

SOUTH AFRICA / JUDGMENT

Biyela-Mbekizeli v Passenger Rail Agency of South Africa SOC LTD (2024/14477) [2025] ZAGPJHC 421 (11 April 2025) [2025] ZAGPJHC 421

COURT

South Gauteng High Court, Johannesburg

BEFORE

M V Noko

CASE / FILE NUMBER

2024/14477

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, JOHANNESBURG.

Case

Number: 2024-14477

(1)

REPORTABLE: YES / NO

(2)

OF INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED: YES/NO

In

the matter between: AYANDA
 BIYELA-MBEKIZELI
 Plaintiff
 And
 PASSENGER
 RAIL AGENCY OF SOUTH AFRICA (SOC) LTD
 Defendant

JUDGMENT

Noko J

Introduction.

[1] The plaintiff instituted a civil claim against the defendant for damages sustained as a result of injuries he suffered from an accident which occurred on 2 February 2015. The quantum for the claim is the amount of R4 500 000.00. The defendant is defending

the suit and has delivered the plea in which it denies liability for the damages on the basis, inter alia, that no negligence could be attributed to any of its employees.

Parties

- [2] The plaintiff is Ayanda Biyela Mbekezeli an adult male resident at 2[...] M[...], Zone 1[...], S[...], Johannesburg.
- [3] The defendant is Passenger Rail Agency of South Africa (Soc) Limited (PRASA) a transport utility established in terms of section 2 of the Legal Succession to the South African Transport Services Act 9 of 1989, trading as Metrorail. PRASA's business address is situated at 3[...] W[...] street, U[...] H[...], Johannesburg.

Background

- [4] The background of the lis is generally common cause between the parties. The plaintiff, an adult male person aged 34, alleged that he fell and suffered injuries whilst attempting to board a train operated by PRASA. The parties are in agreement about the age of the plaintiff, date, time, place of the accident and further that the plaintiff was in possession of a valid train ticket.
- [5] The plaintiff subsequently caused a letter of demand to be issued against the defendant in terms of the Institution of Legal Proceedings

Against Certain Organs of State Act.[1] Pursuant to the defendant failing to react positively to the demand the plaintiff suit out summons for damages suffered as a result of the injuries on his back, left foot, left side of the face, left arm and left finger. This suit is continuing only in respect of merits, the parties having agreed to separate merits and quantum as contemplated in Rule 33 of the Uniform Rules of Court. I accordingly granted an order of separation.

Plaintiff's evidence.

[6] The plaintiff stated under oath that on 2 February 2015 he bought a train ticket and boarded a train ("first train")

at about 7am to travel from Naledi station en route to work in Long Dale. He was working for a company which carries its business near the Long Dale train station. He would disembark and walk for a short distance to his place of work. He was employed to cut potatoes to make chips and also doing deliveries. His shift starts at 9:00. The train stopped at New Canada where passengers were directed to exchange into another train ("second train") which was travelling to Johannesburg. He disembarked and went up the stairs to go over the pedestrian overpass bridge to board a train which was at that time stationary with its doors opened.

[7] All passengers in the first train had to disembark and as such there was a stampede on the way to board the train heading to Johannesburg. Due to the high number of people (others boarding and others disembarking) he had to try to push and force his way into the second train. He had his first foot on the doorstep of the train with his left hand on the wall of the train. He then tried to lift the

next foot to get inside but was pushed by other commuters and lost balance, slipped and got stuck between the train and the platform. He then fell and landed with his right hand on the platform. He moved both his hands and hold onto the steel bar at the centre of the door. In the meantime, the whistle was blown signalling to the driver that the train should move. At that time there were still other people embarking and other alighting from the train.

[8] When the train started moving, he had to let go of the steel bar and was dragged and spun. The members of the public started screaming and after a short while the train stopped. At that time, he was already at the end of the coach and he then started crawling out.

He was assisted by someone who was wearing the uniform who looked like a ticket examiner.

[9] He believed that the signalling of the train to move was premature, as due to high number of the passengers, it was clear that there was still pushing by those alighting and at the same time those who were trying to board the train. There were no security officials

nor marshals on the horizon unlike it was the case at Naledi train station.

[10] Since he was still on time for his work, he could have waited for the next train which usually come after a 15 minute interval. In

this instance, the second train was stationary and there was no reason to wait for the next train.

