IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 22676/2019

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: **YES**

[redacted]

22 September 2025

Date **K. La M Manamela**

In the matter between:

MATLOU, MMAMPELEGE JOHANNA Plaintiff

and

BIG SAVE (PTY) LTD Defendant

DATE OF JUDGMENT: This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge's secretary. The date of the judgment is deemed to be 22 September 2025.

JUDGMENT

Khashane Manamela, AJ

Introduction

[1] The plaintiff, Ms Mmampelege Johanna Matlou, is 69 years old and resides in the environ of Hammanskraal in northern part of the City of Tshwane. In the afternoon of 6 February 2019, she went to do shopping at the store or premises of the defendant, Big Save (Pty) Ltd, also in Hammanskraal. According to the plaintiff, she was injured whilst in the defendant's store or premises when 'an unattended, hazardous shelf timber' fell on her.[1] She attributes the cause of the accident or incident to be the 'exclusive negligence' of the defendant, the defendant's employees or both. On 02 April 2019, she caused summons to be issued against the defendant for compensation in respect of damages she allegedly suffered (due to the injuries she allegedly sustained in the incident) in the amount of R1 million.

[2] The plaintiff's claim is disputed by the defendant, primarily, on the basis that an unknown third party, presumably a fellow shopper of the plaintiff, bumped the piece of timber or plank causing it to fall. The alternative conditional defences include that even if the defendant's negligence caused the accident its liability ought to be excluded on the basis of the two disclaimer notices displayed by the entrance to the defendant's premises or store. The disclaimer notices, according to the defendant, warn those entering the defendant's premises that they do so at own risk and that the defendant and its employees are precluded from responsibility for resultant harm or injury. A further alternative defence pleaded by the defendant is that there was contributory negligence on the part of the plaintiff which led to her injuries and, ultimately any damages to be awarded to her ought to be accordingly apportioned.

[3] On 8 May 2025, the defended civil action came before me for trial. Mr M Nekhofhe appeared for the plaintiff, while Mr JM Prinsloo appeared for the defendant. I ordered, on the

---

1 Particulars of Claim ('PoC') par 3, CaseLines ('CL') 002-10.

basis of the agreement reached between the parties, that issues relating to liability be separated from those relating to the quantum of the damages allegedly suffered by the plaintiff in terms of Rule 33(4) of the Uniform Rules of this Court. An order postponing *sine die* the latter would be made, in the event the plaintiff succeeds in establishing the defendant's liability in this part of the trial. The trial on liability concluded on 14 May 2025. I reserved this judgment at the conclusion of the trial.

Pleadings (relevant aspects thereof)

[4] The following extract - with respect, quoted warts and all - from the plaintiff's particulars of claim is material for the issues to be determined by the Court:

> 5.
> As a result of the Defendant's negligence/breach of statutory duty, the Claimant suffered injury, loss and damage:
> 5.1 The Plaintiff suffered Head Injuries and leg injuries. Following the accident, she was treated in the premises. The Plaintiff proceeded to consult with trained doctors (Dr L Van Zyl) who then prescribed antibiotics and other medication.
> 5.2 The Plaintiff suffered whiplash injuries
> 5.3 The Plaintiff suffered pain on her leg.
> 6.
> As a result of the injuries that the Plaintiff sustained in the aforementioned accident…
> 7.
> In the circumstances of the patient sustained personal damages in an amount of R 1000 000.00 …[2]

[5] The defendant admitted that the 'incident' occurred at its premises on 6 February 2019, but denied that the incident was as a result of its negligence or that of its employees. It pleaded that an unknown male customer ('the third party') bumped the shelf inside the premises or store causing the timber or plank to fall onto the plaintiff. The negligence of the third party caused the timber or plank to fall, it is further pleaded. Therefore, the plaintiff's claim ought to be directed at the third party and not against the defendant. In the alternative to the aforesaid defence, the defendant pleaded that should the Court find the defendant's employees to have

[2] PoC pars 5-7, CL 002-11 to 002-12.

been negligent, such negligence did not cause or contribute to the incident. As also mentioned above, the defendant's further alternative defence - in the event that its employees are ruled to have negligently caused or contributed to the plaintiff's damage or injuries - is that:

> 4.4.1 [t]here are large and clearly marked disclaimer notices and [sic] the entrance to the Defendant's premises, displaying the words that entry onto the Defendant's premises was at own risk and that the Defendant and its employees accept no responsibility for any harm or injury to any persons entering onto the premises.
>
> 4.4.2 [t]he notice boards were clearly visible and the Plaintiff reasonably could and should have taken cognizance thereof.
>
> 4.4.3 [i]n the premise, the Plaintiff, by entering into the Defendant's premises, accepted the terms contained in the disclaimer boards and in the premise, the Plaintiff is disclaimed from proceeding with this action against the Defendant.[3]

[6] In the event that all of the above defences do not extinguish the defendant's liability arising from the incident, the defendant pleads contributory negligence on the part of the plaintiff. In this regard the plaintiff is said to have contributed to the cause of her damages by negligently 'failing to keep a proper lookout and caring for her own safety'.[4] Therefore, any damages to be awarded to the plaintiff ought to be apportioned in terms of the Apportionment of Damages Act 34 of 1956. There was no replication delivered by the plaintiff to the defendant's plea.

Applicable legal principles

[7] It is common cause between the parties that the plaintiff's action or claim is premised on the assertions that there was delictual conduct on the part of the defendant. The learned author of *Delict: The Law of South Africa* (*LAWSA*)[5] defines a delict as 'the wrongful causing of patrimonial or pecuniary loss (*damnum iniuria datum*), the wrongful infliction of pain and

---

3 Defendant's plea, pars 4.4.1 to 4.4.3, CL 002-18 to 002-19.
4 Defendant's plea par 4.5, CL 002-19.
5 JR Midgley, *Delict : in The Law of South Africa* (or LAWSA) Vol 15 (3rd edn, LexisNexis 2016) at 72.

suffering associated with bodily injury to the plaintiff and the wrongful infringement of interests of personality (*iniuria*)'.[6] It is also common cause that the plaintiff's claim relates to the first two form of delictual conduct in the form of patrimonial or pecuniary loss, and pain and suffering linked to bodily injury to the plaintiff, both alleged to have been wrongfully or culpably caused by the defendant.

