IN THE HIGH COURT OF SOUTH AFRICA

WESTERN CAPE DIVISION, CAPE TOWN

Case no: 8102/2014

In the matter between:

OLIVIER KALENGA MULAMBA NGINDU **Plaintiff**

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA Defendant

Date of hearing: 16, 17, 19 February and 3 March 2015

JUDGMENT DELIVERED 18 MAY 2015

SAVAGE J:

Introduction

[1] The plaintiff, Mr Olivier Kalenga Mulamba Ngindu, instituted action against the defendant, the Passenger Rail Agency of South Africa, for payment of damages in the sum of R355 765,00 as a result of the injuries sustained by him on 17 May 2012 following his assault and stabbing at Koeberg Railway Station, in the Western Cape by

employees of the defendant acting at all material times in the course and scope of their employment with the defendant.

[2] The defendant in its plea admitted that on 17 May 2012 an incident occurred but denied that its employees assaulted and stabbed the plaintiff and stated that:

> '*...the Plaintiff was the sole cause of the incident in that Plaintiff:-*
>
> *3.3.1 Attempted to gain access to the station platform to board a train with an invalid train ticket;*
>
> *3.3.2 Assaulted an employee i.e. a ticket verifier of Defendant at Koeberg Station when he was advised that he is not allowed to board a train with an invalid ticket;*
>
> *3.3.3 Engaged into a fight with employees of the Defendant when he was refused access to the station platform and not allowed to board a train with an invalid ticket...*'

[3] It was not pleaded by the defendant that members of the public assaulted the plaintiff and inflicted the injuries sustained by him.

[4] By agreement between the parties merits and quantum were separated under rule 33(4).

Evidence of incident

Evidence for Plaintiff

[5] The 38-year old plaintiff is Congolese, has resided in South Africa since January 2001 and holds a degree in chemical molecular cell biology. He was employed at the Department of Molecular Cell Biology at the University of Cape Town as a scientific researcher at the time of his assault. On 17 May 2012 he went to Bellville on business at around

07h00. He had another appointment in Cape Town thereafter. After having completed his business in Bellville, the plaintiff arrived at the Bellville train station at 13h00 with 15 minutes to spare before his train. He went to the ticket office outside the station to buy a ticket. The ticket seller delayed in providing him with a ticket and, with the train to Cape Town leaving, the plaintiff was forced to move quickly in an attempt to make the train after receiving his ticket. He did not pass the ticket controller as he saw he had missed the train, which the ticket seller had warned him may happen. When he asked for his money back on the basis that he had missed the train, he was told that the next train was in 30 minutes and that the ticket was not refundable as was evident from the face of the ticket but that it could be used any time that day.

[6] The plaintiff rescheduled his Cape Town appointment and took a taxi to Maitland. He went to his wife's friends at Koeberg Pharmacy where he buys items for his baby and drew money at an Absa ATM before proceeding to Koeberg Station at around 16h00. At Koeberg station the plaintiff walked into entrance 2. The station was not very busy and the defendant's employees were verifying tickets at the entrance to the station. His evidence was that one or two of these employees were wearing bibs mixed with orange, although the person wearing the orange bib was quite far, but most wore green bibs. Mr Lucien Kindu, who is Congolese and was at the station on the day, saw three male ticket verifiers, one wearing an orange bib and two wearing green bibs. Mr Gawulana, a ticket verifier, in his evidence for the defendant stated that the security wear orange bibs.

[7] The plaintiff stated that an old man, who was during the course of proceedings identified as Mr Booysen, sat in the middle of entrance 2 behind a steel railing wearing a grey Metrorail jacket. He held a bottle of

Coke in his hand. Mr Lucien Kindu who witnessed the events on the day stated that Mr Booysen was drinking orange juice out of a glass bottle and held the bottle in his hand. With other Metrorail employees and additional people present, the plaintiff stated that he greeted Mr Booysen and gave him his ticket. The plaintiff's evidence was that Mr Booysen 'changed completely' and told him the ticket is invalid. The plaintiff was shocked and asked why this was and the man responded that he had bought the ticket at Bellville at 13h00. The plaintiff informed him that at Bellville station he had been told he could use the ticket as long as it was on the same day, that he had not used the ticket and that there was no expiry time recorded on the ticket. The plaintiff was told to buy a new ticket. He asked for his ticket back as he needed it to complain in Cape Town but Mr Booysen refused to return the ticket. When he sought assistance from an employee wearing green Metrorail clothing who sat across from Mr Booysen, identified as Mr Sokutela, no assistance was forthcoming.

[8] Mr Booysen scratched the unused ticket with a pen, tore it and placed it in a ticket bin. Mr Booysen in his evidence said that the ticket was invalid in that once it has been used it is invalid. Mr Sokudela heard the exchange between the plaintiff and stated that the ticket was invalid in that a passenger must enter at the same station where a ticket is bought.

[9] The plaintiff stated that he walked backwards, indicating that he would not take the train but that he wanted the ticket back in order to complain to Metrorail in Cape Town. He said Mr Booysen pushed him towards the ticket office with one hand while holding the bottle in the other. The plaintiff, who is a tall man, did not move. With Mr Booysen unable to move him, the plaintiff stated that four or five Metrorail employees came to help, all wearing Metrorail uniforms. They started

pushing and beating him with open hands. When he felt pain on the side of his chest the plaintiff got very angry and when he touched his side he found he was bleeding and realised he had been stabbed. He continued asking for his ticket but realised that if he did nothing he could die and started defending himself.

[10] The men continued to assault him, coming back to him a second time hitting him with a coke bottle, two padlocks and a metal chain after re-grouping a short distance away for less than a minute. He did not know where the padlocks and chain came from. The plaintiff defended himself using his back but was hit on the head and face with a padlock and a bottle, causing injuries on his head, above his eye and his head was bleeding. He stated that he had many injuries on his head, of which photographs were later taken. Female commuters then came to separate them, telling the defendant's employees that they must leave the plaintiff and must not attack him. The plaintiff heard the defendant's employees use the word '*makhwerekhwere*' (foreigner). In the course of the incident the plaintiff lost personal possessions including academic work on a computer disk which had been in his bag as well as his Guess watch.