[11] The plaintiff stated during cross examination that usually there will be metro rail officials who will check the tickets at a check point before crossing over into the other part of the railway station. On this specific day there were no officials providing such

service.

[12] He restated his position that when trying to step back due to the pushing force he missed the platform and then fell. The train doors were still open but the train had started moving. He then rolled between the train and the platform and was released at the end of the platform. He persisted that he was not late for work and just opted to embark on this train as it was stationery with its doors open.

[13] The plaintiff disputed that he was trying to board a train which was already in motion and further that since he was not in a hurry, he could have waited for the train which would have followed soon thereafter. In addition, had he been aware that the train was

full, which is normally an afternoon occurrence, he could have opted to take a taxi to work. He further put in dispute the version by the defendant that he attempted to board a train which had already started moving and tried to climb onto the cables in between the coaches.

[14] He further disputes that he was negligent as he did not foresee the train moving whilst others were alighting and others boarding the train. He also did not foresee the possibility of the whistle being blown whilst there were still jostling to get in and others getting out of the second train.

[15] The plaintiff stated under the re-examination that maybe if there were security officials close by it could have been discovered

early that the time was not opportune for the train to move in view of the fact that there were many passengers trying to board whilst others were alighting.

[16] The plaintiff did not have another witness and he then closed his case.

Defendant's evidence.

[17] The defence first witness was Mlambele Promise Jili ("Mr Jili") who testified that as at the time of the incident he was employed by Vusa Isizwe Security Company which was contracted to the defendant. He was posted at New Canada train station. His responsibilities included, inter alia, to ensure that passengers only board the train when it is safe to do so; to assist the passengers to alight from the train and to monitor that the passengers do not go over the yellow line safety zone. He is further required to ensure that the passengers and all users of the train service at the station are safe and not attacked by criminals.

[18] He stated that the plaintiff came running towards the train whose doors were already closed and started moving. He attempted to instruct him not to approach the train but he rebuffed the instructions. Mr Jili testified that the plaintiff first went straight to the door and on realising that it is closed he then ran towards the end of the coach and attempted to jump onto the cables between the coaches.

[19] Counsel referred the witness to the report he compiled after the incident and confronted the witness on contradictions since the

report states that the plaintiff attempted to open the doors and the evidence during trial is that the plaintiff went straight to the end of the coach. Further in one instance the witness stated that the plaintiff was alone but at the same time stating that he was not alone. In retort, the witness stated that the plaintiff was the only person who crossed the yellow line with the intention of boarding a moving train.

[20] Mr Jili stated further that the plaintiff ignored the instructions and then tried to reach the cables in between the coaches and fell. He then raised his hands and expeditiously gave instructions to train guard to stop the train. He contacted the control office from where the ambulance services was summoned and came to the site where the plaintiff was assisted.

[21] Mr Jili re-stated under cross examination that the plaintiff was alone when he attempted to board a train which was already in motion with its doors already closed. Further that ordinarily his duties would be to ensure that passengers do not cross the yellow line when not safe to do so. In this instance he was a few coaches from the plaintiff and could not physically stop him but he screamed

to him that he should not attempt to board the train but he opted not to heed to the instructions.

[22] The next witness was Mr Gift Tshitavhadula who stated he was in the employ of the defendant as the segment security commander. His

duties included management of contracts and attending to all complaints at railway stations within his scheduled area. He testified that he received a call from the Joint Operation Centre in the morning on 2 February 2015 and was informed that there was an accident which took place where a passenger was injured. He drove to the centre and reached the area around 8:30 where he found the plaintiff who was with Mr Jili. He took his personal details. The plaintiff also showed him his ticket which was still valid. Shortly thereafter the ambulance arrived and the paramedics assessed the plaintiff and provided him with the nature and details of the injuries before leaving the scene with the plaintiff.

[23] He then spoke to Mr Jili who gave him the background as to how the accident occurred. That the plaintiff tried to board a train that had its doors closed and in motion. He then tried to get into between the coaches and fell. In terms of the company protocol once the accident has been reported, he will, amongst others, compile report and complete a liability form. This process was undertaken on the same day, within a period of three hours after he arrived at the scene. The said liability form was completed based on the information made

available to him by Mr Jili.

[24] The witness read the contents of the report and stated that the injuries were not serious. He was also referred to the details of

the person who prepared the report and the copy of the occurrence book. He denies the accusation by the plaintiff that the defendant was negligent as there were not enough security personnel to warn people not to approach the train which was in motion, and this was accordingly done. He finally stated that the plaintiff is the person who was negligent in trying to embark on a train that was in motion and the doors having been closed.