[8] From the aforesaid it is clear that delict is constituted by five elements or requirements, namely: (a) human conduct (be it an omission or a positive act); (b) wrongfulness; (c) fault, commonly in the form of negligence; (d) causation, and (e) harm or damage.[7]

[9] In order to convince the Court that the defendant is liable, among others, the plaintiff ought to allege and establish negligence (i.e. *culpa*) on the part of the defendant, as well as calculable pecuniary loss.[8] Negligence is said to be the 'absence of that degree of diligence which the law expects to be observed by everyone in the ordinary relations of life' which may be manifested either by an act of commission or omission.[9] An omission results in liability if it relates to an omission of a legal duty.[10] It appears, as with cases of 'slip and fall' or 'trip and fall',[11] that the current case before this Court is in the form of omission.[12] A claim based on an omission of a defendant is possible where the defendant had a duty to perform an act and omitted to do so, hence the complaint.[13] To succeed a plaintiff claiming damages alleged to have arisen from an omission ought to establish: (a) a duty on the part of a defendant 'to do a

---

6 Midgley, *Delict* at 72 and the authorities cited there.

7 Johan Scott, 'A reassuring judgment for "slip and fall" victims with a caveat to restaurateurs to reassess the effectiveness of their disclaimer notices : *Morrison v MSA Devco (Pty) Ltd* (5229/2018) 2025 ZAWCHC 21 (30 January 2025)' [2025] TSAR 579 <https://doi.org/10.47348/TSAR/2025/i3a10> at 580-581.

8 Midgley, *Delict* at 72 and the authorities cited there.

9 H Daniels, *Beck's Theory and Principles of Pleadings in Civil Actions* (6th edn, LexisNexis 2002) par 13.62.1 at 349.

10 Daniels, *Beck's Theory and Principles of Pleadings* par 13.62.1 at 349.

11 Scott, 'A reassuring judgment for "slip and fall" victims' at 579-580 on the different references or nomenclature for these types of occurrences.

12 Scott, 'A reassuring judgment for "slip and fall" victims' at 581.

13 Daniels, *Beck's Theory and Principles of Pleadings* par 13.62.4.2 at 351.

particular act or take a particular care and the manner in which that duty arises'; (b) negligence due to failure by the defendant to do such act or to exercise the required care, and (c) injury and damage consequentially sustained, despite that the defendant could reasonably have taken the necessary action and prevented the harm.[14] Conduct in the form of an omission is unlawful where the legal convictions of the community require that such omission be considered unlawful and the defendant be held liable for the damage suffered by the claimant, as the defendant has failed to act reasonably under the circumstances.[15]

[10] Conduct may be negligent and result in a loss, but would not be actionable unless it is also wrongful.[16] This, clearly, establishes wrongfulness as an essential and separate requirement for delictual liability.[17] Wrongfulness of conduct is the conclusion of law drawn by the court on the peculiar facts of a matter.[18]

[11] Whether an omission is wrongful is a consideration involving, among others, the exercise of balancing of the parties' individual interests, and the parties' relationship to each other.[19] Conceptually, the inquiry into wrongfulness may precede that into negligence, as the one does not arise without the other.[20]

---

14 Daniels, *Beck's Theory and Principles of Pleadings* par 13.62.4.2 at 352, relying on *Cape Town Municipality v Paine* 1923 AD 207.

15 *Minister van Polisie v Ewels* 1975 (3) SA 590 (A) at 597. See also Daniels, *Beck's Theory and Principles of Pleadings* par 13.62.4.2 at 352.

16 *Gouda Boerdery BK v Transnet Ltd* [2004] 4 All SA 500 (SCA); 2005 (5) SA 490 (SCA) [12].

17 Midgley, *Delict* at 72, partly relying on *Sea Harvest Corporation* (*Pty*) *Ltd and Another v Duncan Dock Cold Storage* (*Pty*) *Ltd and Another* 2000 1 SA 827 (SCA); 2000 1 All SA 128 (SCA) [19]; *Country Cloud Trading CC v MEC Department of Infrastructure Development, Gauteng* 2014 12 BCLR 1397 (CC); 2015 (1) SA 1 (CC) [20].

18 Midgley, *Delict* at 72, partly relying on *Steenkamp NO v Provincial Tender Board, EC* 2006 1 All SA 478 (SCA); A); 2006 (3) SA 151 (SCA) [25]; *Phumelela Gaming and Leisure Ltd v Gründlingh and Others* 2007 (6) SA 350 (CC) [31].

19 *Administrateur, Transvaal v Van der Merwe* 1994 (4) SA 347 (A) at 361-362, as explained in Scott, 'A reassuring judgment for "slip and fall" victims' at 591.

20 *Gouda Boerdery v Transnet* [2004] 4 All SA 500 (SCA); 2005 (5) SA 490 (SCA) [12]. See also *Cape Town Municipality v Bakkerud* 2000 (3) SA 1049 (SCA) [9], *Cape Metropolitan Council v Graham* 2001 (1) SA 1197 (SCA) [6].

[12] In cases involving 'slip and fall' incidents – which I consider to be comparable with the one currently before the Court – wrongfulness may normally be determined by first considering the principle that those who own or occupy (whilst in control of) a property which may pose a threat of harm to those entering the property, have a duty to protect those entering from the occurrence of such harm.[21] The nature and extent of the control of the property or premises would depend on the facts of a particular matter.[22] Breach of such duty suggests wrongfulness, even if only on a *prima facie* basis.[23]

[13] The absence of the legally expected diligence may be determined by ascertaining whether a reasonable person (*diligens paterfamilias*) would have anticipated the possibility of the damage complained of occurring considering all circumstances of a matter.[24] It was previously thought the requirement of duty of care was owed by the defendant towards the plaintiff for purposes of negligence and that this formed part of our law,[25] but in *Mashongwa v PRASA*[26] the Constitutional Court observed that the duty of care approach no longer enjoys favour by the courts in this country.[27] The relevant duty is essentially 'the duty to act positively to avoid harm to another' and breach of such duty owed to another would suggest wrongfulness of the actor's conduct, and not negligence.[28] And, the negligence ought to have resulted in damage suffered by the plaintiff.[29]

---

21 Scott, 'A reassuring judgment for "slip and fall" victims' at 581-582.

22 *Administrateur, Transvaal v Van der Merwe* 1994 (4) SA 347 (A) at 360D, as explained in Scott, 'A reassuring judgment for "slip and fall" victims' at 581-582.

