

SOUTH AFRICA / JUDGMENT

Ndhlovu v Phoshoko (11908/2020) [2024] ZAGPPHC 942 (18 September 2024)

[2024] ZAGPPHC 942

COURT

North Gauteng High Court, Pretoria

BEFORE

N Davis

CASE / FILE NUMBER

11908/2020

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HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 11908/2020

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

DATE: 18 SEPTEMBER 2024

In the matter between: MATLAKALA SALOME NDHLOVU Plaintiff and MATOME ELIAS
PHOSHOKO Defendant

Summary: Damages, measure of – This is the quantum portion of a damages claim between neighbours after a boundary wall built without

foundations, plans or approvals on the defendant's higher-lying residential property had collapsed onto the house of the plaintiff's adjacent lower-lying property in 2017. Those damages which could be proven with the necessary measure of certainty had been allowed in order to attempt to put the plaintiff in a position to continue live in her house as she had before the incident. The acrimony between the neighbours and the lack of co-operation in the conduct of litigation impeded the running of the trial. An appropriate amount of damages was awarded together with interest from date of service of the summons together with costs.

ORDER

1. The defendant is ordered to pay the plaintiff damages in the amount of R 485 694,89 together with interest thereon at the rate determined by the Prescribed Rate of Interest Act 55 of 1975 from date of service of the summons until date of payment.
2. The defendant is ordered to pay the plaintiff's costs on the scale as between attorney and client.

J U D G M E N T

This matter has been heard in open court and is otherwise disposed of in terms of the Directives of the Judge President of this Division. The judgment and order are accordingly published and distributed electronically with the effective date thereof being 12 September 2024.

DAVIS, J

Introduction

- [1] The plaintiff and the defendant are neighbours. The defendant's residential property is on higher-lying ground than that of the plaintiff. On the fateful day of 21 February 2017 a boundary wall erected by the defendant on his property without the necessary foundations, drainage holes, plans or approval, succumbed to the weight of stormwater (some of it which he had unlawfully redirected) and collapsed over and onto the plaintiff's property, damaging her house and adjacent garage structure. This is referred to as "the incident".
- [2] On 2 March 2023 this court granted an order in terms of which the defendant was found to be 100% liable for the plaintiff's proven or agreed damages suffered as a result of the incident.
- [3] This is the judgment in respect of the subsequent quantum of damages portion of this action.

Plaintiff's claims

- [4] Shortly after the incident and as a result of the plaintiff's continuous engagement with the City of Tshwane within which jurisdiction the residential properties are situated, the matter was referred to the City's insurers, AIG. The insurers conducted a full investigation, including having regard to the numerous complaints laid by the plaintiff at the City of Tshwane's relevant

inspectors, regarding the encroachment of the boundary wall onto the plaintiff's property, the redirection of stormwater by the defendant, the lack of proper plans, drainage reticulation, engineering specifications, and the lack of foundations and proper construction. AIG was also made aware of numerous criminal complaints laid by the plaintiff against the defendant and the fact that the City of Tshwane's inspectorate had completely failed to attend to any of her complaints. Pursuant to this all, AIG determined that the City of Tshwane was liable to a claim for damages by the plaintiff.

