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IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION, MTHATHA)

CASE NO: CA 50/2023

In the matter between:

ZIZIPHO BRIDGETTE ZIDE Appellant

and

XHOBANI SECURITY SERVICES First respondent

FALCON FIREARM TRAINING ACADEMY Second respondent

JUDGMENT

RUSI J

[1] The appellant as plaintiff in the trial court instituted a claim founded on her alleged unlawful and intentional, alternatively, negligent shooting on 08 June 2016 by a security guard who was, at the time, the employee of the first or the second respondent. As a result of the shooting, she sustained a rapture of her right eyeball for which she received medical treatment at the Nelson Mandela Academic Hospital,

Mthatha. She consequently holds the first and second respondents liable, jointly and severally, for damages in the sum of R16 million representing pain and suffering, loss of amenities of life, permanent disfigurement, past and future medical expenses.

[2] The trial proceeded on the merits of the appellant's claim only, with the determination of the *quantum* of damages standing down for later determination. In a judgment handed down on 01 December 2020 the trial court [1] dismissed the appellant's claim, with costs. This appeal is with the leave of the trial court against that judgment and order.

The background facts

[3] A student protest erupted on 08 June 2016 at the Walter Sisulu University, Mthatha Campus (the campus), during which a group of about 500 students threatened to disrupt examinations that were underway at the examination hall identified as the 'Great Hall'. This they did by intimidating the non-protesting students and examiners and also threw rocks and bottles at this examination venue. At the time, the members of the first respondent were the security guards in charge of safety and security at the campus in general and they were on guard of the Great Hall.

[4] When the protest broke out, the first respondent solicited the intervention of the second respondent which in its view had expertise in crowd control. On arrival of the members of the second respondent at the campus, five members of the first respondent, together with those of the second, attended the Great Hall to secure its precinct and to protect the non-protesting students and administrative personnel that were in charge of the examinations. On arrival at the Great Hall, they negotiated with

[1] In the judgment of Mafunda AJ under case number 229/2017 delivered on 01 December 2020.

the representatives of the protesting students with a view to dispersing the protesting crowd which, by then, was close to the doorway of the Great Hall.

[5] The negotiations failed, and the crowd of students became aggressive and threw rocks and bottles at the contingent of security guards that were on guard of the precinct of the Great Hall. In response, the members of the second respondent drove the protesting students towards student residences at the campus, more particularly towards Chumani residence. At the time of this incident, the appellant lived in room 181 situated on the ground or base level of Chumani residence.

[6] An inspection *in loco* that was held during the trial revealed that the main entrance of Chumani residence is situated on the 3rd floor of the same building. Three flights of stairs lead to each of the three floors of student rooms inside the residence and there is a stairway landing between the 2nd and 3rd floors. From this landing, the entrance to the Chumani residence is visible. A *Google* map was also handed to the court *a quo* with markings of various points relevant to the scene of the protest as it continued to unfold from approximately 10h00 on 08 June 2016.

[7] When the bottle and rock throwing by the protesting students persisted with the crowd simultaneously advancing at the security guards in waves, the members of the second respondent fired paintballs and rubber bullets at them as a further attempt at their dispersal. The fracas endured for about two hours and the students would move from various points around the campus. At some point during the violent protests, two security officers of the first respondent were injured and a total of three loaded shotguns were taken from some of the guards.

[8] The members of the second respondent eventually ran out of rubber bullets and they retreated to the main gate of the campus where they had discussions with the Student Representative Council (the SRC) members regarding their intention to use live ammunition in the light of the persistent aggression by the protesting students. The use of live ammunition was apparently the last option available to them in those circumstances in their attempt to protect their lives, those of the third parties not involved in the protest, and the property of the University. It was at this point that the SRC managed to disperse their constituency, the protesting students.

The pleadings

[9] The appellant's particulars of claim are far from being a model of clarity. In them, she sets out her cause of action as being founded on her intentional, alternatively, negligent shooting by the members of the first or second respondent. Even though no averment was pertinently made by the appellant in the particulars of claim that her shooting by the members of the first and second respondents was unlawful, it appears that during the trial both parties and the court accepted that the appellant's claim was that she was unlawfully, alternatively, negligently shot. We have no qualms with the approach followed by the trial court in this regard, it appearing that neither of the parties were prejudiced by the fact that, as far as it could be discerned from the record before us, no formal amendment was sought.

[10] In substantiating her assertion that she was negligently shot by an employee of the first or second respondent, the appellant states, in essence, that the said security guard failed to exercise the reasonable care that was expected of him when handling his firearm and failed to take reasonable steps expected in the circumstances in order to prevent her shooting.

[11] In resisting the appellant's claim, the first respondent pleaded that its members only heard of the shooting at 10h18 on that day and none of them shot the appellant. It further pleaded that to the extent that its members shot the protesting students with paintball guns which discharged disc ceramic balls, they acted in private defence as they were under attack by the students who threw rocks and bottles at them.

[12] The second respondent pleaded, in turn, that its members shot the protesting students in private defence in circumstances where there was a threat to their lives, the lives of the innocent students; and University personnel and property. They shot them with paintball guns which discharged ceramic balls.

[13] As alternative defences, each of the respondents pleaded that the appellant, having been aware of the protest action, or, when she should have been aware of it, voluntarily assumed the risk of harm by placing herself in the vicinity of the protesting and violent group of students who were attacking the security guards with rocks and bottles.

[14] Each of the respondents further pleaded, as a further alternative defence, that by her own negligence the appellant contributed to the harm she suffered when she placed herself in an unsafe position thereby unnecessarily exposing herself to the risk of injury, and when she failed to pay sufficient attention to the protesting students and the reaction of the security guards. They further pleaded in this regard that the appellant failed to take steps to move away from or avoid the protest action where, had she paid sufficient attention, she could and should have done so. On these bases, they claim apportionment of damages as envisaged in the Apportionment of Damages Act 34 of 1996.

[15] In a pre-trial meeting that was held on 06 November 2019 the parties further curtailed issues and reached an agreement regarding the following:

(a) If the appellant was shot at in Chumani residence as she pleaded, then liability of the respondents would follow.

(b) If, on the other hand, the appellant was shot at in circumstances where she was in the vicinity of the protesting students who were acting violently and attacking the security guards, none of two respondents would be liable for the harm she suffered.

