THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: 27 November 2009
Status: Immediate

HAWEKWA YOUTH CAMP **FIRST APPELLANT**

THE MINISTER OF EDUCATION FOR THE WESTERN CAPE **SECOND APPELLANT**

and

GARY MICHAEL BYRNE **RESPONDENT**

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

On Friday, 26 November 2009, the Supreme Court of Appeal dismissed the appeal in Hawekwa Youth Camp and another v G M Byrne. The appeal originated from an action instituted by the respondent, Mr Gary Byrne, in the High Court, Cape Town, on behalf of his minor son, Michael, who was born on 15 June 1995. In March 2004, when Michael was almost nine years old and a grade 3 learner at the Durbanville Preparatory School, he accompanied a group under the control of his teachers on a two day excursion to the Hawekwa Youth Camp site outside Wellington. The group arrived at the camp on 3 March where they were accommodated in bungalows.

During the early hours of the next morning Michael was found on the cement floor of his bungalow. No-one saw how he ended up there, but he was unconscious and appeared to be having convulsions. He was taken to hospital where medical examinations revealed that he had suffered a fractured skull with underlying brain injuries which led to some degree of permanent brain damage.

In the event, the respondent instituted action against the first and second appellants in the Cape High Court for the damages that he and Michael had suffered as a result of these injuries. The nub of his case was that Michael's injuries could have been prevented by the employees of the two appellants, who had wrongfully and negligently failed to do so. The first appellant was the owner of the Hawekwa Youth Camp site where the incident occurred. The second appellant is the Minister of Education in the Western Cape who was cited in his capacity as employer of teachers at Government schools within the area of jurisdiction, including the Durbanville Preparatory School.

The Cape High Court declared both appellants liable, jointly and severally, for the loss resulting from Michael's injuries. After the appeal was noted, a settlement was reached between Mr Byrne and the first appellant, with the result that it played no further part in the appeal. But proceedings between the Minister and Mr Byrne continued.

It was not in dispute that during the night of 3 March 2004 Michael slept on the upper portion of a double bunk. From the outset, Mr Byrne’s contention as to how Michael ended up on the floor of the bungalow was that he had rolled from the upper bunk in his sleep because there was no barrier – or, at best for the Minister, a barrier which was ineffective – to prevent him from doing so. During the course of the proceedings, various alternative suggestions were made on behalf of the Minister as to how the incident might have occurred. This was one of the issues at the trial.

On that issue the Cape High Court found in favour of Mr Byrne. The further issue was whether the teachers accompanying the group were negligent in allowing Michael on an upper bunk which proved to be unsafe. On this issue the Cape High Court found that a reasonable teacher would foresee the danger and would have told Michael to sleep on the floor. The Supreme Court of Appeal confirmed the findings of the trial court on both these issues and thus the Minister's appeal was dismissed with costs.