- [5] Pursuant to such a claim having being lodged, AIG obtained quotations from the plaintiff in order to determine the costs necessary to make good the damages suffered by her. The quotes submitted by her were assessed and accepted by AIG as correct, who then determined that the plaintiff's loss amounted to R 289 058.69 (VAT inclusive). AIG then excluded the VAT and applied a R 100 000.00 deductible whereafter after it paid the City of Tshwane the VAT inclusive amount of R 196 389.56. Pursuant hereto the City of Tshwane paid the plaintiff the total amount of R 228 708.07 which included an undisclosed ex gratia amount. This payment later appears in the parties' papers as the rounded-up figure of R 229 000.00.
- [6] The plaintiff, who appeared in person from an early stage of the proceedings, having terminated the mandate of her previous attorneys, initially claimed damages in this Court in her particulars of claim in a total amount of R 1 219 503.00. This amount was calculated as being the balance of the following amounts after deduction of the amount paid by the City of Tshwane: the total of the amount required to repair structural damage to the immovable property in the amount of R 497 055,80, the amount required to replace the movable property damaged in the incident in the amount of R 90 428,47 and the amount of R 60 726,90 for "material purchased for the restoration of the plaintiff's property". These amounts were set out in schedules annexed to the particulars of claim and respectively marked N1, N2 and N3. To this were added two further amounts of R 60 000.00 each for "re-wiring of the electrical wires in the property" and "structural damage sustained to the sewage system of the property". In addition, damages to the plaintiff's books and manuscripts in an amount of R 680 000.00 was also claimed.
- [7] At the trial, the plaintiff produced various sets of documents in support of her claims, the quantum of which has by then ballooned to R 2 989 422.17. Although not initially clear, both from the documents produced and from the evidence lead in support of this ballooned claim, it appeared that of the amount claimed, R 1 005 037,55 represented expenses already incurred or amounts already paid by the plaintiff. The breakdown of these were included in 4 schedules marked annexures N1 to N4 respectively. These schedules differed from those initially annexed to the particulars of claim.
- [8] Schedule N1, reflecting an amount of R 356 878,84 was said to represent "a supplementary schedule setting out calculations of materials for immovables which are bought/paid for and used to: 1. temporarily fix the damaged foundation, 2. support the leaning/ unstable house, 3. patch the seriously damaged doors, 4. to build the garage temporarily, 5. build the retaining wall with palisade/ steel fence,
6. roofing part of the house and garage and 7. painting of the roof tiles."

- [9] Schedule N2, reflecting an amount of R 469 681,00 was said to represent “a schedule setting out transport paid to transport materials bought to fix, move immovable and movable property damages, removing rubbles, getting quotes, experts, labourers, labour as well as solving problems caused by the defendant’s wall”.
- [10] Schedule N3, reflecting an amount of R 54 410.00 was said to represent “a schedule setting out calculations of essential movables fixed or replaced with less expensive ones, not the same quality as those
- which are damaged/bought and paid for”.
- [11] Schedule N4, reflecting an amount of R 124 067.35, was said to represent “a schedule setting out calculations of airtime/ data and Internet, copies, scans, printing, stationary as well as typing pages used for the case”.
- [12] In addition to the money allegedly already expended as set out in schedules N1- N4, two further claims were added, reflected in schedules N5 and N 6.
- [13] Schedule N5, reflecting an amount of R 868 077,57 was said to represent “a schedule setting out quotations, calculations of immovable damages to be fixed. Some were temporarily fixed but they need permanent fixing “.
- [14] Schedule N6, reflecting an amount of R 1 345 307,05 was said to represent “a schedule setting out quotations, calculations of replacing damaged movables”.
- [15] As already mentioned, the plaintiff claimed the total of the six schedules which, after deduction of the rounded-up figure paid by the City of Tshwane, amounted to R 2 989 422.17.

Defendant’s defense

- [16] Apart from a bald denial, it was difficult to discern the defendant’s actual defense. Various attempts and exhortations by the court to have the schedules examined and considered and the issues of dispute narrowed, were to no avail. The parties continued accusing each other of a lack of cooperation. Copies of bundles delivered were either alleged to have been incomplete or not properly compiled or those actually delivered were ignored by the other defendant.
- [17] It also appeared that the defendant’s counsel had difficulties in obtaining instructions. This left the court with a lack of indication of which of the plaintiff’s documents were placed in dispute and on which basis they were disputed. There was also no indication given as to whether the amounts reflected in the various schedules and documents were disputed, whether the reasonability of the claims were disputed or whether the defendant simply sought to fight every invoice on a proverbial trench by trench basis. It was only during the latter part of cross- examination that it appeared that the large volume of the plaintiff’s “invoices” were disputed because they had been authored by herself and not by the alleged suppliers.

[18] What further hampered the process was the accusation by the plaintiffs that many of the original documents which she had given to her previous the attorneys had gotten “lost” in their offices. There was however a dearth of evidence regarding any attempt at locating or retrieving these “lost” documents.

[19] There were only two defenses of substance put forward on behalf of the defendant. The first was one contained in a report produced by a civil engineer on 4 December 2023 wherein the engineer had concluded that there was no structural damage to the plaintiff’s building and that it was structurally sound, although not in a habitable state. The second defense was tendered by the defendant by way of his wife who denied that the garage structure adjacent to the plaintiff’s house had at all been damaged and consequently a denial that any of the contents thereof had been damaged. I shall deal with these defences as part of the evaluation of the claims.