(c) In the event of a finding that the appellant was shot by a member of the first respondent, the second respondent would attract no liability as its members would have been hired by the first respondent to undertake crowd control during the student protest.

(d) If the court's finding is that she was shot by a member of the second respondent, the first respondent would carry vicarious liability for the actions of the second.

[16] The parties further made common cause of the fact that rubber bullets were fired at the protesting crowd of students by the security guards that were deployed on campus to deal with the protest and were fired at no nearer than 70 meters from the student residences.

[17] Furthermore, trial particulars concerning the shooting incident were provided by the appellant upon the second respondent's request in terms of Uniform Rule 21(2). She stated in her reply that at the specific time of the shooting, around 12 noon, she was on the stairway landing between the 2nd and 3rd floors of Chumani residence and the security guard who shot her was in front of the entrance of the residence which is situated on the 3rd floor. Further particulars provided by the appellant are that it was peaceful in this residence at the time, there were no protesting students and no one else was attacked except for her. She further stated that the security guard who shot her fired two gunshots, but the second one missed her.

The trial and incidence of onus

[18] Even though the onus rested on the respondents to justify the admitted shooting, the appellant accepted the duty to begin leading evidence. This was so because she had to prove whether she was shot by the security guard in the employ of the first or second respondent.

[19] The appellant was the only witness in her case. Two security officers, Mr Stemela and Mr Mjika testified for the first respondent, while one security officer, Mr Collacott, testified for the second respondent. Where, in this judgment, reference is made to these respective witnesses without the use of their titles, I intend no disrespect to them but do so for the sake of brevity and convenience.

[20] Medical records that were discovered between the parties were admitted in evidence, by agreement between the parties, on the customary basis that while there would be no need to prove them, their correctness was not admitted.

The appellant's evidence

[21] The appellant denied that she, in any way, voluntarily assumed the risk of being shot or that she was in any way negligent as the respondents alleged.

[22] She testified that she was inside the Chumani residence when she was shot. This happened as she was about to exit the residence to go to the library in preparation for her examination the next day. As she was alone on the stairway landing between the 2nd and 3rd floors, she encountered a security guard who was dressed in black attire and who stood outside the residence at a distance of about three metres from her. The security guard pointed the firearm towards the exit point of the residence which was at the time on upper level in relation to where she was. When she was shot, she had not done or said anything to the security officer. At the

time of the shooting, it was only her and her shooter in the residence. In her words, *"it was quiet"* in the residence, and there were no protestors outside either.

[23] Further details regarding what happened to the appellant after she was shot emerged during her cross-examination by counsel for the second respondent. In this regard she told the trial court that after she was shot, she ran back to her room where she found her roommate, Ms Zizipho Majingo whom she had left behind when she left for the library. She phoned her family while her roommate brought security guards to the room. She was accompanied out of her room by her roommate and the security guards until they reached the 3rd floor of the residence where she was handed over to the members of the SCR. The members of the SRC accompanied her to the main gate of the campus where she met her brothers who transported her to Hospital.

[24] Asked whether she was aware of the protest that was taking place on campus on that day, the appellant testified, at first, that she was aware that there was a protest taking place on that day even though she did not know where exactly on campus it was taking place. She went further and told the trial court during further cross-examination on this aspect, that she did not hear any chanting of protest songs on the day she was shot as she had remained in her room until she went out to go to the library. She had last witnessed the protest on the previous days. Other than that, she only saw a large gathering of students who were standing calmly near the main gate of the campus as she was being transported to hospital after she was shot.

[25] When her identification of her shooter was traversed in cross-examination, the appellant told the trial court that the person who shot her was a security guard and she identified her by his black attire and the fact that he also wore a war vest. According to her, members of the first respondent wear black trousers and yellow shirts as their work uniform. Due to the distance that she was at when she

encountered her shooter, she was unable to ascertain the security company logo or names that were embellished on his attire. The appellant was also unable to deny or confirm what was put to her, that black attire was worn by the first respondent's tactical team. It was during further cross-examination by counsel who represented the first and second respondents, respectively, that she testified that she was shot by 'a white person' who also wore 'thick lensed eyeglasses that looked like binoculars.'

[26] She disavowed her initial testimony in which she stated that she became aware that a protest was taking place on campus even though she did not see where exactly it was taking place. In short, the appellant distanced herself from the protest action and insisted that she was inside Chumani residence when she was shot and that she never saw anyone protesting on 08 June 2016. This concluded the appellant's evidence.

The first respondent's evidence

[27] Mr Stemela told the court that he and two other security guards of the first respondent were on duty on campus as the security guards who were sent there on 08 June 2016 to maintain order in the wake of the student protests. They were together with members of the second respondent. Keeping guard of the Great Hall was himself, Mr Mjika, Mr Mzaca and members of the second respondent. His other colleague identified only as 'Ntobeko' watched over their vehicle which was parked near the library.

[28] It was Mr Collacott, a member of the second respondent, who engaged in discussions with the students that they found in the precinct of the Great Hall when they arrived on campus. When the discussions yielded no positive result, the members of the second respondent drove the protesting students towards the Chumani residence on ground level. When the protesting students began throwing

rocks and bottles at the security guards, some of those objects got inside the Great Hall.

[29] At some stage he left the Great Hall under the guard of Mjika and Mzaca when he received communication from Ntobeko that the security vehicle was about to be burned. He went to fetch the vehicle and drove it to the main gate. On arrival at the main gate, he found Collacott and also saw Mjika running being chased by the students who were attacking him. When Mjika fell down, the students dispossessed him of his firearms – a paintball gun and shot gun. In order to rescue Mjika, he fired rubber bullets at the students who then dispersed. The trial court further heard from Stemela that he, Mzaca and Mjika were not part of the contingent of security guards who drove the students towards the residences and who fired shots at them. They remained in the precinct of the Great Hall, and he could see from that position that the students were positioned between the Chumani residence and the group of security guards of the second respondent. He could not, however, see what took place inside the residence.

[30] Mjika confirmed that while he and Stemela were on guard at the Great Hall, Stemela received a message that the protesting students were threatening to burn the security vehicle which was parked near the library. He and Mzaca remained in guard of the Great Hall as Stemela went to fetch the vehicle that the students threatened to burn. While Stemela had left, he could hear shots being fired. At some point, the firing of shots stopped, and he saw the members of the second respondent running towards the gate. Realizing that the members of the second respondent who were their backup were retreating towards the gate, he and Mzaca also ran in different directions towards the gate. As he ran towards the gate, he encountered a group of students who attacked him with bricks and stones. As a result of the attack, he lost consciousness and sustained wounds on his head, for which he subsequently

received medical treatment in hospital. While in hospital, Mzaca also arrived with injuries, and it appeared that he too had been attacked.

