

SOUTH AFRICA / JUDGMENT

A.F.A v Blue Crane Route Municipality (4784/2015) [2017] ZAECHGHC 86 (11 July 2017) [2017] ZAECHGHC 86

COURT

Eastern Cape High Court, Grahamstown

BEFORE

Plasket

CASE / FILE NUMBER

4784/2015

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IN

THE HIGH COURT OF SOUTH AFRICA

EASTERN

CAPE DIVISION, GRAHAMSTOWN

Case

no.4784/2015

Dates

heard: 13, 14 and 15/2/17; 30/3/17

Date

delivered: 11/7/17

Not

reportable

In

the matter between:

A.
F. A.
Plaintiff
and
BLUE
CRANE ROUTE MUNICIPALITY
Defendant

JUDGMENT

PLASKET, J:

- [1] On 8 January 2008, an eight year old girl, A. A., came into close proximity with a long piece of wire hanging from overhead high voltage electrical lines that ran in the vicinity of her home in N. in the village of Pearston. The lines carry 22 000 volts of electricity in three phases of 12 702 volts. In all probability – and the experts who testified were in agreement on this – A. did not touch the wire but, given the high voltage involved, the fault current, as a result of ionisation of the air between the wire and A., arced from the wire to her body. She suffered terrible injuries as a result: she lost her right hand and forearm and sustained severe burns.
- [2] The Blue Crane Route Municipality, the defendant, owned or controlled the power line. The plaintiff is Mr A. A., A.'s father. He instituted a claim for damages against the defendant in which he alleged that her injuries were sustained as a result of the negligent and wrongful acts or omissions of the defendant.
- [3] At the outset the merits and quantum were separated. This judgment concerns only the merits.
- [4] It is not in dispute that the defendant is a 'licensee' for purposes of the Electricity Regulation Act 4 of 2006: it is thus 'the holder of a license granted or deemed to have been granted by the Regulator under this Act'.^[1] Section 25 of the Act provides:
- 'In any civil proceedings against a licensee arising out of damage or injury caused by induction or electrolysis or in any other manner by means of electricity generated, transmitted or distributed by a licensee, such damage or injury is deemed to have been caused by the negligence of the licensee, unless there is credible evidence to the contrary.'
- [5] The effect of s 25 of the Act is to reverse the onus to an extent. In *Eskom Holdings Ltd v Hendricks*,^[2] a case concerning the interpretation of the similar in effect s 26 of the Electricity Act 41 of 1987, Scott JA held:^[3]

'The effect of the section therefore is that Eskom bore the onus of proving on a balance of probabilities that it was not negligent or, if it was, that there was no causal link between the negligence

and the injuries sustained by [the plaintiff].’

The pleadings

[6] In his particulars of claim, the plaintiff pleaded:

‘4.1 Defendant owed a duty of care to persons within the municipal area of Pearston, and more particularly the members of the public walking at, or near, any electrical power lines and/or cabling and/or electrical wiring within the said municipal area to ensure that they are not exposed to any harm, or danger, by ensuring that inter alia:

4.1.1 all live electrical power lines and/or cabling and/or electrical wires and/or uncovered electrical wires:

4.1.1.1 are not left unattended;

4.1.1.2 are not left uncovered;

4.1.1.3 are properly maintained and/or inspected;

4.1.1.4 are not left at any place and/or area where it is within the reach of members of the public and more particularly minor children;

4.1.1.5 are disconnected from the electrical power supply;

4.1.1.6 are raised sufficiently to ensure that it is not within reach of the public, and more particularly minor children;

4.1.1.7 are properly secured;

4.1.1.8 are not in an area where members of the public and more particularly, minor children, have access to and/or are able to gain access;

4.1.2 Members of the public, more particularly minor children, be warned, alternatively, adequately warned, of the danger posed by any electrical wiring and/or cabling and/or power lines;

4.1.3 Where a dangerous situation is present/created, ensure that members of the public, more particularly minor children, are not harmed;

4.1.4 All steps that a reasonable person could, and would have taken, in the circumstances to avoid members of the public, and particularly minor children, being injured, are taken.’

