


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)

18/11/16  
CASE NO: 41405/2011

(1)	<u>REPORTABLE: NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES: NO</u>
(3)	<u>REVISED.</u>
..... DATE	 SIGNATURE

In the matter between:

HJ ODENDAAL

Plaintiff

and

GOVAN MBEKI MUNICIPALITY

Defendant

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J U D G M E N T

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NONYANE, AJ:

- [1] The plaintiff sues the defendant for damages arising out of personal injuries he sustained when he fell into an open manhole situated on a property owned by the Govan Mbeki Municipality (the defendant). The

manhole is on the pavement immediately adjacent to a business called Jungle Inn Pub and Grill Bed and Breakfast (hereinafter referred to as "Jungle Inn") in Lesley. The incident took place on the evening of 20 February 2009.

- [2] At the commencement of the trial, by agreement between the parties, the Court made an order in terms of Rule 33(4) separating the quantum from the merits. The trial proceeded on the merits only. At the outset of the trial, the parties agreed that the sole question to be determined regarding the merits is whether the plaintiff fell into the manhole or not.
- [3] The plaintiff's version is that he was walking on the pavement at night when he suddenly fell into the open manhole. In support of his version, the plaintiff testified on his own behalf and called Mr Charles Jordan, the owner of Jungle Inn, and his cousin, Hendrik Odendaal.
- [4] The plaintiff testified that on the 20 February 2009 he went with his cousin to Jungle Inn. He was driving a bakkie and they parked it outside Jungle Inn on the street next to the pavement. They, after a while, decided to go and he reminded his cousin that he must drive as it was now his turn to drive the bakkie.
- [5] He then went to the bathroom and his cousin went to the bakkie. From the bathroom he followed his cousin to the bakkie. He walked to the passenger side of the bakkie and he suddenly felt the ground giving in

and he fell into the manhole with his wallet and phone in his hands. On realisation that he has fallen into a sewerage hole, he then picked himself up, grabbed and pulled himself out of the manhole.

- [6] He was covered with sludge all over. He took off his clothes and walked naked to Jungle Inn where he asked for soap and to use their tap. He then washed himself with Sunlight liquid while his cousin was pouring water, contained in a bucket, on him. He testified that his cousin had extra clothes with him and he then put them on and they left the place.
- [7] The owner of Jungle Inn, Mr Charles Jordan, corroborated the plaintiff's testimony. In his testimony, he testified that the manhole was open and there had been incidents of people falling into the manhole. He further testified that he once helped take out a child who had fallen into the manhole. He was concerned about the open manhole as it posed a danger to his customers. He reported it to the municipality but the municipality failed to act. He further testified that he was informed by his staff about the incident when they sought permission from him to allow the plaintiff to use the shower.
- [8] Hendrik Odendaal, the plaintiff's cousin, also corroborated the plaintiff's testimony that on the day of the incident they were together at Jungle Inn. He testified that he did not see the plaintiff when he fell into the manhole because he was already inside the car. He only heard him

screaming and when he went out to check, he saw the plaintiff covered with sludge. He testified that the plaintiff took off his clothes and used the Sunlight liquid and water from the tap of Jungle Inn to wash himself.

- [9] The defendant denies that the plaintiff fell into the manhole. The defendant called Phetha Alfred Mangena who works for the defendant as a Biochemist Water and Sewer.
- [10] Mr Mangena was not testifying as an expert witness but as the employee of the defendant. His testimony was that the manhole was not open as at the time of the incident. He also testified that it would not be possible for the plaintiff to have fallen into the manhole and if indeed he had fallen into the manhole, it would not have been possible for him to take himself out.
- [11] The defendant contended that there had never been an open manhole in the area or the immediate vicinity of the area where the plaintiff alleged the incident occurred. The defendant contended that it was not possible for the plaintiff, being an adult person, to have fallen into the manhole, even if he intentionally attempted to jump inside, taking into account the very small size of the opening of the manhole.
- [12] The defendant contended that even assuming that the plaintiff were to fall inside the manhole, the depth of the said sewerage holding hole

was about 2.5 metres down below the ground level which would have been impossible for the plaintiff to get out without the assistance of equipment. The defendant further contended that the plaintiff would have drowned due to the sewerage sludge inside the drain hole and he would have been severely affected by methane gas fumes with skin infection.

- [13] The defendant through the pleadings, the pre-trial minutes and further particulars for purpose of trial admitted that: the manhole is situated on municipal property; the pavement is used by pedestrians; that it has a legal duty to ensure the safety of pedestrians using the pavement and to keep the manhole closed and safe and that there was a foreseeability of harm to any person walking on the sidewalk should the defendant not take reasonable precautions to close the manhole.
- [14] The defendant further admitted that any causal negligence on its part would be wrongful and unlawful and that a closed manhole will prevent incidents in respect of the public in general.
- [15] The defendant in argument suggested that the plaintiff's negligence contributed to the damages suffered by the plaintiff and the Court should apportion damages. Contributory negligence and apportionment of damages have to be specifically pleaded. These were not pleaded by the defendant and the defendant is accordingly not entitled to any apportionment.

- [16] In the light of the admissions made by the defendant, the issue that has to be decided is whether or not the plaintiff fell into the manhole. If the question is answered in favour of the plaintiff the liability of the defendant will ensue. I am satisfied that the evidence of the plaintiff's witnesses was credible and reliable. Their evidence was also supported by the photographs submitted in Court. Nothing suggests that their evidence is questionable or unreliable.
- [17] The cross examination of the plaintiff's witnesses did not put any aspect of their evidence in doubt nor did it enhance the defendant's case. The same cannot be said of the defendant's evidence. The evidence of the defendant amounted to a mere denial of what actually happened without tendering any plausible supporting evidence. The version of the defendant is such that it cannot be believed.
- [18] In the light of the evidence adduced on behalf of the plaintiff and the admissions made by the defendant I am satisfied that the plaintiff has proved its entitlement to the relief it seeks on a balance of probabilities.
- [19] In the result, I make the following:
- a. The defendant is liable to compensate the plaintiff in full for his proven or agreed damages arising from the incident that took place on 20 February 2009.

- b. The defendant is ordered to pay the plaintiff's costs of suit including the costs of the inspection *in loco*, the fees of Adv BP Geach SC and the costs of W Naude, the plaintiff's expert.



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**NONYANE AJ  
ACTING JUDGE OF THE  
HIGH COURT OF SOUTH  
AFRICA, GAUTENG  
DIVISION, PRETORIA**

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