The applicable law

[20] The plaintiff’s claim is delictual in nature.[1]

[21] As such, the defendant is liable to compensate the plaintiff for pecuniary loss suffered as a result of the defendant’s unlawful

conduct.[2]

[22] The plaintiff bears the onus to prove the causal connection between the unlawful conduct and the damages suffered.[3]

[23] After having established causation, it is for the plaintiff to allege and prove the extent of the damages suffered.[4]

[24] As to the assessment of the quantum of damages, the following quotation is apposite:[5]
“Where damages can be assessed with exact mathematical precision, a plaintiff is expected to adduce sufficient evidence to meet this

requirement. Where, as is the case here, this cannot be done, the plaintiff must lead such evidence as is available to it (but of adequate sufficiency) so as to enable the Court to quantify his damages and to make an appropriate award in his favour. The Court must not be faced with an exercise in guesswork; what is required of a plaintiff is that he should put before the Court enough evidence from which it can, albeit with difficulty, compensate him by an award of money as a fair approximation of his mathematically

unquantifiable loss”.

[25] Where a court has determined that pecuniary loss has been suffered, it is necessary for a court to make a determination, making the best use of the evidence before it.[6]

Evaluation

- [26] Schedule N1 of the plaintiff's set of documents submitted in support of the quantum of her claims consists of 59 items with some of the items having sub-items. They were more or less chronologically listed, which should have made the evaluation easier but in the so-called "quantum bundle", the alleged source documents making up each of the items neither followed the numbering in the schedule nor were they similarly marked. So, for instance, instead of item 1 of schedule N1 being similarly marked (e.g as N1 item 1) it appears simply as page 161 in one of the two un-indexed bundles of documents. Moreover, items 1 and 2 both appear on page 161, while item 3 then appears on page 162 while item 4 starts on page 162, but runs over to page 163. The same applies, not only to many items in this schedule, but to many other items in the other schedules as well. It was therefore a huge task to locate the alleged source documents relating to each of the individual documents listed in the various schedules. Needless to say, this also hampered both the leading of evidence in chief as well as the cross-examination of the plaintiff.
- [27] A further complicating fact was that some of the item descriptions in the schedule contained snippets of evidence. Some of the alleged source documents did the same. To illustrate: Item 1 in schedule N1 reads as follows: "21/2/17 plaster sand mix, concrete mix, river sand mix, crack filler, cement for closing gaps and damaged doors etc. Supplied by builder. I was trapped inside the house. R 6 000.00". The corresponding source document, being an invoice of the type found in general stationary suppliers invoice books, reflects the date of 21 February 2017 but as the VAT registration number reflects the plaintiffs cell phone number and contains her name and address as well as the address of a Mr. Abel Ndou, care of Mr. Wilson Mavhungu, with address S Ndukula Street, Atteridgeville, described as a builder and also a plasterer. The actual contents of the invoice read as follows: Mr. Ndou sent by Mr. Mavhungu to help with emergencies patched doors, closed serious cracks [and] supplied some materials R 6 000.00".
- [28] The reason for the appearance of the "invoices" as described above, eventually became clear during the latter part of cross examination, as a result of which the plaintiff conceded that many of the invoices which accord with those described above, were written by herself. She compiled them from notes made at the time and/or from invoices which had been supplied to her previous attorney. In a number of instances however, she was able to produce copies of actual purchases and regular till slips from suppliers, such as Cashbuild, Pretoria West. In some other instances she had lost those documents but had the returned to the supplier and had obtained confirmation from their records as to the purchases, which she then reflected in self-created "invoices".
- [29] If one were to have regard to the nature of the descriptions contained in these invoices, I gained the impression that these reflected real and actual expenses incurred by the Plaintiff. The invoices generated by her were not in relation to simulated transactions, nor do they appear to have been created ex post facto in relation to fictitious transactions. However, when perusing all the items in schedule N1 and comparing them to the source documents and even by giving the plaintiff the benefit of the doubt, particularly as her oral evidence

could not be controverted by any real evidence or countervailing

evidence by the defendant, certain items still remained questionable. I list those items hereunder.

