

SOUTH AFRICA / JUDGMENT

Minister of Safety and Security v Msi (273/2018) [2019] ZASCA 26 (28 March 2019)

[2019] ZASCA 26

COURT

Supreme Court of Appeal

BEFORE

Navsa, Majiedt, Mathopo, Schippers, Eksteen

CASE / FILE NUMBER

273/2018

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THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case No: 273/2018

In the matter between:

THE MINISTER OF SAFETY AND SECURITY APPELLANT

and

KHOLEKA NANCY MSI RESPONDENT

Neutral citation: The Minister of Safety and Security v Nancy MSI (273/2018) [2019] ZASCA 26 (28 March 2019)

Coram: Navsa AP, Majiedt, Mathopo, Schippers JJA and Eksteen AJA

Heard: 27 February 2019

Delivered: 28 March 2019

Summary: Delict – assault by policeman – vicarious liability – deviation case – application of legal principles.

ORDER

On appeal from: Eastern Cape Division of the High Court, Grahamstown (Lowe J and Kahla AJA concurring):

1. The appeal succeeds with costs, including the costs of two counsel.
2. The order of the court a quo is set aside and is replaced with the following
'(a) The appeal succeeds with costs.
(b) The order of the Magistrate is set aside and replaced with the following: 'The plaintiff's claim is dismissed with costs.'

Eksteen AJA (Navsa AP, Majiedt, Mathopo and Schippers JJA concurring):

- [1] The dispute in this matter raises the vexed issue of vicarious liability of the appellant (the Minister) for the conduct of his servants who have deviated from the course and scope of their employment. The respondent (Ms Msi) was assaulted by her former suitor, Warrant Officer Thambo (Thambo), a policeman in the employ of the South African Police Services (SAPS), during a private meeting at the home of her employer. Thambo was summoned to the residence by Ms Msi in order to discuss personal affairs, which are set out in greater detail below, when the assault occurred. She instituted action against the Minister claiming damages which she allegedly

suffered in consequence of the injuries she sustained in and as a result of the assault. She obtained judgment in her favour in the Regional Court, Grahamstown which was confirmed on appeal by the High Court, Grahamstown. The current appeal is directed against that judgment and it proceeds with special leave obtained from this court.

Background

- [2] The sad saga giving rise to Ms Msi's claim unfolded in the usually tranquil seaside village of Kenton-on-Sea (Kenton) in the

Eastern Cape. Ms Msi, a 52 year old woman who was employed as a domestic worker, had previously been engaged in a lengthy intimate

relationship with Thambo which had ended in 1996 when Thambo left to live in Johannesburg. He later returned to Kenton and, although they did not resume their relationship, they remained close friends. Thambo's brother, Madala, and his girlfriend formed part of their social circle. During February 2013, tension arose within the friendship as Ms Msi suspected that Thambo was engaged in an unduly intimate relationship with Madala's girlfriend. She had witnessed the two of them kissing in a motor vehicle in Kenton. At approximately the same time Ms Msi became aware of inexplicable animosity towards her from Madala's girlfriend, who had made abusive statements to and of her. Unsurprisingly, she felt offended by this conduct.

[3] Ms Msi's alleged observation of the perceived intimacy between Thambo and Madala's girlfriend had come to the knowledge of Madala and he requested to meet with Ms Msi at his home so that they could discuss the matter. Initially, she was reluctant and declined to commit to such a meeting. In due course, however, she agreed to such a meeting on condition that it be held at the house of her employer and on the basis that 'there isn't any violence that will occur'. The meeting was accordingly

scheduled for 20 February 2013.

[4] Initially, Ms Msi testified that the meeting was arranged only to discuss the abusive utterances by Madala's girlfriend. However, in cross-examination, she was constrained to acknowledge that the illicit affair between Thambo and Madala's girlfriend was also on the agenda. In these circumstances, Thambo was also summoned to the meeting.

[5] On the day of the meeting, Thambo was officially on duty performing crime prevention patrol duties and attending to complaints. He was not authorised to attend private meetings during working hours. He was dressed in full uniform and armed with his official firearm carrying his issued handcuffs and he travelled in a marked police vehicle. Although police on patrol duty are required to

work in pairs, Thambo proceeded without his partner, no doubt because he perceived the meeting to be a private affair, to fetch Madala, his girlfriend and another unnamed woman. The four of them travelled in the police vehicle to Ms Msi's place of employment. The use of a police vehicle for private purposes was prohibited by police regulation.