[7] He then pleaded, in paragraph 5, that on 8 January 2008 A. ‘suffered a severe electrical shock when she came into contact with live electrical power lines and/or cabling and/or uncovered electrical wires that were lying at and/or hanging from overhead power lines’, as a result of which she suffered injuries. The particulars of claim then state that in ‘breach of the defendant’s duty of care, as set out in paragraphs 4.1 – 4.2 above, the defendant’s electricity department staff, and other departments, were negligent in that they failed in one, or more, of the respects detailed in paragraphs 4.1 – 4.2 above’. It was, the plaintiff concluded, as a

result of the failure of the defendant's employees that A. was electrocuted and injured.

[8] In its plea the defendant admitted that it was 'subject to a legal duty ("duty of care") to members of the public, including the minor child, to take all precautions reasonably necessary to ensure that live, overhead electrical power lines under its control did not in the ordinary course constitute a hazard to members of the public and, more particularly, to ensure that members of the public did not and could not inadvertently come into contact with electricity being conducted in such electric power lines'. The remainder of paragraph 4 of the particulars of claim was denied.

[9] In answer to paragraph 5 of the particulars of claim, the defendant pleaded as follows:

'12.1 It is admitted that

(a) On or about 8 January 2008 at N., Pearston, the minor child suffered an electrical shock when she came into contact with certain extraneous conductive wire (ie, not being part of the electricity reticulation system), which an unknown person or persons had, without the knowledge, consent or approval of the defendant, thrown over or otherwise introduced to an overhead electrical power line, such that it dangled from the power line, within reach of the minor child, and

(b) As a result of the aforesaid shock the minor child suffered certain injuries.

12.2 Save as aforesaid, each and every allegation in this paragraph is denied as if separately traversed, the plaintiff being put to the proof thereof.

12.3 Without derogating from the generality of the aforesaid denial, but purely in amplification thereof, the defendant pleads as follows:

(a) The sole cause of the minor child's electrocution, and the sequelae thereof, was the conduct of the person or persons who threw the extraneous conductive wire over or otherwise introduced it to the overhead electrical power line, such that it dangled from the power line within reach of the minor child.

(b) The conduct of the aforesaid person or persons was of such an unprecedented, extraordinary, deliberate and/or malicious nature that the legal convictions of the community and/or the objective criterion of reasonableness ("objektiewe redelikheids-kriterium") did not in the circumstances impose upon the defendant a legal duty to foresee and take precautions against it.'

The

facts

[10] The facts relating to the incident emerge from the evidence of Mr C. K. and A.'s grandmother, Ms M. A.. Relevant evidence was also given by one of the defendant's employees at the time, Mr Christoffel Botha.

- [11] The story starts with Mr K.. On 7 January 2008, when he was about 16 years old, he was walking with his friends when he saw a length of wire hanging from the overhead electric power lines. He touched the length of wire and was shocked, suffering burn wounds to his hands and feet. From his evidence, it is clear that the length of wire was the same conductor that electrocuted A. the next day. He told his parents what had befallen him the following day and he went to the local clinic for treatment. It appears from his evidence, however, that he did not report the incident to anyone else.
- [12] Ms A. testified that A. lived with her at the time of the incident. A. was injured on 8 January 2008. That morning, at about 08h00, Ms A. had seen a municipal bakkie drive up to the pylons near where the accident later happened. Two men got out of the bakkie, looked up at the pylons, got back into the bakkie and drove away. She does not know what these men were doing.
- [13] Later, between 13h00 and 14h00 she was called by one of A.'s friends who told her that A. had been electrically shocked. She ran to the scene of the accident, about 150 metres from her house, where she found A. in a badly injured state. She carried A. home. She called the police and an ambulance.
- [14] From Ms A.'s description of events, it appeared that the municipal bakkie had stopped on the far side of the pylons from where A. was injured, and where the piece of wire hung down from the power lines. She was asked in cross-examination whether the men would have been able to see the wire from where they stood. Her answer was:
- ‘Nee want hulle het nie op die plek gestaan waar die draad gehang het nie.’
- When she was asked how she knew that they would not have seen the wire, she said:
- ‘Ek weet waar die draad gehang het en waar die bakkie gestaan het.’
- [15] Mr Christoffel Botha was the acting head of the Municipality's electricity department at the time of the accident. He testified that he was contacted at about lunch time of 8 January 2008 and informed that a child had been electrically shocked at Pearston. He hastened there.
- [16] On his arrival at the scene, he found members of the South African Police Service present. They had placed a cordon around a length of wire hanging from the power lines. It hung down to about half a meter from the ground. He described the wire as a bead wire from a car tyre.
- [17] He asked the police to take photographs of the scene for him. He then removed the wire from the power line. He believed that the wire had been used as the tail of a kite because he saw a kite that was stuck on the middle power line. He described the wire as being very thin and said that a person would not have noticed it unless he or she was specifically looking for it.

