REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)

CASE NO: 971/2025

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO THE JUDGES: YES/NO
(3) REVISED: YES/NO

Naude – Odendaal J

[redacted]
SIGNATURE

03/11/2026
DATE

In the matter between:

CECILIA NKWINIKA **APPLICANT**

and

PEPPADEW INTERNATIONAL (PTY) LTD **RESPONDENT**

JUDGMENT

NAUDÈ-ODENDAAL J:

[1] The Applicant instituted an action against the Respondent in terms whereof the Applicant claims damages arising from an accident that occurred at her place of employment.

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[2] The parties are referred to as per the heading of the documents filed of record. The Applicant is the Plaintiff in the action and the Respondent is the Defendant in the action. The correct citing would have however been that the Defendant, who raised the exception be referred to as the Applicant in this application and the Plaintiff as the Respondent. However, to maintain harmony with the record, I will refer to the parties as per the heading of the documents.

[3] The Applicant pleaded that on the 23rd of April 2023, during normal business hours, the Plaintiff was rightfully on the premises. The Applicant was employed by the Respondent as a cleaner and she was at work performing her duties. The Respondent's employee by the name of Senyolo, sprayed the Applicant with a chemical onto her face using a backpack sprayer. The backpack spray was owned and/or operated on behalf of the Respondent. Senyolo was an employee of the Respondent and acting within the course and scope of his employment with the Respondent.

[4] The Applicant further pleaded that as a result of being sprayed on her face with the chemical, her eyes suffered severe injuries as she experienced excruciating pain that her vision vanished and she could not see anything as everything was dark. The injury to the Applicant's eyes was caused by the wrongful and negligent failure of the Respondent, or its employees or servants or agents acting within the course and scope of their employment, to perform their duty to take reasonable steps to maintain reasonable safety conditions for the Applicant on the premises, further alternatively in one or more of the following respects below:-

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4.1 They failed to keep a proper lookout;

4.2 They used the backpack spray negligently without due regard to other employees within the premises;

4.3 They failed to take cognizance of the fact that other employees may be present in the premises, and in particular the presence of the Applicant;

4.4 They operated the backpack spray without having the required skill, knowledge or certification;

4.5 They failed to take adequate steps to prevent the chemical from spraying the Applicant on her face, when they could and should have done so;

4.6 They failed to avoid injury to the Applicant, when by the exercise of proper care they should have done so.

[5] The Applicant further pleaded that the Respondent could and should have foreseen that a person in the position of the Applicant could be injured in the circumstances. The Respondent could and should have taken reasonable steps to guard against such occurrence. Further, the Respondent failed to take the necessary steps.

[6] The Applicant pleaded, further, that as a result of being sprayed with the chemical on the face, she sustained the following injuries:-

6.1 Conjunitins;

6.2 Facial skin change;

6.3 Swelling and unable to count fingers with the right eye;

6.4 Chemical burn to the eyes; and

6.5 Psychological trauma and depression.

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[7] As a result of the injuries sustained by the Applicant and the *sequelae* thereof, the Applicant received medical and hospital treatment and incurred expenses in connection therewith, will in future undergo medical and hospital treatment and incur future medical costs in connection therewith, suffered loss of amenities of life and will in future continue to suffer such loss, suffered loss of earnings and/or earning capacity and will in future continue to suffer such loss, experienced pain, suffering and discomfort and will in future continue to experience same and sustained emotional shock and trauma and will in future continue to experience same.

[8] The Applicant pleaded in paragraph 9 of the Particulars of Claim that the nature and extent of the injuries and the effect and duration of the Applicant's disabilities will be further address in the hospital records from Letaba and Mankweng Hospitals respectively and medico-legal reports filed in due course in terms of the rules of court.

[9] As a result of the injuries and their consequences the Applicant suffered damages in the amount of R1710 000.00 (One Million Seven Hundred and Ten Thousand Rand) as pleaded and set out in paragraph 10 of the particulars of claim.

[10] The Applicant further pleaded that the amount claimed for past medical and hospital expenses represents the total amount of the accounts received by the Applicant for medical treatment and hospital expenses after the incident to date, which will be

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supplemented with the costs of the Applicant's ongoing treatment in due course. A further schedule of medical expenses will be prepared in due course.

[11] It was further pleaded by the Applicant that the amount claimed for future medical and hospital expenses is for the further treatment of the Applicant's injuries, namely:-

11.1 Surgery and reconstructive surgery;

11.2 Conservative treatment;

11.3 Ophthalmologist;

11.4 Optometric therapy and eye glasses.

11.5 Neuropsychological and clinical psychological consultations;

11.6 Further treatment, as will be further addressed in medico-legal reports to be filed in due course in terms of the rules of Court.