[31] It also emerged from the evidence of Stemela and Mjika, that they were dressed in black trousers and gold shirts, this being their work uniform as the employees of the first respondent.

The second respondent's evidence

[32] Collacott told the trial court that as the second respondent's members, they went to the campus on the special request of the first respondent since they have the expertise in crowd management. Upon arrival on campus, they attended the area where the protesting students were, being the Great Hall. They first negotiated with the protestors, but this yielded no positive result. Instead, the protesting students began throwing stones and bottles at them and on the windows of the Great Hall. They drove the students towards the residences and the stone and bottle throwing endured for about two hours.

[33] They fired rubber bullets and ceramic paint balls in self defence as the protesting students were standing on the roof of the residence and they were positioned around and behind them as they hurled rocks and bottles at them. They had no way of escaping from behind the wall where they stood as they fired the rubber bullets and paint balls at the students. The students were also armed with spades, picks and machetes.

[34] According to Collacott none of the security officers from the second or first respondents went inside or near the Chumani residence. This, he said, was because when there is a strike action on campus, the security personnel are not deployed at the residences but at security entrances and spots where there is riotous action. He

wore cargo pants, a black t-shirt and war vest as his work uniform. He did not wear any eyeglasses or binoculars. The tactical team of the first respondent wore black uniform. It was his evidence further that if the appellant was shot outside the residence where the rest of the protestors were, then, he or one of his colleagues from Falcon Firearm Training Academy shot her in the circumstances of private defence already described. He denied that he or his colleagues went inside the residence.

The findings of the trial court

[35] In dismissing the appellant's claim, the trial court found that her evidence was not credible and fell to be rejected. This, said the court, was due to its contradictory nature regarding her knowledge of the protest and her identification of her shooter. The court further found that the appellant's identification of Collacott as her shooter was an afterthought impelled by the fact that Collacott was present during the inspection *in loco* that was conducted during the course of the hearing, and he demonstrated knowledge of the shooting incident. It further found that her identification of her shooter as a 'white person' was opportunistic since Collacott was the only 'white person' among the security guards that were deployed to stabilize the campus.

[36] It was the trial court's finding further, that even though it was incontrovertible that the second respondent was contracted by the first and therefore its employee, the appellant, however, failed to establish her cause of action, namely, that she was shot at Chumani residence by the members of the first and/or second respondent. The court rejected the appellant's version as being incredible and unreliable.

The grounds of appeal

[37] The appellant, in essence, challenges the trial court's findings of fact and evaluation of evidence, as well as its alleged displacement of the onus by finding that she had to establish the identity of the person who shot her.

[38] The grounds on which the appellant relies in this appeal, regrettably, appear to be repetitive and in some instances they overlap. For ease of comprehension and clarity I take the liberty of paraphrasing them hereunder without altering their content and context. The appellant contends that the trial court erred in the following respects:

(i) Failing to accept her evidence as a single witness even though that evidence was satisfactory in all material respects.

(ii) Failing to accept her undisputed and 'uncontradictory' evidence that she was shot in Chumani residence by a security guard while she was on the landing area on the second floor.

(iii) Disregarding the fact that the security officers of the first respondent were in no position to explain the shooting incident since they were not engaged in the control of the protesting students between the Great Hall and Chumani residence and therefore not present thereat when she was shot.

(iv) Failing to have regard to the fact that only the members of the second respondent were in possession of ceramic paint balls which fact tends to corroborate her version of the shooting.

(v) Placing the onus on her to prove the identity of her shooter, that is, whether her shooter was a member of the first or second respondent.

(vi) Impugning her credibility concerning whether she had knowledge of the fact that there was a protest taking place on campus when there was undisputed evidence that during the time of the protest, she was preparing to write examinations.

(vii) Finding that her identification of Collacott as her shooter was prompted by the observations made at the inspection *in loco* which was held at the beginning of the trial in the presence of the respondents' witnesses.

(viii) Not weighing the respondent's pleaded case and bald denials of the shooting against her testimony.

The issues for determination

[39] This Court is called upon to determine whether the trial court's findings of fact ought to be disturbed, in particular, whether it was incorrect in finding that the appellant's testimony fell to be rejected as being unreliable and lacking in credibility.

[40] We are also to consider whether the appellant's shooting was justified and, thus, whether the appellant as plaintiff in the trial court proved her claim on a balance of probabilities. In so far as the alternative defences raised by the respondents are concerned, this Court must also determine whether, on a balance of probabilities, it has been established that the appellant consented to her injury by placing herself in harm's way; as well whether, by her own negligence in the form contended for by the respondents, she contributed to the injury that she suffered.

The submissions on appeal

[41] On behalf of the appellant Mr *Msiwa* made these principal submissions. The version put forward by the appellant regarding where, and the circumstances under which she was shot at by a security guard, was not controverted. On this basis, he submitted that the appellant's version ought to have been accepted by the trial court as the truth. This, said Mr *Msiwa*, was all the more so that the appellant gave evidence which was free of any contradictions. As a single witness, so the submission continued, she gave evidence that was satisfactory in every material

respect, thus entitling the court to find in her favour on the basis of her single witness evidence.

[42] Mr *Msiwa* lamented the trial court's finding that the appellant's identification of her shooter was an afterthought. In this regard, he submitted that the court ascribed an incorrect meaning to the description given by the appellant, viz, that her shooter was 'white', when it said that the person described as 'white' was Collacott. According to Mr *Msiwa*, the appellant's use of the word 'white' or 'white person' in describing her shooter had no racial connotation but was with reference to the shooter's complexion.

[43] It was further submitted on behalf of the appellant, that the trial court impermissibly allowed the respondents to advance, during trial, a case far removed from that which they each pleaded. Mr *Msiwa* went on to submit that the respondents even failed to put to the appellant the case that each of them pleaded.

[44] Regarding whether the shooting was justified or not, Mr *Msiwa* submitted that the respondents each proffered three materially different versions which warranted rejection by the trial court.

[45] Mr *Sintwa* submitted on behalf of the first respondent that it cannot be liable for the harm caused to the appellant since its members were not part of the contingent of security guards that drove the protesting students back towards the residences and they did not shoot at the students.

