, over two days, was persistent in her evidence that she was walking to the plaintiff's right-hand side and the plaintiff on the side of the parking lot. Both versions cannot be reasonably possibly true and are contradictory. This is destructive to plaintiff's version as to his general care and reasonableness to be on the lookout of his surroundings. The negligent attitude and carelessness of plaintiff's approach of the angled kerb stone and pavement in close proximity being raised higher than the tarmac is contradicted with the position of his wife at the time.

[138] In cross-examination, plaintiff asserted that he observed his surroundings, the bollard obstructed his view and his wife obstructed his view, but in evidence in chief he answered as follows: "My Lord, we were talking to each other and I was looking at her. We were talking about what we were going to do, and the next thing I just fell and slipped and had no control." In re-examination he testified that he observed all the way whilst talking to his wife, looked around and saw things happening which is materially contradicting to the evidence in chief and cross-examination.

[139] It is uncontested that plaintiff did not look down towards the ground when entering or exiting the premises or approaching the bollocks. The plaintiff testified that he saw tape lying on the floor with papers attached to it before he fell and simply walked past it. His wife testified that she also saw tape on the ground and drew the plaintiff's attention to it, but no further evasive or precautionary steps were taken. This is contradictory to the wife's testimony that she did not look down and her testimony in evidence in chief, that she and the plaintiff were generally watching where they were walking.

[140] Me. Ehrke's evidence is also contradictory to the plaintiff's evidence because she gave an oral and physical warning to the plaintiff and no evidence was forthcoming

from plaintiff regarding such warning. The plaintiff's son in his testimony noticed papers lying around in the area where plaintiff fell, but he neither stepped on nor slipped on any of them. Photo 6, furthermore, depicts a blue folder and not laminated papers.

[141] The plaintiff's testimony that his view was obstructed by his wife walking on his left and his attention shortly before and at the time of the incident was with his wife is in my view the best and correct evidence.

[142] The first witness for the defendant testified that Me. Ehrke indicated to him that the plaintiff missed a step. This has to be weighed up against the probabilities of the plaintiff's and his wife's versions immediately prior to the falling of the plaintiff. If it is, for a moment, accepted that the plaintiff was walking on the left, as testified by his wife, his view could not have been obscured by his wife as per his testimony. Accepting that the plaintiff, as per his testimony, was walking on the right-hand side of his wife and they were walking next to each other at the time he fell and looking at the photos the wife could not have been immediately next to plaintiff, with the two cans of paint in both hands and both of them going through the bollocks next to each other if one considers the width of the bollards and the angle they approached them.

[143] The testimony was not that Me. Ehrke went to the left of the two bollards and it can be accepted that she did not exit through there and it's also a very narrow space. In my view, on plaintiff's version, he could have exited to the right of the two bollards between the right bollard and a plant which is different from the area between the bollards since the pavement is starting at the right bollard.

[144] Plaintiff did not look down as per his own testimony and it is reasonably possibly true that he did not see the kerb stone and "missed his step" as per the communication to defendant's witness shortly thereafter. On the probabilities, plaintiff missed his step on the angled kerb stone instead of a laminated page which laminated page is not visible on the photos. Notwithstanding the plaintiff's obscured view, he noticed the papers when he passed them and not that he tripped on the papers in cross-examination.

[145] The plaintiff testified that it was a windy day and thought that the wind took down the tape, but it was not moving around which, on the probabilities, should be moving around if it was windy, or as per Me. Ehrke's testimony, that "the wind was blowing", contradicting the plaintiff's testimony. Me. Ehrke's testimony was therefore of a much stronger wind than the description by the plaintiff. The defendant's witness testified that it was not windy after he considered the photograph shown to him which again confirms no wind at least at the time the photo was taken.

[146] This places in doubt the plaintiff's only version that the laminated notices that were stapled to the tape came loose and were on the ground. No expert evidence was proffered as to the weather and or weather conditions and photograph 6 was the only photograph to rely on regarding the windy conditions on the date of the incident.

