THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Of no precedential significance

Case No: 240/10

In the matter between:

IVAURA ESTATES (PTY) LTD Appellant

and

THE MEMBER OF THE EXECUTIVE COUNCIL, DEPARTMENT OF ROADS & TRANSPORT, MPUMALANGA Respondent

Neutral citation: *Ivaura Estates (Pty) Ltd v The Member of the Executive Council, Department of Roads & Transport, Mpumalanga* (240/10) [2011] ZASCA 9 (10 March 2011).

Coram: HARMS DP, CLOETE and MALAN JJA

Heard: **4 March 2011**

Delivered: **10 March 2011**

Summary: Delict: negligence: fire.

ORDER

On appeal from: North Gauteng High Court (Pretoria) (Legodi J sitting as court of first instance):

The appeal is dismissed, with costs.

JUDGMENT

CLOETE JA (HARMS DP and MALAN JA concurring):

[1] On 12 October 2005 a fire destroyed or damaged a considerable number of mango trees on the appellant company's property. The appellant sued The Member of the Executive Council, Department of Roads and Transport, Mpumalanga Province, alleging negligence on the part of employees of the department ('the road workers') who had been cutting the grass on the road reserve of the D533 adjacent to the plaintiff's farm. The court a quo (Legodi J) dismissed the claim but granted leave to appeal to this court.

[2] For the purposes of this judgment I shall assume in favour of the appellant that the road workers were negligent in starting and not controlling the fire. A passerby noticed the fire burning in the road reserve and alerted Mr Peter Spear, who telephoned his brother, Mr John Spear, the managing director of the plaintiff. Mr John Spear dispatched a tractor towing a 2 000 litre high pressure sprayer to fight the fire.

[3] When Mr John Spear arrived at the site of the fire, he found that it had been extinguished by his brother, a team of five or six labourers using the high pressure sprayer and the road workers. Nevertheless, to make assurance doubly sure, the burnt grass was swept towards the middle of the

burnt area and it was again sprayed with water. The appellant's employees then left the scene.

[4] It was the appellant's case that the fire flared up again and spread to the mango orchards owned by it. Assuming, again in favour of the appellant, that this is so, there was in my view no negligence on the part of the road workers. The appellant's representatives arrived on the scene and took over the fighting of the fire. They had the equipment and the knowledge how to do so. Mr John Spear said that he and his brother had acquired knowledge of fighting fires over some thirty years of farming and he said that he had been involved in fighting between 100 and 200 fires himself. When the appellant's employees left, Mr John Spear was satisfied not only that the fire had been extinguished, but also that sufficient precautions had been taken to prevent it flaring up again. In these circumstances, it cannot be found that a reasonable man in the position of the road workers would have foreseen that it would, and accordingly the first requirement set out in *Kruger v Coetzee* 1966 (2) SA 428 (A) at 430E-F, the *locus classicus* of the test for negligence, has not been satisfied.

[5] The appeal is dismissed, with costs.

_____
T D CLOETE
JUDGE OF APPEAL

APPEARANCES:

APPELLANTS:	E B Clavier
	Instructed by Du Toit-Smuts & Mathews Phosa c/o De Swardt Vögel & Myambo, Pretoria Symington & De Kok, Bloemfontein
RESPONDENTS:	T P Krüger
	Instructed by The State Attorney, Pretoria The State Attorney, Bloemfontein