[11] After the assault female commuters came to help the plaintiff, taking him to a room where he sat down. In the room with him were mostly women, the security and the supervisor. The stapled ticket was shown to the police, who arrived after an hour from the Maitland police station by which time the defendant's employees had left. The police told the plaintiff that he could open a case and was given a J88 form to have completed. It was suggested that an ambulance be called to take the plaintiff to Somerset Hospital although no ambulance arrived. When the plaintiff could not make contact with his wife on her cellphone he asked a commuter, Mr Lucien Kindu, who is Congolese and who was on the

scene when the police were present, to call his friend, Carol, at whose house he has lived since 2001. Carol arrived some time later and took the plaintiff to Groote Schuur Hospital for medical treatment. The plaintiff produced the clothing he had worn on the day of the incident in Court on which dark stains were present as well as a cut under the left arm and one on the right forearm.

[12] In cross examination the plaintiff stated that he did not buy his ticket to town when he arrived at Bellville in the morning as he was pre-occupied with his business in Bellville. He understood that the ticket purchased at Bellville was refundable and it is not stated differently on the face of the ticket. The plaintiff dismissed as a lie that he had been at Maitland station on the day of the incident where he is alleged to have presented a ticket which was invalid. He also denied that he had said he would walk to Koeberg station. Had this occurred the plaintiff stated that he would have asked for the return of his ticket at Maitland station in order to complain in Cape Town.

[13] The plaintiff testified that he was not aware as to how Mr Booysen broke his glasses. It was put to the plaintiff that Mr Booysen marked the ticket with a pen and tore it, but not completely, and said that the ticket was invalid in that it had been bought at Bellville at 11h00. The plaintiff denied that when he asked Mr Booysen for his ticket he became angry and slapped Mr Booysen across the face before Mr Booysen could answer. He said he could not do that. It was further put to the plaintiff that he spoke to the ticket verifier, Mr Sokudela, who agreed the ticket was invalid. The ticket was then torn up and put in the ticket bin. The plaintiff denied that he grabbed Mr Booysen by the front of his jacket and that when Mr Gawulana came to assist Mr Booysen he also kicked Mr Gawulana. The plaintiff did not see if Mr Sokudela had a portable ticket

machine with him which he handed with the money to a female employee. He denied that he smacked and hit Mr Sokudela and that commuters had to pull him off them. He also denied that it was the commuters who started to hit him, denied that Mr Booysen was too dazed to know what was happening and called security at which point the commuters ran away.

[14] The plaintiff stated that if he did this, it was not clear why did the defendant's employees did not wait for the police to arrive in order to accuse him. The plaintiff denied that the on-going attack on Mr Booysen was initiated by him and stated that the commuters, who had nothing to do with it, came to his rescue. It was put to the plaintiff that the defendant's employees did not have access to padlocks and chains. He denied this, stating that he saw one of them hitting him on the head with a padlock and up to now sometimes he does not feel well as a result of the attack. He also denied that Mr Booysen did not have a coke bottle with him and stated that in his bag, with which he defended himself, he later found little bits of broken coke bottle inside. The plaintiff denied that the defendant's officials called the police, stating that commuters called the police in front of him. The plaintiff stated that he was shocked to have been stabbed and that the defendant's employees did not have injuries, nor did they mention any injuries. The plaintiff saw a security guard after the second attack but indicated that Mr Sokudela, Mr Gawulana and Mr Booysen were the only male ticket verifiers on duty on the day of the incident.

[15] Mr Lucien Kindu is Congolese and has lived in South Africa since 2008. On 17 May 2012 he went to visit a friend at a Metrorail house near Koeberg station, having come from his house at Parow. He left his friend's house at 15h20 and went to the station to catch a train to go

home. He noticed ticket verifiers at the station: an old man (in the middle), a young man and a lady were at the entrance to Koeberg station checking tickets. He showed his monthly ticket to Mr Booysen, who he knew from Maitland station, who sat in the middle. He noticed that from around 15h25 until 15h45 the defendant's employees were standing with padlocks and chains but nothing happened. Three security officers were on the platform: one on the Maitland platform, one at the back of ticket verifiers and another one at the Bellville platform. The man standing near to Mr Booysen had two padlocks and the other man had a chain. Mr Booysen was drinking his orange juice out of a glass bottle and held the bottle in his hand At 15h45 he heard Mr Booysen speaking to the plaintiff who he did not know. He was shouting that this ticket is not valid, saying 'you must go and buy another ticket'. Mr Kindu was curious and turned to look. He heard the plaintiff explaining that the ticket was valid, that it was bought in Bellville but due to his having missed train he had not used it and that he had taken a taxi. He was not shouting but speaking nicely. Mr Booysen took the ticket, tore it and pointed at the ticket office telling the plaintiff he must go and buy another ticket. The plaintiff asked for his ticket back. The plaintiff refused and he moved to the next ticket collector who did not answer him but just looked at him. The plaintiff went back to Mr Booysen and asked for the ticket to make a complaint in Cape Town at customer service. Mr Booysen slapped the plaintiff and pushed him towards the ticket office. The plaintiff asked: 'Are you not listening?' and when the plaintiff came back again, Mr Kindu stated that the defendant's employees who were wearing bibs asked Mr Booysen what was taking place and Mr Booysen explained.

[16] Mr Kindu heard him say 'look at this *makwerekwere*'. When Mr Booysen started beating the plaintiff, the other Metrorail ticket verifiers

joined in. One wore an orange bib and two wore green bibs. They beat the plaintiff and pushed him to the ticket office window. Mr Kindu described the incident as 'really awful'. He saw Mr Booysen beat the plaintiff on the head with the bottle he had been drinking from. The man with the orange bib held two locks in hand and beat the plaintiff on the head with them. During the assault, the defendant's employees stopped checking tickets and Mr Kindu was able to walk back through the gate. The plaintiff was bleeding and Mr Kindu said he could not bear to see the blood. He ran to report the matter at the Maitland police station as he saw no one could intervene, including the security who were there and who had not intervened in spite of female commuters asking the defendant's employees to stop assaulting the plaintiff, which the security had overheard. He did not phone the police as he did not have airtime. When he returned from the police station at around 16h00, the station was becoming busy, which was not the case when he had arrived there earlier. People were taking the plaintiff outside the station and many people were standing and screaming, asking why they beat the plaintiff to this level and asking what he did.