[147] The defendant's COVID-19 protocols and crowd control measures was corroborated by the testimony of plaintiff's witnesses. The plaintiff, however, in cross-examination, testified that there were guards and staff, but did not tell them anything and did not tell them that they were not allowed to walk there which is contradictory to plaintiff's evidence in chief where he testified that there were people guiding them. He could not remember exactly how many and the staff told him what to do and where to stand.

[148] The evidence of the plaintiff's son was that he was stopped by the defendant's employees and said that he had to go stand in the queue. Plaintiff's testimony was also to confirm the yellow lines placed on the ground outside the premises on the pavement for the adherence of customers to social distancing, but in cross-examination plaintiff testified that the yellow lines were not used on that day and defendant used a queue with tape to the right of the queue.

[149] On the probabilities, there were two queues of which one was the yellow lines where social distancing was enforced and a second queue to the right where seniors, pregnant women, etc. queued with chairs to sit on and, on plaintiff's version, with tape to the right of that queue. On the photos it was not visible and on the probabilities not reasonably possibly true as the tape could not be fastened at any place towards the returns-cubicle.

[150] Plaintiff later denied that social distancing protocols was not adhered to on that day whilst, in his own words, he visited the place regularly, can only be to alleviate the inconvenience of the conclusion that plaintiff traversed on ground where he was not supposed to be in terms of the COVID-19 protocols and furthermore, not having kept a proper lookout.

[151] It is common cause that no expert witness was called to testify in the instant case. In the circumstances no expert evidence was led by plaintiff to prove or provide evidence as to the slippery nature of the laminated papers lying on the surface where he testified he fell and the possible influence of his footwear. There is therefore no evidence before court regarding the slippery nature, looks, construction or condition of the laminated pages and the surface it was on and when stepped on it with the footwear plaintiff was wearing on the day and in relation thereto which makes it impossible to make a deduction in this regard.

[152] In the plaintiff's testimony he confirmed that he exited the store and had no intention of re-entering the store at the main entrance or the return of any goods at the returns-cubicle and, in terms of the COVID-19 protocols, he was to, after exiting the premises, to walk to the zebra crossing at the exit and onto the tarmac and then to his vehicle and not walk towards the main entrance on the pavement in contravention of the COVID-19 protocols at the time.

[153] I find Mrs. Ehrke's testimony questionable insofar as favourable details was specific in recollection whereas unfavourable details she had a limited or no recollection of.

[154] Predicated on the evidence before me. I cannot come to the conclusion that a hazardous situation existed at the time of the plaintiff's fall, whether it was created by defendant or permitted by defendant to persist or for that matter to arise. In my view the plaintiff's conduct is the direct and material cause for the incident.

[155] Defendant's witnesses gave clear evidence as to the COVID-19 protocols that were in place and applied at the time of the incident. Mr. Chauke was questioned about the completion of an incident report on the day which he confirmed and testified that

what he testified in court was relayed in the incident report. He was questioned why the incident report was not discovered. At the hearing a copy was also not requested.

[156] No camera footage was available of the incident since, at the time, no cameras were installed that could record the incident.

[157] The defendants' witnesses corroborated each other regarding the running of the tape, signage and stapling thereof to the tape.

[158] Mr. Chauke was questioned about the absence of signage on the tape in photograph 7. He disputed the alleged time the photograph was taken and testified that the son visited him the following day and was furious. He also testified that the photographer might have removed the signs.

[159] On one of the photos a huge disclaimer notice, clearly visible from about 20 meters away where the photograph was taken and situated to the left of the entrance, albeit that plaintiff's evidence was that the area was cluttered with information that same did not stand out. This is inconsistent with the photographs before court.

[160] Plaintiff elected to carry the two cans of paint with handles in each hand weighing each 6 to 8 kilograms and elected not to make use of a trolley, readily available.

[161] Plaintiff also proffered the version that the bollard might have obscured his view and that resulted him slipping on paper behind the bollard which he did not see. If, for a moment, it is accepted that there was paper behind a bollard and plaintiff walking to the right of his wife, he would have to walk to the front of the right bollard to step on the paper. Contradictory to this, plaintiff's wife testified that there was nothing that obscured his view down to the ground.