- [30] N1 item 6. This was for an amount of R 45 000.00 and was described as “wall to wall Deco carpet”. The original source document relating to this expense could not be traced or retrieved from the previous attorneys nor from Carpet Deco themselves. The typed explanation provided in the schedule was that the person who knew about this had had a nervous breakdown. This is not sufficient proof of either an expense or of damages suffered. The other reason why I question this expense is that during the inspection in loco it was not pointed out that the house had been wall to wall carpeted since the incident.
- [31] N1 item 15. This was a claim for an expense of R 1 575.00 incurred by having purchased a “jump start” system from Midas. This was allegedly necessary because the battery of the vehicle which had been stored in the garage structure had been damaged in the incident and had run down. Clearly this was not a damaged item and clearly the purchase was simply for a useful movable item but not for replacement of one which had been damaged in the incident. The same applies to item 21 in the amount of R 18 384.00 referring to tool kits, multi-plugs and adaptors.
- [32] N1 item 29. This is an invoice for a white four chair dining set in the amount of R 3 300.00 and the document reflects a salesman's name and his signature. Apart from the questionable sufficiency of the source document for this expense there was no evidence that the whole of the previous dining table had been so damaged that it had to be replaced. All that was alleged in the papers was that a large television set had fallen onto the table and/or a sideboard and had caused some damage to it.
- [33] N1 item 47. This is a claim for a R 30.00 expense for a copy of a municipal property map and is not an item claimable as damages. The same applies to items 59(1), 59(6) and 59(7) in the amounts of R 5 000.00, R 3 200.00 and R4 000.00 respectively, being for “engineers call out fees”. It was not clear from the evidence when engineers had been called out and whether those call outs had been to do actual assessments,
- perform works, give opinions or to assist in the claims, either in respect of those lodged with or being examined at the time by AIG or those subsequently claimed. These items have therefore not been proven to represent claimable damages.
- [34] N1 items 59(3), 59(4) and 59(5). These items have been described as loan payments. The first of these items is described as a loan to a Lucia Von Vollenstee in the amount of R 13 000.00, the second a loan to Wilson Mavhunga in the amount of +/- R 20 000.00 and the third a loan to Louise Chauke in the amount of +/- R23 000.00. None of these items have been verified nor has any evidence been produced as to why these amounts are claimed as damages. They should all similarly be disallowed.

- [35] The items described above total R 136 489 when that amount is deducted from the total of the amount claimed in schedule N1 it leaves a net amount of R 240 389, 84.
- [36] In respect of schedule N2, it is notable that most of the items were “verified” in similar fashion as many of the items in schedule N1 by invoices generated the plaintiff. In respect of cash payments made to the builder/labourer Mr Ndou, I take into account that it would be difficult to prove cash amounts paid to a casual builder from time to time. Insofar as there had been no suggestion that the plaintiff had fabricated these amounts and if one has regard to the detailed manner in which she had noted the items and payments, I am prepared to accept her evidence that these expenses have actually been incurred by the plaintiff in her attempts to remedy the damages caused by the collapsing wall. There are however items which do not fall under this rubric and which I shall list hereunder and consequentially disallow.
- [37] N2 item 12. This item in the amount of R 6 000.00 is described by the plaintiff as follows “transport meetings with municipality, AIG insurance, my insurance advising me, getting all the necessary documents about claims/ investigations, getting names of officials who ignored my complaint about building without foundation and more”. Apart from the general deficiency of this claimed item, these transport expenses incurred do not constitute claimable damages
- caused to the plaintiff’s property. The same applies to item 14 in the amount of R 20 000.00 as transport expenses allegedly
- incurred in obtaining quotations. The same applies to similar claims for various errands ran by the plaintiff in order to gather
- information or obtain documents or have meetings with various persons, being item 17 in the amount of R 300.00, item 18 also in the amount of R 300.00, item 19 in the amount of R 1 400.00, item 20 in the amount of R 300.00, item 21 in the amount of R 400.00, item 22 in the amount of R 300.00, item 24 in the amount of R 400.00, item 45 in the amount of R 400.00 (relating to the delivery costs of the mini four chair dining set referred to in schedule N1 item 29), item 47 in the amount of R 622.00, item 68 in the amount of R 550.00, item 69 in the amount of R 300.00, item 72 in the amount of R 400.00, item 81 in the amount of R 150.00, item 87 in the amount of R 400.00, item 88 in the amount of R 220.00, item 89 in the amount of R 80.00, item 90 in the amount of R 40.00, item 92 in the amount of R 645.88, item 93 in the amount of R 220.00, item 95 in the amount of R390.00, item 96 in the amount of R 220.00, item 97 in the amount of R450.00, item 98 in the amount of R 220.00, item 99 in the amount of R 400.00 and item
- 102 in the amount of R 80.00.
- [38] In similar fashion as in schedule N1 the plaintiff included call-out fees for engineers. These were items 64 and 94 in the amounts of R 5 000.00 and R 3 200.00 respectively.