23 Scott, 'A reassuring judgment for "slip and fall" victims' at 581-582.

24 Daniels, *Beck's Theory and Principles of Pleadings* par 13.62.1 at 349, partially relying on *Administrator, Cape v Preston* [1961] 3 All SA 465 (A), 1961 (3) SA 562 (A).

25 Daniels, *Beck's Theory and Principles of Pleadings* par 13.62.1 at 349, partially relying on *South African Railways and Harbours v Marais* 1950 (4) SA 610 (A), [1950] 4 All SA 403 (A).

26 *Mashongwa v PRASA* 2016 2 BCLR 204 (CC); 2016 (3) SA 528 (CC).

27 *Mashongwa v PRASA* 2016 2 BCLR 204 (CC); 2016 (3) SA 528 (CC) [30]. See also Scott, 'A reassuring judgment for "slip and fall" victims' at 582 and 589, as well as the authorities cited there.

28 Scott, 'A reassuring judgment for "slip and fall" victims' at 581.

29 Daniels, *Beck's Theory and Principles of Pleadings* par 13.62.1 at 349.

[14] The test for negligence is set out in the durable authority[30] of *Kruger v Coetzee*[31] to the effect that liability *culpa* would arise, where: (a) a *diligens paterfamilias* in the position of the defendant would have foreseen reasonable possibility of her, his or its conduct causing injury to another, such as the plaintiff, in her personal property and causing the plaintiff patrimonial loss, and would have taken reasonable steps to prevent such occurrence, and (b) that the defendant failed to take the required steps.[32] The test in *Kruger v Coetzee* is pivoted by two bases: (i) reasonable foreseeability, and (ii) reasonable preventability of damage.[33] And there is also a word of caution that the test ought not be applied in a manner that is too rigid, but in a more flexible manner: simply, the conduct complained of ought to be measured against what is expected of a reasonable person.[34]

[15] Where it is proven that a reasonable person would have foreseen the likelihood of occurrence of harm, then it ought to be determined what measures ought to have been taken to prevent the foreseeable harm under the given circumstances of a matter, which determination is premised on the following four basic considerations, the: (a) extent or degree of the risk arising from the conduct complained of; (b) seriousness or gravity of the possible consequences

---

30 *Member of the Executive Council for Health, Eastern Cape v DL obo AL* (117/2020) [2021] ZASCA 68 (3 June 2021) [8]; *Loureiro and Others v iMvula Quality Protection* (*Pty*) *Ltd* 2014 3 SA 394 (CC) [58]; *Jacobs and Another v Transnet Ltd t/a Metrorail and Another* 2015 (1) SA 139 (SCA) [6]. See also Midgley, *Delict* at 155.

31 *Kruger v Coetzee* 1966 (2) SA 428 (A).

32 *Kruger v Coetzee* 1966 (2) SA 428 (A) 430E, applied in *Oppelt v Department of Health, Western Cape* 2016 (1) SA 325 (CC) [69]. The Constitutional Court in the latter case emphasised that each case ought to be determined on its particular circumstances and that there was no hard and fast rule or basis in this regard. And the Supreme Court of Appeal in *Sea Harvest Corporation v Duncan Dock Cold Storage* 2000 (1) SA 827 (SCA); [2000] 1 All SA 128 [21]-[22] held that '[d]ividing the inquiry into various stages, however useful, is no more than an aid or guideline for resolving issues.' See further John Saner, *Medical Malpractice in South Africa* (LexisNexis, 2025) at par 2.3; Midgley, *Delict* at 155.

33 *MEC for Health, Eastern Cape v DL obo AL* [2021] ZASCA 68 [8], relying on *Kruger v Coetzee* 1966 (2) SA 428 (A). See further Saner, *Medical Malpractice* at par 2.3. In Midgley, *Delict* at 155 the foreseeability test is said to comprise three elements: 'reasonable foreseeability of harm; reasonable precautions to prevent the occurrence of such foreseeable harm and failure to take the reasonable precautions'.

34 Saner, *Medical Malpractice* at par 2.3-2.4, and the authorities cited there.

which may arise due to the risk of harm; (c) usefulness or utility of the conduct complained of, and (d) burden involved in the elimination of the risk of harm.[35]

[16] As I have mentioned above, the defences raised by the defendant to avoid liability include that there are two disclaimer notices outside of its premises or store to warn shoppers or those entering that they do so at own risk. Logically, issues relating to a disclaimer are dealt with only after the court has found that the delict alleged to have been committed by a defendant is proven, which finding ought to be accompanied by a finding of wrongfulness on the part of the defendant.[36]

[17] A defendant would rely on a disclaimer notice in a quest to exclude delictual liability, just like a party to a written agreement would an exclusion or exemption clause.[37] But, a disclaimer would be enforced by the court when expressed in clear and unambiguous terms from the purview of a reasonable person, otherwise the *contra proferentem* rule[38] applicable to the interpretation of contracts would be utilised – in uncertainties – to adversely interpret a disclaimer against a defendant, as its crafter.[39]

[18] Section 49 of the Consumer Protection Act 68 of 2008 is applicable to disclaimer notices and provides, among others, that [a]ny notice to consumers or provision of a consumer agreement that purports to - (*a*) limit in any way the risk or liability of the supplier or any other person; (*b*) constitute an assumption of risk or liability by the consumer; (*c*) impose an obligation on the consumer to indemnify the supplier or any other person for any cause; or (*d*)

---

35 Daniels, *Beck's Theory and Principles of Pleadings* par 13.62.2 at 350, partly relying on *City Council of Pretoria v De Jager* 1997 (2) SA 46 (SCA), [1997] 1 All SA 635 (SCA); *Cape Metropolitan Council v Graham* 2001 1 All SA 215, 2001 (1) SA 1197 (SCA). See further Scott, 'A reassuring judgment for "slip and fall" victims' at 582-583.

36 Scott, 'A reassuring judgment for "slip and fall" victims' at 590.

37 Scott, 'A reassuring judgment for "slip and fall" victims' at 583.

38 The *contra proferentem* rule is derived from the maxim '*verba fortius accipiuntur contra proferentem*' which translates '*words are interpreted against* (to the disadvantage of) *the party uttering them*': Hiemstra VG and Gonin HL, *Trilingual Legal Dictionary* (3rd edn, Juta 1992). See further RC Claassen and M Claassen, *Claassen's Dictionary of Legal Words and Phrases* (Juta 2025 and its cited authorities.