[162] From the testimony plaintiff, and Me. Ehrke, was immediately prior to the incident aware of tape and laminated paper on the ground which they passed. And the hazard therefore, if it existed, was visible.

[163] It is a settled practice for plaintiff not to pay attention to his surrounds as he visits the defendant's premises regularly.

[164] Whether the plaintiff slipped or missed his step, the fact that plaintiff elected to carry approximately 16 kilograms of paint in his hands increased the risk and reduce his ability to recover his balance in such an instance.

[165] In plaintiff's own evidence he did not look down when he was about to descend a sloped kerb with the paint in both hands and after having observed warning tape and papers on the ground and to enter this area of the incident, contrary to COVID-19 protocols, amounts to negligence, carelessness and reckless in the circumstances, in contrast to what a reasonable customer in the circumstances would have done.

[166] Plaintiff's ordinary vigilance was displaced due to his admission of his familiarity with the defendant's premises. This stands in contrast to the plaintiff's son's testimony that he saw the same hazard, allegedly, and avoided it thereby confirming that plaintiff did not act reasonably at the time of the incident. Plaintiff, furthermore, did not adhere to his wife's warning prior to the incident either. I also find it questionable that plaintiff would continue to walk and approaching an area where his wife obscured his view, a bollard obscured his view, he did not look down and in an area against COVID-19 protocols.

[167] No substance was proffered as to what plaintiff actually stepped on and what footwear he was wearing at the time, if any, and, furthermore, plaintiff and defendant presented different versions as to where plaintiff was lying after falling. In the circumstances, I cannot make an inference that the proximity of possibly paper, unidentified, could be the cause of plaintiff's fall.

[168] If, for a moment, it is accepted that it was a windy day or strong wind as per Me. Ehrke's testimony and it is accepted for a moment that what can be seen from the front of the cone on photo 6 is to be regarded as "stacked laminated papers", then on the probabilities they should have been scattered as well and not remain in one place as proffered.

[169] The fact that plaintiff could not see what he slipped on, and neither his wife, for not having looked down cannot exclude the possibility the plaintiff could have missed his step which on the probabilities makes it equally probable than a slip on a laminated page. No evidence was proffered as to how the laminated page looked, where it was observed after the fall and was not identified by any independent witness or preserved.

[170] If, for a moment, it is accepted that there were loose pages on the ground as per the plaintiff's son's evidence it would have been on the ground for about an hour for the defendant to have removed them or clean the area which is inconsistent with defendant's protocols and the evidence that it was a windy day, to remain in the same place.

[171] The plaintiff's version that the tape was up when he arrived was contradicted by his son's version that the tape was down.

[172] It cannot be excluded that plaintiff's testimony was reconstructed over time instead of not recalling.

[173] The plaintiff's familiarity replaced his vigilance in the circumstances.

[174] The plaintiff stepping forward behind the bollard where his view was obscured whilst not looking down was reckless and unreasonable.

[175] In the case of *Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority SA* **2006 (1) SA 461 (SCA)** it was said: "[12] The first principle of the law of delict, which is so easily forgotten and hardly appears in any local text on the subject, is, as the Dutch author Asser points out, that everyone has to bear the loss he or she suffers.¹ The Afrikaans aphorism is that 'skade rus waar dit val'. Aquilian liability provides for an exception to the rule and, in order to be liable for the loss of someone else, the act or omission of the defendant must have been wrongful and negligent and have caused the loss. But the fact that an act is negligent does not make it wrongful² although foreseeability of

¹ C Asser *Handleiding tot de beoefening van het Nederlands Burgerlijk Recht: Verbintenissenrecht* 9 ed (1994) part III at 12: 'In beginsel moet ieder de door hem zelf geleden schade dragen.'

