

SOUTH AFRICA / JUDGMENT

Frans v Minister of Correctional Services (14141/15) [2021]

ZAWCHC 284 (14 June 2021)

[2021] ZAWCHC 284

COURT

Western Cape High Court, Cape Town

BEFORE

Nel

CASE / FILE NUMBER

14141/15

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN

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

Case

no: 14141/15

In the matter between:

SANDRA
FRANS
Plaintiff
and
THE
MINISTER OF CORRECTIONAL SERVICES
Defendant

JUDGMENT

DELIVERED ON 14 JUNE 2021

INTRODUCTION:

1. The plaintiff instituted an action against the defendant for delictual damages arising from an incident which occurred on 17 August 2012 when she slipped whilst climbing off of a step at the George Correctional Facility situate at 10 Union Street, George (“the premises”).

2. At the commencement of the proceedings the parties indicated that a separation of issues in terms of rule 33(4) of the uniform rules was called for, with the result that liability would be considered first and quantum at a later stage. A separation was accordingly ordered.
3. The plaintiff gave evidence herself and called one other witness in support of her claim. The defendant called one witness.

THE EVIDENCE:

Evidence of the plaintiff:

4. The evidence of the plaintiff can briefly be described as follows:

4.1 She is 62 years of age, and a widower with three children. On 17 August 2012, when she was 54 years of age, she attended at the premises in order to make payment for bail which had been set for her son.

4.2 She had previously been to the premises in the two preceding years in order to visit her son who had been incarcerated there, and she was therefore familiar with the premises. Upon arrival at the premises one was required to produce an identity document at the information office window prior to proceeding inside via the door next to it. On her prior visits, the person accompanying her would always go to the office window to present their identity document. On the day of the incident she arrived at the premises between 3:30pm and 3:45pm and, for the first time, went to the window herself, which she testified had a wooden crate in front of it, which she had to climb on, in order to produce her identity document. Once she had climbed onto the crate she heard a voice from the office informing her that they were closed and that she should proceed straight through the door. She thereupon turned around on the wooden crate in order to climb off of it. She initially stepped down with her right foot which slipped from underneath her causing injury and various fractures to her left ankle and tibia. She testified that she

was taken to the local hospital by a Mr. Grootboom, who was an employee at the premises. She had to undergo a surgery and was discharged from the hospital several days later.

4.3 The plaintiff testified further that the wooden crate was approximately 40cm high (coming up to just below her knee) by 70cm wide by 55cm deep. A joint trial bundle was handed in, as Exhibit "A", which contained photographs of the information office window and its immediate surroundings. The photos on pages 1 to 2 thereof were taken by the plaintiff's attorneys of record during an inspection in loco during 2015. The plaintiff testified that the photographs in Exhibit "A" show a different and lower "step" in front of the window than the one she stepped on in 2012. She testified that the step in the photographs, which she observed in 2015, was made of bricks and cement. It was furthermore her evidence that the window in the photographs had been lowered since the day of the incident. She also testified that the tile on the flooring on the day of the incident was a cement tile although she regarded it as slippery, but only realized that when she fell. The tiles in the 2015 photographs were the same as the ones during the incident. She had short comfortable boots on that day which had leather soles. The tiles were not wet on that day. She mentioned that an inspection in loco by the court would not be of any assistance as

renovations had taken place in the area and it now differs from the 2015 photographs, mentioning that there is no longer a step. She is aware of this because she had visited the premises the Saturday prior to testifying. She was also of the view that a hand rail would have made it more comfortable for her to climb off of the step, although she did not think that climbing onto or off of the step was dangerous as everybody else had done it. There were furthermore no signs warning her of the dangers of climbing off of the step or that the floor was slippery.

4.4 She approached her attorneys of record in 2014 after hearing an advertisement by them on the radio. Prior thereto she had not reported the incident to anyone at the correctional services centre nor had she sent any letters of complaint.