[17] Mr Kindu knocked on the supervisor's door and was told that the supervisor was not there. He went back in front where he saw that the same Metrorail employees with the yellow and green bibs pushing the plaintiff out of the station. He returned to the police station as the police had not arrived. When Mr Kindu returned the second time after about half an hour, the plaintiff had fallen down and he was asked if the plaintiff was his brother. He said he was not and was given a tissue, a handkerchief and toilet paper to help stop the blood running from the plaintiff. Mr Kindu wiped the blood and took photographs of the toilet paper and of the plaintiff's injuries. He tied the handkerchief on the

plaintiff's head. He stated that there was a lot of blood and that the plaintiff was bleeding on his head, nose and mouth.

[18] When the police arrived the Metrorail employees wearing bibs had left. A policeman took the plaintiff to sit at the security office in the station and Mr Kindu went with him. The police asked why the security had not called the police. Mr Kindu saw a police officer speaking to Mr Booysen asking what happened. Mr Booysen said that a customer had assaulted him. Mr Booysen did not reply when the police asked where security was when this took place. Mr Kindu stated that the police said 'what you did was wrong'. The police sent Mr Booysen to the police station and Mr Kindu called a woman called Carol to assist the plaintiff, on the request of the plaintiff. Carol arrived about an hour later.

[19] Mr Kindu stated that Mr Booysen first shouted at the plaintiff before pushing the plaintiff with one hand as he was holding the bottle in the other hand. The plaintiff was standing saying that he needed his ticket. The plaintiff went back when he was pushed the second time the plaintiff moved back. At that stage Mr Booysen was alone in pushing the plaintiff. He did not see the bottle getting broken as there were a lot of people around. Mr Kindu did not see the plaintiff touch Mr Booysen, nor did he see him pushing or beating. Mr Booysen spoke to the other employees in isiXhosa. Two days later the police asked Mr Kindu to provide a statement in the presence of a Congolese person. The statement was not read back to Mr Kindu, who also did not read it before signing it. In his statement reference was made to the plaintiff being Mr Kindu's friend. Mr Kindu indicated that this may have been because they are both Congolese as he had told the police that he did not know the plaintiff. Mr Kindu indicated that he did not have knowledge of the plaintiff's destination and did not mention Salt River, nor did he speak to the

plaintiff about his destination. He could not say where the policeman would have got this information.

[20] Mr Kindu did not see anyone take cellphones and delete pictures but saw an employee with an orange bib delete a video. He denied that the plaintiff pushed Mr Booysen against the wall. He saw no portable ticket machine which was the reason the plaintiff was sent to purchase a ticket at the office. He did not see the supervisor give the portable machine to a female employee with the money in order to assist Mr Booysen. He also denied that the plaintiff had smacked the supervisor, Mr Gawulana. He denied that Mr Gawulana had tried to stop the plaintiff's assault on Mr Booysen and also denied that the plaintiff had kicked Mr Gawulana in the groin. Mr Kindu stated that no passengers touched the plaintiff. He reiterated that the employees had padlocks and a bottle, the pieces of which there was a photograph.

[21] Mr Kindu denied that Mr Sokudela and Mr Gawulana tried to stop the commuters from attacking the plaintiff but that they were not able to do so. Instead he said the female commuters were screaming but none assaulted the plaintiff.

Evidence for defendant

The defendant led four witnesses at the trial.

[22] Mr Enoch Zweni Booysen has been employed by Metrorail for 37 years. On 17 May 2012 at Koeberg station he was verifying tickets. The plaintiff arrived with an invalid ticket before 15h00 and he told him that the ticket, a single from Bellville to Cape Town, was invalid in that once used it is invalid. The plaintiff went off without saying anything to the side of the ticket box. Mr Sokudela asked for the ticket while the plaintiff

stood behind Mr Booysen. Mr Booysen handed the ticket to Mr Sokudela and said that the ticket was no longer valid. The plaintiff asked 'why you tear my ticket up'. Instead of speaking to Mr Booysen the plaintiff raised his hand and slapped Mr Booysen with an open hand on his head causing his glasses to fall and break. He then pulled Mr Booysen out of the gate and threw him against the wall by grabbing his shirt with both hands in front of his chest. Mr Booysen tried to free himself from the plaintiff. There were many people around who were unknown to Mr Booysen and they pulled the plaintiff from Mr Booysen who was left standing against the wall. Mr Booysen could not see clearly because his glasses were broken and stated that he was shocked. He did not consult a doctor. He denied assaulting the plaintiff and denied that other employees had locks and a chain with which the plaintiff was assaulted. He stated that he did not see any padlocks on that day although there are padlocks used to lock the gates on the platforms that ticket verifiers open for the people to enter and that the gates at platform 2 being locked by the security.

[23] The Metrorail uniform consists of a white jacket, grey jersey and light green bib and the other employees wore the same colour bibs according to Mr Booysen. Mr Booysen stated that with him, Mr Sokudela and Mr Gawulana were on duty. When the police arrived they spoke to the people in front and then to the security guard and the plaintiff. He could not recall where Mr Sokudela and Mr Gawulana were when the police arrived. Mr Booysen went to the police station to open a case and was told they were already busy with the case. He denied that he had a bottle with which he had hit the plaintiff.

[24] Mr Booysen stated that an uninterrupted and broken journey means a single ticket had been purchased from one destination to another and that the passenger had not interrupted the journey by getting off at

another station. If this happens the single ticket would then no longer remain valid. He denied that a passenger may use a single ticket from a station other than the one stated on the ticket, even if it was closer to the final destination, although this is not stated on the face of the ticket. A ticket may be refunded within 30 minutes of purchase.

[25] Mr Booysen's evidence was that peak hour at Koeberg station starts from 14h00 until 18h00 with around 15 – 20 000 passengers passing through the station but indicated that the station was empty before 16h00. At the time of the incident he estimated that there were 1000 people on the station. Trains pass through every 2 or 3 minutes in peak hour. He was not sure if he sat on the right hand side of the entrance gate since the incident took place, a long time ago and he has forgotten about it. He denied that plaintiff and Mr Kindu's evidence that he was at the centre and could not comment on his version not having been put to them in cross examination. The plaintiff arrived before 15h00, although he stated that he was not clear about time and conceded it may be as the plaintiff stated, before 16h00.

[26] He accepted that he could not tell if the ticket had been used. He denied that the plaintiff had explained to him that the ticket had not been used and said twice that the plaintiff did not say anything to him. Mr Booysen could not comment on what the plaintiff had been told at Bellville regarding a refund or the use of the ticket later on the same line. Mr Booysen stated that the ticket must be returned if not used at the station it was purchased. He stated that he would say the ticket was used and that if it was not used, then it should have been returned as the ticket was bought to enter Bellville station. It was accepted that in his evidence in chief he had stated that he said to plaintiff that the ticket was invalid

because it was used. After the plaintiff left Mr Booysen said he put the ticket in the box and took it out to give to Mr Sokudela.