² *Indac Electronics (Pty) Ltd v Volkskas Bank Ltd* **1992 (1) SA 783 (A)** at 793I - J; *Minister of Safety and Security v Van Duivenboden* **2002 (6) SA 431 (SCA)** ([2002] 3 All SA 741) at para [12].

damage may be a factor in establishing whether or not a particular act was wrongful.³ To elevate negligence to the determining factor confuses wrongfulness with negligence and leads to the absorption of the English law tort of negligence into our law, thereby distorting it.⁴

[176] Aquilian liability is an exception to the general rule that “skade rus waar dit val” consequently the onus rests on the plaintiff that must establish and prove on a balance of probabilities (act or omission), wrongfulness (breach of a legal duty), fault (negligence or intention), causation (both factual and legal) and harm (patrimonial loss or damage).

[177] Both parties argued about two mutually destructive versions before court. Plaintiff relied on the case of *National Employers' General Insurance Co Ltd v Jagers* **1984 (4) SA 437 (E)** and defendant the case of *Stellenbosch Farmers' Winery Group Ltd and Another v Martell et Cie and Others* **2003 (1) SA 11 (SCA)** where it was said:” [5] On the central issue, as to what the parties actually decided, there are two irreconcilable versions. So, too, on a number of peripheral areas of dispute which may have a bearing on the probabilities. The technique generally employed by courts in resolving factual disputes of this nature may conveniently be summarised as follows. To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities. As to (a), the court's finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness' candour and demeanour in the witness-box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extracurial statements or actions, (v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events. As to (b), a witness' reliability will depend, apart from the factors mentioned under (a)(ii), (iv) and (v) above, on (i) the opportunities he had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to (c), this necessitates an analysis and evaluation of the probability or improbability of each party's version on each of the disputed

³ *Government of the Republic of South Africa v Basdeo and Another* **1996 (1) SA 355 (A)** at 368H.

⁴ There are a number of informative articles dealing with wrongfulness that have been helpful by Francois du Bois, Anton Fagan, Johan Potgieter, J R Midgley, Jonathan Burchell and Dale Hutchison in T J Scott & Daniel Visser (ed) *Developing Delict: Essays in Honour of Robert Feenstra* also published in the 2000 edition of *Acta Juridica*.

issues. In the light of its assessment of (a), (b) and (c) the court will then, as a final step, determine whether the party burdened with the *onus* of proof has succeeded in discharging it. The hard case, which will doubtless be the rare one, occurs when a court's credibility findings compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors are equipoised probabilities prevail."⁵

[178] In the case of *Chartaprops 16 (Pty) Ltd and Another v Silberman* **2009 (1) SA 265 (SCA)** it was said:" [18] In a case like this one the parties stand in such relationship to one another and in my view it indeed calls for the higher standard of care that I have referred to. A person who invites the public to frequent a shopping mall will be expected by members of the public to have ensured that the floors of the premises are reasonably safe and they will expect to look to that person if they are not. They are not ordinarily able to make their own assessment of the performance of the cleaners who might have been appointed to the task and, unlike the person in control of the premises, they are also not ordinarily able to determine where the fault for any failure of the cleaning system lies and who is responsible for that occurring. In short, they are entirely reliant upon the person in control of the premises to ensure that reasonable precautions are taken to keep the floor safe. It seems to me in the circumstances that it is reasonable to expect a person in control of a shopping mall to ensure that reasonable precautions are taken to keep the floors safe and is liable if those precautions are not taken by a person whom he or she has appointed to do so. That is how the duty was described in comparable circumstances in *Probst v Pick 'n Pay Retailers (Pty) Ltd*,⁶ consistent with other decisions,⁷ and I respectfully agree. The precautions that should reasonably be taken were described by Stegmann J in *Probst v Pick 'n Pay Retailers (Pty) Ltd* (in relation to a shop floor but I think it applies as much in this case) to be - 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.⁸ The learned judge should not be thought to have said that it is enough to have an adequate system in place: I think it is implicit in what he said that the system must be adhered to."

⁵ See also *Baring Eiendomme BK v Roux* **2000 JDR 0795 (SCA)** at para 7.