[39] The plaintiff also included as item 74 a claim of R 4 400.00 being her estimated transport costs in respect of approximately 15 trips to the office of the Public Protector.

[40] Also included in the transport claims listed in schedule N2 was a claim for an amount of R 300 000,00 described as “court costs, transport to court, internet, copies, scan, emails, uploading, printing etc”. As a lay litigant the plaintiff is not entitled to these costs and those litigation expenses actually incurred, which will be assessed

by the Taxing Master, will be dealt with thereinlater.

[41] The total of the above-mentioned disallowed items is R 344 587.88 and when this is deducted from the amount claimed in schedule N2, it leaves a net amount of R 125 093.12.

[42] In schedule N3 the plaintiff claimed amounts expended in replacement of items which have allegedly been damaged. I accept the plaintiff’s evidence that the Mercedes-Benz which features in a number of photographs in the makeshift garage had become damaged in the incident. She had replaced the bonnet, the grill the and the windscreen and grill handle from a parts shop and claimed R 12 000.00 for parts and labor in respect thereof. This appears to be a fairly reasonable amount. She had also replaced various loose items such as electrical kettles, toasters, frying pans, a cheap TV set and similar items in the kitchen. The amounts claimed in respect thereof do not appear to be exorbitant. She also claimed the replacement costs of certain clothing items and shoes, none of which have been refuted by the defendant on any reasonable ground and none of which are individually exorbitant or unreasonable. What was however included in the schedule were claims for the “jumpstart” equipment bought from Midas in the amount of R 1 575.00 and the R 18 620.00 bought from Midas as tools and electrical appliances. These claims are not only duplicates but again need to be disallowed as well as the mini four chair dining set already previously included in a previous schedule and disallowed. When the total of these disallowed items are deducted from the total claimed in item N3 the net amount is R 30 907.00.

[43] In schedule N4 the plaintiff listed various expenses apparently incurred by her in procuring on compiling evidence. The schedule comprises of 59 items ranging from the cost of printing photographs, copying photographs, sending registered letters, doing internet searches, paying the government printer for extracts of certain documents as well as other printing costs.

[44] The total amount claimed in this schedule was R 124 067.35. This included an amount of +/- R 120 00.00 described by the plaintiff in her heads of argument as follows “more than 200 small airtime vouchers which are still legible are available, another 400-500 small vouchers has (sic) faded. Some are in the position (sic) of helpers/builders who left with my phones and airtime vouchers. I gave them phones so that I could trace them. I called about 50 experts to comply with the judicial case management directives. I sometimes called four to five times before I could understand that my expert was made to change his or her mind. Many of them would keep on saying: ‘I am busy call after an hour’. I always called back until I found that I am being sabotaged. About 10 experts informed me that the judge does not

want their report. I would try to find out which judge spoke to them but they did not tell me. Calls, data as well as emails cost me a lot during 2022. I made few international calls thinking that the person/people sabotaging me will not be able to reach experts out of the country but had it wrong. I reported the matter to the judge's secretary asking for extension at times. I also reported to different police departments. I reported to the Department of Justice after realizing that some of the people sabotaging me works in court. I sent emails explaining my problem to different institutions including the Chief Justice's

office with no help. All the experts changed their mind. Most of them would block my calls and emails. After inspecting/evaluating the damages discussed their first draft of their report with me which looked and felt fishy, some would just tell me that in light of the information they received they are no more going to give the compiled report ...".