[46] We brought to the attention of Mr *Sintwa* that there was evidence on the record of proceedings before us, which suggests that an employee of the first respondent was in possession of a shot gun from which rubber bullets were fired at the protesting

student, and that medical records from the hospital where the appellant was treated indicate that she gave a history of being shot with a rubber bullet. On the issue of vicarious liability, we further asked Mr *Sintwa* if, in light of the common cause fact that the members of the second respondent were hired by the first respondent to manage the crowd of protesters, it did not follow, in any event, that the first respondent was liable for the wrongful actions of the second respondent.

[47] Other than submitting that the first respondent stood by its heads of argument, Mr *Sintwa* was unable to make any insightful submissions on the points we raised with him. That being the case, in the heads of argument filed on behalf of the first respondent, it was submitted that the trial court was justified in rejecting the appellant's version as being unreliable and incredible. On this score, it was further submitted that the contradictions apparent from the appellant's evidence regarding her knowledge of the protest action went to the heart of the issues that the trial court had to determine, namely, whether it could be said that she was part of the protesting crowd and therefore, put herself in harm's way.

[48] It was further contended that the appellant's identification of Collacott as her shooter was an afterthought which inexplicably came about after the inspection *in loco* and when she had already given her evidence in chief. This, so the contention continued, was an act of embellishing and adapting her version.

[49] It was also submitted in the first respondent's heads of argument that a further factor that would, in any event, militate against the appellant's version, is her failure to call her roommate and a member of the SRC among those who assisted her after her injury. In this regard it was contended that these witnesses would elucidate the location of the appellant at the time of the shooting since this was a highly contested issue. There is no indication from the record that the trial court was told whether the

appellant's roommate and the relevant SRC member among those who accompanied the appellant to the gate were available to testify or not. Be that as it may, it was contended that an adverse inference should be drawn, that the appellant did not call these witnesses as she feared that they would give evidence adverse to her case. Therefore, so the submission went, the trial court's evaluation of the evidence cannot be faulted.

[50] On behalf of the second respondent, Mr *Botma* submitted that the facts and issues agreed on by the parties in the further pre-trial conference referred to above, properly set out the framework against which this Court should make a determination of the appeal. He put emphasis on the fact that since the second respondent was contracted by the first for the purposes of crowd control, the first respondent was vicariously liable for the actions of the second respondent. Conversely, he said, if this Court determines that the appellant was shot by the members of the first respondent, no liability ensues against the second respondent as it cannot, as a hired servant of the first respondent, be liable for the first respondent's actions.

[51] It was Mr *Botma*'s submission further that the trial court correctly rejected the version of the appellant as being improbable on the basis that it was manifestly contradictory pertaining to her knowledge of the protest. In the second respondent's heads of argument, it is further submitted that in as much as the appellant's version was that she was shot inside the Chumani residence, it was incumbent upon the trial court to weigh her version against the version of the respondents and decide whether it was probable.

[52] Furthermore, so Mr *Botma* submitted, there is nothing contradictory about the second respondent's version which, in essence was that the shooting was justified by

necessity and/or private defence, and that alternatively, the appellant voluntarily assumed the risk of the injury for which he claimed damages against the respondents, by placing herself in harm's way. The first respondent's case, so the submission continued, has always been that none of its members were ever inside Chumani residence, and that the appellant could only have been shot while she was among the crowd of protesters or in the vicinity of the protesting crowd, something which she completely disavowed.

The law

[53] A court of appeal will be hesitant to interfere with the factual findings and evaluation of the evidence by a trial court and will only interfere where the trial court materially misdirected itself insofar as its factual and credibility findings are concerned. This is trite law.[2] As held in *S v Francis*[3]:

> "The powers of a court to interfere with the findings of fact of a trial court are limited. In the absence of any misdirection the trial court's conclusion, including its acceptance of a witness' evidence, is presumed to be correct. In order to succeed on appeal, the appellant must therefore convince the court of appeal on adequate grounds that the trial court was wrong in accepting the witness' evidence a reasonable doubt will not suffice to justify interference with its findings. Bearing in mind the advantage which a trial court has of seeing, hearing and appraising a witness, it is only in exceptional cases that the court of appeal will be entitled to interfere with a trial court's evaluation of oral testimony."

[54] Therefore, in order for this Court to disturb the findings of fact that the trial court made, there must be a demonstrable material misdirection on its part in its assessment of the evidence.

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[2] *R v Dhlumayo and another* 1948 (2) SA 677 (A).
[3] 1991 (1) SACR 198 (A) at 198j – 199a.

[55] Concerning the incidence of the onus, the distinction between the onus of proof and the evidentiary burden of proof must be kept in mind. As held in *Pillay v Krishna and another*[4], the word *'onus'* means the duty which is cast on the particular litigant, in order to be successful, of finally satisfying the court that he is entitled to succeed on his claim, or defence, as the case may be.[5] Put another way, the onus of proof is the duty of a party to present evidence on the facts in issue which is necessary to establish his or her claim or defence on the standard of proof required by law. This is the overall onus of proof which does not shift from the party upon whom it originally rested.[6] In civil proceedings, the overall onus rests on the plaintiff to prove his/her claim on a balance of probabilities.

[56] The evidentiary burden, on the other hand, is the duty of a party to present evidence sufficient to establish or rebut a fact in issue in order to establish a *prima facie* case or to rebut one where it has been made against him/her. The evidentiary burden may shift from one party to the other in the course of the proceedings, depending on the measure of proof furnished by a particular litigant.

[57] The Court, in *Pillay v Krishna* explained it this way:

> "If one person claims something from another in a Court of law, then he has to satisfy the Court that he is entitled to it. But there is a second principle which must always be read with it: Where the person against whom the claim is made is not content with a mere denial of the claim, but sets up a special defence, then he is regarded quoad that defence, as being the claimant: for his defence to be upheld he must satisfy the Court that he is entitled to succeed on it … But there is a third rule, which Voet states… as follows: 'He who asserts, proves and not he who denies, since a denial of a fact cannot naturally be proved provided

[4] 1946 AD 946.
[5] Id, at 952-953; see also, *South Cape Corporation (Pty) Ltd v Engineering Management Services (Pty) Ltd* 1977 (3) SA 534 (A) at 548.
[6] *Brand v Minister of Justice and Another* 1959 (4) SA 712 (A) at 715).

that it is fact that is denied and that the denial is absolute'. The onus is on the person who alleges something and not on his opponent who merely denies it.'[7]

[58] Where, as in the present case, the respondent admits the act complained of by the appellant as being actionable in law, the onus rests on that respondent to prove that the act complained of was justified. The corollary is that once a *prima facie* case is established by the respondent concerning its defence, the appellant becomes burdened with the duty of presenting evidence sufficient to rebut that *prima facie* case.