[27] The criminal case against Mr Booysen, Mr Gawulana and Mr Sokudela was withdrawn after they had appeared in court on a few occasions. The plaintiff asked him why his ticket was torn and thrown in the box for used tickets. Mr Booysen first stated that he was not sure if he had torn the ticket up and then stated he could not remember, although his evidence was that he was asked why he had torn the ticket, and that as he turned the plaintiff beat him with his open hand. It was put to him that the plaintiff's evidence was that Mr Booysen came out from where he collected tickets and pushed him towards the ticket office. Mr Booysen denied that the plaintiff spoke to him and denied that he had assaulted the plaintiff in the face and on top of his head with a open hand.

[28] It was put to Mr Booysen that in his written statement he recorded that the ticket expired at 13h00, although in evidence he said 11h00. He indicated that he may have forgotten about this because it happened a long time ago. When it expired would depend, according to Mr Booysen, on the ticket verifier considering the reason given and how many trains had passed although he accepted that this was not apparent from the ticket. The validity of the ticket therefore depended, he said, on the ticket collector for acceptance, the reason it is used after it is bought and the defendant required employees to use their own discretion. If trains are on schedule Mr Booysen stated that tickets expire after 30 minutes. He said that he watches trains arriving and those delayed. Mr Booysen showed the plaintiff that the ticket expired and that it was 15h00 although he was not watching the time and could have been wrong and could not dispute the plaintiff's version that it was 15h45 or 16h00. Mr Booysen stated that the plaintiff shouted 'why you taking my ticket?' and denied Mr Kindu's

version that he had spoken in a normal voice. Because his glasses had fallen off and he was in a state and shocked he could not identify any of the commuters who assaulted the plaintiff. In his statement he recorded that Mr Sokudela and Mr Gawulana were around, although in evidence could not recall this. He denied having a bottle. His statement also recorded that he was head-butted by the plaintiff, which he denied, saying that he cannot now remember clearly.

[29] Mr Dumisani Mlobeli is employed by the defendant as a ticket verifier. He stated that on 17 May 2012 he was one of five ticket verifiers on duty at Maitland station which is about 5 to 10 minutes away from Koeberg on foot. After 15h00 the plaintiff presented him with a ticket bought at Bellville for travel from Bellville to Cape Town. He spoke to the plaintiff for 2-3 minutes in peak time, closing his gate to speak to him, and told him the ticket was invalid because of the time on the ticket. The plaintiff said he bought the ticket at Bellville and if he is not permitted to use it at Maitland he would go to Koeberg station. He had not seen the plaintiff before, nor did he see him after this incident but recalled his build and accent and his memory he said was very clear. Mr Mlobeli confirmed that Mr Booysen told him that who the plaintiff was last year when he saw him at the magistrate's court.

[30] He stated that he heard from a supervisor that 15 minutes later the plaintiff was at Koeberg station. Mr Mlobeli testified that the plaintiff was wearing jeans and a short sleeved white top and had nothing else with him. It was put to him in cross examination that the plaintiff denied being at Maitland station on the day, that he was wearing brown thick jacket and a green shirt and had a black bag with him. Mr Mlobeli denied this and stated that he was wearing a white top and that he did not see a black bag. Mr Mlobeli confirmed that the 2015 Metrorail ticket differs

from the 2012 ticket in that the 2015 ticket includes *inter alia* the operator number and a barcode. A ticket is valid for use within 30 minutes and must be used at the station it is bought for an unbroken journey. This is so although the ticket does not include an expiry time.

[31] Mr Thani Gawulana was on duty as a ticket verifier on 17 May 2012 at Koeberg station with Mr Booysen, Mr Sokudela and two female employees. He was dressed in his grey and white uniform with a yellow bib. He stated that at about 15h00 he was at another gate when he heard a noise and looked to the side where he saw someone holding Mr Booysen, who did not wear his glasses, by the front of his shirt against the pillar and was hitting him. Mr Gawulana tried to separate the two. The plaintiff let go of Mr Booysen by one hand and pushed Mr Gawulana with his free hand, kicking him with one leg. Mr Gawulana took a step back. Mr Gawulana stated in cross examination that he then sat down and he saw the commuters started hitting the plaintiff to get him to stop beating the Metrorail employees, going to the plaintiff because he attacked them. He later stated that he had not seen commuters hitting the plaintiff but had seen commuters go towards him. He did not mention commuters going to the plaintiff in his evidence in chief as he could not differentiate between commuters who were mingling with employees. He later saw the plaintiff red with blood on the head but did not know why or who had beaten him and did not notice the plaintiff bleeding when he had tried to separate the plaintiff and Mr Booysen. The station was very busy as it was peak hour and commuters then arrived. Mr Gawulana denied that he and other Metrorail officers assaulted the plaintiff. Mr Sokudela arrived after Mr Gawulana as he was busy with the money and the ticket machine. Mr Gawulana did not remain at the station on the day of the incident and approximately two months later gave a statement to the police in which

he stated that the incident took place at 17h00, although he could not recall when this was and did not speak to the plaintiff himself in spite of it being recorded in his statement that he had personal knowledge of what had transpired when he had, he said, been informed of such information by his colleagues. He could not remember the time and could not dispute that it occurred at 16h00. He stated that ticket verifiers often get verbally attacked by commuters at Koeberg but not physically. Three incidents of assault have occurred in 29 years.

[32] Mr Gawulana did not see the plaintiff breaking Mr Booysen's glasses. He stated that he wears a firearm on his waist for protection as he wakes early to go to work. When the plaintiff's version was put to him in cross examination Mr Gawulana indicated that he was not aware of this and that he did not see any assault of either the plaintiff or Mr Booysen.

[33] Mr Gawulana claimed that Mr Booysen and Mr Sokudela were working at entrance 1. He stated that the plaintiff pushed him with his flat hand under his throat. He denied the contents of his statement in which it was recorded that the plaintiff had smacked him in his face. He indicated that Mr Sokudela was smacked although he did not see it and that he was kicked. Mr Gawulana indicated that if security is not present and a colleague or commuter is attacked 'we have to intervene and stop them'. He stated that his statement that he was beaten was incorrect, in that he was only pushed and kicked. Mr Gawulana disputed that plaintiff's version that 4 – 5 people male employees wearing Metrorail uniform started pushing him and hitting him with the open hand, saying that only three male employees wore uniform on the day, being him, Mr Sokudela and Mr Booysen. Mr Gawulana did not dispute that the plaintiff was stabbed although said he had not seen it.

