



## 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:** 2 September 2025

**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***

*Johannes Diederik Le Roux N O and Another v The Nelson Mandela Bay Municipality* (Case no 239/2024) [2025] ZASCA 122 (2 September 2025)

Today the Supreme Court of Appeal (SCA) set aside the order of Bloem, Zilwa and Potgieter JJ, sitting as court of appeal of the Eastern Cape Division of the High Court, Makhanda (the full court). Special leave to appeal was granted by the SCA, and the appeal was upheld with costs, such costs to include the costs of two counsel where so employed.

On 13 September 2014, Ms Jos-Lynn Heile Olifant, the 17- month- old daughter of Ms Olifant and Mr Barry (the appellants), sadly drowned when she fell into an open stormwater drain in Grootboom Street, Greenfields, Uitenhage. The appellants required assistance of a curator ad litem, Mr Le Roux, due to the psychiatric consequences they had suffered when Jos-Lynn died. They had instituted a delictual claim against the respondent, the Nelson Mandela Bay Municipality (the municipality) for damages in the Eastern Cape Division of the High Court, Makhanda (trial court). The appellants claimed that the municipality was responsible for the maintenance, upkeep, and inspections of the drains in the area and that the municipality was previously warned of the danger that the open drain in Grootboom Street posed. The municipality accordingly had a legal duty to ensure that all drains within its area were covered. They relied on ss 152 and 156 of the Constitution, as well as the municipality's relevant by-laws in support of the claims. It was further claimed that the municipality's employees breached their duties and that such breach was negligent, wrongful, and causally linked to the death of Jos-Lynn. The municipality denied that the precautions it took were unreasonable or insufficient. Moreover, it pleaded that Jos-Lynn was at all relevant times in Ms Olifant's custody and under her control, alternatively in the custody and under the control of an adult person, who ought to have been reasonably aware of any uncovered drain in the area and should properly have observed and prevented Jos-Lynn from suffering harm as a result of such an open drain.

The trial court concluded that Ms Olifant and Mr Barry and their witnesses were credible witnesses, who corroborated each other and had discharged the onus of proving that the municipality was delictually liable for the damages arising from the death of Jos-Lynn. On appeal the full court, however, concluded on the very same evidence that the appellants had failed to prove the delictual elements of wrongfulness and legal causation.

The issues before the SCA concerned wrongfulness, negligence, causation, and contributory negligence.

With reference to established principles and criteria for wrongfulness, the SCA judgment, penned by Steyn AJA, confirmed that where a legal duty arises, a breach which would constitute wrongfulness, depends on the legal convictions of the community. The SCA found that the municipality had a statutory and common law duty to maintain the public infrastructure, including the stormwater drain in the area and the failure to ensure that the drain was properly covered to prevent injury was wrongful.

The SCA observed that there were two mutually conflicting versions. The appellants and their witnesses testified that the drain was uncovered and that reports were made to the municipality previously that it posed a danger to the residents in the area. The version of the municipality, which they purported to be supported by documentary evidence, was that it had no knowledge of the uncovered drain in Grootboom Street which could be potentially harmful, nor that it had received any reports of the uncovered drains. Relying on trite principles regarding mutually destructive versions the SCA held that the full court, not having had the benefit of seeing and hearing the witnesses testify, was misdirected in its evaluation of the evidence presented at the trial and that it overlooked the fact that the documentary evidence presented by the municipality related to a different street to the one where the incident occurred. The SCA further held that the legal convictions of the community required that where the municipality had knowledge of the uncovered stormwater drain, a failure to attend to the drain and cover the drain was wrongful. The SCA found that such knowledge of the danger posed and the failure to have taken appropriate remedial action constituted negligence and gave rise to delictual liability.

The SCA held, in respect of causation, and with reference to *Van Duivenboden*, that legal causation is determined by considering the omission and whether the omission is the legal cause of the harm suffered, in *casu* the resultant death of Jos-Lynn. The SCA concluded that her death was directly and causally connected to the municipality's wrongful and negligent conduct.

The SCA distinguished *Stedall and another v Aspeling and another* and found that it was not unreasonable in many lower income households to have an older child entrusted with the care of younger children. The SCA found that the municipality had not established contributory negligence on the side of Ms Olifant in leaving Jos-Lynn in the care of a 15-year-old, who was living with them, for a short while.

The SCA concluded that the full court erred in finding that the appellant had not established wrongfulness and legal causation at the trial. As a result, the SCA upheld the appeal with costs, including the costs of two counsel where so employed, and replaced the order of the full court with an order dismissing the appeal with costs.