



**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

**Date:** 22 June 2022

**Status:** Immediate

***The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal***

*The Memorable Order of Tin Hats v Kenneth Paul Els (488/2021) [2022] ZASCA 99 (22 June 2022)*

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Today the Supreme Court of Appeal (SCA) handed down judgment upholding, with costs including the costs of two counsel, an appeal against the decision of the Gauteng Division of the High Court of South Africa, Johannesburg (the high court).

The appellant was, the Memorable Order of Tin Hats (the M.O.T.H), a voluntary association and brotherhood of former South African soldiers. One of the premises of the M.O.T.H, was the M.O.T.H Hall, situated at the corner of 16th Street and 2nd Avenue, Parkhurst, Johannesburg. This was a two storey building with the basement area occupied by the M.O.T.H, which utilized it as a pub for its members and the public. In order to exit the basement there was a two-step stairway directly outside. It is this route from the pub on the basement level to the parking area on the ground level that is at the centre of this dispute. The respondent, Mr Kenneth Paul Els, often frequented the pub, though he was not a member of the M.O.T.H. On 18 January 2014, he went to the pub to consult with a client. Whilst busy with his consultation, one of the members who was wheel-chair bound, sought assistance to leave the premises of the pub and proceed to the parking lot. It was during that process of assisting the member that the respondent got injured.

The respondent instituted action proceedings for delictual damages arising from the injury he sustained. The delictual claim arose from the unlawful and wrongful failure or omission of the M.O.T.H to take reasonable measures to avoid a foreseeable incident that resulted in the damages he suffered as a result of his injuries. The high court found 90% in favour of Mr Els and refused an application for leave to appeal. The M.O.T.H petitioned this Court and was granted leave to appeal to the full court of the Gauteng Local Division, Johannesburg. The full court, dismissed the M.O.T.H's appeal. Dissatisfied, it applied for special leave to appeal. These proceedings were with the leave of this Court, special leave having been granted.

The critical issue was that of causation. The question to be answered was what caused Mr Els' injuries. According to his testimony, he did not know why he fell but he thought that he lost his balance and his foot got stuck whilst they were in the process of transferring the member in his wheelchair. The witnesses for the M.O.T.H agreed that he tripped and fell backwards.

The SCA held that despite the fact that the precise manner of the accident was not clear, it was apparent that while helping the member, Mr Els overbalanced, tripped and fell backwards, with the member and his wheelchair falling onto him. The combined weight of the member and his wheelchair was estimated by the witnesses to be in the region of 120 kilograms. The SCA held that for the purposes of this judgment it would accept that the M.O.T.H's omission to install a second handrail on the stairs was negligent and wrongful. That, however, was not the end of the enquiry. The element of causation also had to be proven by Mr Els. The Court found that he failed to prove a culpably causative relationship between the omission and the harm. It was more probable than not that, when Mr Els overbalanced and fell, a handrail on his side of the stairs would not have averted the harm. Even if he had been able to grab onto such a handrail, the force of 120 kilograms falling onto him from above him, would have

broken his grip – and he would have fallen and injured himself despite it being present. On an examination of the evidence the conclusion that the SCA reached was that the M.O.T.H's negligent omission and the wrongful conduct were not the catalysts for the unfortunate accident. Mr Els failed to prove that they were more than likely the cause of the harm. Consequently, the appeal was upheld.

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