[25] The witness stated under cross examination that since he was not present at the time when the accident occurred, he cannot give personal knowledge. He is further unable to give an indication as to what is the detailed job description for the security guards at the railway station. He has been with the defendant for the past 16 years and he was also required to comply with the policy of defendant with regard to occurrence of accidents on site. He stated that he is the one who called the ambulance after being notified about the accident.

[26] The defence next witness was Ms Hermina Fikile Nkabinde ("Ms Nkabinde"). She testified that she was a Metro guard on the day in question and was guarding train number

9347. She is an assistant train driver who occupies the last coach while the driver is occupying the first coach. Her responsibilities include making sure that the whole body (including the last coach) of the train has arrived at the platform before the doors are opened. And to give a cue to the driver to leave the station when it is opportune to do so. If the whole train has not reached the platform, she will then not open the doors and communicate with the driver to move forward until she is satisfied that the last coach has reached the platform. She will then open the door for the passengers to disembark and others to embark the train and when that has been completed, she will then press the bell to indicate to the passengers that they are not allowed to go over the yellow line and the doors of the train would be closed. As at the time when the train doors were getting closed, there were no passengers beyond the yellow line.

After closing the doors, then she would press the button so as to give the driver a cue that the train may leave the station.

[27] After giving an indication to the driver to start more moving forward, she then saw a passenger rushing towards the train. As the doors were closed, he proceeded and tried to jump onto the cables between the coaches and she saw him falling between the coaches. She immediately pressed the button for the train to stop as it was already in motion. She further insisted that she has done all what she could have done under the circumstances. She testified that the plaintiff is the person who was negligent by attempting to board a train that was moving and its doors closed. She further confirmed that the version that was put up by the plaintiff is incorrect. She made it a point that the doors were closed after she peeped through the window and managed to see that there was no passenger beyond the yellow

line.

- [28] The witness stated under cross-examination that as at the time of the accident she was working as a guard and was promoted in 2005 to become a train driver. Further that her prime responsibility is to make sure that the yellow line is clear before the train could start moving.
- [29] She testified that the train from which the plaintiff could have alighted from would have been separated from platform 5 and 6 by another platform. She disputed the version that the plaintiff was descending from the stairs, as was stated by Mr Jili, especially because there are no rails between platform 5 and
6. Once confronted with the version from Mr Jili who may have been very closer to where the incident or occurred, she persisted that plaintiff fell between the coaches and not between the train and the platform.
- [30] The counsel for the plaintiff confronted the witness and put it to her that had she indicated to the driver not to move the train while seeing the passenger running, she could have saved the passenger. She responded that ordinarily passengers do come running towards the train, but once they become aware that the train's doors are closed and it had started moving, they would immediately stop. In this instance she assumed that seeing that the door was closed, the passenger would not have proceeded towards the train. She further disputed the version of the plaintiff as was presented to her by the plaintiff's counsel and vociferously contended that if the accident occurred as stated by the plaintiff he would have probably died.
- [31] She mentioned whilst still under cross examination that the space between the edge of the train and the platform is so small that no one could fit in. She stated that she is not sure as to where the plaintiff was coming from and that would ordinarily not be part of her job which was, as stated above, specifically to make sure that there is no passenger beyond the yellow line before the train can move.
- [32] The witness was confronted with regard to the disparity of her evidence in contrast to the evidence in the statement that was presented to the court. The statement indicated that he went to the door and then towards the space in between the coaches and the evidence presented at Court suggest that he went straight to the end of the coach. The counsel further inquired from the witness that if

they were enough guards maybe the accident would not have occurred to which the witness stated that she is not sure about that but still persisted that she was able to see the plaintiff as he was crossing the yellow line which is normally cleared once the doors are closed and the train is starting to leave the station.

- [33] The witness also persisted that according to her they were adequately staffed and not as insinuated by the plaintiff's counsel who stated that if they were adequately staffed maybe one of the employees would have managed to physically stop the plaintiff from crossing the yellow lane as it is being alleged.
- [34] The witness was also confronted of the inconsistency in her evidence as she stated that all was recorded in the occurrence book in the morning whereas the book itself referred to 13:30 in the afternoon. In retort she stated that the correct time is 7:45 in the morning.
- [35] She continued and stated that she raised her hands and screamed at the plaintiff to dissuade him from approaching the train when she saw him approaching in a rush but he rebuffed the instructions.