The plaintiff's case

- [18] It is clear from the particulars of claim and from the first report of Mr Mathew Knowles, the expert witness called by the plaintiff, that the initial basis of his case was that one of the power lines had broken and hung down to the ground. On the strength of this assumption, Mr Knowles had investigated whether the system had been properly maintained by the defendant and the case advanced was that the broken power line was caused by the defendant negligently failing to maintain the electricity network.
- [19] The plaintiff's case began to change when it emerged from the plea that the conductor that had shocked A. was a length of wire extraneous to the power line introduced onto the power line by an unknown person.
- [20] It later became the plaintiff's case that the defendant had been under a legal duty to upgrade the network and was obliged to introduce a sensitive earth fault detection device, and to set it to operate at a low fault current and to activate instantaneously on detecting the rated fault current.
- [21] These legal duties were not pleaded specifically. Instead, the plaintiff relied on what it termed a general 'duty of care' to ensure that '[a]ll steps that a reasonable person could, and would have taken, in the circumstances to avoid members of the public, and particularly minor children, being injured, are taken'.
- [22] When Mr Knowles was about to testify about the upgrading of the system and the introduction of a sensitive earth fault detection

device, Mr Tyler, who appeared for the defendant, objected and gave notice of his intention, in due course, to argue that this evidence was inadmissible as its basis had not been pleaded. I shall deal with that issue in due course.

The

issues

- [23] In *Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority SA*[4] Harms JA stated:

'The first principle of the law of delict, which is so easily forgotten and hardly appears in any local text on the subject, is, as the Dutch author Asser points out, that everyone has to bear the loss he or she suffers. The Afrikaans aphorism is that "skade rus waar dit val". Aquilian liability provides for an exception to the rule and, in order to be liable for the loss of someone else, the act or omission of the defendant must have been wrongful and negligent and have caused the loss. But the fact that an act is negligent does not make it wrongful although foreseeability of damage may be a factor in establishing whether or not a particular act was wrongful. To elevate negligence to the determining factor confuses wrongfulness with negligence and leads to the absorption of the English law tort of negligence into our law, thereby distorting it.'

[24] Subject to the reverse onus created by s 25 of the Electricity Regulation Act, if delictual liability is to be visited on the

defendant, findings will have to have been made that its acts or omissions were negligent and wrongful, that harm was suffered and that the harm was caused by the negligent and wrongful conduct.[5]

Negligence: The two municipal employees

[25] I accept the evidence of Ms A. that during the morning of 8 January 2008, she saw two municipal employees travelling in a municipal

bakkie go to the vicinity of where the accident later happened. Her evidence was that they stood at the first of a set of three pylons carrying the three phases of the power supply. The wire that shocked A. hung from one of the power lines at a point beyond the furthest pylons from the two men.

[26] I accept that if the employees had seen the wire and done nothing to remove it or have it removed from the power line, their failure would have constituted negligence, which would have been attributable vicariously to the defendant. The evidence of both Ms A. and Mr Botha, however, leads me to conclude that it is improbable that the two men saw the wire. I say this for two reasons. First, they were a distance from it and secondly it was thin and very difficult to see.

[27] In the result, the credible evidence of Ms A., taken with the equally credible evidence of Mr Botha, negatives the presumption of negligence on the part of the defendant in relation to the conduct of its two unknown employees.

Causation: The existing network

[28] In *Lee v Minister of Correctional Services*[6] Nkabinde J set out in general terms the functioning of causation as an element of a delict. She stated:[7]

‘The point of departure is to have clarity on what causation is. This element of liability gives rise to two distinct enquiries. The first is a factual enquiry into whether the negligent act or omission caused the harm giving rise to the claim. If it did not, then that is the end of the matter. If it did, the second enquiry, a juridical problem, arises. The question is then whether the negligent act or omission is linked to the harm sufficiently closely or directly for legal liability to ensue or whether the harm is too remote. This is termed legal causation.’