[34] He did not see that the plaintiff had a bag and only noticed it when he went to separate them. He did not see female commuters on the scene. He did not hear the word '*makwerekwere*'. He confirmed that the padlocks are used by the security to lock the gates at the bottom of the station but stated that the security and not the ticket verifiers work with padlocks and that the ticket verifiers only use pens. Where the padlocks are left depends on the shift working. Sometimes they are left with security, sometimes at the ticket office or with the people working on railway trains.

[35] Mr Gawulana denied that there were two separate assaults of the plaintiff but that it was the same thing, over a long period. He could not dispute that the plaintiff was attacked by Metrorail officials on the day as he did not see. The only words he heard commuters saying was how come the plaintiff came over and attacked a person at his work. He stated that he did not respond when he saw the plaintiff covered in blood as he saw three security on duty and he had pain on his body. He stated that a ticket expires 30 minutes after purchase as ordered by the company. He also indicated that the security guards wear a navy uniform with an orange bib.

[36] Mr Mluleke Sokudela, who is employed by the defendant, was on duty on 17 May 2012 at Koeberg station. With him on duty were four Metrorail employees: Mr Gawulana, Mr Booysen and two women named Mini and Athelia. He stated that he saw the plaintiff arrive at the station with an invalid ticket. The plaintiff showed the ticket to Mr Booysen who told him the ticket was invalid. This was given that a passenger must enter at the same station where a ticket is bought. Mr Booysen tore the ticket and threw it in the dustbin. The plaintiff returned to Mr Booysen and hit him, asking why Mr Booysen tore up his ticket. Mr Booysen

could not answer as the plaintiff grabbed him by the shirt and threw him against the wall, hitting him in such a manner that his glasses fell. Mr Sokudela handed the portable ticket issuing machine to a woman and went to ask what is happening. He stated that the plaintiff slapped him and he fell. The plaintiff then returned and gave him a slap on the face between the eyes. Mr Gawulana was not far and came to them wanting to know what was happening when the plaintiff kicked Mr Gawulana in front between his legs. Commuters asked why the plaintiff was beating them up and they started beating the plaintiff. After the plaintiff smacked him, Mr Sokudela tried to focus his eyes as they were teary. He stated that the incident occurred between at peak hour, between 14h00 and 15h00 although he was not sure. A woman came inside to call the security through the intercom. The commuters then ran to the train very fast and boarded it. Mr Sokudela did not see Metrorail employees assault the plaintiff, only an attack by the plaintiff on Metrorail employees. When the security arrived Mr Sokudela was taking the money collected from his machine to Maitland. He did not see the plaintiff again.

[37] His evidence was that the ticket was valid for 30 minutes although it does not state this on the ticket which records that it is valid for one unbroken journey and expires the same day. The expiry time is the instruction given by the company and part of his job description. He denied that the ticket states that it expires on the day it is purchased. It is valid for a journey, not for one day and company policy is that the ticket must be used at the station it is purchased. He agreed that before a commuter takes the train the ticket has not expired. Mr Sokudela stated that the plaintiff had bought the ticket at 11h00 and the time was close to 17h00, but past 15h00 to 16h00 and the ticket was old. Peak hour begins at 14h00. He stated that the incident happened after 14h00 'now I

remember because I was coming from lunch'. Mr Booysen showed the ticket to him and then tore the ticket up and threw it in the bin. The plaintiff then hit Mr Booysen. Mr Sokudela stated that he was operating the ticket machine at entrance 2 where Mr Booysen was working.

[38] Mr Sokudela could not remember if Mr Booysen was in the middle and was not sure with which hand Mr Booysen hit him. The plaintiff left Booysen and he came to Mr Sokudela. When Mr Sokudela asked why he hit Booysen the plaintiff hit Mr Sokudela. He stated that he did not fall down but fell against the wall. Mr Gawulana arrived and asked what was going on. When the plaintiff was finished with Mr Sokudela he kicked Mr Gawulana. He hit Mr Booysen once, pushed him up against the wall and Mr Booysen sat and did not defend himself. Mr Sokudela also did not defend himself. He stated initially that he was carrying the money and the machine when he was hit by the plaintiff but later changed this version stating that before he went to where the plaintiff was holding Mr Booysen he gave the machine to the woman and that he was not carrying the machine when the plaintiff hit him. He did not defend himself as he does not have the right to defend himself at work as company policy is that the customer is always right.

[39] The matter was not reported to security as they were in the trains and the two security personnel on the station were closing the points. It was put to him that the assault perpetrated on the three men by the plaintiff was met with no defence from all three which was very unlikely. Mr Sokudela did not agree.

[40] Mr Gawulana claimed that Mr Sokudela arrived after he did, while Mr Sokudela said he arrived before Mr Gawulana. He could not explain why this was so. Mr Sokudela denied that he was the only witness to

commuters beating the plaintiff and could not explain why a group of commuters would get involved apart from that they see him every day. He indicated that he knew they were commuters from working at the station. He did not know how many commuters beat the plaintiff as the incident occurred in 2012 and he could not remember. He could not say what they looked like as he was '*not alright*' having been beaten and could not see properly. In response to it having been put to the plaintiff that Mr Sokudela and Mr Gawulana would say they tried to stop the commuters from hitting the plaintiff, Mr Sokutela stated that he was not sure before stating that they tried to stop the attack. When asked why he had not said anything about trying to stop the commuters initially in his evidence he said that maybe he had forgotten. After the commuters attacked the plaintiff, security were called and he left as his supervisor told him to drop the money at Maitland station.

[41] Mr Sokudela saw no chains, padlocks or a bottle. He was not sure if the plaintiff was injured on his face and was bleeding as he had left there early. He stated that after the plaintiff smacked him his face was burning and his eyes were red.

Evaluation

[42] There is no dispute that the plaintiff sustained injuries from an assault at Koeberg station, that he was bleeding from his head and face as a result of the assault and that he had been stabbed. In issue is the identity of the perpetrators of the assault, with the plaintiff bearing the onus to prove that it was employees of the defendant who assaulted him.