Submissions

by the counsels.

- [36] The counsel for the plaintiff submitted that the plaintiff has presented a watertight case of what transpired and the basis for alleging that the accident occurred as a result of negligence of the defendant and or its employees.
- [37] The counsel for plaintiff submitted that where there are contradicting versions from the witness the court need to have regard to the credibility of witnesses, reliability of the evidence presented and thereafter then the balance of probabilities, as set out in the locus classicus judgment in Stellenbosch Farmers' Winery Group Limited[2] The important witness of the defendant was Ms Nkabinde whose evidence was unreliable due to the inconsistencies in her evidence. First saying that the train came on platform 5 and 6 and later changing that it was probably platform 7. Secondly stating that train 9347 came after she had left at the same time saying that she saw the plaintiff who came with first train and attempted to embark on her train. In addition, she should have first made sure that the platform was clear of passengers before closing the doors and getting the train into a movement.
- [38] There were no adequate security personnel deployed at the station to ensure safety of the passengers. Further that it was not disputed by the defendant's witnesses that it was inadequate. In addition, the train guard conceded that had she stopped the train swiftly when realising the attempt by the plaintiff to board that could have saved the plaintiff from the injuries.
- [39] The defendant's counsel on the other hand submitted that the plaintiff was outside of the train and not on board. Further that
- the plaintiff has failed to prove that the defendant's conduct was wrongful. If anything, the defendant has demonstrated that it complied with its legal obligations and also acted with the requisite degree of care and skill in discharging its obligations.

- [40] Ordinarily once the passengers have disembarked and others having boarded the guard would blow the whistle to warn all that the doors are closing and thereafter rings the bell after which the train will start moving. This is what Ms Nkabinde did on this day. If the plaintiff was within sight at the time the train was about to set in motion, then the plaintiff would have heard the sound and stayed off the soon to be moving train.
- [41] Counsel further submitted that there are two reports which supports the stance of the defendant. In this regard, he referred to Wits metro faults report which stated that unknown person tried to board a train whilst in motion. Secondly, the liability report which also confirms that someone tried to board a train which was already in motion.
- [42] The evidence of the security guard and the train guard corroborates each other in the sense that the plaintiff fell after attempting to board a train which was in motion. The security guard having testified that the plaintiff attempted to latch onto the steel structures between the coaches and the train guard stating that plaintiff just latched onto the steel bars between the coaches. To this end, it is contended that the defendant discharged its legal duty and there was a security guard on duty for this purpose.
- [43] The second requirement, counsel for defendant continued, is that of negligence and the test thereof is whether a reasonable person in the position of the defendant would have reasonably foreseen harm befalling the plaintiff as a result of boarding the train in motion and the counsel for defendant retorted that 'no' since it was not foreseen that one would attempt to board a train in motion with its doors closed. The plaintiff confirmed that he could see that the train was overcrowded and he should have awaited the train which would come after (i.e. the 9643 train). Even if this injury was not foreseen, the defendant took immediate steps by stopping the train.
- [44] The next question is of factual causation being whether there is causal link between the conduct of the defendant and the attendant

injuries. The injuries occurred as a result of an attempt to board a moving train with its doors closed. No such conduct can in any way be attributed to the defendant, it was argued.

- [45] The last question is on the legal causation (the imputation of liability) being the determination whether the wrongful conduct is

remotely connected to the harm caused or closely connected to it. In this case, it is argued, the conduct of the defendant of closing the doors and starting the movement of the train is far removed from the alleged resultant harm suffered by the plaintiff.

Issues

- [46] The issue for determination is whether the plaintiff has made out a case for the relief sought.

Legal principles and analysis.

[47] The plaintiff is enjoined to present evidence for a delictual claim and establish that there was a wrongful and negligent conduct on the part of the defendant which caused him harm for which he should be entitled to compensation. The factual causation is established by determining whether the defendant's conduct caused the harm. The question is whether the defendant's conduct was the necessary condition for the harm. Whereas the legal causation calls for the determination whether the defendant should be held liable for the harm. In essence, the plaintiff is required to demonstrate that the defendant has a duty to ensure a safe usage of the passenger rail services which includes the duty to prevent accidents and harm to the passenger by exercising reasonable care and that the defendant has failed to exercise the said duty.[3]

[48] The defence has correctly submitted that where the version of the parties are mutually destructive the court should refer to the principles laid down in Stellenbosch Farmers Winery Group Ltd[4] in terms of which the court is required to make a finding on (a) the credibility of the various factual witnesses; (b) their reliability;

and (c) the probabilities.

