



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Rautini v Passenger Rail Agency of South Africa (Case no. 853/2020) [2021] ZASCA 158 (8 November 2021)

Today the Supreme Court of Appeal (SCA) handed down judgment upholding the appeal against the Western Cape Division of the High Court, Cape Town (the full court).

The issue before the SCA was whether contents of documents discovered by the appellant were admissible without the author having testified about the correctness of the contents thereof.

On the morning of 19 November 2011, the appellant boarded the train at Du Toit station and was on his way to work. He testified that he usually disembarked the train at Lynedoch station and would walk back to Spier Wine Estate. The appellant's evidence was that the doors of the train were open when the train left Du Toit station and remained open throughout the journey. Just before Lynedoch station, a gang of three men appeared and threatened the passengers with a knife and a gun, demanding their cell phones. In a scuffle with one of them, the appellant was thrown out of the moving train. The appellant does not remember where he fell. Other evidence indicated that he was later found on the platform at Spier station. He was seriously injured and was taken to Stellenbosch hospital in an ambulance. He regained consciousness at the Paarl General Hospital.

Counsel for the appellant argued that the medical records could not be relied on as they constituted hearsay evidence. The full court however attached considerable weight to them on the basis that the appellant, who in fact discovered them, never disputed their veracity. It then concluded that the appellant in fact supported the respondent's version of events. The full court also considered as relevant the fact that an incident as serious as that of robbery and attempted murder on a train was not reported to the police or the respondent, and that it only came to light a year later when the appellant lodged a claim with the respondent. The full court then drew the inference that the appellant's version of events was a recent fabrication.

The SCA held that the contents of the hospital records and medical notes constituted hearsay evidence, and it is trite that hearsay evidence is *prima facie* inadmissible. The discovery thereof by the appellant in terms of the rules of court did not make them admissible as evidence against the appellant, unless the documents could be admitted under one or other of the common law exceptions to the hearsay rule. The SCA held further that the appellant was never cross-examined about when he had first related to anyone that assailants had pushed him from the train. If the respondent had wanted to suggest that the appellant's version, that he was pushed from the train, was a recent fabrication, it should have explored this aspect with the appellant. In the absence of cross-examination of the appellant on this aspect, the full court committed a material misdirection when it found that his version only became known a year later.

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