39 Scott, 'A reassuring judgment for "slip and fall" victims' at 583.

be an acknowledgement of any fact by the consumer, must be drawn to the attention of the consumer in a manner and form that satisfies the formal requirements of subsections (3) to (5).'

Evidence adduced at the trial

General

[19] The plaintiff was the only witness to testify in the advancement of her case, whereas the defendant called to the stand the first-aid manager, who attended to the plaintiff after the incident had occurred on the material day. The defendant also heavily relied on a video which appears to have been generated from the video surveillance cameras of the premises or close-circuit television, colloquially CCTV. The video was handed in - by agreement between the parties - as part of the evidence during the trial.

Ms MJ Matlou (i.e. the plaintiff)

[20] The plaintiff was the first witness to testify before the Court and the only one to do so in respect of her case. She did so through the aid of an interpreter. When asked to tell the Court from her recollection of what happened on 6 February 2019, among others, she stated the following. She entered the defendant's premises to do shopping. She was walking along when a piece of wood or plank fell on top of her foot. She did not see anyone touch the timber. After that, the people in the store called out the names Mpho and Long. A gentleman called Mpho (later in the trial it turned out that this is in reference to Mr Thapelo Khosa, the defendant's witness) and he came to where she was seated. He didn't introduce himself and she only heard his name when it was called out by others earlier. He grabbed her foot and did what she described as an up-and-down movement with her foot. From there she went home. She didn't see any timber laying around in the store, as if it is a hardware store, as the place only sells groceries. There was actually nothing she could have done to prevent the incident.

[21] When cross examined by counsel for the defendant, the plaintiff as a witness was made to watch a video, referred to above, which contained a footage of the alleged incident. She,

further, testified that the plank was upright in position. She saw a certain gentleman walking. When asked if she saw a certain gentleman pushing the plank and thus making it to fall, the plaintiff told the Court that when a person is inside a store he or she concentrate on what he or she is doing and nothing else. But eventually she confirmed that on the video she could see someone bumping the plank. This was after the video had been replayed from one moment to another, a number of times. She also confirmed seeing in the video the unknown gentlemen or third party put the plank back where it originally was. She confirmed that, thereafter, she proceeded into the middle of the video when they called Mpho and was provided with a chair to sit on. She accepted that she preceded walking after the incident with a handbag hanging by a strap from her shoulder. She didn't recall what she was wearing on the day. But she confirmed that she was wearing shoes. No ambulance was called. But at some stage she thought that they were calling an ambulance for her, but in vain. She did not go to the hospital and counsel for the defendant alerted her of the claim for hospital expenses incurred (forming part of her summons). She was also referred to other heads of claim, alleged injuries and averments in her particulars of claim. In the end, the plaintiff confirmed that she only suffered a leg injury. She specifically denied that she had sustained a head or neck injury. It later turned out that the witness actually meant foot and not leg. The plank fell on her foot, being the part of her body where she wears shoes, she confirmed. Counsel pointed out the discrepancy in the particulars of claim, where it is stated that she suffered a leg injury. She later testified that she was hit by the plank on foot and a bit of her ankle. She confirmed that, following the incident, she consulted a Dr Van Zyl for treatment and he gave her antibiotics and medicine. She referred to tablets or pain tablets, but later mentioned medicine. Counsel then cross-examined her on the medical note by Dr Van Zyl. She confirmed that although the incident took place on 6 February 2019, she only consulted the medical doctor two days later, on 8 February 2019. Her foot was swollen after the incident at the defendant's premises. She disagreed with defendant's counsel's

statements that his client disputed her injuries and their *sequelae*. At this stage of the proceedings the witness appeared emotional or crying. She also confirmed the description of the injury on the medical note and being booked-off duty for two days.

[22] Counsel for the defendant also referred the witness to the disclaimer boards or notices. He mentioned to her that this is displayed at the defendant's premises. The witness disagreed with the assertions that the defendant would not be liable for damages flowing from any proven injury due to the disclaimer. The witness reiterated her previous statement that when she is in a store she does not look around, but only concentrate on her business. She did not see the unknown third party and, therefore, she is not going to accuse any person (other than the defendant). When it was put to her that the unknown third party is not an employee of the defendant she disputed this. Counsel objected to a gentleman in the gallery area of the Court who appeared to be assisting the witness in responding to the questions whilst under cross examination. I warned the particular gentleman not to interfere with the proceedings of the Court, in any way. The witness also disagreed that she contributed to her injuries by not keeping a proper look out. She was also informed by counsel that the person she referred to as Long is actually Mr Thapelo Khosa who may be called to testify, if necessary. She pointed out that Long did not see the incident, but was only called from the back to come in and help, after the incident had taken place.

[23] Under re-examination, the witness stated that she did not go to the hospital after the incident, as she thought it was not serious. She did not see the disclaimer board, as she does not look at those things when she enters into premises, she explained.

Mr Thapelo Khosa (i.e. the defendant's witness and first-aider)

[24] Mr Thapelo Khosa was the only witness for the defendant. He confirmed that he is an employee of the defendant and also fulfils the role of first-aider or first-responder in the

defendant's store. His duties – as a first-aider – is to assist people by giving them first aid and also keeping the records of such incidents. He is actually employed as general worker. He attended a course on first aid. He is known and referred to as Long in the store or his place of work. That is his nickname. On 6 February 2019, he was called from the back of this store after a piece of timber had fallen on the foot of the plaintiff. He did not see the incident happen, but only reacted when his name was called out. He rubbed or applied Deep Heat pain application onto the plaintiff's foot. He confirmed that the plaintiff was wearing shoes on the material day and that she was not bleeding after the incident. She was satisfied to can walk by herself and, indeed, walked out of the store on her own. He was then shown the same video shown to the plaintiff. He confirmed that the third party bumping the plank in the video is not an employee of the defendant.

[25] Mr Khosa's testimony under cross examination included the following. He confirmed that the plaintiff informed him that she had suffered injuries when he assisted her. He could not provide the Court with an assessment of her injuries, as he is only a first-aider. The plaintiff herself pointed to where she was injured and he rubbed her with pain application on that part of her body. He offered to call an ambulance for the plaintiff, but she told him she was fine. He could not answer whether the plank was positioned normally. He confirmed that he was the safety representative of the defendant and has some responsibilities when accidents happen. He could not dispute that the incident did happen.