[12] The Applicant pleaded further, that the amount claimed for past loss of earnings is an estimate of the amount that the Applicant would have earned to date but was unable to earn due to the injuries and the *sequelae* thereof and the amount for future loss of earnings/earning capacity is an estimate based on the fact that the Applicant will not be able to work as well as she did prior to the incident and that she is less likely to find employment or gain promotion after the incident. She will also have to take time off work in order to obtain medical treatment for the injuries and the *sequelae* thereof. Alternatively, the amount is a globular amount based on the fact that the Applicant is unable to attain her pre-incident earning capacity as a result of the injuries she sustained.

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[13] Further, the amount claimed for general damages is a globular amount which cannot be subdivided in heads of damages.

[14] The Applicant pleaded that notwithstanding demand, the Respondent has failed and/or neglected and/or refused to make payment to the Applicant as aforesaid or at all, which payment is now due.

[15] The Respondent filed a notice of intention to defend on 18 February 2025 and on the 5th of March 2025 a notice of exception. The grounds of exception are as follows:-

15.1 The Applicant instituted a common-law claim against the Respondent for damages suffered by her as a result of injuries sustained by her and consequences flowing from such injuries.

15.2 In paragraph 5 of the particulars of claim the Applicant alleges that she was on 23 April 2023 during normal business hours rightfully on the Respondent's premises performing her duties as a cleaner when another employee by the name of Senyolo, acting within the course and scope of his employment with the Respondent, sprayed her with a chemical onto her face using a backpack sprayer ("the incident"), which incident caused her to suffer severe injuries to her eyes.

15.3 The Applicant is an "employee" and the Defendant is an "*employer*" as defined by the Compensation for Occupational Injuries and Diseases Act, 130 of 1993 ("COIDA")

15.4 Section 22(1) of COIDA provides as follows:-

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"If an employee meets with an accident resulting in his disablement or death such employee or the dependants of such employee shall, subject to the provisions of the Act, be entitled to the benefits provided for and described in this Act."

15.5 An "*accident*" is defined in COIDA as follows:-

"'accident' means an accident out of and in the course of an employee's employment and resulting in a personal injury, illness or the death of the employee."

15.6 Section 35(1) of COIDA provides as follows:

"No action shall lie by an employee or any dependant of an employee for the recovery of damages in respect of any occupational injury or disease resulting in the disablement or death of such employee against such employee's employer, and no liability for compensation on the part of such employer shall arise save under the provisions of this Act in respect of such disablement or death."

15.7 An "*occupational injury*" is defined in Section 1 of COIDA as follows:

"'*occupational injury' means a personal injury sustained as a result of an accident."*

15.8 In **Mankayi v Anglogold Ashanti Ltd 2010 (5) SA 137 (SCA)** the Supreme Court of Appeal held that Section 35(1) of COIDA also precludes an action for general damages in respect of which no compensation can be recovered in terms of COIDA.

15.9 The incident relied upon by the Applicant in her claim against the Respondent, is an "*accident*" as contemplated by COIDA, which accident

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arose out of such employment and which have occurred during the course of her employment.

15.10 The Applicant is accordingly statutorily barred from claiming directly against the Respondent by virtue of Section 35(1) of COIDA.

15.11 The Applicant in the premises has no common-law claim against the Respondent arising from the incident.

[16] Consequently, the Respondent prays for an order that the exception be upheld with costs and that the Applicant's claim be dismissed with costs.

[17] The Applicant in opposition submitted that the injuries sustained by the Applicant do not fall within the ambit of the Compensation for Occupational Injuries and Diseases Act, 130 of 1993.

[18] It was submitted that in **Churchill v Premier, Mpumalanga (889/2019) [2021] ZASCA 16 (4 March 2021)**, the Court at paragraph 12 held that there are three elements to the definition of an accident, namely:-

18.1 An accident;

18.2 Arising out of and in the course of an employee's employment; and

18.3 Resulting in a personal injury, illness or the death of the employee.

[19] It was further submitted by the Applicant that in **Minister of Justice v Khoza 1966 (1) SA 410 (A)** the court developed two tests in deciding whether an incident is an "accident" which arose out of or in the course of employment which is as follows:-

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19.1 The first is by the majority concurring in the judgment of Rumpff C.J – an injury from an assault at work is not an accident where the motive or the reason for the assault is unrelated to the job.