[43] In arriving at conclusions on the distinct versions placed before the Court by witnesses for the plaintiff and those for the defendant this Court is required to adopt the approach set out by Nienaber JA in *SFW Group*

Ltd & another v Martell et Cie & others.[1] This requires that findings be made on the credibility of the factual witnesses, their reliability and the probabilities.

[44] The altercation at Koeberg station began with a dispute as to the validity of the plaintiff's train ticket. The plaintiff's evidence was that he had not used his ticket to travel went undisputed given that in spite of Mr Booysen stating that the ticket had been used, no evidence was put up either by Mr Booysen or other of the defendant's witnesses to show that the ticket had been used, clipped, marked or torn when presented by the plaintiff to Mr Booysen. I am satisfied therefore that the probabilities support a conclusion that the plaintiff's version that the ticket was unused be preferred over that of the defendant.

[45] The basis on which witnesses for the defendant alleged the ticket was invalid also varied from a requirement that the ticket be used from the station at which it was purchased to that it had expired despite there appearing no expiry time on the ticket. All four witnesses for the defendant testified that a ticket expires after 30 minutes. Subject to an individual ticket verifier's subjective assessment of the explanation given for the use of the ticket at the time. In his written statement Mr Booysen recorded that the time on the ticket was 13h00, however from the face of the ticket it is apparent that the ticket is stated to be valid for the date of issue without mention of a time for validity. The reasonable conclusion to be drawn from this fact is that a single ticket purchased is valid for the period of the day commencing from the time it is purchased until midnight on the same day. The evidence of all four of the defendant's witnesses that a ticket expires 30 minutes after issue is not supported by the validity period recorded on the face of the ticket and unsubstantiated

[1] 2003 (1) SA 11 (SCA) at para 5

by any extrinsic evidence as to company policy or procedure that is different in this regard.

[46] The face of the ticket also records that it is valid for one unbroken journey and that it is not transferable. With no evidence that the plaintiff's ticket had been used, no conclusion is capable of being drawn that the ticket was invalid insofar as his journey had been broken. The ticket does not record that it may only be used from the station at which it was purchased and no basis was put up to support the claim that the plaintiff was not permitted to use the ticket from a station closer to the destination stated than the ticket he had purchased, apart from the evidence of the defendant's witnesses that this is impermissible.

[47] The relevance of the ticket is twofold. Firstly, its validity forms the underlying basis for the dispute which emerged between the plaintiff and Mr Booysen, which neither dispute. Secondly, the reasons provided for its invalidity are relevant to the issue of credibility. There is no dispute that the plaintiff sought to use the ticket he had purchased for travel from Bellville to Cape Town from Koeberg, which was a station nearer to Cape Town than Bellville. Mr Booysen held the view, supported by Mr Sokudela, that the ticket was invalid. However I am satisfied that the reason stated by Mr Booysen for his view, namely that the ticket has been used, was without foundation given the absence of evidence proving that the ticket had been used. No extrinsic evidence was produced by the defendant to support Mr Booysen's contention that the ticket must be used at the same station bought, failing which the ticket will be deemed to be invalid. However, regardless of whether Mr Booysen was correct in his assertion that the ticket was invalid, I accept it to be probable that given his view, he sought that the plaintiff purchase a new ticket if he wished to travel. It is therefore probable in my mind that Mr Booysen

would have insisted that the plaintiff buy a new ticket in circumstances in which the plaintiff persisted that his ticket be returned to him.

[48] There were varying estimations as to the time at which the assault of the plaintiff took place. The plaintiff stated that the incident occurred at around 16h00. Mr Kindu said it was at 15h45, Mr Booysen said before 15h00, Mr Gawulana said 15h00 but conceded that it could have been 16h00 and Mr Sokudela said it was after 14h00 as he had returned from lunch. Mr Booysen, Mr Gawulana and Mr Sokudela in their written statements recorded that it had taken place at 17h00.

[49] The plaintiff's evidence that Mr Booysen started pushing him with one hand towards the ticket office to buy another ticket and that when he did not move four or five ticket verifiers joined and started pushing and beating him accorded with that of Mr Kindu. Mr Kindu said that the ticket verifiers pushed the plaintiff to the ticket window and beat him. The evidence for the plaintiff accorded with the contents of his written statement and that of Mr Kindu concerning the assault.

[50] Mr Booysen's evidence that after the plaintiff had asked for his ticket back, the plaintiff slapped him in the face with an open hand causing his glasses to break and pulled him out the gate grabbing him by his shirt and pushed him against the wall does not accord with the contents of his written statement taken after the incident. In his statement Mr Booysen recorded that the plaintiff *'was grabbing at me and pushing me all over and I was trying to defend myself. He headbutted me, pushed me against the wall causing me to scrap* (sic) *my arms*'. In evidence he made no mention of being head-butted, of being pushed all over or of having had his arms scraped.

[51] Mr Sokudela's evidence was that the plaintiff hit Mr Booysen, grabbed him by the shirt and threw him against the wall, hitting him in such a manner that his glasses fell. Mr Sokudela stated that when he asked the plaintiff why he had hit Mr Booysen, the plaintiff hit him. Mr Sokudela stated that Mr Gawulana then came to help and the plaintiff '*smacked him and kicked him*' too. Mr Gawulana testified that he arrived on the scene of the assault before Mr Sokudela and that with one hand holding Mr Booysen, the plaintiff kicked him in the groin and then smacked Mr Sokudela across the face. Mr Sokudela stated that the plaintiff held Mr Gawulana under the throat and then kicked him.

[52] Mr Sokudela initially testified that he was unable to defend himself against the plaintiff's attack given that he held the ticket machine and money but then testified that he had handed the machine and money to another employee before approaching the plaintiff. He evidence was also that company policy forbids employees defending themselves and that the customer is always right, unless as he stated the customer is wrong. This, he said, was why none of the ticket verifiers defended themselves when attacked by the plaintiff.

[53] The plaintiff's evidence was that he was stabbed in his left rib, with his clothing presented in Court confirming this to be so. He said he '*started to push them also*', defending himself realising he was in danger. He stated that he asked the defendant's employees to call the police if they were right. He said they all spoke and then attacked the plaintiff again, two of the defendant's employees using padlocks and a chain in doing so causing injuries to his head. He was also hit on his head with the glass bottle, the pieces of which he later found in his bag. Both the plaintiff and Mr Kindu heard reference made to '*makwerekwere*'. Mr Kindu stated that he saw four other employees, all Metrorail staff, fought

with the plaintiff and hit him with locks and a bottle, with Mr Booysen repeatedly pushing the plaintiff out of the station. Mr Booysen's glasses broke and he was angry with the plaintiff. Mr Kindu indicated that the fighting stopped when the public asked why the defendant's employees were doing this.