[59] Lest there be confusion – that a plaintiff, in terms of Uniform Rule 39(13) carries the duty to lead evidence first where she/he has the onus of adducing evidence on one or more issues, does not place on him or her the overall onus of proof, but rather has more to do with that plaintiff's duty to adduce evidence in order to prove such an issue. This, to my mind, accords with the principle that a party who bears the onus of proof has a duty to begin leading evidence on the issues on which the onus of proof rests on him/her.

Discussion

[60] The issue of the appellant's identification of her shooter became a strenuously contested issue on appeal before us as it appears to have been in the trial court. In the light of the view I have of this issue, I deem it necessary to deal with it first.

[61] It is indeed so, that the identification of Collacott as the appellant's shooter only came about during further cross-examination of the appellant on application by

[7] Id, at 951-952.

Mr *Sintwa* who represented the first respondent. The context to this aspect of the appellant's evidence is to be gleaned from the following excerpt of the record:[8]

> 'MR SINTWA: Now yesterday you described, even today you confirm, the attire that is person was wearing, actually black, is there any other thing which you can say you observed from that person? (interpreter interprets). Which you observed . . . (indistinct) which you observe on that security guard.
>
> WITNESS: Yes, there is, M'Lord.
>
> MR SINTWA: Yes, what is it, a'am?
>
> WITNESS: The complexion of that person, he was a light complexion.
>
> MR SINTWA: Light in complexion?
>
> WITNESS: He was a white person, M' Lord.
>
> MR BOTMA: A white person?
>
> INTERPRETER: A white person.'

[62] From this point the witness goes on to describe the eyeglasses or binoculars that the person she described wore. Further cross-examination by Mr *Botma* on the issue of the identity of the appellant's shooter is encapsulated in the excerpt below:

> 'MR BOTMA: I put it to you that after ten members – security guards present on that day there was only one white person. (Pause) Of the ten security, amongst then there was only one white person.
>
> WITNESS: That I do not have knowledge of, M'Lord.

[8] Record, page 212, from line 5 onwards.

MR BOTMA: Now, I'm putting it to you, that I putting it to you the person – the on person . . . (indistinct) the witness – the person sitting in court here.

WITNESS: That I don't know of as well, M'Lord.

MR BOTMA: Ja, and he will deny that he was at all at the point that you pointed out where the security guard was today.

WITNESS: That I don't have knowledge of, M' Lord.

MR BOTMA: And you cannot say that it was the person in court who was the one who fired the shot at you? (Pause) You cannot say that him, the person at the back of the court was the person who fired the shot at you?

WITNESS: That I don't have knowledge of, M' Lord.

MR BOTMA: Thank you, M'Lord.'

[63] There being no re-examination of the witness by Mr *Msiwa*, the court excused the appellant.

[64] I should perhaps emphasize at this stage the importance of accurate and competent interpretation during court proceedings. As held in *S v Saidi*[9], the court[10] has a duty to ensure that a competent interpreter is used in criminal proceedings. Although this was held in the context of criminal proceedings, the principle regarding competence holds true for civil proceedings where a witness testifies in a language of their own choice not being one of record.

[9] 2007(2) SACR 637, para 14, see also *S v Mponda* 2007(2), SACR (C) [2004] 4 All SA 229 (C).

[10] In that case reference was made to magistrates, but this ought to apply similarly to judges. following the approach in *S v Mponda* supra.

[65] I note that at some point during the trial counsel on both sides complained of inaccurate interpretation by the interpreter, but in my view, that instance has not vitiated the evidence that was adduced, since all counsel availed themselves of the opportunity to correct that which was inaccurately interpreted.

[66] However, the trial court's interpretation of what was said regarding the 'white person' is troubling. This is compounded by the court's failure to seek clarity on the meaning of 'white person' in the light of the context that the above quoted excerpts of the record provide.

[67] It bears emphasizing that the court's role in court proceedings is not that of an umpire who merely ensures observance of the rules of the game. In *R v Hepworth*[11] it was held that a Judge is an administrator of justice, he is not merely a figurehead, he has not only to direct and control the proceedings according to recognized rules of procedure but to see that justice is done. I may add that in as much as the field of the fray in civil proceedings is even in the sense that both parties litigate on the same level, this principle holds true where the proceedings are conducted in a manner that might result in a miscarriage of justice.

[68] It is equally concerning that Mr *Msiwa* who represented the appellant in the trial proceedings also did not correct the manifestly inaccurate interpretation regarding the description of the appellant's shooter. He could and should have done so during re-examination of the appellant after she was cross-examined by counsel for the first and second respondents.

[11] 1928 AD 265 at 277.

[69] From the above quoted excerpts of the record, properly construed, the appellant only identified her shooter by his light complexion and attire. She was unable to tell whether that person was a security guard of the first or second respondent. In context, the appellant described her shooter according to his skin colour or tone, it is unclear if she actually meant 'white' in a sense connoting race. This view is fortified by the fact that when the appellant was asked by Mr *Botma* who represented the second respondent if Collacott who was present in court was the 'man that shot her', she answered *"I have no knowledge of that."*

[70] I am in agreement with the submission made by Mr *Msiwa* that it was incorrect, regrettably, for the trial court to ascribe to the use of 'white' or 'white person' the meaning that it ascribed, namely, that the description related to Collacott as a person of the white race. This is more so that the trial court did not seek to establish this as a fact from the appellant herself when she was still in the witness stand.

[71] With this said, sight must not be lost, of the fact that the trial court's rejection of the appellant's evidence as being unreliable and lacking in credibility was not based only on how she identified her shooter. The trial court made further credibility findings as to probabilities, regarding the appellant's knowledge of the protest and her location when she was shot. No miscarriage of justice resulted from the trial court's failure to seek clarity regarding the use of 'white person' in the context as it appears from the quoted excerpts of the record.