19.2 Secondly, by Williams JA in the minority judgment – It is that an injury from an assault at work is an accident where the fact of employment brings the employee within the range or zone of the hazard that gave rise to the injury.

[20] It was further submitted by the Applicant that in **MEC for Health, Free State v DN (MEC v DN) [2014] ZASCA 167; 2015 (1) SA 182 (SCA)**, Navsa ADP said "*the question that might rightly be asked is whether the act causing the injury was a risk incidental to the employment*".

[21] It was submitted that the court went further at **paragraph 20** in **MEC v DN *supra*** and said that *"the plaintiff in that case was at her place of employment and about her duties at the time of the assault. Her employment had brought her within the zone of the hazard giving rise to her injuries. That pointed to her injury arising out of her employment. But when the question was asked whether the risk was incidental to her employment, the answer was an emphatic 'No'"*.

[22] The Applicant submitted that in *casu* as per paragraph 5 of her particulars of claim, she alleged that she was at work as a cleaner and the Respondent's employee, Mr. Senyolo was busy spraying using a backpack sprayer when he sprayed her on her face with a chemical. The Applicant submitted that the fact that the incident occurred in her workplace when she was going about her duties is undoubtedly a

factor that connected it to her employment. Her employment brought her within the zone of risk, but that is where it ends as it did not arise out of her employment.

[23] The Applicant submitted further that the only connection between the incident and her employment was that she was at work at the time of the incident. The incident bore no relation to her duties and was the result of negligence on the part of the Respondent's employee, Mr. Senyolo by failing to exercise care in handling his backpack sprayer. The injuries the Applicant does not arise out of the performance of her duties and as such, were not incidental to her employment. Therefore, it is submitted that, the Respondent's exception stands to be dismissed.

[24] The core issue that this Court has to decide in the present case is whether the injury had been sustained at the workplace and whether the employee was eligible for damages under COIDA, or whether the employer could be held liable given that COIDA indemnifies the employer. As stated in **Churchill v Premier of Mpumalanga and Another (889/2019) [2021] ZASCA 16 (4 March 2021)**, this would indeed be the position if the injuries were sustained in the course of the employee's duties. There needs to be a direct nexus between the employee's injury(-ies) and the execution of her duties. However, the Court held in **Churchill *supra*** that if the injury took place at the workplace but was not related to the employee's duties, then COIDA does not indemnify the employer and the employer is therefore liable.

[25] The Court in ***Churchill v Premier of Mpumalanga and Another (889/2019) [2021] ZASCA 16 (4 March 2021)*** *held as follows: 'In this case the only connection*

between the incident and Ms Churchill's employment was that she was at work at the time. The incident bore no relation to her duties and was the result of misplaced anger directed at her because of a misunderstanding. She was not assaulted because of the position she held, or because of anything she had done in carrying out her duties, or for any reason related to the protest action that took place that day. She was assaulted because one individual mistakenly thought she had sworn at him and he, together with others, responded by assaulting and humiliating her. In my opinion her injuries did not arise out of her employment.'

[26] In my view, in the present matter, the spraying of Chemicals by Mr. Senyolo with a backpack sprayer at the premises of the Respondent bore no relation to the Applicant in her duties as a cleaner. She did not sustain the injuries because of the position she held, or because of anything she had done in carrying out her duties. She was injured because Mr. Senyolo had sprayed her on her face with a chemical using a backpack sprayer, whether negligently so or deliberately as an assault is for the trial court to determine.

[27] In the result, in my view, the Respondent is not excluded from liability by Section 35 of the Compensation for Occupational Injuries and Diseases Act, 13 of 1993 and the exception stands to be dismissed with costs. In my view, Costs on Scale B of Uniform Rule 67A read with Uniform Rule 69, in the circumstances are justified.

[28] It the result, following order was made:-

28.1 The Exception is dismissed.

28.2 The Respondent (employer) is ordered to pay the Applicant's costs of the exception, which costs are to be taxed and paid on Scale B.



M. NAUDÈ-ODENDAAL

JUDGE OF THE HIGH COURT,

LIMPOPO DIVISION,

POLOKWANE

APPEARANCES:

HEARD ON:	12 AUGUST 2026
JUDGMENT DELIVERED:	3 NOVEMBER 2026

For the Applicant/Plaintiff:	Adv. H.P. Mabuza
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For the Respondent/Defendant:	Adv. R. Grundlingh
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