[29] In this matter, it is only factual causation that is in issue. This proper approach to that issue was set out as follows by Corbett CJ in *International Shipping Co (Pty) Ltd v Bentley*:[8]

‘The enquiry as to factual causation is generally conducted by applying the so-called “but-for” test, which is designed to determine whether a postulated cause can be identified as a *causa sine qua non* of the loss in question. In order to apply this test one must make a hypothetical enquiry as to what probably would have happened but for the wrongful conduct of the defendant. This

enquiry may involve the mental elimination of the wrongful conduct and the substitution of a hypothetical course of lawful conduct and the posing of the question as to whether upon such an hypothesis plaintiff's loss would have ensued or not. If it would in any event have ensued, then the wrongful conduct was not a cause of the plaintiff's loss; aliter, if it would not so have ensued. If the wrongful act is shown in this way not to be a *causa sine qua non* of the loss suffered, then no legal liability can arise.'

[30] For present purposes I shall assume that the defendant's failure to maintain the network was both negligent and wrongful. The question to be addressed is whether the harm would have occurred whether the defendant had been negligent or not and irrespective of the wrongfulness if its omission. In other words, the enquiry centres on whether A. would have been injured even if the network had been properly maintained.

[31] Both Mr Knowles and Mr Edmund De Klerk, the defendant's expert, testified on this aspect. They were in agreement. In his report, Mr De Klerk had stated that 'on the assumption that the network had been properly maintained' and that the protective measures that had been installed 'were functioning optimally, A.'s injuries would not have been averted'.

[32] The protection he referred to was made up of three components: the oil circuit-breaker (OCB) which was set to 20 Amps; the auto-recloser circuit-breaker (ARCB) which was set at 15 Amps; and fuses attached to the support structure, the sensitivity of which were also 15 Amps.

[33] Mr De Klerk stated:

"The aforesaid protection is designed to protect the network (against fault current and against overload and phase faults), and not to protect humans against electrical shock as a result of inadvertent exposure to the electricity in the overhead conductors. The design and operation are wholly compliant with South African standards and practice, which do not entail protections on high or medium voltage overhead conductors to avoid electrical shock to humans – apart, of course, from protections to ensure that humans are physically barred from too close an approach to bare conductors (such as, for example, installing anti-climbing devices on pylons and ensuring that overhead cables are suspended at minimum clearances). An important concern in the design and implementation of network protection is that the network ought to ensure a reasonably continuous supply of electricity (ie, so that it is a stable

network). This implies that protection cannot be so sensitive that the network becomes unstable.'

[34] He explained that when A. came into 'contact' with the wire 'she precipitated a short circuit fault to earth'.

She was exposed to 'current with a potential of 12 702 V'. The initial resistance of her body would have decreased and the fault current would have increased. The fault current to which she was exposed was not catastrophic for the network, increasing in milliseconds to somewhere in the region of 12.7 Amps. This would not have activated the protection.

[35] Mr De Klerk concluded:

‘Because A. survived, it is most probable that she ceased to have contact with the conductive wire before the fault current escalated to the levels which would have activated the aforesaid protection.’

[36] Mr De Klerk’s reasoning was put to Mr Knowles paragraph by paragraph when he was cross-examined. He agreed with it virtually

without reservation. He most certainly agreed with its bottom line – that even if the network had functioned as it should, A. would still have been injured in the way in which she was.

[37] The result of this is that the defendant’s failure to maintain the network was not the factual cause of A.’s injuries and so, even if negligence and wrongfulness had been established, factual causation has not been established.

The plaintiff’s evolved case: Was it pleaded?

[38] During the course of the trial, and in the argument, the plaintiff’s case evolved from the negligent and wrongful conduct on the part of the defendant being its failure to maintain the network to its failure to upgrade its network and to install in it a sensitive earth fault device that could be set to low amperages and to activate immediately. (I have considerable doubt that when the network in use at the time was legally compliant, and used by a large number of municipalities across the country, as testified by Mr De Klerk, a failure to upgrade it can be regarded as negligent or wrongful.)

[39] The evolved case has not been pleaded expressly in the particulars of claim. Paragraph 5.1 of the particulars of claim sets out the factual basis of the plaintiff’s cause of action. It is that A. had ‘suffered a severe electrical shock when she came into contact with live electrical power lines and/or cabling and/or uncovered electrical wires that were lying at and/or hanging from overhead power lines. . .’. Various ‘duties of care’ had been pleaded prior to this in general terms. They tended to focus, not surprisingly, on the maintenance issue.