Plaintiff's counsel closing legal argument

General

[26] Mr M Nekhofhe, as already stated, appeared in the matter on behalf of the plaintiff. I had directed that counsel for both parties deliver written argument, before appearing for oral submissions. I am grateful for the material filed.

Plaintiff's case and evidence (in support)

[27] It is submitted that the plaintiff was at the defendant's store to purchase some groceries when she met the accident or incident. As the defendant's store sells groceries, the plaintiff had no reason or knowledge that she may be obstructed during her shopping, ostensibly by a falling timber or plank in the store. It is stated that the plaintiff shops for her grocery at Big Save stores from time to time. It is submitted by counsel for the plaintiff that the timber or plank was not on its rightful place, as the defendant's store only deals with groceries.

[28] The defendant has a legal duty to take reasonable steps to prevent harm from occurring to its customers, it is submitted. The legal duty included: (a) guarding against foreseeable problems; (b) taking reasonable precautions; (c) warning customers of any potential dangers, and (d) safeguarding of any hazardous objects from falling onto customers, due to poorly maintained shelves or other hazards, the submission concludes. The defendant breached the aforesaid duties or obligations and, thus, conducted itself negligently by: (i) leaving the plank or timber unattended in the path of the customers, causing the plaintiff, its customer, to suffer harm; (ii) not maintaining the shelves or timber to prevent it from harming the defendant's customers, including the plaintiff; (iii) allowing the plaintiff to enter an unsafe area within the defendant's store; (iv) failure to warn or adequately warn the plaintiff of the unstable hazardous plank or timber in the store, and (v) failure to take reasonable care to ensure safety of the plaintiff whilst on the premises.

[29] It is submitted on the behalf of the plaintiff that she was a reliable and credible witness. The plaintiff explained to the Court how the accident on 6 February 2019 occurred. And that she responded to all the questions regarding the events of that day when posed by counsel to her to the best of her ability, it is further submitted. Nothing from the cross examination of the plaintiff by counsel for the defendant discredited the evidence of the plaintiff regarding how the accident occurred. The video or CCTV footage also confirmed the plaintiff's case. The

plaintiff stated that she was not aware of the disclaimer board notifying her that entry into the defendant's premises was at her own risk. No one brought it to her attention, it is argued.

[30] Also, it was argued that, the defendant was more focused on issues relating to quantum by traversing the plaintiff's particulars of claim, despite the current hearing being limited to issues of liability.

Defendant's case and evidence (in support)

[31] The witness called by the defendant (i.e. Mr Khoza) told the Court that he was not at the scene when the accident occurred and, thus, he was not in a better position to explain what transpired. Overall, it is submitted that, the defendant's witness was not reliable, as he: (a) failed to tell the Court about the respective measures in place at the defendant's store for ensuring the safety of the customers; (b) did not indicate who should be held accountable for accidents which may occur in the store, despite being a general worker and a safety officer of the defendant's store(s); (c) did not examine the third party (I presume this refers to the one who bumped the plank) and he was only made aware of the third party when he viewed the CCTV footage in Court, and (d) failed to explain to the Court why the plank or timber was on the path of the customers and could only refer the plaintiff's counsel to seek clarity directly from the defendant, despite being the defendant's safety officer. But, the defendant's witness did confirm the plaintiff's presence at the defendant's store and the occurrence of the accident involving the plaintiff, the submission concludes.

Authorities cited in support of the plaintiff's case

[32] Counsel for the plaintiff referred to a decision of this Division in *Mthembu v Big Save Store, Mabopane (Pty) Ltd*[40] involving a 'slip and fall' accident on an uneven slope by the plaintiff, whilst in Big Save Store, Mabopane and, consequently, was injured. The defendant

[40] *Mthembu v Big Save Store, Mabopane (Pty) Ltd* (65018/2020) [2022] ZAGPPHC 1013 (10 October 2022), *pr* Janse van Nieuwenhuizen J.

in that case, as in the one before this Court, pleaded contributory negligence on the part of the plaintiff - in the event the court found the defendant negligent – on the basis that the plaintiff failed to keep proper look-out. The court concluded that the defendant was liable for the proven or agreed damages suffered by the plaintiff, due to her slip and fall at the defendant's store.

[33] In *Plastilon Verpakking (Pty) Ltd v Meyer*,[41] another decision of this Division by a Full Court, the court dealt with a claim of damages arising from an incident where the plaintiff (the respondent in the appeal) was injured when a box fell on her from a shelf, whilst in the defendant's store. The appeal was against the finding of the court *a quo* that the defendant was liable for compensation of the plaintiff for her damages. The court *a quo* found the defendant to have been negligent by failing to ensure that the boxes in its store were safely packed to avoid them toppling over. The Full Court confirmed the finding of the court *a quo* and dismissed the appeal. It is submitted by counsel for the plaintiff in the matter before this Court that the defendant similarly failed to ensure that the plank or timber was at its rightful place, instead of on the path of the customers.

[34] It had been held in *Naidoo V Birchwood Hotel*[42] that a disclaimer notice precluding an injured person from recovering damages for personal injury caused by the negligence of the owner of a property or establishment, ought to be fair and not lead to injustice by being contrary to public policy or inimical to the norms and values of the Constitution of the Republic of South Africa, 1996 ('the Constitution') and the Bill of rights enshrined in the Constitution.[43]

Conclusion

[35] Counsel for the plaintiff concludes, on the basis of the facts, evidence and the case law cited above, that his client has made a proper case against the defendant that she was injured

41 *Plastilon Verpakking (Pty) Ltd v Meyer* (A143/2021;77802/16) [2022] ZAGPPHC 475 (24 June 2022), *per* AC Basson, J (Molefe *et* Janse van Nieuwenhuizen JJ concurring).
42 *Naidoo v Birchwood Hotel* 2012 (6) SA 170 (GSJ) *per* Heaton-Nicholls J.
43 *Naidoo v Birchwood Hotel* 2012 (6) SA 170 (GSJ) [45]-[47].