[54] It was put to the plaintiff in cross examination that both Mr Gawulana and Mr Sokutela would testify to having attempted to halt the commuters from attacking the plaintiff. Mr Sokutela was however the only employee who witnessed commuters attacking the plaintiff and was unable to identify these commuters as he did not know them, although he stated that '*they know me*' as they see him daily. Mr Sokudela in his written statement recorded that the commuters coming off the platform '*also started hitting him* [the plaintiff] *as he was wild and unstoppable. No-one hit him with any bottles or knives or locks*'. Mr Gawulana in evidence could not dispute that the plaintiff was attacked by Metrorail officials on the day stating that he did not see this. Mr Booysen's evidence was that there were many people around who were unknown to him and who pulled the plaintiff from him but he testified no further as to who assaulted or stabbed the plaintiff. Both the plaintiff and Mr Kindu stated that commuters tried to help the plaintiff and phoned the ambulance and the police. The plaintiff denied breaking Mr Booysen's glasses, which broke when the defendant's employees were attacking the plaintiff. Mr Sokudela stated that the matter was not reported to security as the security was on the trains.

[55] The plaintiff impressed as a credible witness who was candid and direct in the witness box. This was so in spite of certain difficulties which arose with the French interpretation. These difficulties did not alter the quality of his evidence, which accorded with the content of his

contemporaneous statement provided to the police and with the evidence of Mr Kindu. I accept that Mr Kindu was unknown to the plaintiff prior to his assault and there is no basis before this Court in light of the evidence of both the plaintiff and Mr Kindu to this effect on which to conclude differently, with both testifying to there being no other link between them apart from the fact that they were both Congolese. In such circumstances, and given that Mr Kindu's statement was interpreted from French, I am satisfied that his evidence was that of an independent third party on the scene and that this is so in spite of the reference to the plaintiff as his 'friend' recorded by scribe taking down his written statement. Mr Kindu bore no knowledge of the reference to the plaintiff wanting to get onto a train to Salt River recorded in his statement.

[56] The similarities in the statements of the defendant's witnesses, all of whom recorded the incident as having occurred at 17h00, to the plaintiff having come from Maitland and to there being a 30 minute period within which to use a ticket, are noteworthy. This is particularly so when their oral evidence differed on the time of the assault, when the plaintiff disputed that he had been at Maitland and when there was no extrinsic evidence put up to prove the 30 minute expiry rule.

[57] The evidence of Mr Mlobeli must be considered against that of the plaintiff who denied that he went to Maitland station on the day. I am unable to accept Mr Mlobeli's evidence regarding the identification of the plaintiff at Maitland as either credible or reliable. He confidently recalled, incorrectly, what the plaintiff wore on the day and his physical description of the plaintiff was coloured by his having seen the plaintiff at the criminal court when the defendant's employees faced charges. The fact that all the defendant's witnesses made reference to the plaintiff having been at Maitland station in their statements permits a conclusion

that the matter had been discussed between them, which is further supported by the existence of other similarities in their statements. Mr Booysen in his statement indicated that he told the plaintiff that he could not get off the train in Maitland, while the other witnesses indicated that the plaintiff had come from Maitland station. Given that there is no evidence that the plaintiff's ticket had been used and with Mr Mlobeli's evidence that the plaintiff was attempting to board again at that station, had Mr Mlobeli's alleged interaction with the plaintiff been known to the defendant's witnesses prior to their statements being made, they would have known that the plaintiff was accused by Mr Mlobeli of attempting to board a train in Maitland. It is not clear therefore where Mr Booysen would have obtained information that the plaintiff had exited the train at Maitland and attempted to board the train at the same station unless he had understood this to be what Mr Mlobeli had indicated. It is possible that the plaintiff mentioned having gone to Maitland from Bellville, as he stated he did, without using the train and that Mr Booysen understood this incorrectly to mean that he had interrupted his journey. The reference to the plaintiff having come from Maitland station in the statements of Mr Gawulana and Mr Sokudela however support a conclusion that the issue had been discussed between the defendant's witnesses.

[58] Also remarkable is the distinction between the version of the assault that Mr Booysen gave in oral evidence and that contained in his statement. It is reasonable to conclude that the description of the assault contained in the written statement must have been provided by Mr Booysen given its specific reference to his having been pushed all over and head-butted, not aspects that a scribe would reasonably arrive at of his or her own accord. Furthermore, the statement that commuters then pulled the plaintiff off him and that he saw Mr Gawulana and Mr

Sokudela '*bunched together around the man who attacked me. But there were so many I could not see what was going on*' did not accord with the evidence he gave in Court when he made no mention of Mr Gawulana and Mr Sokudela being around the plaintiff with commuters. These discrepancies are not trivial and they call into question Mr Booysen's credibility as a witness and the reliability of his testimony.

[59] The discrepancies between Mr Gawulana's oral evidence and the contents of his statement also bear mention. In his testimony he made no reference to Mr Booysen having given him the plaintiff's ticket to verify the date, nor did he testify in Court in the manner recorded in his statement that '*I saw that it was old and I tore it up and threw it in the bin*'. The evidence of Mr Booysen, Mr Sokudela and the plaintiff was to the contrary. In evidence Mr Gawulana stated that the plaintiff kicked him and let go of Mr Booysen with one hand when doing so, which was distinct to what is recorded in his statement that the plaintiff '*smacked me in my face. He kicked me and started beating me.*' I find it improbable that the plaintiff would, with one hand holding Mr Booysen, have waged an assault upon Mr Gawulana without either of them fighting back. Mr Gawulana's statement also recorded that commuters started hitting the plaintiff as they were angry with the plaintiff regarding the manner he conducted himself. However in oral evidence Mr Gawulana stated that he did not see the commuters hitting the plaintiff, only going to him in circumstances in which he could not differentiate between commuters and the defendant's employees and did not know who assaulted the plaintiff.

[60] Mr Gawulana was a poor witness who resisted making concessions when due and who had to be prompted to answer questions on a number of occasions, requiring that questions be restated. He was evasive and

sought time within which to construct an answer to questions posed. His evidence was, in my mind, neither credible nor reliable and little store can be placed on it.