[72] Even assuming that the appellant had told the trial court that she was shot by Collacott or a member of the first respondent for that matter, a determination would still have to be made, whether on the totality of the evidence, Collacott (or any of the security guards on campus) was ever inside the residence. Put differently, the

question would be whether it was more probable than not that the appellant was among the protestors or in their vicinity when she was shot. This is the central issue to the trial court's findings of fact, one of the aspects of this appeal to which I now turn.

[73] A reading of the pleadings directs that since the shooting was admitted by the second respondent but denied by the first, the second respondent had the onus to establish its defence of private/self defence, as well as the alternative defences of *volenti non-fit injuria* and contributory negligence on the part of the appellant. The corollary of the second respondent's involvement in the shooting is that the first respondent, as its employer, would be vicariously liable for any delict that they committed in the course of their employment as the persons contracted by it to manage the crowd of protesting students.

[74] The appellant, in turn, became saddled with the duty (a rebuttal onus) to present evidence that would displace any *prima facie* case to the extent established by the first and second respondents. Such evidence included an explanation by her regarding the place and circumstances under which, in her version, she was shot, and the person who shot her since this, as the respondent's respective pleas indicate, was denied with further facts pleaded in amplification of that denial.

[75] The appellant was indeed a single witness whose evidence could found judgment in her favour only if the court was satisfied that it was credible. The Civil Proceedings Act 25 of 1965, in section 16, confirms this position by providing that judgment may be given in any civil proceedings on the evidence of any single competent and credible witness. There is no suggestion from the record that the appellant was not a competent witness.

[76] In determining the credibility of a single witness, the correct approach has always been for the court to weigh that witness's evidence, consider its merits and demerits and having done so, to decide whether it is trustworthy and whether despite the fact that there may be shortcomings or defects or contradictions in the testimony, the court is satisfied that the truth has been told.[12]

[77] In *casu*, the trial court was faced with three conflicting versions – that of the appellant who testified that she was shot inside Chumani residence for no apparent reason at all, and that when she was shot it was quiet inside the residence, with only her and her shooter in the vicinity of the shooting.

[78] The second version was that of the first respondent whose witnesses told the court that they did not take part in the shooting, and instead their members were dispossessed of two shot guns and a paintball gun, and two security guards were severely assaulted by the students. The first respondent's witnesses both denied ever going inside the residence during the mayhem.

[79] The third version was that of the second respondent, who as mentioned, admitted that its members fired shots of rubber bullets and ceramic balls at the protesting students but that they did so in self/private defence or out of necessity in the circumstances already described. Collacott testified that none of the second respondent's members went inside the residence as the crowd of protesting students had been attacking them from outside the residence.

[80] It is readily discernible from the judgment *a quo* that the court was mindful of the approach to be followed in resolving mutually destructive versions from

[12] *S v Sauls and Others* 1991 (3) SA 172 (A) ; *S v Webber* 1971 (3) SA 754 (A) at 758.

opposing parties. In *National Employers General Insurance Co Ltd v Jagers*[13], this approach was articulated as follows:

> 'In a civil case the *onus* is obviously not as heavy as it is in a criminal case, but nevertheless where the *onus* rests on the plaintiff as in the present case, and where there are two mutually destructive stories, he can only succeed if he satisfies the Court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the other version advanced by the defendant is therefore false or mistaken and falls to be rejected. In deciding whether that evidence is true or not the Court will weigh up and test the plaintiff's allegations against the general probabilities. The estimate of the credibility of a witness will therefore be inextricably bound up with a consideration of the probabilities of the case and, if the balance of probabilities favours the plaintiff, then the Court will accept his version as being probably true. If, however, the probabilities are evenly balanced in the sense that they do not favour the plaintiff's case any more than they do the defendant's, the plaintiff can only succeed if the Court nevertheless believes him and is satisfied that his evidence is true and that the defendant's version is false.'

[81] That the protesting students were throwing rocks and bottles at the security guards and at the windows of the Great Hall remained uncontroverted. So did the evidence that the protesting students severely assaulted two security guards who were members of the first respondent. Equally unchallenged was the evidence of the respondents' witnesses that the security guards were dispossessed of three shot guns by the students.

[82] Apart from the foregoing, Collacott's stance throughout the trial remained that since his co-members from the second respondent had fired the shots, if the appellant was shot by them as the members of the second respondent, she could only have

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[1313] 1984 (4) SA 437 (ECD), a 440 D-G; see also *Stellenbosch Farmers' Winery Group Ltd and Another v Martell & Cie SA and Others*2003 (1) SA 11 SCA at 14i-15d.

been shot while she was part of or in the vicinity of the protesting students, and not inside Chumani residence as they had no reason to be inside residences and in fact did not go therein.

[83] A disconcerting feature of the appellant's evidence is that at first, she had stated that she was aware on the day of her shooting that there was a protest taking place even though she did not know where about in the campus it was taking place. She later changed this version and told the court that she last witnessed a protest the previous days. She persisted with her version that on 08 June 2016 she did not hear any chanting of protest songs, nor did she become aware of any pandemonium on campus. When hard pressed on this issue, being reminded of her earlier testimony on this aspect, she went as far as disavowing her earlier testimony in this regard.

[84] The record before us speaks for itself. It is difficult, therefore, to fathom how the appellant could honestly distance herself from having told the trial court that she became aware of the protest that was taking place on campus on the day of her shooting. Not only that, but the appellant went as far as avoiding to make innocuous concessions such as her awareness of the presence of other students in the residence. It is understood why, counsel for the second respondent, suggested to her that '*she lived in a world of her own totally oblivious to her surroundings.*'

[85] Against this background, this Court must weigh the probabilities as they arise from the conspectus of all the evidence and the circumstances of the case. As held in *Maitland and Kensington Bus Co (Pty) Ltd v Jennings,*[14] for judgement to be given for the appellant, the Court must be satisfied that sufficient reliance can be placed on her story for there to exist a strong probability that her version is the true one.

[14] 1940 CPD 489 at 492.

And, in *Ocean Accident and Guarantee Corporation Ltd J v Koch,*[15] it was held that the evidence presented by the burdened party must be such that the court can say that it is more probable than not for the burden to be discharged. However, if the probabilities are evenly balanced, then the burden has not been discharged by the party on whom it rests.

[86] To my mind, the appellant's avoidance of concessions that would do no harm to her case and her disavowal of the testimony which the record before us captured, was indicative of a witness who was determined to conceal the truth in the mistaken belief, if not ill advice, that her version would be considered alone from the rest of the evidence and therefore incontrovertible and even credible.