[40] I cannot see how it can be inferred from the particulars of claim a case that the defendant’s liability arose from its failure to upgrade its network in a particular way. Furthermore, no facts were pleaded that would establish that such an omission was wrongful.[9]

[41] Despite vague responses to a request for further particulars not shedding any light on the precise contours of the plaintiff’s

pleaded case, Mr Knowles’ first report, dated 21 September 2016, makes it clear that his instructions were that ‘the line had broken and was hanging from the overhead lines’ – and that this was a result of inadequate maintenance. He conceded in cross-examination that this had been his initial understanding of the

facts.

[42] In a second report, dated 27 January 2017, Mr Knowles conceded that his ‘previous assumption’ that ‘the line broke’ was not correct and that, in fact, ‘the wire hanging from the line was not part of the conductor’. For the rest, he maintained his position that the cause of the harm to A. was the inadequate maintenance of the network. So, for instance, his opinion was:

‘8 That in his view there should have been regular maintenance done on an annual basis and the failure to do so caused the injuries.

9 That in conclusion, despite all the discovery and photographs produced by the defendant, recently, he stands by his previous findings and the abovementioned new evidence supports his view that the system and line was not serviced by the defendant and the failure to do so resulted in a danger to life and limb, which resulted in a protection not operating properly, causing harm to the minor child.

10 That had the system and line been serviced properly, and given the old equipment used by the defendant, the line would have tripped and the possible electrocution of the minor child would only have lasted milliseconds or seconds and which would not have caused such significant injury to the minor child.’

11 That, with special reference to annexure “MH10”, the breaker did not trip at all and the protection measures failed.’

[43] In his third report, dated 30 January 2017, Mr Knowles confirmed the technical information contained in Mr De Klerk’s report as to how the protection on the network was meant to work. He stated that he stood by his two earlier reports, confirming the views and opinions that he had stated. In paragraph 2, however, after reference to Mr De Klerk’s report, he had expressed the view that ‘the equipment utilised by the defendant is the old type equipment and if new IDMT relays had been utilised, with a sensitive earth fault, the incident would not have caused the harm as the oil fill breaker would have tripped appropriately’.

[44] The large majority of Mr Knowles’ evidence in chief was devoted to the dearth of record-keeping on the part of the defendant’s

electrical staff and the apparent lack of maintenance that could be inferred from the lack of records, as well as his observations of the network some eight years after the incident.

[45] He testified, however, that the network was old, dating back to the 1970s, and that in the Makana Municipality (Grahamstown and surrounds), for instance, a similar network had been replaced with a more modern network. Eskom, he said, had also embarked on an upgrading process. A feature of the replacement networks is that they incorporate sensitive earth fault detection that can be set at a low amperage.

[46] As stated above, Mr Tyler objected to the evidence of Mr Knowles regarding the upgrading of the system. If he had not, that evidence may have been relevant and admissible, and the plaintiff's evolved case may have been properly before me, even though it was not pleaded. [10]

[47] Section 2 of the Civil Proceedings Evidence Act 25 of 1965 provides that '[n]o evidence as to any fact, matter or thing which is irrelevant or immaterial and cannot conduce to prove or disprove any point or fact in issue shall be admissible'. Two of the important purposes of the pleadings in civil proceedings are to inform an opposing party of the case he or she has to meet and to define the issues.[11] What evidence is relevant to a plaintiff's claim – and hence admissible – is defined principally by the particulars of claim which contains a 'statement of material facts relied upon by a plaintiff in support of his claim against a defendant, the conclusion of law that he is entitled to deduce from the facts stated therein and a prayer for appropriate relief'.[12]

[48] In *Trope & others v South African Reserve Bank*[13] the court held:

'It is trite that a party has to plead – with sufficient clarity and particularity – the material facts upon which he relied for the conclusion of law he wishes the Court to draw from those facts. . . It is not sufficient, therefore, to plead a conclusion of law without pleading the material facts giving rise to it.'

Flowing from this principle that material facts must be pleaded, Jansen JA, in *Société Commerciale de Moteurs v Ackermann*,[14] held that '[e]vidence would not be admissible to prove facts not pleaded'.

[49] As, in this case, the material facts relied upon to found the plaintiff's evolved case have not been pleaded, the defendant

has objected to that evidence and will, as a result, be prejudiced, the evidence of Mr Knowles concerning the upgrading of the network is inadmissible. Put simply, the evolved case is not before me.

Causation: The plaintiff's evolved case

[50] Even if the evidence of Mr Knowles concerning the upgrading of the network and the inclusion of a sensitive earth fault device set as he suggested was admissible, I am of the view that his evidence does not, in any event, establish factual causation.