- [45] It is clear that even if the plaintiff had incurred the expenses contained in the schedule, they did not constitute damage caused by the collapsing of the wall on her property. The largest portion of the amount claimed in the schedule has also only been made in the most generalized and vaguest sense and does not constitute sufficient evidence on which a claim can in any event be awarded. Expenses which the plaintiff has, even as a lay litigant, reasonable incurred in conducting thee litigation, shall be dealt with in relation to the issue of costs hereinlater. For the remainder, the claims contained in this schedule are disallowed.
- [46] In schedule N5 the plaintiff claimed an amount of R 868 077.57 as the estimated still outstanding costs of repairing the immovable property. She inter alia claimed the costs of replacing the house roof in an amount of R 21 319,40 and also an amount in excess of R 164,000.00 for "fencing, retaining wall, rebuild the garage, fix the damaged foundation, structural damages" as well as a further amount in excess of R 60 000.00 for "support damaged garage roof re roof the garage plaster the house and garage" as well as an amount in excess of R 179 000.00 to "fix all plumbing damages". The amount of R 60 000.00 claimed in the in the particulars of claims for plumbing and rewiring the damaged electricity was now claimed in an amount of R 87 931.00.
- [47] In order to assess whether the damages claimed in this schedule, particularly regarding the structure of the immovable property, has been caused by the collapsing wall to the extent alleged by the plaintiff and whether the costs are consequential to the collapse, it is necessary to refer to the report by the civil engineer produced by the defendant. The plaintiff did not have a countervailing report and from the evidence of the engineer, being a Mr. Van Schalk Wyk, it appeared that he had done a full investigation of the house, had considered various allegations made by the plaintiff and has expressed an expert opinion.
- [48] It is trite that the opinion expressed by an expert carries weight if it is supported by a sufficient factual basis, contains sound reasoning and a rational application of the expert's expert expertise.

- [49] The engineer considered the plaintiff's contentions that her house had "moved" during the incident, that its structure had become so compromised that the front door became jammed and that the structural integrity of her whole house had become impaired. Despite the plaintiff having debated the mechanism of the incident with the engineer based on her own very emotive experience thereof, I find that his responses to her contentions, which he had set out in his report, had been cogently given.
- [50] In his report the engineer conceded that his inspection had been conducted six years and nine months after the incident but he did scrutinize each of the claims of structural damage made by the plaintiff individually and applied forensic scrutiny and structural acumen. From this he opined that he could find no evidence of any movement of the building sufficient to have caused a distortion of doorways. He also could not find any evidence of structural cracks emanating from the corners of doorways. He observed that work had been done to underpin the buildings foundations and conceded that this may have entailed digging down adjacent to the foundation and underpinning the strip footings within large concrete pads. As the work has long since been completed with pre-cast paving having been reinstated on the surface, it was not possible for him to verify if this was the case. He further reported that the superstructure of the building showed no signs of cracking or displacement.
- [51] The engineer further considered the plaintiff's description to him that repairs had taken place and stated that if they had indeed taken place they appear to have been very effective as he could find no sign of such repair, even with the closest scrutiny. He further expressed the opinion that the addition of structural steel channels at various points to the sides of the building did not serve any purpose whatsoever despite the plaintiff's contention that they were there to brace and support the walls and to support the roof structure. In his view neither the walls nor the roof still required such additional support as there was no evidence that they were in distress.
- [52] In respect of the boundary wall, the engineer was of the opinion that this was a necessity and that a new retaining wall had been constructed on the boundary to replace the previous collapsed wall. Upon examination the engineer found that the external plumbing parts appear to be relatively intact but conceded that some pipes and a drainage gully may have been damaged by rubble from the collapsed retaining wall. Although there was evidence of previous leaks in the roof, a visual inspection of the roof structure showed it to be structurally sound.
- [53] Regarding the garage structure, the engineer described it as a lean-to structure which has evolved into a more permanent addition. The steel support structure thereof appears to be sound but it has clearly not been constructed according to an approved structural design.
- [54] Regarding the electrical installation, the engineer reported that there was no electrical supply to the dwelling as the supply had either been terminated by the City of Tshwane or voluntarily switched off by the plaintiff. He said that this was just as well as light fittings have

been displaced from the ceiling and exposed wires and connections abound. The general condition of all light fittings and electrical outlets suggested to the engineer that they have reached their current state after years of neglect. He could find no attempt to make any of the fittings safe.