[87] A question that ought to follow is why the appellant would have been inclined to sanitize herself of any facts that would place her anywhere near the group of protesting students. I can think of only one, and it is that she was indeed part of the protesting student, or she knowingly placed herself at the risk of being shot by being in the vicinity of the pandemonium that unfolded in the campus. For there does not appear, on the conspectus of the evidence, to have been any logical reason for any of the members of the first and/or second respondents to have been inside the Chumani residence, let alone to have shot at a student who posed no threat of harm to them. Regard must, furthermore, be had to the fact that on the record before us, no evidence was adduced nor issue raised regarding the possibility of someone other than the security guards shooting the appellant at any other point during the mayhem, except for what she told the court in this regard, that she was shot by a security guard at the Chumani residence. Therefore, it is this Court's view that the appellant's description of how she was shot tends to defy logic.

[15] 1963 (4) SA 147 (A), at 157D.

[88] I interpose to deal with the submission made on behalf of the first respondent that an adverse inference must be drawn from the appellant's failure to call her roommate and the member of the SCR as witnesses. A failure to call a witness may, under certain circumstances, justify an adverse inference being drawn against the party failing to call such a witness. In *Elgin Fireclays Limited v Webb*[16] the court held:

> "[I]t is true that if a party fails to place the evidence of a witness, who is available and able to elucidate the facts, before the trial court, this failure leads naturally to the inference that he fears that such evidence will expose facts unfavourable to him. . . But the inference is only a proper one if the evidence is available and if it would elucidate the facts. . ."

[89] From the above quoted passage, it follows that there are two requirements to the drawing of an adverse inference from a party's failure to call a witness. The witness must be available, and his/her evidence must be such that it would elucidate the facts. The appellant testified that after the shooting she went back to her room where she found her roommate and that she was accompanied to the main gate by members of the SRC. Alongside this is her evidence that when she was shot, it was quiet in the residence with only her and her shooter.

[90] The evidence of the appellant's roommate and an SRC member among those who accompanied her to the main gate of the campus would elucidate the facts regarding the circumstances under which she was shot. Since it emerged during the appellant's cross-examination that her roommate was in the room they shared at the time of the shooting; and since, on her version, the shooting occurred inside the residence, it is not farfetched that her roommate would have heard the sound of the gunshot. Her roommate would elucidate this fact in so far as the shooting is

[16] 1947 (4) SA 744 at page 749 -750; see also *Tshishonga v Minister of Justice and Constitutional Development and Another* 2007 (4) SA 135 (LC); *Boyce NO v Bloem* 1960 (3) SA 855 (T) at 864.

concerned. This is against the background that the point where the appellant was shot at was strenuously contested.

[91] I have already mentioned that there is no indication from the record that the trial court was told whether the appellant's roommate and the SRC members were available to testify or not. When counsel for the appellant made his opening address at the commencement of the trial, he did not make specific mention of witness that the appellant would call in support of her case. He made a general submission that the evidence he would lead would relate to the appellant's assertion that she was not part of the protesting crowd of students and posed no threat to the security guards at the time she was shot at.

[92] Regard must be had to the fact that the shooting incident took place in 2016, and the trial of the case commenced four years later. It was necessary that an indication be given regarding the availability of the appellant's roommate to testify. This was not done. In the absence of an indication from the record whether these witnesses were available to testify or not as at the time of trial, I am not persuaded that it would be appropriate for this Court to draw an adverse inference from the appellant's failure to call them. That being so, I must still consider the evidence of the appellant as a single witness.

[93] The contradictory evidence that the appellant gave regarding her awareness of the protest is not immaterial. It goes to the heart of probabilities. It seems to me that on the totality of the evidence on the record before us, it is more probable than not that the appellant was shot at while she was among the protesting crowd or in their vicinity. The probabilities favour the version that the respondents put forward. The appellant's evidence as a single witness, contrary to what was contended for on her behalf, is far from being credible.

[94] For these reasons, there is no basis for criticizing the trial court's finding that the appellant's evidence was unreliable, lacking in credibility and tailored. I turn to deal with whether the respondents could be found liable, on their version, for the harm caused to the appellant as a result of her shooting.

[95] Even though at first, it was contended that the members of the first respondent were never in possession of paintball guns and were not involved in the ground control of the protesting crowd of students, there is, on the other hand, undisputed evidence that the appellant was shot with a rubber bullet and that the members of the first respondent were in fact also armed with shotguns from which rubber bullets were fired. That the members of the second respondent too fired rubber bullets and ceramic balls at the protesting students is also beyond controversy. But was this shooting justified? In the discussion that follows I deal with this question.

[96] It is trite that conduct which is directed against an innocent person for the purpose of protecting an interest of the actor or a third party, against a dangerous situation justifies wrongfulness (unlawfulness) on the basis of necessity.[17] The test is objective, the question in each case being whether the conduct that caused the harm was a reasonable response to the situation that presented itself.[18]

[97] In *Chetty v Minister of Police*[19] , it was held that for the police to escape liability for the harm caused by them on the ground of necessity, there must have been reasonable grounds for thinking that because of the situation they were faced with, there was imminent danger or it had commenced, such as danger of injury to persons or damage to or destruction of property as to require police action. The means used in an endeavour to restore order and avert such danger, and resulting in

[17] *Petersen v Minister of Safety and Security* [2010] 1 All SA 19 (SCA) para 23, and all authorities referred to therein.
[18] *Crown Chickens (Pty) Ltd t/a Rocklands Poultry v Rieck* 2007 (2) SA 118 (SCA) at para 10.
[19] 1976 (2) SA 450 (N).

the harm or injury must not be excessive, having regard to all the circumstances, such as, *inter alia*, the nature and the extent of the danger, the likelihood of serious injury to persons, the value of the property threatened.[20]

[98] The dictum of Van Winsen AJ in *Ntanjana v Vorster and Minister of Justice*[21] is instructive, with respect, when he cautioned that in deciding whether there was a necessity to act in self-defence the court must place itself in the position of the person claiming to have acted in self-defence and consider all the surrounding factors operating on his mind at the time he acted. The court must be careful to avoid the role of the armchair critic, wise after the event, weighing up the matter in the secluded security of the courtroom.[22]

[99] The enquiry in this regard, in the instant appeal, begins with whether the first and second defendants have established that there were reasonable grounds for thinking that their lives and those of others, and the University property were in danger of harm and destruction.