⁶ **[1998] 2 All SA 186 (W)** at 200g.

⁷ *Turner v Arding & Hobbs Ltd* **[1949] 2 All ER 911 (KB)** at 912E; *Alberts v Engelbrecht* **1961 (2) SA 644 (T)** at 646D; *City of Salisbury v King* **1970 (2) SA 528 (RA)**; *Jones v Maceys of Salisbury (Pvt) Ltd* **1982 (2) SA 139 (ZH)** at 141H.

⁸ Stegmann J in *Probst v Pick 'n Pay Retailers (Pty) Ltd* **[1998] 2 All SA 186 (W)** at 200, in which the leading cases in this country and abroad are considered.

[179] The defendant owes a duty of care to customers to maintain a safe premises. The legal duty does not remove the plaintiff's burden of proving the factual predicate for a breach of that duty and pre-supposing that a hazardous condition has been proven to exist.

[180] In the case of *Mzaca v King Sabata Dalindyebo Local Municipality and Another* **(1320/2020) [2024] ZAECMHC 47 (18 June 2024)** it was held: "[12] To obtain a judgment holding the defendants liable to pay delictual damages, the court in *Minister of Safety & Security v Van Duivenboden*⁹ stated that the plaintiff must prove, on a balance of probabilities, that the act(s) or omission(s) of the defendants were wrongful and negligent and have caused the loss. The approach in our law to the plaintiff's claim is not controversial. It is trite that in order to succeed in her delictual claim for damages, the plaintiff must establish that the wrongful and negligent conduct of the defendants or their employees, acting within the course and scope of their employment, had caused her harm.¹⁰

[14] In *Naude NO v Transvaal Boot and Shoe Manufacturing Co*¹¹ it was held – "Although the onus of proving negligence is on the plaintiff, the plaintiff does not have to adduce positive evidence to disprove every theoretical explanation which is exclusively within the knowledge of the defendant, however unlikely, that might be devised to explain (his paraplegia) in a way which would absolve the defendant and his employees of negligence."

[15] In *Monteoli v Woolworths (Pty) Ltd*¹² the court confirmed that the onus, nevertheless, remains with the plaintiff. The defendant has an evidential burden to show what steps were taken to comply with the standards to be expected."

[181] In the case of *Gailis v Woolworths (Pty) Ltd and Another* **(11651/2022) [2025] ZAWCHC 579 (11 December 2025)** it was held: "[46] The plaintiff's claim is founded in delict. Aquilian liability, Harms JA said in *Telematrix*¹³ is an exception to the general rule that "skade rus waar dit val". In order to fall within the exception, a plaintiff must establish the following elements on a balance of probabilities: (a) Conduct (either an act or omission); (b) Wrongfulness (breach of a legal duty); (c) Fault (negligence or intention); (d) Causation (both factual and legal); and (e) Harm (patrimonial loss or damage).

[47] The onus rests on the plaintiff to prove each of these elements. Where there are two mutually destructive versions before the court, the approach to be adopted was authoritatively

⁹ *Minister of Safety & Security v Van Duivenboden* **2002 (6) SA 431 SCA** at para [12]; *LD obo AD v Member of the Executive Council responsible for the Department of Health* **[2021] JOL 49623 (ECM)** at para 2.

¹⁰ *KX v Member of the Executive Council for Health, Western Cape* **[2021] JOL 51401 (WCC)** at para 3.

¹¹ *Naude NO v Transvaal Boot and Shoe Manufacturing Co* **1938 AD 379** at 392(3).

¹² *Monteoli v Woolworths (Pty) Ltd* **2000 (4) SA 735 (W)** at 127.

¹³ *Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority SA* **2006 (1) SA 461 SCA** at para 12.

set out in *SFW*¹⁴. The court must make findings on the credibility and reliability of witnesses and evaluate the probabilities. Where the probabilities are evenly balanced, the plaintiff can only succeed if the court believes her evidence and is satisfied that the defendant's version is false.