4.5 During evidence in chief she testified that she had never previously been on the tiled floor surrounding the step, whereas during cross-examination she conceded that she had in fact walked across those tiles a number of times in the preceding years whilst visiting her son.

4.6 It was also pointed out to her during cross-examination that in an affidavit which she deposed to, on 3 June 2015, as part of an internal investigation by the Department of Correctional Services, she stated that Mr. Witbooi had taken her to hospital. She then stated that the affidavit was incorrect and that it was indeed Mr. Grootboom who had taken her to hospital. She was also directed to an affidavit which she deposed to, on 18 August 2017, in support of an application for default judgment, wherein she alleged that the wooden crate which she had to stand on was loose. This is also repeated in paragraph 6 of the particulars of claim. She however testified that she did not know that the crate was loose, and had not informed her attorneys of such, and had only told them that the crate had been placed against the wall.

4.7 She also testified that she was not in a rush when she climbed off of the crate and did so slowly knowing that her son was coming out. It bears mentioning that at this stage she had not made payment of the bail amount yet.

Evidence of Mr. Jansen:

5. The second witness called on behalf of the plaintiff was Mr. Jan Johannes Jansen. He was not at the premises on the day of the incident. He was a building contractor by trade, although he was not called as an expert witness. In 2012, his sister-in-law's son was in prison at the premises. He had been to see him two or three times, approximately once a year during his period of incarceration, which in 2012 had been for approximately 3 years. In 2012 however he had also been there a second time in order to take the plaintiff to visit her son.

6. He testified that there was a wooden step which he referred to as a “kas” in front of the information window which was approximately 30cm to 40cm high, 90cm wide and 40cm deep. It was composed of wooden planks nailed together with a 5mm gap between them. The step was situated on cement tiles. A step of 30cm to 40cm is irregularly high as in his experience a step should be no more than 17cm high.
7. He was referred to the photographs in Exhibit “A” which were taken during 2015, and he testified that the tiles in those photographs differed from the ones that were present in 2012 which he described as being rectangular in shape. He regarded the tiles in 2012 as being slippery and there were no warning signs in order to warn persons thereof. On the occasions when he himself got off of the step in front of the window he held onto the wall in order to step down. He did not recognize the step in the 2015 photographs, which he estimated to be 17cm high, as it differs from what was there in 2012. He too visited the premises on the Saturday before testifying and on that occasion there was no step at all. The step in the 2015 photographs looked like a built step, and not a box.
8. He also testified that during 2012 the window was higher than in the 2015 photographs stating that in 2012 it was approximately 1.5 metres from the floor level whereas in the photographs the window is approximately 1.2 metres from the floor level.
9. During cross-examination when he was taken to the photographs of the window, he testified three times that it was a photograph of the door next to the window. When it was put to him that it was not a door but was rather a window, he testified that it was different to the window that was there in 2012 in that the 2012 window was square and didn’t have the same hinges on as those depicted in the photographs.
10. His late wife had been very good friends with the plaintiff since they had been in school. He had heard about the plaintiff injuring herself at the premises on the same day that it happened. He had gone to visit the plaintiff at her home after she had been discharged from hospital and she had explained to him what had transpired and how it happened. Thereafter, and once the plaintiff’s cast had been removed from her leg, she paid Mr. Jansen and his wife a visit at their home, and once again explained to them what had happened during the incident. Thereafter he only saw her every now and then.
11. He and the plaintiff visited the premises together on the Saturday before they testified. They also travelled together on the bus down from George to Cape Town and they then again spoke about the incident, including the lowering of the window.
12. That concluded the case for the plaintiff.

