



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: 17 DECEMBER 2021

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

Lucas & Another v Umhlathuze Municipality and Another (Case no. 785/2020) [2021] ZASCA 181 (17 December 2021)

Today the Supreme Court of Appeal (SCA) handed down judgment dismissing, with costs, an appeal against a decision of the Kwazulu-Natal Division of the High Court, Durban (the high court).

The issue before the SCA was whether the municipality, by virtue of the fact that it placed its lock on the metal cage encasing the electricity distribution kiosk belonging to the body corporate, assumed the duty to ensure the safety of the kiosk and metal cage. And if so, whether the municipality was negligent for failing to ensure the safety thereof.

On 29 June 2013, the appellants' six-year-old daughter was fatally electrocuted when she climbed onto a metal cage encasing an electrical distribution kiosk on the premises of a sectional title scheme (the scheme), which was under the management of the second respondent, the Oceans Rest 3 Body Corporate (the body corporate). As a result of the death of their daughter, the appellants claimed damages for emotional shock from the municipality and the body corporate, jointly and severally. They alleged that the municipality and the body corporate had negligently failed to ensure that the metal cage was properly maintained, and was not a danger to the residents, thus failing in their 'duty of care' to the public.

It was common cause between the parties that the distribution kiosk was installed by the body corporate, and belonged to it. At the instance of the body corporate, the developer of the scheme had installed five electricity distribution kiosks on the common property, each of which serviced four sections within the scheme. Electrical wiring leading to and from the kiosk was laid underground at a depth of between 350mm and 500mm. The municipality installed prepaid meters in the kiosks which regulate payment but not the supply of electricity. At some stage after the body corporate had installed the cages, employees of the municipality installed locks onto the cages to safeguard the infrastructure against vandalism and to prevent interference with the prepaid meters within the kiosks. The municipality supplies electricity to the body corporate from its mini substation located across the road from the scheme, and provides subterranean infrastructure to the boundary of the scheme, from which point the body corporate is responsible for reticulation of electricity to various sections within the scheme. It was submitted on behalf of the appellants that by placing a lock on the cage and retaining its key, the municipality assumed a legal duty to ensure that the cage was safe. It was also submitted that the municipality was negligent because it failed to mitigate any risk of the cage becoming electrified by ensuring that it was earthed.

The SCA held that the role of the municipality was to distribute electricity to the premises of the body corporate. Consequently, it was important for it to safeguard its infrastructure so as to enable it to carry out its function. The duty to ensure the safe installation and ultimately, the safety of the kiosk and metal

agree lay with the body corporate in terms of the Electricity Supply By-laws of the City of Umhlathuze and the relevant provisions of the Sectional Titles Schemes Management Act 8 of 2011.

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