[48] As stated in *Baring Eiendomme*¹⁵: "...where there are two mutually destructive stories, [the plaintiff] can only succeed if he satisfies the Court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the other version advanced by the defendant is therefore false or mistaken and falls to be rejected."

Slip and fall cases

[49] In slip-and-fall cases, the foundational factual requirement is proof of the existence of a hazardous condition. This principle emerges consistently from various authorities.¹⁶

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

[51] The principle that a retailer owes a duty of care to customers to maintain safe premises is well-established. In *Chartaprops*¹⁷ Nugent JA stated: "A person who invites the public to frequent a shopping mall will be expected by members of the public to have ensured that the floors of the premises are reasonably safe and will expect to look to that person if they are not."

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

[53] The doctrine of *res ipsa loquitur* may apply in slip-and-fall cases, but only after a plaintiff has established that the fall was caused by a proven hazard. As explained in *Probst*¹⁸, the doctrine allows a court to infer negligence where the plaintiff has testified to the circumstances of the fall and the apparent cause, and has shown proper care for his own safety. However, the doctrine "cannot be used to infer the existence of the hazard itself." There must first be evidence of a hazardous condition before negligence can be inferred.

¹⁴ *SFW Group Ltd and another v Martell et cie and others* 2003 (1) SA 11 (SCA) at para 5.

¹⁵ *Baring Eiendomme v Roux* [2001] 1 All SA 399 (SCA) at para 7.

¹⁶ *Montoeli v Woolworths (Pty) Ltd* 1999 JDR 0632 (W); *Holtzhausen v Cenprop Real Estate (Pty) Ltd and Another* 2021 (4) 221 (WCC); *Brauns v Shoprite Checkers (Pty) Ltd* 2004 (6) SA 211 (E).

¹⁷ *Chartaprops 16 (Pty) Ltd v Silberman* [2008] ZASCA 115; 2009 (1) SA 265 (SCA) at para 18.

¹⁸ *Probst v Pick 'n Pay Retailers* 1998 (2) All SA 186 (W).

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

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

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

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

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

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

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

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

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

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

[182] In the instant case plaintiff is also an elderly person who sustained serious injuries in a traumatic incident. I, similarly, have sympathy for the plaintiff. However plaintiff is required to prove his case on a balance of probabilities, which he failed to do.

CONCLUSION

[183] From a helicopter point of view plaintiff failed to prove that any hazardous situation was created or allowed to persist, by laminated pages on the surface where plaintiff fell down on defendant's premises. No substance was proffered as to how the laminated pages looked, its surface and the reaction on the surface beneath it taking into account also plaintiff's unknown footwear. Me. Ehrke testified that it was pieces of white laminated paper whereas defendant testified the paper used was red with black lettering.

[184] Plaintiff failed to prove that his fall was caused by any hazardous situation on the floor outside defendant's premises. This has to be weighed up against plaintiff's own lack of vigilance and carelessness immediately prior to the incident. Plaintiff failed to establish the evidentiary basis of his claim and his witnesses contradicted his testimony with their own versions.

[185] The plaintiff failed to prove that the defendant knew or ought to have known of the existence of a hazard. Furthermore, plaintiff failed to prove that the defendant breached a legal duty of care owing to the plaintiff by not taking reasonable steps to prevent or remedy the hazard. In the circumstances, the plaintiff's claim is dismissed with costs to follow the result.

ORDER

[186] In the circumstances, the following order is made:

1. The plaintiff's claim is dismissed.

2. The plaintiff is to pay the costs, scale B, to include the costs of counsel.



ALLEN AJ
ACTING JUDGE OF THE HIGH COURT,
GAUTENG DIVISION JOHANNESBURG

This judgment was prepared by Acting Judge Allen. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 2 September 2026.

HEARD ON: 26 August 2026

DECIDED ON: 2 September 2026

For the Plaintiff: Mr. H.W. Theron
Instructed by: HW Theron Inc.

For the Defendant: Adv. A. Jansen van Vuuren
Instructed by: Mellows and De Swart Inc.