- [55] As for the plumbing installation, in similar fashion as with the electrical supply, water supply has been shut off. The plumbing installation also requires some attention and maintenance. In conclusion the engineer stated the following: “subsequent inspection of the building albeit 81 months later as shown that there is no lasting structural damage from the collapsed wall”.
- [56] In the opinion of the engineer, the damage and repairs described and claimed by the plaintiff can be ascribed to two root causes:
- 1) settlement of the foundations resulting from the building being founded on poorly compacted soil and 2) a complete lack of maintenance of the building to the point where roof leaks are simply accepted, the electrical reticulation system is nonfunctional and the water supply cannot be activated due to leaking fittings.
- [57] The engineer found that the building as it stands now is not structurally unsound however it is not in an habitable state. This was due to lack of easy access into or entrance from the building with the two principal doors being sealed shut and the only other possible doorway being blocked by a double bed, no potable water supply, no electrical power with electrical reticulation posing a danger to life, limb and property should it be energised for any reason as well as saturated ceilings from a leaking roof and damp carpets.
- [58] If one were to distill the comments of the defendant’s expert on the plaintiff’s complaints regarding the current the state of the building (as also observed by all parties during an inspection in loco), it seems that the position is this: -
- there are no outstanding structural issues and there is no structural damage to the building which may have been caused by the collapsing wall and which still needs to be repaired.
 - both the electrical reticulation and plumbing were in a complete and workable state prior to the incident and were rendered damaged subsequent thereto. Provision should be made for the repair thereof which clearly constitute damages caused by the incident.
 - such additional damage as may have been caused to the roof by the incident appear to have largely been repaired and current leakages are as a result of a lack of maintenance.
 - The engineer could not comment on any damages to movables
- [59] Save for the items referred to hereunder, which co-incide with the concessions made by the engineer, the amounts claimed in the various items contained in schedule N5 appear to be either not supported by expert evidence or include the consequences of a lack of maintenance which the plaintiff had failed to undertake.

- [60] In order to otherwise bolster her case, the plaintiff has obtained and produced an actuarial report. This was done by a Mr. Mureriwa who also came to testify. He simply confirmed the correctness of the calculations and the figures contained in his report. His report contained a present value of the amounts claimed in the particulars of claim with reliance on customary actuarial assumptions based on fast inflation as per CPI rates published by stats South Africa, future inflation at 5%, a discount rate of 8.65% and a future net discount rate of two, 5%. The upshot of this was that the present value of the amounts contained in the particulars of claim was calculated to be R 2 026 583.00.
- [61] From a letter handed to the actuary by the plaintiff, he also calculated the present value of the plaintiff's alleged transport costs to be R 200 000.00, her "court costs" to be R 300 000.00 and her data costs to be R 150 000.00. Again these appear to be rounded off figures which cannot be accepted in this generalized fashion.
- [62] The most relevant parts of the actuary's calculation, were the current value calculations of the outstanding items which still need to be repaired or replaced. The breakdown of these amounts are as follows: sliding door plus labour R 5 394.00, painting and labour R 27 987.00, wall-to-wall carpet replacement R 62 972.00, roof and gutter replacement R 6 997.00.
- [63] Although, as stated above, a court must make the best it can with the available material in order to determine the quantum of damages once it is found that damages had indeed been caused, it remained difficult to firstly determine which claims could be determined with the required measure of certainty in respect of the items contained in schedule N5. I find that the most reasonable evaluation of the amount still needed to remedy such damage as may have been caused by the incident, are those calculated by the actuary, being two amounts of R 83 962,00 each for the rewiring of electrical wires and damage caused to the plumbing and sewage system, as well as the amounts calculated by him in respect of the sliding door, painting and labour, the carpet replacement the roof gutter replacement.
- [64] This brings me then to the last of the plaintiffs schedules, being N6. The total of the 43 items contained in this schedule is R 1 345 307,00. It includes certain duplicated items regarding the repairs to the Mercedes-Benz which had been included in prior schedules. It also appears to contain items relating to virtually all of the movables which may have been in either the house or the garage structure. On the actual evidence presented I cannot accept that everything listed in this schedule, such as base sets, tables, air conditioning, units, Persian carpets, music centres, iPads, chandeliers, coffee mugs, teapots, jugs, saucepans, casseroles, towels, books and the like, had all been completely damaged or damaged to the extent that they have to be replaced. The best the court can do with the available evidence is to rely on the plaintiff's own actuary who had calculated an amount of R 46 739,00 as the present value of the additional damage to movable properties, excluding the damages to books and manuscripts, which he had recalculated from the particulars of claim.

[65] Regarding the books and manuscripts, in respect of which the plaintiff claims a huge sum of money. Although various quotations had been submitted, it was not possible from the available evidence to make any accurate finding as to what exactly had been stored where, what the extent of the water damage was and consequently, what actual irreparable damage had been caused to these items.