[100] It has not been disputed that the protesting students attacked the security guards with rocks and bottles, and some were armed with spades, picks and machetes. The intensity of the violence and how rapidly it escalated has also not been disputed. Similarly, it was not disputed that the protesting students also threw rocks and bottles at the windows of the buildings, and that they were threatening to disrupt examination and harm those students who were writing examinations and not participating in the protest. The less harmful ways of dispersing the crowd of protesting students, namely, the negotiations that Collacott engaged in had failed.

[20] Ibid at 452F – 453C.
[21] 1950 (4) SA 398 (C)
[22] Ibid at 406A.

[101] I have no difficulty finding that the respondents were faced with a threat of harm to their lives and limb, and there was palpably a threat of damage to the property of the University. Furthermore, the lives of the innocent parties who were not participating in the protest were equally at risk of injury. The respondents were justified in their resort to the use of the force that they applied in averting the harm that had ensued and was ongoing. The next question is whether the amount of force they applied was excessive.

[102] It is equally undisputed that the protesting students were armed and in a large number of about 500 as against a small group of a total of 10 security officers. The unchallenged evidence of the first and second respondents is that the students had outnumbered the contingent of security guards. The trial court was told by Stemela and Collacott that rubber bullets and ceramic balls from shot guns and paint ball guns are fired on the lower body. Logically this is to prevent injury to the fatal parts of a person's body.

[103] How did it come about then, that the appellant was shot in her eye, one might ask? This question would best have been answered by the appellant had she given honest and reliable evidence in the court *a quo* regarding her location at the time of her shooting. Were this Court to attempt to find an answer to this question in circumstances where the appellant's chosen scene of the shooting was inside the residence, that would amount to treading on the realm of conjecture. Apart from that, this would amount to this Court making up a case which the appellant did not put forward and which the respondents had no opportunity to traverse in defence.

[104] That being said, it cannot be said that the respondents applied excessive force in dispersing the protesting crowd of students in the circumstances portrayed in the record before us. I deal next with the alternative defence of the appellant's voluntary assumption of injury.

[105] A restatement of the law regarding voluntary assumption of injury is necessary. In instances where it is alleged that a person, by his own conduct brought unto him or herself the harm he suffered (voluntary assumption of risk of injury), *volenti non fit inuiria* is a maxim in our law which is to the effect that he who consents to injury cannot complain, for no one should recover damages for the injury to which he brought unto himself.[23] The onus rests on the respondents to establish the defence of voluntary assumption of risk of injury.[24] For the present purposes, the respondents had to allege and prove that the appellant had knowledge of the risk; appreciated the ambit of the risk; and consented to the risk (expressly or impliedly).[25]

[106] The law further states that where it is shown that the plaintiff foresaw the risk of injury and had knowledge and an appreciation of the danger, consent will be implied.[26] For the defence of consent or voluntary assumption of risk to operate against the plaintiff, the injuries and harm caused must be caused by the materialization of a risk which was subjectively foreseen, appreciated and assumed by the plaintiff.

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[23] *Maartens v Pope* 1992 (4) SA 883 (N) at 886 G-H.
[24] *Santam Insurance Co Ltd v Vorster* [1973] 4 All SA 558 (A), 1973 (4) SA 764 (A).
[25] *Alberts v Engelbrecht* [1961] 2 All SA 611 (T), 1961 (2) SA 644 (T), *Durban City Council v SA Board Mills Ltd* [1961] 3 All SA 344 (A), 1961 (3) SA 397 (A) 406–407.
[26] *Vorster* at 779.

[107] A two-pronged test applies in determining the knowledge of risk by the plaintiff. There must first be an objective assessment of the facts establishing the nature of the inherent risk that existed. Secondly, it must be determined whether the plaintiff foresaw the actual risk that later ensued and caused his injuries.[27]

[108] A finding has already been made that on the totality of the evidence the appellant's version of how she got injured is improbable and out of kilter with logic. On the other hand, the uncontroverted version of the respondents, viewed alongside that of the appellant, establishes, on a balance of probabilities that:

(a) At no stage did the contingent of security guards on campus go inside Chumani residence in the course of their control of the protesting crowd. The appellant would have been among the protestors or would have placed herself in the vicinity of the aggressive protesting students and the already described reaction of the security guards.

(b) With her conjured-up version, she wanted to conceal the fact that she was there.

(c) The surrounding circumstances clearly indicate that there was indeed risk of harm.

(d) Therefore, she subjectively foresaw the risk of harm; and

(e) She implicitly consented to the injury by placing herself in harm's way.

[109] I have come to the conclusion that the whole edifice of the appellant's case must collapse, the appeal must therefore be dismissed, as its very foundation is shaky, to put it mildly. The alternative defence of voluntary assumption of injury that the first and second respondents put forward must succeed for, *inter alia*, the reason that the appellant could not and did not put up any version about how else the

[27] *Vorster supra.*

situation could have been handled as she chose to distance herself from the protests. This has left the respondents' version in that regard uncontested.

[110] With all that having been said, it would be insensitive of this Court not to acknowledge the pain and horror of what the appellant experienced when she lost sight of her eye. While there ought indeed to be sympathy for the appellant's plight, the fact that she elected not to be candid and presented a false version of events regarding the circumstances under which she was shot militates against her succeeding with the result that the version of the respondents prevails. The appeal must accordingly fail.

Costs

[111] Concerning costs, it is necessary to mention that this appeal first served before this Court on 05 February 2024. On that day it appeared that the record of the appeal was not in order as it was not properly collated by the appellant. As a result, it was postponed to a date that would be determined by the Registrar. It has been determined that the costs occasioned by the postponement of the appeal on that day would be in the cause. The general principle is that costs follow the result. I see no reason why this Court should deviate from this principle in this appeal.

[112] In the result, I would make the following order:

1. The appeal is dismissed with costs on scale A referred to Uniform Rule 67A and such costs include the costs of 05 February 2024.

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L. RUSI

JUDGE OF THE HIGH COURT

I agree and it is so ordered:

_____

G. N. Z. MJALI

JUDGE OF THE HIGH COURT

I agree:

_____

M. S. JOLWANA

JUDGE OF THE HIGH COURT

Appearances:

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Date heard : 04 November 2024

Date delivered : 11 February 2025