due to the defendant's negligence as the latter breached its obligation to safeguard the physical wellbeing of the plaintiff and other customers. Had the plank or timber being attended to or removed the accident would have been avoided, it is submitted. The safety officer of the defendant, it is further submitted, does not care about the safety of the defendant's customers. Therefore, the defendant was negligent, due to the plank or timber being placed on the path of the customers, when it fell on the plaintiff. Counsel also drew the following conclusions: (a) the plaintiff's evidence on how the accident occurred remains unchallenged or discredited regarding the issue of liability; (b) the defendant's travails at the hearing was more relevant to issues relating to quantum, which are irrelevant to this stage of the proceedings; (c) the defendant's witness could not respond to questions posed by the plaintiff's counsel as he was only preoccupied with protection of his employer's interests and, thus, his evidence is unreliable; (d) the defendant did not record the incident as it sought to avoid responsibility for its actions; (e) the plaintiff did not see any disclaimer notice when she entered the defendant's store and the disclaimer notices were not brought to the attention of the plaintiff, as a customer; (f) there is no contributory negligence by the plaintiff as the material plank or timber was left unattended on the path of customers, and (g) should the defendant have taken the necessary steps the accident in which the plaintiff was injured would have been avoided. Consequently, the plaintiff seeks that the Court find the defendant fully (i.e. 100%) liable for the damages she suffered, with an order for the costs of the proceedings in her favour.

Defendant's counsel closing legal argument

General

[36] Counsel for the defendant points out that it is common cause that the piece of wood fell on the plaintiff's foot after being bumped by an unknown third party. He, also, submits that the plaintiff's claim - based on alleged delict and negligence of the defendant - can only be actionable where wrongfulness is proven. For wrongfulness to exist, there ought to be a legal

duty on the part of the defendant owed to the plaintiff to act without negligence. It is the defendant's case that it owed no duty to the plaintiff, due to the presence of the large clearly marked disclaimer notice boards at the entrance of its premises. This has not been disputed by the plaintiff and, thus, ought to be accepted by the Court. Also, that the plaintiff, acting reasonably, could and should have taken cognisance of the disclaimers on the notice boards.

[37] It is further submitted by counsel that where a duty is found to be owed by a defendant towards a plaintiff, the test to be applied involves the determination of the issue of foreseeability and a comparison of the steps a reasonable person would have taken and steps the defendant actually took, if any. For without wrongfulness, mere negligence does not suffice to find a claim.[44]

[38] Counsel for the defendant, further, submits that as the unknown third party bumped the shelf causing it to fall onto the plaintiff, therefore, any possible claim by the plaintiff lies against the unknown third party and not against the defendant. Also, that the plaintiff admitted during cross examination - after viewing the video of the incident - that the unknown third party is not an employee of the defendant. Therefore, whether the defendant held a legal duty or not, the issue of negligence does not arise as the plank or shelf fell onto the plaintiff due to the involvement of the unknown third party.

[39] Counsel, further submits that there was no evidence before the Court as to the following: (a) why the timber or plank was on the scene of the accident; (b) the reason for the timber or plank being where it was, and (c) who put the timber or plank at the scene of the accident. But, it was established and accepted that the unknown third party bumped the timber, which fell onto the plaintiff's foot, counsel submitted.

---

44 *Gouda Boerdery v Transnet* [2004] 4 All SA 500 (SCA); 2005 (5) SA 490 (SCA) [12].

[40] It was also argued that, the fact that the plaintiff continued to walk or ambulate unaided after the incident, together with the clinical notes furnished by the plaintiff, confirm that there is no actionable claim by the plaintiff against the defendant.

Wrongfulness and negligence

[41] Counsel for the defendant made further submissions with regard to the principle of wrongfulness which included the following. The inquiry as to wrongfulness involves a determination of the existence of a legal duty on the part of the defendant towards the plaintiff not to act in a negligent manner, which would cause the plaintiff to suffer harm.[45]

[42] Once a legal duty is found to have existed, the inquiry then turns to determining whether the defendant was negligent. Counsel for the defendant referred to the test for negligence formulated in *Kruger v Coetzee*, referred to above.[46]

[43] It is submitted that the Court ought to determine the issue of wrongfulness first, whilst assuming the existence of a legal duty and negligence on the part of the defendant.

[44] Regarding the existence of a legal duty on the part of the defendant, counsel submitted that the defendant does not owe any duty to the plaintiff due to the presence of the disclaimer notices at the entrance to the defendant's premises or store. This remains undisputed by the plaintiff and thus ought to be accepted by the Court, it is further submitted. Absent legal duty owed by the defendant to the plaintiff, a finding of wrongfulness is incompetent. And without any wrongfulness the defendant cannot be found to have conducted itself negligently, the submission concludes.

---

45 *Minister of Safety and Security v Van Duivenboden* 2002 (6) SA 431 (SCA), [2002] 3 All SA 741 (SCA) [12], [22]; *Fourway Haulage SA (Pty) Ltd v SA National Roads Agency Ltd* 2009 (2) SA 150 (SCA), [2009] 1 All SA 525 (SCA) [12].

46 Par [14] above.

[45] It is further argued by counsel on behalf of the defendant that, as the plaintiff accepted that a third party - who is neither known to nor an employee of the defendant - bumped the piece of timber or plank before it fell on the plaintiff (also shown in the video), there cannot be any negligence on the part of the defendant. Therefore, no legal duty existed for the defendant towards the plaintiff. But, even if the defendant had a legal duty there is no negligence on its part as neither the defendant nor its employees were to blame for the timber falling. Absent negligence, and the issue of wrongfulness does not arise, therefore, the plaintiff's action ought to be dismissed with costs, counsel concludes.

[46] Regarding the incident itself, counsel argues that although the defendant's witness, Mr Thapelo 'Long' Khoza did not observe the occurrence of the incident, he was called to attend to the plaintiff as a first-aider for the defendant. He told the Court that the plaintiff was wearing shoes and that she was not bleeding. And, that she rebuffed his offer to call an ambulance before she walked away unaided from the defendant's store. It is argued by counsel that the aforesaid and the contents of the clinical note by Dr Van Zyl, with whom the plaintiff consulted two days after the accident, confirm that there is no actionable claim by the plaintiff against the defendant.

Proof of the plaintiff's case

[47] The defendant's counsel also pointed out that, for the plaintiff to succeed she ought to have established its case against the defendant on a balance of probabilities. He, further, pointed out that there where contradictions in the plaintiff's case – although she did not concede this during cross examination – in that she did not suffer any head or leg injury, contrary to what appears in her particulars of claim. Counsel submitted that the defendant's version that the plaintiff did not suffer the injuries, including their *sequelae*, as stated, and, as pleaded in her particulars of claim, ought to be considered by the Court as more probable than the plaintiff's. Counsel also emphasised that the plaintiff continued to walk after the incident; only went to

consult a medical doctor two days after the incident and did not go to hospital, as alleged by her pleadings. The Court ought to reject the plaintiff's version, due to the numerous concessions and contradictions which emerged during her cross examination.