[51] Mr Knowles and Mr De Klerk agreed that A. probably never came into contact, physically, with the wire but was shocked as a result of arcing from the wire. She would, they agreed, have been exposed to the electricity in this way for an extremely short period of time, measured in milliseconds.

[52] When he was cross-examined, Mr Knowles conceded that in 2008, the sensitive earth fault protection then available was time-definite and would have been set to two seconds to activate, irrespective of the amperage. He conceded too that, on this basis, if this equipment had been in place, A. would still have been exposed to fault current of 12 or more Amps for up to two seconds.

[53] In other words, A. would have been injured even if the sensitive earth fault device available at the time had been installed prior to the accident.

[54] As a result, even if it is assumed that the defendant's omission to upgrade the network as suggested was negligent and

wrongful, that omission was not the cause of the harm suffered by A..

Other

issues

[55] Various other grounds of negligence were raised by the plaintiff. These included a range of failures on the part of the defendant's

electrical staff to ensure the safety of the public. For instance, Mr Knowles testified about inadequate anti-climb measures on pylons, inadequate signage on the substation, inadequate measures to keep the public out of the substation, 'Heath Robinson' repairs on fuses and so on. It is not necessary for me to deal with these issues in any detail. Suffice it to say that the evidence related to Mr Knowles' observations in 2016, eight years after the event, and none were causally connected to the harm suffered by A..

[56] It was also argued that the defendant was under a duty to have educated A. about the dangers of electricity. Her grandmother

testified that A. had grown up in a house that was electrified and that she was well aware of the dangers of electricity.

Conclusion

[57] For the reasons set out above, the plaintiff's claim is dismissed with costs.

C Plasket

Judge of the High Court

APPEARANCES

For the plaintiff: S Cole instructed by Wheeldon, Rushmere and Cole, Grahamstown

For the defendant: T Tyler instructed by Dicks Van der Merwe Attorneys, Cape Town and Netteltons, Grahamstown

- [1] Electricity Regulation Act, s 1. The 'Regulator' referred to in the definition is the National Energy Regulator.
- [2] Eskom Holdings Ltd v Hendricks 2005 (5) SA 503 (SCA). See too Pitzer v Eskom [2012] ZASCA 44 (29/03/2012) paras 11-12.
- [3] Para 8. Section 26 of the Electricity Act provided: 'In any civil proceedings against an undertaker arising out of damage or injury caused by induction or electrolysis or in any other manner by means of electricity generated or transmitted by or leaking from the plant or machinery of any undertaker, such damage or injury shall be presumed to have been caused by the negligence of the undertaker, unless the contrary has been proved.' The Electricity Act was repealed by s 36 of the Electricity Regulation Act.
- [4] Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority SA 2006 (1) SA 461 (SCA) para 12.
- [5] HL & H Timber Products (Pty) Ltd v Sappi Manufacturing (Pty) Ltd 2001 (4) SA 814 (SCA) para 13. See too MTO Forrestry (Pty) Ltd v Swart NO [2017] ZASCA 57 (22 May 2017) paras 15-18.
- [6] Lee v Minister of Correctional Services 2013 (2) SA 144 (CC).
- [7] Para 38.
- [8] International Shipping Co (Pty) Ltd v Bentley 1990 (1) SA 680 (A) at 700F-H. See too Minister of Safety and Security v Van Duivenboden 2002 (6) SA 431 (SCA) paras 24-25.
- [9] Fourway Haulage SA (Pty) Ltd v SA National Roads Agency [2008] ZASCA 134; 2009 (2) SA 150 (SCA) para 14; Media 24 Ltd & others v SA Taxi Securitisation (Pty) Ltd (Avusa Media Ltd & others as amici curiae) 2011 (5) SA 329 (SCA) para 11.
- [10] Middleton v Carr 1949 (2) SA 374 (A) at 385-386; EC Chenia & Sons CC v Lamè & Van Blerk [2006] ZASCA 10; 2006 (4) SA 574 (SCA) para 15.
- [11] Cilliers, Loots and Nel Herstein and Van Winsen: The Civil Practice of the High Courts of South Africa (5 ed) (Vol 1) at 558.
- [12] Cilliers, Loots and Nel (note 11) at 579.
- [13] Trope & others v South African Reserve Bank [1993] ZASCA 54; 1993 (3) SA 264 (A) at 273A-B.
- [14] Société Commerciale de Moteurs v Ackermann 1981

(3) SA 422 (A) at 435C-D.

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