[49] The plaintiff's counsel submitted that the SCA held in Rautini[5] that pleadings should foreshadow the parties case. It was stated that:

"The first difficulty facing the respondent is that it never pleaded the issues raised above. It is also significant that it did not plead that the appellant had deliberately jumped from the train at Spier station. This Court in Minister of Safety and Security v Slabbert held as follows: 'A party has a duty to allege in the pleadings the material facts upon which it relies. It is impermissible for a plaintiff to plead a particular case and seek to establish a different case at the trial. It is equally not permissible for the trial court to have recourse to issues falling outside the pleadings when deciding a case.'"[6]

[50] In his particulars of claim the plaintiff averred that the "... defendant failed to employ employees, alternatively failed to employ an adequate number of employees to guarantee the safety of passengers in general and the plaintiff in particular on the coach in which plaintiff intended to travel; it took no steps to prevent the coach in which the plaintiff was travelling from becoming overcrowded;[7] the driver proceeded to drive the train away while it was clear that not all commuters had completed their entry or exit."

[51] The gravamen of the plaintiff's case is that the defendant should have ensured that there was no overcrowding in the coach which the plaintiff was trying to board. The plaintiff viewed this as the defendant failing to ensure that commuting would be safe

to the members of the public. As a result of this lapse the plaintiff was pushed, fell and sustained the injuries he identified.

[52] Whilst the foregoing is reflective of the pleading set out, the evidence demonstrated a different story all together. The plaintiff argued that he was not aware that the train was overcrowded when descending from the pedestrian overbridge [8]. He however became aware when at the door that there were many commuters jostling, others boarding whilst others were disembarking.

[53] He further stated that had he been aware that there was a stampede he would have caught a taxi to work more especially as he was not late for work, alternatively he could have waited for another train. It is still a mystery why he nevertheless wanted to push

himself into the overcrowded train. This conduct lend credence in the defence raised by the defendant that the plaintiff voluntarily

assumed the risk and it was therefore his own negligence which let to the accident and attendant injuries suffered. Having failed to ascribe negligence to the defendant there would not be legal basis to allege that the defendant's conduct led to the accident.

[54] From the evidence presented by the plaintiff, his version is improbable and alternatively failed to advance his case that the defendant was not negligent and not him. The plaintiff's credibility is questionable and undermined by inconsistent version that he pushed to get in even though he had an option to wait. His candour was not impressive when testifying and I found his testimony

to have not been reliable and is contradictory. The probability is that the plaintiff was late for work and could not wait for the following train or he was not late for work but opted to risk his life. The only reason he advances for his strange conduct, which still make no sense, is that he was not late but opted to board as the train was stationery and the doors were opened. It is mindboggling for one to argue that the plaintiff insisted on boarding an overcrowded train when there is no pressure to do so at all. It's a classical case on *volenti non fit injuria*.

[55] Noting that the plaintiff is endowed with the onus to prove all the elements of the delict the version presented justify a dismissal of the claim.

[56] That notwithstanding the crux of the evidence as presented by the defendant is that the plaintiff approached a train in motion with

closed doors. Two witnesses, Mr Jili and Ms Nkabinde's evidence was generally above board that the doors were closed and the train was in motion. The plaintiff's counsel kept on hammering on the contradictions in their evidence that Ms Nkabinde stated that the plaintiff was not descending from the pedestrian bridge as the train from which he exited was separated by a platform and not rails from the train he was supposed to board. Further that the train which the plaintiff came from only arrived after the second train had left the station.

[57] The contradictions may not be dispositive of the case and the court should assess the materiality thereof, plausible explanation as presented. The passage of time at the time the incidence may also play a role and impact on the ability or impair recollections of events. The contention that the plaintiff went to the door before proceeding to the end of the coach does not tarnish the evidence

either. The counsel for the plaintiff further strenuously argued that the defendant failed to state in the plea that the plaintiff fell into between the coaches. This argument is in contrast with the plea and fails to appreciate what was mentioned in the plea that the doors were closed and also that the train was in motion. Further that he made attempts to board the train when it was inopportune to do so and also having failed to exercise reasonable care when he could have done so.

