



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

PRESS RELEASE

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Minister of Safety and Security v Mohofe

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

In the late afternoon of 12 March 2001 a police officer, Inspector G Nemengaya, on patrol (in plain clothes) in a crowded Johannesburg street, saw three robbery suspects emerge from a shop. He saw that two of them were armed. He called out that he was a policeman and ordered them to stop. One drew his firearm and shot at Nemengaya, who dived to the ground. But he then chased the suspects and apprehended the man who shot at him.

Unbeknown to Nemengaya when he gave chase, the shot killed a man who was in the vicinity. The respondent, the mother of the deceased, claimed damages for loss of support for herself and the deceased's minor children. The High Court, Johannesburg, found that Nemengaya's conduct in calling out that he was a police officer had been negligent and was the wrongful cause of the death of the deceased. The State was thus liable to compensate the respondent for the loss caused.

The SCA today held that Nemengaya had not acted negligently, and thus upheld the appeal against the high court's decision. The court considered that although a reasonable police officer in the position of Nemengaya would have foreseen that an escaping suspect,

when alerted to the presence of police, might shoot at him and hit a passerby instead, he would also have foreseen other possibilities: the suspect might surrender (that was Nemengaya's experience) or the suspect might continue to run away and harm others in the vicinity. The reasonable police officer would have weighed all these factors and their attendant risks and nonetheless taken the risk of alerting the suspects to his presence. On the evidence it could not be said that the reasonable police officer would have viewed the risk of alerting the suspects to his presence as greater than that of the suspects fleeing and shooting a member of the public in their getaway. It was Nemengaya's duty as a police officer to protect the public and he had taken reasonable steps to do so. He had thus not been negligent in calling out that he was a policeman. The State was accordingly not liable to compensate the respondent for the loss suffered by her and the deceased's minor children.
