



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

GUGU PRECIOUS MTHEMBU v TRANSNET t/a METRORAIL

The Supreme Court of Appeal (SCA) today refused an application, by Gugu Mthembu, for special leave to appeal a decision of a Full Court of the Johannesburg High Court. Ms Mthembu had sued Metrorail for damages arising from injuries she sustained at Tembisa Station on 25 May 2002. The trial court had ruled that her injuries were caused by the negligence of Metrorail's servants and refused Metrorail's application for leave to appeal that decision. That decision was overturned by the Full Court after the SCA granted Metrorail leave to appeal to that court.

The SCA confirmed the Full Court's finding that the trial court had committed a number of misdirections which had caused it to come to the wrong conclusion. In this regard, the applicant's version was that she was in the process of boarding a train to Kempton Park when the train suddenly pulled off without warning causing her to bump her head on its door panel. She had also testified that her three companions had already boarded the train when she got injured. The trial court found her to be an honest and forthright witness and rejected the version by Themba Khumalo, one of her companions who testified for Metrorail, branding him as an unreliable witness who may have been persuaded to testify against the

applicant. Khumalo's version was that applicant had stumbled headlong onto the train when it entered the platform and before it came to a standstill. The trial court had also found that Metrorail had failed to produce evidence showing why the applicant would have behaved in that bizarre fashion.

The Full Court found that the trial court had committed a misdirection by not considering the evidence of Emma Phasha, a security guard who was on duty at the station on the day the accident happened. In this regard, Phasha's version was that one of the applicant's companions had summoned her and her colleague from an overhead bridge where she was stationed advising them of the accident. She also testified that this was shortly after she had heard screaming coming from the platform where the accident happened. She testified that she found the injured applicant lying on the platform with her three companions standing around her and that one of them related to her and her colleagues how the applicant got injured. She recorded this report in the occurrence book and her pocket book. In this regard, the SCA found that the Full Court had correctly found that Khumalo's version was corroborated by Phasha in her testimony as well as through the note she made of the report given to her by one of the applicant's companions. The SCA also found that the Full Court was correct in finding that Phasha's testimony corroborated Khumalo's version that none of them had boarded the train when the accident happened. The SCA further found that the Full Court was justified in accepting Khumalo's version. The SCA ruled that the Full Court had dealt with the matter properly and comprehensively and that there were therefore no reasonable prospects in a further appeal.