[58] There is no evidence which was presented to gainsay the evidence that the Ms Nkabinde was able to see through peeping that there was no passenger who was beyond the yellow line safety zone at the time when the doors were closed. In addition, the evidence presented is further that the whistle was blown for the train to move after the doors were closed. Equally important is the unchallenged evidence of Mr Jili who stated that he was close to the coach which was approached by the plaintiff and could also clearly see the yellow line.

[59] The contention by the plaintiff that had there been more security personnel they would have been able to physically stop the plaintiff from attempting to board a moving train is unsustainable as it would imply that there should just be as many security personnel

as commuters as the defendant should always expect that commuters would always try to board moving trains with doors closed. This would be preposterous. It would not be unreasonable to assume that the commuters would not attempt to be suicidal.

[60] The defence placed more emphasis on the importance of the evidence of the defendant failing to appreciate that the onus still rests with the plaintiff to allege and prove elements of delict including alleged negligence on the part of the PRASA and/or its employees..[9] The plaintiff's case should either be as pleaded that the train was overcrowded and this should have reasonably been avoided by the defendant or its employee acting reasonable under the circumstances alternatively that the train was not overloaded as per evidence presented which will derail the tenor of the case advanced by the plaintiff as he fell from being pushed by those who were trying to disembark as against those who were trying to embark.[10] The plaintiff further referred to cases where the defendant was considered to have been negligent for not ensuring that the doors

were closed. It appears that those judgment are irrelevant to the issues which serves before me.

Conclusion

[61] The plaintiff has failed to ascribe negligence to the defendant as such other elements of the delict including causation and failure to exercise duty of care could not be demonstrated. The defendant discharged its duties and no negligent conduct on the part of the defendant or its employees which caused the injuries was proved. The evidence supports the version of the defendant's

defence of *volenti non fit injuria*. In the premises the suit is bound to fail.

Costs

[62] Costs ordinarily fall within the discretion of the court, which must be exercised judicially, having regard to the relevant factors. It was held in *Affordable Medicines Trust v Minister of Health*[11] that "[t]he award of costs is a matter which is within the discretion of the court considering the issue of costs. It is a discretion that must be exercised judicially having regard to all the relevant considerations." In this instance it is axiomatic that the plaintiff was clutching at straws. It is also trite that the costs follow the outcome and, in this case, no persuasive argument was mounted warranting any deviation from the well-trodden path.

Order

[63] In the premises I make the following order

The claim is dismissed with costs.

M V NOKO

Judge of the High Court,

Gauteng Division, Johannesburg.

This judgement was prepared and authored by Noko J and is handed down electronically by circulation to the Parties / their legal

representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 11 April 2025.

Dates:

Hearing: 22 October 2024.

Judgment: 11 April 2025.

Appearances:

For the Plaintiff :

S Tshungu

Instructed by Maria Phefadu Attorneys

For the Defendant:

M Muchenje.

Instructed by Mzamo Attorneys

- [1] Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002.
- [2] Stellenbosch Farmers' Winery Group Limited and Another v Martell & Cie SA and Others 2003 (1) SA 11 (SCA).
- [3] See Shabalala v Metro Rail
- [2007] ZASCA 157 which confirms that the PRASA is enjoined to take all reasonable steps to procure safe commuting of the passengers.
- [4] footnote 2 above.
- [5] Rautini v Passenger Raul Agency of South Africa
- [2021] ZASCA 58.
- [6] Id at para 21.
- [7] This aspect was curiously not dealt in the Plaintiff's Heads of Argument, and it should lend credence that it is acknowledged that it obliterates the plaintiff's case.
- [8] See para 4.1 of the Plaintiff's Heads of Argument at CL 25-4 where it is stated that "that the Plaintiff was not late for work, if that train was full, he was going to wait for the other train". Further at 4.5. that "The he was able to see the train doors from the stairs and the train was not full."
- [9] See Passenger Rail Agency South Africa v Sithuse
- [2021] ZASCA 78 where the SCA held at para 26 that the "... Full Court misdirected itself by impermissibly placing the onus on PRASA to prove that Ms Sithuse had attempted to commit suicide. Its decision to hold PRASA liable was made on an incorrect legal basis, and for that reasons cannot be supported."
- [10] Noting that in his evidence the plaintiff stated that he could see that the train was not overcrowded when descending but later changed the version as stated that the train was overcrowded.
- [11] Affordable Medicines Trust and Others v Minister of Health and Others
- [2005] ZACC 3; 2006 (3) SA 247 (CC) at para 138.

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