



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Minister of Safety and Security v Morudu (1084/2013) [2015] ZASCA 91 (29 May 2015)

The Supreme Court of Appeal (SCA) today handed down judgment in a matter relating to the extent to which the Minister of Safety and Security can be held vicariously liable for acts of a policeman which were found not to be sufficiently close to his duties as a policeman in order to give rise to vicarious liability.

Litigation in the case arose from events of Christmas-eve in 2001. On that day, Inspector Duba, an employee of the Minister of Safety and Security who was on stand-by duty on at the time, drove to the home of the respondents with an unmarked police vehicle, where upon his arrival, he called out the name of Mr Morudu (the first respondent's husband and the father of the other respondents), whereafter he pursued Mr Morudu through the house and ultimately shot and killed him using his personal firearm, for the alleged extra-marital affair with Duba's wife. At that time Duba had been employed as a fingerprint investigator at Polokwane Criminal Record and Crime Scene Management Unit of the South African Police Service.

Mrs Morudu (the widow of Mr Morudu) instituted action in the North Gauteng High Court, Pretoria, for damages for the unlawful killing of the deceased. The question on appeal to the SCA, as in the court below, was whether, following on the death of Mr Morudu, the Minister should be held vicariously liable for the respondents' alleged loss of support sustained as a result of Duba's actions.

The SCA found that it was necessary to have regard to the subjective element in the case ie whether there is a sufficiently close link between Duba's acts for his own interests and purposes and his duties as a policeman, that Duba was convinced that he was a cuckold and that he travelled to the home of the Morudu to kill the person he considered to be his wife's lover, which was the motivation for the tragic act that followed. The Court found that this was a radical deviation from the tasks incidental to Duba's employment. In relation to the objective element, the SCA found that: (a) none of the Morudus identified Duba as a policeman and none of them reposed trust in him; (a) the only police accoutrements were the radio and the vehicle, and that the radio was not visible or seen while the vehicle was unmarked; (c) while it was true that Duba had used a police vehicle to travel to Morudu's home, he could just as easily have used public transport; and (d) the area to which Duba travelled was not an area to which he had been assigned. The SCA further found that it was significant that Duba was a member of a unit of the police service which interfaced with the public on a limited basis

after a crime had been perpetrated and that the unit was not a division of the police in which the public would intuitively turn for protection.

The court a quo had found that although Duba's act had nothing to do with his official duties, there was accordingly a sufficiently close link between Duba's acts for personal reasons, and the business of the Minister of Safety and Security: Duba had utilized an official albeit unmarked vehicle to drive to Morudu's house.

The SCA stated this was a difficult case because of the terrible consequences for the Morudus. The trauma they suffered in witnessing a husband and father being gunned-down in front of them was difficult to fully appreciate. The Court said that drawing a line that does not hold the Minister liable for the loss of their breadwinner is in itself difficult. It held that keeping mind the values of the Constitution when adjudicating cases such as this, did not mean that an employer will inevitably be saddled with damages simply because the consequences are horrendous.

The SCA accordingly upheld the appeal with no order as to costs and the judgment of the Gauteng Division of the High Court was set aside and replaced with an order dismissing Mrs Morudu's actions with not order as to costs.

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