Issues requiring determination

[48] From what appears above, the following are the issues requiring determination in this matter: (a) the role and impact of the unknown third party; (b) breach of a legal duty possibly owed by the defendant to the plaintiff; (c) disclaimer notices; (d) nature and extent of the plaintiff's harm or damage, and (e) contributory negligence.

[49] The above appears to be the main issues requiring determination to dispose of this matter, although there may be other ancillary issues that may arise during the discussion of the main issues. Some interlink between the issues and repetitions in the discussion of the issues - under the above subheadings - may prove unavoidable.

Unknown third party (his role and effect on the plaintiff's claim)

[50] I consider it apposite to commence the discussion on this issue. It is common cause that a plank fell on the plaintiff's booted foot. The plaintiff says she was injured as a result of this. The defendant argues that it is not its conduct that harmed the defendant, but that of an unknown third party. It is also common cause that the third party is not an employee of the defendant and, therefore there is no possibility of a vicariously derived liability either, it is contended by the defendant.

[51] I think it is appropriate to start with the following submission by counsel for the defendant: '[a]lthough there is no evidence before the court as to what exactly the timber was doing on the scene/why it was present and/or why the timber was there and/or who put the timber on the scene, it was established and accepted that the unknown third party bumped the

timber, which fell onto the plaintiff's foot.'[47] This is telling coming from the side of the defendant.

[52] I can add to the submissions by defendant's counsel by stating that there is no evidence that the unknown third party dislodged the timber from where it was properly placed or secured to serve some particular purpose in the shop. It does not appear from the video tendered – by agreement between the parties – that the unknown third party applied some extraordinary or unreasonable force in 'bumping' the plank or piece of timber to force it to dislodge from its normal place in the shop. This is also confirmed by his effort in putting back the plank from where it fell, which he appeared to have done with ease despite being an unknown and non-employee user of the premises. Finally, it does not appear that the plank was safely out of the way of shoppers and the unknown third party was doing more than shopping or walking through or attempting to do so, before 'bumping' the plank. Therefore, should it be found that the defendant had a legal duty to prevent the plank from falling and injuring the plaintiff, which is discussed next, the involvement of the unknown third party, for the reasons appearing immediately above, would not assist the defendant. The defendant would have negligently failed to have reasonably taken the necessary action (of (a) securing the plank if it served any reasonable purpose by being in the store or (b) making sure it wasn't in the shop if it served no reasonable purpose by being in the store in the first place) and, thus, prevented harm from occurring to the plaintiff.

Did the defendant breach a legal duty owed to the plaintiff?

[53] As stated above, the plaintiff's claim against the defendant, as with 'slip and fall' cases is in the form of omission (i.e. that the defendant whilst saddled with a duty to perform an act omitted to perform such act).[48] The plaintiff – in order to be successful in her omission claim

---

47 Defendant's closing legal argument par 5.7, CL 015-8.

48 Par [9] above.

for damages against the defendant - ought to establish: (a) a legal duty on the part of a defendant; (b) negligence due to the defendant's failure to do such an act or to exercise the necessary care, and (c) injury and damage on her part.[49] Under this part, the Court is dealing with the requirement whether the defendant had a legal duty to the plaintiff.

[54] The plaintiff referred in her pleadings to breach of statutory duty by the defendant, but neither of the parties cited breach of any statutory provision of relevance during the trial. In his written legal argument, counsel for the plaintiff referred to the defendant's legal duty to take reasonable steps to prevent harm from occurring to its customers. This appears comparable to the duty in 'slip and fall' cases in which wrongfulness may be determined by first considering the principle that the owners or occupiers - whilst in control - of property or premises capable of causing harm to those entering the property or premises have a duty to protect those entering from the occurrence of such harm.[50] In my view the defendant owed such duty to the plaintiff.

[55] It is common cause that the defendant was in control of the property or premises in which the plaintiff was hit by a falling plank. The plaintiff says she was injured by the plank, whilst the defendant disputes the injuries. Assuming for a moment that the plaintiff suffered injuries capable of pivoting her claim,[51] the next issue to consider is whether the defendant breached the duty owed to the plaintiff.

[56] The defendant's duty entailed that it secured firmly the piece of timber/plank or if it was firmly secured that it ensured that the plank does not fall when bumped without unreasonable force by those who have entered its premises.[52] Or simply that the plank wasn't in the store if it had no useful purpose in the store. A falling plank, no doubt, poses a threat of harm to those using the defendant's store or premises and the defendant clearly had a duty to

---

49 Par [9] above.
50 Part [12] above.
51 Pars [64]-[66] below on a discussion on the nature and extent of the plaintiff's injuries.
52 *Plastilon Verpakking v Meyer* [2022] ZAGPPHC 475 [24].

protect those within its premises or store from the occurrence of such harm. I do not agree that the plaintiff had a corresponding duty to lookout for a plank falling off a shelf or a higher platform when shopping in the defendant's store. The defendant cannot invite shoppers, such as the plaintiff, and reasonably expect them to shop whilst walking around to find grocery items in the defendant's store, without the shoppers being entitled to expect that they would be safe from falling planks.[53] It would not be reasonable to expect such from the shoppers or users of the defendant's premises, including the plaintiff.[54]

[57] A reasonable storekeeper – in the position of the defendant would have foreseen the possibility of the damage (caused by a falling plank bumped by the one user of its facilities) occurring and would have taken the necessary steps to prevent the plank from falling when bumped – without application of some extraordinary or unreasonable force - by another user of its premises. The defendant, in my view, failed the test in this regard and, therefore, the defendant's conduct was wrongful in that the defendant breached the aforesaid legal duty owed to the plaintiff through its negligent conduct. But the defendant contends that the presence of the disclaimer notice boards at the entrance of its premises is material to the issue of liability. I turn, to this next.

Disclaimer notice boards

[58] The defences raised by the defendant to avoid liability, as mentioned above, include that there are two disclaimer notices outside of its premises or store warning shoppers or those entering that they do so at own risk. The plaintiff says she did not pay attention to anything else, but her walking and/or shopping. On the other hand, the defendant brands this approach by the plaintiff a confirmation that she did not keep a proper lookout.