Evidence of Mr. Pieters:

13. The defendant called Mr. Gerrit Andre Pieters who has been in the employment of the Correctional Services Department at the premises since 2007. He has been an investigating officer since 2010. He took the photographs on pages 3 to 6 of Exhibit “A”; and he passes by the information window in the photographs everyday that he is on duty on the way to his

office. He testified that since 2007 there have been no changes to the window at all. It has not been lowered, the shape has not changed, and the hinges are still the same. He moreover testified that the step on the 2015 photographs had not changed since 2007; it was the same step that was there in 2012. The step is a wooden box, which he described as solid, measuring approximately 15cm to 18cm high. He testified that he had personally picked the step up at some point. It is not a built in step. In 2016 or 2017 the step had been removed. The tiles on the 2015 photographs are the same tiles that were present in 2012.

14. Mr. Pieters testified under cross-examination that one did not have to stand on the step as the window could be reached simply by standing next to the step; the window being wide enough to do so. Although, he did agree that by placing a step in front of the window it was an invitation to members of the public to make use thereof. He also testified that the office closed at 3:30pm, but during office hours, there were always employees available to assist disabled or elderly persons. The present incident occurred after hours so there was no one to provide assistance.
15. He would not describe the tile as being particularly slippery, although they did have a slight glaze on them, and he was not of the view that someone wearing the correct shoes would slip on it. Despite the flooring in some of the offices and corridors being polished, the tiles in this area were never polished. Other than the yellow mobile signs which were placed on the floors whilst being washed (which would not have been present after hours at the time that the incident occurred), there were no permanent signs warning members of the public of the possibility of the floor being slippery.
16. He conceded under cross-examination that the step may from time to time have to undergo some form of maintenance, although there hasn't been a time that he can recall not seeing the step there. He also denied that it would be replaced with a crate whilst undergoing maintenance, if any, as he would have noticed that. He has never seen a step, other than the one in the photographs at the window. He testified that he sees the step when he comes in in the mornings and then again when he leaves in the afternoon; it is possible that maintenance may have replaced it during his working day. He also conceded under cross-examination that it may have been better to provide something for people to hold on to when climbing off of the step.
17. There have however been no other incidents of anyone slipping off of the step since he has been there, and himself has never found it to be slippery.

EVALUATION OF THE EVIDENCE:

18. The plaintiff and defendant's witnesses have given two conflicting versions in respect of: (a) whether the window has subsequent to 2012 been lowered; and (b) whether the step in the photographs taken in 2015 is the same step that was present at the time of the incident in 2012.

19. When faced with the two irreconcilable versions, a trial court is enjoined to examine the reliability and the credibility of the witnesses. Paramount in this regard would be the consistency of each witness and where appropriate draw inferences in the light of inherent probabilities and improbabilities. The technique used to resolve two irreconcilable versions was restated and explained in *Stellenbosch Farmers' Winery Group Ltd and Another v Martell ET Cie & Others* 2003 (1) SA 11 (SCA). There the Supreme Court of Appeal said at para [5]:

The technique generally employed by the courts in resolving factual disputes of this nature may conveniently be summarized 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 the subsidiary factors, not necessarily in order of importance, such as (i) the witness' candour and demeanor 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 the (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 issues. In the light its assessment of (a), (b) and (c) the court will then, as final step, determine whether the party burdened with the onus of proof has succeeded in discharging it'.^[1]

20. Turning to the facts of the present matter, the contradiction in the plaintiff's evidence where she in chief testified that she had never previously been on the tiled surface surrounding the step at the information office versus her evidence under cross-examination that she had in fact walked on the surface many times whilst visiting her son is striking.
21. The fact that the plaintiff and Mr. Jansen have been friends for a long time does not, without more, affect their credibility. However, in respect of reliability one must take into account that both the plaintiff and Mr. Jansen visited the premises together on the Saturday before giving evidence in court, and also travelled together on the bus from George to Cape Town where Mr. Jansen openly admits that they discussed the matter, including the lowering of the window. I would not go so far as to say that the plaintiff and Mr. Jansen colluded together, however, one has to question the reliability of their evidence given that the