[61] Similar conclusions apply to the evidence of Mr Sokudela. He initially testified that he was unable to defend himself against the plaintiff's attack given that he held the ticket machine and money but then testified that he had handed the machine and money to another employee before approaching the plaintiff. He testified somewhat illogically that company policy forbids employees defending themselves and that the customer is '*always right*', unless as he stated, '*the customer is wrong*'. Mr Sokudela was the only employee who witnessed commuters attacking the plaintiff but was unable to identify these commuters as he did not know them, although he stated that '*they know me*' as they see him daily. Yet it was put to the plaintiff in cross examination that both Mr Gawulana and Mr Sokutela would testify to having attempted to halt the commuters from attacking the plaintiff which supports a conclusion that this way the version they gave to the defendant's legal representatives.

[62] Mr Sokudela was stubborn and evasive in his demeanour in Court, on occasion refused or failed to answer questions, when he did answer did not do so in a direct manner and presented as both uncooperative and untruthful in his evidence. He refused to concede that the sample ticket shown to him does not state a time of expiry when clearly it does not. He stated that the assault occurred at close to 17h00, then testified that it happened after he finished lunch at 14h00 and then claimed the evening begins at 14h00. Mr Sokudela was a poor witness, whose evidence contained internal contradictions, was far-fetched and I am satisfied was fabricated and untruthful.

[63] In argument Ms Slingers for the defendant submitted that the plaintiff's version was improbable in that the station was populated with commuters, yet conceded that the evidence was that it was commuters who came to the plaintiff's assistance during both assaults. I am satisfied that the versions of the plaintiff and Mr Kindu were not inconsistent or improbable and that rather it was the evidence of the defendant's witnesses that was improbable when considered against that of the plaintiff and Mr Kindu.

[64] I find it probable that Mr Booysen became angered with the plaintiff who he had refused entry to the station and who demanded the return of his ticket. I accept the evidence of the plaintiff and I find it improbable and unlikely that the plaintiff, when surrounded by other of the defendant's employees and commuters, would have smacked Mr Booysen in his face breaking his glasses when his ticket was not returned to him. More probable on the evidence before this Court is that Mr Booysen pushed the plaintiff towards the ticket office instructing him to purchase a new ticket and when the plaintiff did not move, other of the defendant's employees came to assist Mr Booysen. I find it to be probable on the evidence before this Court that at this time the assault on the plaintiff by employees of the defendant commenced and that it was during the course of this assault that he was stabbed and hit on the head with padlocks and a chain which were used at the station. Given the physical nature of the assault upon the plaintiff, in the course of the attack upon the plaintiff by the three employees of the defendant, Mr Booysen's glasses were broken. I do not accept that the fact that the glasses were broken is proof of an assault upon Mr Booysen at the hands of the plaintiff.

[65] I am not satisfied that much turns on the length of the pause in the assault of the plaintiff and whether this interrupted the assault such as to warrant the event being described as two distinct assault. It is clear that the assault of the plaintiff occurred in the manner he described and that it was witnessed by Mr Kindu. Ms Slingers contended that the plaintiff's version was improbable in that it was not apparent why the assault was halted. I find it probable however that with the plaintiff bleeding and injured, the defendant's employees halted the attack on him.

[66] Ms Slingers contended that the probability of the plaintiff's version is undermined by the inconsistencies in the evidence of Mr Kindu. I do not agree. In material respects the evidence of the plaintiff was corroborated by that of Mr Kindu on key aspects related to the attack upon the plaintiff.

[67] Issue is taken with Mr Kindu's evidence that Mr Booysen was drinking orange juice out of a white glass bottle while the plaintiff testified that he was drinking coke. I am not persuaded that very much turns on this discrepancy. This is so given that there was no challenge to the evidence of the plaintiff that following the assault he found pieces of glass from the bottle which had been used to hit him in his bag. The fact that Mr Kindu and the plaintiff recall different substances in the bottle, rather than leading to a conclusion that there evidence was false and reliable, achieved in my mind the opposite result. It indicated that their evidence was not constructed to suit the plaintiff's version and bolstered my conclusions regarding their credibility and the reliability of their respective accounts. The same applies to their evidence regarding the colour of the bibs worn by the defendant's employees and the discrepancies in their description of the assault, which given its nature and their respective positions at the time are reasonable.

[68] Ms Slingers suggested that the evidence of Mr Kindu was unsatisfactory in that he could not explain adequately why he ran to the police station to call for assistance as opposed to call security on the scene. I do not agree. Mr Kindu did as a responsible member of the public would – he called for help when help was not available. The fact that he saw the defendant's employees standing with the chain and padlocks from 15h20 or 15h25 to 15h45 is material and supports the plaintiff's version that these items were used in his assault. The same applies to the evidence of both the plaintiff and Mr Kindu both of whom testified that the defendant's employees made derogatory reference to the plaintiff as a '*makwerekwere*'.

[69] As Selke J stated in *Govan v Skidmore*[2] –

> '*...it seems to me that one may, as Wigmore conveys in his work on Evidence 3rd ed para 32, by balancing probabilities select a conclusion which seems to be the more natural, or plausible, conclusion from amongst several conceivable ones, even though that conclusion be not the only reasonable one.*'

[70] On a conspectus of the evidence before this Court I am satisfied that the more natural and plausible, conclusion to be reached is the one put up by the plaintiff and supported by Mr Kindu. It follows that the plaintiff's claim on the merits must succeed, have discharged the burden upon him to prove on a balance of probabilities the merits of his case against the defendant.

[71] The defendant must therefore be held liable for such damages as the plaintiff can prove arising from the injuries sustained by him as a result of and arising from his assault on 17 May 2012.

[72] There is no reason as to why costs should not follow the result.

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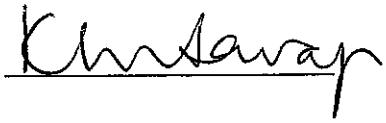
[2] 1952 (1) SA 732 (N) at 7344A-B

Order

[73] In the result, I make the following order:

1. The plaintiff's action succeeds on the merits and the defendant is held liable for such damages as the plaintiff can prove arising from the injuries sustained by him on 17 May 2012.

2. The defendant is to pay the plaintiff's costs on the High Court scale.



K M SAVAGE

Judge of the High Court

Appearances:

Plaintiff:	R Abrahams Instructed by Jonathan Cohen and Associates
First Defendant:	H Slingers Instructed by Werksmans Attorneys