---

53 *Brauns v Shoprite Checkers (Pty) Ltd* 2004 (6) SA 211 (E) 217- 218.

54 *Probst v Pick n Pay Retailers (Pty) Ltd* [1998] 2 All SA 186 (W), *per* Stegmann J at 194. See also *Lombard v Mcdonald's Wingtip* (38117/2020) [2022] ZAGPPHC 877 (14 November 2022) *per* Vuma AJ at [52]-[53].

[59] To advance this defence, the defendant pleaded that 'large and clearly marked disclaimer notices' adorn the entrance to its premises or store, displaying words to the effect that entry into its premises or store is at the entrant's own risk and that it is not responsible for any harm or injury suffered by such entrant. It was also pleaded that such notice boards were 'clearly visible' and that the plaintiff, acting reasonably, ought to become aware of the notices. It was further mentioned by counsel during the trial that there are two disclaimer notices. In the pleadings, it was also stated that by entering the premises, the plaintiff signalled her acceptance of the terms contained in the disclaimer boards, precluding the current claim by her. Counsel for the defendant argued that the disclaimer notice was not disputed by the plaintiff and, thus, ought to be accepted by the Court.

[60] The authorities cited above are to the effect that for a disclaimer notice to be enforced by the Court its expression ought to be in clear and unambiguous terms, when viewed by a reasonable person.[55] No evidence was led as to the exact location of the disclaimer notice boards by the entrance of the defendant's premises. Equally, there was no evidence led as to the exact appearance and contents of the disclaimer notice,[56] save for what is stated above. I am referring here to the exact terms of or words used in the notice. The Court was not placed in a position to pronounce on the clarity and lack of ambiguity of the notices. But nothing would turn on this. And from the authorities, it is undisputable that section 49 of the Consumer Protection Act finds application to disclaimers, as notices to consumers.[57] Neither counsel referred to the latter provision, but nothing turns on this also.

[61] In my view, even if the defendant's notices were seen by the plaintiff or were brought to her attention, they would have no bearing on the incident in question. It is common cause

---

55 Par [17] above.
56 *Mthembu v Big Save Store, Mabopane* [2022] ZAGPPHC 1013 at pars [9], [10], [13].
57 Par [18] above.

that the plaintiff complains of being struck by a plank which fell from a shelf or some higher platform in the defendant's store or premises. I agree with the argument by counsel for the plaintiff that one cannot expect to be hit by a piece of timber or plank in a grocery store, but a hardware store. It would not be fair and just or even comport with public policy let alone the norms and values of the Constitution, to expect a shopper in the position of the plaintiff in this case to expect to be hit by a plank in the defendant's store.[58] Therefore, the notices are incompetent of disclaiming responsibility or liability on the part of the defendant under the circumstances of this matter.

Contributory negligence

[62] The defendant also raised the defence of contributory negligence in the event negligence was proven on its part, as it is already the case. This was on the basis of the plaintiff being accused of not keeping a proper lookout, due to her assertion during her testimony that she was generally unconcerned by nothing else, but her walking and/or shopping whilst in the defendant's store on the material day.

[63] But, it is my view, that the plaintiff was in no way negligent. In case I am mistaken and the plaintiff did conduct herself negligently, it is my view then that such negligence has no bearing on her damages to justify any apportionment of such damages.

Plaintiff's harm or damage and damages

[64] Counsel for the defendant dedicated a considerable amount of time during his cross-examination of both witnesses who appeared before the Court and in his oral and written argument on issues relating to the nature and extent of the injuries suffered by the plaintiff. I agree with counsel for the plaintiff that this was premature at this stage of the trial in this matter, as the Court is only seized with issues relating to liability.

---

[58] *Naidoo v Birchwood Hotel* 2012 (6) SA 170 (GSJ) [45]-[47].

[65] It is common cause that the plaintiff was hit by a plank which fell on her booted foot. During the testimony she also mentioned that her ankle was also reached by the object. She appeared to be resolute in not conceding that there were no other injuries, despite viewing the uncontested video evidence. I agree with counsel for the defendant that there is no evidence of any injuries arising from the plank incident beyond the plaintiff's foot. I must point out that counsel appears to be arguing that his client even denies injury to the plaintiff's foot. But, in my view, this may be the result of confusing whether the plaintiff was injured with the extent to which the plaintiff may have been injured. The Court is seized with the former at this stage.

[66] The five constitutive elements of delict stated above include causation and harm or damage.[59] I am satisfied that the plaintiff has proven these elements in the delictual claim against the defendant.[60] The extent of the harm or damage is immaterial for current purposes and would feature in the next stage when the Court is seized with determination of issues relating to quantum.

Conclusion and costs

[67] Based on the above, the plaintiff has succeeded in establishing that the defendant's conduct caused it to suffer damages and, thus, an order will be made holding the defendant fully (i.e. 100%) liable for the plaintiff's damages, be they proven or agreed.

[68] There is no reason for departing from the convention that costs should follow the aforesaid outcome of the matter. Therefore, the defendant will be held liable for the applicable costs at the scale of party and party. Counsel for the defendant urged the Court to grant costs on scale B, obviously in the event the outcome was in his client's favour. I consider the issues in this matter to justify such scale and it would be included in the order made.

---

59 Par [8] above.

60 *Mthembu v Big Save Store, Mabopane* [2022] ZAGPPHC 1013 at pars [33]-[35].

Order

[69] In the premises, I make the order, that:

a) the defendant is liable to compensate the plaintiff fully (i.e. 100%) in respect of the plaintiff's proven or agreed damages arising from the incident or accident which occurred on 6 February 2019;

b) the defendant is ordered to pay the plaintiff's taxed or agreed party and party costs relating to the determination of issues relating to liability at scale B, where applicable, and

c) the issues relating to quantum are postponed *sine die*.

Khashane La M. Manamela
Acting Judge of the High Court

Dates of Hearing	**:**	**8 and 14 May 2025**
Date of Judgment	**:**	**22 September 2025**

Appearances	:	
For the Plaintiff	:	Mr M Nekhofhe
Instructed by	:	Nefuri Attorneys, Pretoria
For the Defendant	:	Mr JM Prinsloo
Instructed by	:	Prinsloos Attorneys, Pretoria