incident

occurred approximately 9 years ago, and their very recent discussions surrounding the incident. It begs the question as to how much of their evidence is reconstruction and how much is a genuine recollection of the facts. They had according to Mr. Jansen agreed between themselves, during the bus trip, that the window had been lowered since 2012. Moreover, both the plaintiff and Mr. Jansen appeared to be anticipating follow up questions before they were asked, and answered beyond what was required, both volunteering that no signs were present warning them about the alleged slippery floor or the danger of stepping off of the step, as well as the absence of a handrail to guide them off of the step. Their evidence accordingly came across as coached, alternatively

rehearsed.

22. In contrast, Mr. Pieters was overall consistent and his testimony was both credible and reliable. He made a good impression as a witness and also gave concessions where necessary. I am not in agreement with the plaintiff's submission that Mr. Pieters was a biased witness merely as a result of his employment with the Department of Correctional Services.
23. Although Mr. Jansen gave an accurate guestimate of the height of the window in court, in light of what I have said above, the evidence of Mr. Pieters was more reliable and accords with the inherent probabilities. It is highly improbable that the Department of Correctional Services would place a 30cm to 40cm crate in front of an information window for members of the public to climb onto when presenting their identity documents, and that such a crate would indeed be frequently used by the public. It is furthermore improbable that if the step was indeed 40cm high as the plaintiff alleges that she would have climbed onto it, and if it was lose as she described, then I am in agreement with the submissions of Mr. Warner, who appeared on behalf of the defendant, that the probabilities are that she would have moved it away or stood next to it. The evidence of Mr. Pieters, for all of the reasons set out above, to the effect that the step as depicted in the 2015 photographs is the same step that was present when the incident occurred in 2012, is therefore accepted.
24. I also find that the plaintiff has not discharged the onus upon her[2] in respect of the version put to Mr. Pieters that the step in the 2015 photographs could have been temporarily removed for maintenance, and replaced with a crate. Mr. Pieters testified that he had never seen a step other than the one in the photographs before the window, which he had observed each day he arrived for and left work. Given that the incident occurred at approximately 3:45pm after the information office had closed at 3:30pm, and at the end of Mr. Pieters shift which was between 3:35pm and 4pm, he would have noticed had there been another step in place.

25. I turn now to deal with the issue of the defendant's liability, if any, on the basis that the scene of the incident is, as stated by Mr. Pieters, the same as that depicted in the photos in Exhibit "A", in that the same step of approximately 15cm to 18cm in height was present, and the window had not been altered.
26. The test for the imposition of liability for negligence has been authoritatively stated in *Kruger v Coetzee* 1966 (2) SA 428 (A) at 430E-G. There the court 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.[3]

27. The plaintiff has pleaded that the defendant was negligent by inter alia: allowing a crate (which constituted a danger to the safety of the public) to remain and be used as a step in front of the counter;

and/or failing to warn members of the public of the dangers created by the crate and slippery flooring. This is denied by the defendant.

28. As I have stated above, I have accepted the evidence of Mr. Pieters that it was not a crate in front of the counter, but rather a sturdy wooden step, which was approximately 15cm to 18cm high. The placing of a step in front of the counter, which on the evidence of Mr. Jansen was the height of a standard step, is not in and of itself negligent. One has to bear in mind that the step, on the plaintiff's version, is much broader and wider than a normal step.[4]
29. Whilst the defendant may have been able to foresee the reasonable possibility of someone injuring themselves whilst stepping onto or off of the step, given that it is only one step, the standard height thereof, that it was reasonably wide and deep, and its position against a wall, which can be used as support, such as Mr. Jansen did, the applicant has not discharged the onus upon her of showing on a balance of probabilities that a diligens paterfamilias in the position of the defendant would take reasonable steps to guard against such an unlikely occurrence.[5]

