

SOUTH AFRICA / JUDGMENT

Mhlongo v Passenger Rail Agency of South Africa (2012/31036) [2014] ZAGPJHC 164 (5 March 2014)

[2014] ZAGPJHC 164

COURT

South Gauteng High Court, Johannesburg

BEFORE

Wright

CASE / FILE NUMBER

2012/31036

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA,

GAUTENG LOCAL DIVISION,

JOHANNESBURG

CASE NO: 2012/31036

DATE: 05 MARCH 2014

In the matter between:

MHLONGO, SIPHAMANDLA MTHEMBISENI.....PLAINTIFF

And

PASSENGER RAIL AGENCY OF SOUTH AFRICA.....DEFENDANT

J U D G M E N T

WRIGHT J

1. The plaintiff has instituted action against the defendant for damages arising out of injuries sustained on 4 November 2011. He says that he was injured when thrown from a moving train after having being robbed. The doors of the train were open at the time.

2. The plaintiff testified. He was a most unsatisfactory witness. Even though he testified through an interpreter he was evasive on even simple issues. He insisted that he was thrown from the train between President station and Driehoek station where there was no platform. He insisted equally that he was thrown off the train at Driehoek station.
3. The robbery is not referred to in the pleadings drawn on the plaintiff's behalf. They suggest only that he was pushed off the train by other commuters.
4. The plaintiff said that the train he was on had only a few passengers. His pleadings allege, in paragraph 3.11 of his reply to a request for further particulars that the train was overcrowded.
5. The evidence of the robbery and that the train held only a few passengers appear to be recent fabrications.
6. Ms Matlaletsa testified that she was a guard on duty at the time at Driehoek station. She was standing between platforms. She saw two trains arrive at the same time. She saw the plaintiff leave one train and attempt to board the other. As the plaintiff ran towards the train, its doors closed on him. The train was moving. The plaintiff tried to open the doors of the moving train but fell down between the platform and the train.
7. Ms Matlaletsa said that she had not told a superior that she had witnessed the event. Then she contradicted herself. Apart from this, her evidence was a lot more plausible than that of the plaintiff.
8. At the request of the plaintiff's counsel, I allowed into evidence a report by Mr Chuma, a security officer of the defendant. I did so as it was receivable being a document discovered by the defendant. This report indicates that there was no witness to the accident. Mr Ralikhuvhana for the plaintiff, submitted that because Ms Matlaletsa had said in evidence that she had given a written statement soon after the event to Mr Chuma, read with the fact that a copy of her statement is not discovered by the defendant, read with the defendant's failure to call Mr Chuma who was available as a witness, leads to the inference that Ms Matlaletsa's evidence is a fabrication. It is notionally possible that her version is a fabrication but I think that this is unlikely. It is not clear when exactly Ms Matlaletsa gave her statement to Mr Chuma. His report is dated 4 November 2011 that is the date of the incident but it is as likely that she gave her statement to him before he signed it as after he signed it. The statement of Ms Matlaletsa has not been discovered. There is no evidence that it is or was in the possession of the defendant either now or at the time of discovery.
9. Ms Matlaletsa does not recall the relevant part of her statement. In my view this aspect is neutral. It is not more likely than not that Ms Matlaletsa's statement contained a version different to the one she gave in court.

10. Mr Ralikhuvhana says that the defendant's failure to call Mr Chuma proves that the defendant has something to hide and that therefore Ms Matlaletsa's evidence is false. Mr Opperman for the defendant conceded that there is no reference in Mr Chuma's report to Ms Matlaletsa's written statement. This aspect of the defendant's case is unsatisfactory. However, I am unable to draw the inference contended for by the plaintiff.
11. In any event, the plaintiff's version is so unreliable that it cannot stand in the face of the defendant's evidence. The plaintiff has the onus and he has not discharged it. I cannot hold that his evidence is better than the defendant's case.

Order

1. The plaintiff's action is dismissed with costs.

JUDGE OF THE HIGH COURT

On behalf of the Plaintiff: Adv N. Ralikhuvhana

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Instructed by: Kwata Attorneys

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On behalf of the Defendant: Adv F. F. Opperman

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Dates of Hearing: 5 March 2014

Date of Judgment: 5 March 2014

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