

SOUTH AFRICA / JUDGMENT

Ivaura Estates (Pty) Ltd v MEC, Council, Department of Roads & Transport, Mpumalanga (240/10) [2011] ZASCA 9 (10 March 2011) [2011] ZASCA 9

COURT

Supreme Court of Appeal

BEFORE

Harms, Cloete, Malan

CASE / FILE NUMBER

240/10

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Of no precedential significance

Case No: 240/10

In the matter between:

IVAURA ESTATES (PTY) LTDAppellant

and

THE MEMBER OF THE EXECUTIVE COUNCIL,

DEPARTMENT OF ROADS & TRANSPORT, MPUMALANGARespondent

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.

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

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZASCA/2011/9.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/ivaura-estates-pty-ltd-v-mec-unknown-topic-asca-2011>

Prepared on 10 October 2026 · Esheria