30. In respect of the alleged slippery floor, although the plaintiff testified that she regarded the floor as slippery, when she was asked in her evidence in chief when she first realized that the tiles were slippery, she responded that she had only done so when she fell. She had walked across those tiles on a number of occasions when she had visited her son, both in 2012 and in the preceding years, at the premises. She notably did not give evidence that on any of those prior occasions she had slipped or even noticed or considered the floor to be slippery. The first time she does so is after the incident giving rise to the

action. Moreover, the evidence of Mr. Pieters, which has been accepted as more reliable and credible than that of the plaintiff's

witnesses, is that although the tiles had a slight glaze on them, he would not regard them as slippery. The plaintiff has

accordingly failed to discharge the onus upon her of proving that the floor was slippery at the time of the incident.

31. Moreover, the plaintiff at no point in time, prior to her hearing an advert on the radio for her current attorneys of record, complained to anyone at the premises regarding either the step or the alleged slippery floor.

32. In *Gilson v Shoprite Checkers Ltd* (A 69/2008) [2008] ZAWCHC 330 (25 August 2008), Cleaver J, writing for a full bench held as follows:

[26] The trial judge concluded that in the light of the evidence given by Day, De Waal and Ruiters and the unlikelihood of dust having entered the supermarket in the relatively short time-span which applied, the evidence of the plaintiff that the floor was extremely slippery was not sufficient to discharge the onus which rested on her. This was for her to establish, on a balance of probabilities, that sufficient dust had accumulated on the floor of the store where she fell to make

it reasonably foreseeable that a customer might slip and fall on the dust. The mere fact that the defendant slipped is no evidence of negligence on the part of the defendant, for

"People slip and fall daily, due to some negligence or inadvertence or oversight on their part or for other reasons".

[27] In reaching his conclusion the trial judge found the plaintiff's description as to how she came to slip and fall difficult to follow, as indeed I did. Why she should have shifted her weight onto her right leg in order to lean across to her left hand side is by no means clear.

[28] In my view the trial judge was correct in concluding that the plaintiff failed to show on a balance of probabilities that the defendant was in law liable for any damages suffered by her and in the circumstances I would dismiss the appeal.

33. Applying the legal principles to the facts of the present matter and for the reasons which I have set out above, I am unable to find that the plaintiff has been able to discharge the onus upon her that her fall was caused by any negligent conduct on behalf of the defendant. I am not unsympathetic towards the plaintiff's

unpleasant experience. I however have to make a decision based on the evidence available and the applicable legal principles.

34. I accordingly make the following order:

ORDER:

- i. The plaintiff's action is dismissed with costs.

NEL AJ

- [1] See also the matter of *Santam Bpk v Biddulph*

[2004] 2 All SA 23 (SCA) at para [10] where the court held that "the proper test is not whether a witness is truthful or indeed reliable in all that he says, but whether on a balance of probabilities the essential features of the story which he tells are true".

- [2] It is trite that he who alleges must prove. See in this regard the matter of *Meyers v MEC, Department of Health, Eastern Cape* 2020 (3) SA 337 (SCA) at para [54].

- [3] See also *Minister of Safety and Security v Van Duivenboden* 2002 (6) SA 431 (SCA) at para [12].

- [4] The plaintiff testifying that the step was 70cm wide and 55cm deep whilst Mr. Jansen testifying that the step was 90cm wide and 40cm deep.

- [5] Mr. Pieters testified that the incident in the present matter was the first that he was aware of since he started working at the premises in 2007. See also *Herschel v Mrupe* 1954 (3) SA 464 (A) at 447A-B where the court held that "[a]part from the cost or difficulty of taking precautions, which may be a factor to be considered by the reasonable man, there are two variables, the seriousness of the harm and the chances of its happening. If the harm would probably be serious if it happened the reasonable man would guard against it unless the changes of its happening were very slight."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAWCHC/2021/284.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/frans-v-minister-unknown-topic-awchc-2021>

Prepared on 11 October 2026 · Esheria