[66] Accordingly I find that the plaintiff has proven the following amounts of damages with reference to the paragraphs in which I have dealt the with above:

R 240 389,84 (par 35)

R 125 093,12 (par 41)

R 30 907,00 (par 42)

R 5 394,00, R27 987,00, R62 972,00 and R 6 997, 00 (par 62 read with par 63)

R 83 962,00 (par 63)

R46 739,00 (par 64)

R 714 402.96

[67] From this, the amount of R228 708,07 needs to be deducted leaving a net amount of R 485 694, 89.

[68] Before reaching concluding remarks I need to deal with another aspect raised by the defendant's only other witness, being his wife. She alleged that no damage had been caused by the collapsing wall to the plaintiff's garage structure. Her evidence was made with reliance on a photograph taken from the direction of the defendant's property showing on the front left hand side thereof a portion of the wall still remaining upright after the incident. This fact alone is, however not entirely conclusive since certain portions of the wall which had indeed collapsed to the inside the plaintiff's property are also visible at the base of the garage structure. As her evidence and the photograph appeared to contradict the evidence of the plaintiff, it caused the plaintiff to allege that the photograph was a forgery and that a fraud was being perpetrated on the court. Without any substance, such an accusation cannot stand. I find that the photograph has simply been taken from a different perspective from the photographs taken by the plaintiff or by the newspaper journalist who had also produced a photograph on which the plaintiff relied. Having observed the garage structure, it was clear that it was after a previous incident in 2000 never reconstructed as a solid, formal or approved building structure. It was at best an improvised garage and as such it would be susceptible to damage caused to it by even a portion of the wall or rubble hitting some of its steel supports. I therefore find that, on the evidence and particularly the plaintiff's description of the incident, damage had been caused to the then existing garage structure but that the consequences thereof and the damages to the items contained therein, were limited to the extent already described above.

Concluding remarks

- [69] It was clear, not only from the plaintiff's affidavits and evidence, but also from the first letter of demand written to the defendant, that she had experienced the incident as extremely traumatic. Her letter of demand even included a claim of R 500 000,00 for "... pain and suffering, emotional and psychological distress, physical hardship, health problems, hundreds of damaged files containing years of research and investigation materials, printed books ready to be published, manuscripts and more".
- [70] Despite this, there had been a complete absence of sympathy from the defendant's side. There was none of the neighbourliness one would have expected from the side of the defendant (or his family). To paraphrase the concept of ubuntu, the defendant was only a neighbour because the plaintiff was his neighbour, yet none of this shone through in any contact, neither shortly after the incident until the conclusion of the trial. The defendant did not even come to testify.
- [71] I find the above conduct not only saddening, but of sufficient weight to justify an award of costs, including those costs which the plaintiff may have incurred while still represented, on an attorney and client scale. This would also include those disbursements

which she as a lay person has reasonably incurred and of which she can convince the Taxing Master to allow.[7]

Order

- [72] Consequently, the following order is made:
1. The defendant is ordered to pay the plaintiff damages in the amount of R 485 694,89 together with interest thereon at the rate determined by the Prescribed Rate of Interest Act 55 of 1975 from date of service of the summons until date of payment.
 2. The defendant is ordered to pay the plaintiff's costs on the scale as between attorney and client.

N DAVIS

Judge of the High Court

Gauteng Division, Pretoria

Date of final submission of arguments: 27 May 2024

Judgment

delivered: 18 September 2024 APPEARANCES: For the plaintiff: In person For the Defendant: Adv K A Tema Attorney for the Defendant: Nkopodi Mphahlele Inc, Pretoria

- [1] Neethling & Potgieter, Visser-Law of Delict, Lexis Nexis, 7th Edition at 2.1.5. p 387 and the cases quoted there.

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- [2] Greenfield Engineering Works (Pty) Ltd v NKR Construction (Pty) Ltd 1978 (4) SA 90 (N).
- [3] Blyth v Van der Heever 1980 (1) SA 191 (A) at 208 and Minister of Safety & Security v Carmichele 2004 (3) SA 305 (A) at par 54.
- [4] Erasmus v Davis 1969 (2) SA 1 (A).
- [5] From Aaron's Whale Rock Trust v Murry & Roberts Ltd 1992 (1) SA 652 (C) at 655.
- [6] Hersman v Shapiro & Co 1926 TPD 367 quoted in Esso Standard SA (Pty) Ltd v Katz 1981 (1) SA 964 (A) at 970E.
- [7] Nationwide Detectives & Professional Practitioners CC v Standard Bank of Namibia Ltd 2008 (6) SA 75 (NmHC) at 82D.
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