[6] There is no evidence that any of the attendees, save for Ms Msi, knew that the utterances by Madala's girlfriend were to be

discussed at the meeting, nor that they were raised for discussion at the meeting before it descended into chaos as set out below. As the meeting commenced Ms Msi immediately raised the alleged illicit affair between Thambo and Madala's girlfriend for discussion. This elicited an angry response from Thambo who proceeded to assault Ms Msi. He struck her with a clenched fist and with his police handcuffs. As she screamed for help, her employer's son came to her assistance and separated the parties. These events brought the meeting to an abrupt end.

[7] There is a dearth of information relating to the immediate stimulus which lead to the assault. Neither the trial court nor the court a quo gave any consideration to the sequence of the events at the alleged meeting. It can, however, safely be accepted on a conspectus of the evidence that the assault occurred when Thambo was confronted with his alleged conduct with Madala's girlfriend.

[8] Against this background, the court a quo held the Minister vicariously liable for the conduct of Thambo. The sole question in the appeal is whether it was correct in this finding.

The test for vicarious liability

[9] As a general rule, an employer is vicariously liable for the wrongful acts or omissions of an employee committed within the course

and scope of employment, or whilst the employee was engaged in any activity reasonably incidental to it. In *F v Minister of Safety and Security* 2012 (1) SA 536, Mogoeng J explained:

‘Two tests apply to the determination of vicarious liability. One applies when an employee commits the deed while going about the employers business. This is generally regarded as the “standard test”. The other test finds application where wrongdoing takes place outside the course and scope of employment. These are known as “deviation cases”.[1]

In this matter the court a quo correctly held, and it is common cause, that Thambo was not advancing the interests of his employer in any way, whether improperly or otherwise. He was not acting in the course and scope of his employment. This is accordingly a ‘deviation case’.

[10] The legal foundation of the test for vicarious liability in deviation cases was initially developed in two decisions of this court during the previous century; *Feldman (Pty) Ltd v Mall* 1945 AD 733 and *Minister of Police v Rabie* 1986 (1) SA 117 (A). The test was further refined by the Constitutional Court in *K v Minister of Safety and Security* [2005] ZACC 8; 2005 (6) SA 419 (CC) and in *F v Minister of Safety and Security*. [2] It is instructive to have regard to these developments before seeking to apply the test to the facts of the present case.

[11] In *Feldman* a servant of the defendant had been given custody of a motor vehicle and a number of parcels with instructions to drive the vehicle and to deliver the parcels to various customers in town. Having completed his deliveries he was to return the vehicle to a certain garage. Instead, however, he drove the vehicle to a place some distance away, on his own business, and there consumed alcohol which significantly impaired his driving ability. Shortly after departing from this location and on route back to the garage he collided with and killed the father of two minor children. This court held that he had never entirely abandoned his master’s work as

he had throughout retained the custody and control of the vehicle on behalf of his master and that the master was therefore liable for his negligence.

[12] In the course of his judgment, however, Watermeyer CJ discussed the common law position relating to vicarious liability. He stated:

‘If an unfaithful servant, instead of devoting his time to his master’s service, follows a pursuit of his own, a variety of situations may arise having different legal consequences.

(a) If he abandons his master’s work entirely in order to devote his time to his own affairs then his master may or may not, according to the circumstances, be liable for harm which he causes to third parties. If the servant’s abandonment of his master’s work amounts to mismanagement of it or negligence in its performance and is, in itself, the cause of harm to third parties, then the master would naturally be legally responsible for that harm. . . If, on the other hand, the harm to a third party is not caused by the servant’s abandonment of his

master's work but by his activities in his own affairs, unconnected with those of his master, then the master would not be responsible.'[3]

[13] Watermeyer CJ also discussed the reasons for imposing vicarious liability on a master and explained:

'I have gone into this question more fully than seems necessary, in the hope that the reasons which have been advanced for the imposition of vicarious liability upon a master may give some indication of the limits of a master's legal responsibility, and the reasons are to some extent helpful. It appears from them that a master who does his work by the hand of a servant creates a risk of harm to others if a servant should prove to be negligent or inefficient or untrustworthy; that, because he has created this risk for his own ends he is under a duty to ensure that no one is injured by the servant's improper conduct or negligence in carrying on his work and that the mere giving by him of directions or orders to his servant is not sufficient performance of that duty. It follows that if the servant's acts in doing his master's work or his activities incidental to or connected with it are carried out in a negligent or improper manner so as to cause harm to a third party the Master is responsible to that harm.'[4]

[14] Rabie was decided some forty years after Feldman. In Rabie, an off-duty mechanic employed by the South African Police and dressed in civilian clothes carried out an arrest purely for his own purposes. He was not employed to perform law enforcement duties and he had clearly not acted in the course and scope of his employment. At the time of the arrest, however, he introduced himself as a policeman and after arresting his victim took him to the police station, filled out a docket, wrongfully charged his victim with attempted housebreaking and detained him. In the course of the

judgment Jansen JA stated:

'It seems clear that an act done by a servant solely for his own interests and purposes, although occasioned by his employment, may fall outside the course or scope of his employment, and that in deciding whether an act by a servant does so fall, some reference is to be made to the servant's intention (cf *Estate Van der Byl v Swanepoel* 1927 AD 141 at 150). The test is in this regard subjective. On the other hand, if there is nevertheless a sufficiently close link between the servant's acts for his own interests and purposes and the business of his master, the master may yet be liable. This is an objective test . . .'[5]

[15] K came before the Constitutional Court in 2005. It concerned the unlawful kidnap and rape of an innocent woman by three policemen on duty. K had been on a date with her boyfriend. The arrangement had been that he would take her home at the end of the evening, but he had met up with a former girlfriend during the course of the evening which led to a disagreement between K and her companion. When she asked him to take her home he refused and she therefore decided to look for a telephone in order to call her mother so that she could collect her. As there was no telephone available at the venue where they were she proceeded on foot to a nearby petrol

station. There too she was unable to obtain access to a telephone. However, in the shop attached to the petrol station a policeman in full uniform entered. He was the driver of a marked SAPS vehicle and addressed her in fluent Afrikaans asking where she was headed. She advised that she wanted to go home and he offered to take her there. In the vehicle there were two other members of the SAPS, also dressed in full uniform. They were all on duty. Instead of taking her home, however, they kidnapped and raped her.

[16] The Constitutional Court accepted the test enunciated in *Rabie* as point of departure and further refined the test in order to give effect to Constitutional norms. It held that in seeking to establish what constitutes a 'sufficiently close link' the court should consider the need to give effect to the spirit, purport and object of the Constitution. It referred with approval to the dicta in *Feldman* and *Rabie* which I have set out above and O' Regan J proceeded to state, in respect of deviation cases:

'The objective element of the test which relates to the connection between the deviant conduct and the employment, approached with the spirit, purport and objects of the constitution in mind, is sufficiently flexible to incorporate not only constitutional norms but other norms as well. It requires a court when applying it to articulate its reasoning for its conclusions as to whether there is a sufficient connection between the wrongful conduct and the employment or not. Thus developed, by the explicit recognition of the normative content of the objective stage of the test, its application should not offend the Bill of Rights or be at odds with our constitutional order.'[6]

[17] The Constitutional Court concluded that the police officers' conduct bore a sufficient connection to their employment as police

officers to attach vicarious liability to the Minister. In applying the new refined tests for vicarious liability three considerations

weighed heavily with the court; (a) the police officers and their employer had a statutory and constitutional duty to prevent crime and to protect members of the public; (b) the police officers had offered to assist K and she had accepted their offer and by doing so, reposed her trust in the police officers in uniform in circumstances where it was reasonable for her to do so; and (c) there had been a simultaneous commission and omission. The police committed the rape on K; simultaneously they had omitted to protect her from harm which they had a general and special duty to do.

[18] In *K*, however, the Constitutional Court sought only to lay down the legal parameters. O' Regan J went on to explain:

'The common - law test for vicarious liability in deviation cases as developed in *Rabie's* case and further developed earlier in this judgment need to be applied to new sets of facts in each new case in the light of the spirit, purport and objects of our Constitution. As courts determine whether employers are liable in each set of factual circumstances, the rule will be developed. The tests is one which contains both a factual assessment (the question of the subjective intention of the perpetrators of the delict) as well as a consideration which raises a question of mixed fact and

law, the objective question of whether the delict committed is “sufficiently connected to the business of the employer” to render the employer liable.’[7]

[19] The facts in F were similar to those in K. A young teenage girl had been to a night club in George. In the early hours of the morning she found herself stranded without transport. She was offered a lift home by an adult man in civilian clothes in an unmarked vehicle. As it turned out he was a policeman on standby duty and the vehicle was a police vehicle which he was entitled to use by virtue of the police functions which he might be required to fulfil if called upon. The vehicle was fitted with a radio which F noticed when she entered the vehicle. Whilst travelling she noted a pile of police dockets bearing the name and the rank of the police official. Upon enquiry he advised that he was a private detective, which F understood to mean that he was a policeman. Contrary to his earlier undertaking, however, he drove the vehicle to a secluded spot outside of the town. The direction in which he drove caused F to become suspicious and when the vehicle came to a stop at the secluded spot F alighted and fled. A short while later the vehicle departed and F returned to the road side in order to seek a lift back to town. A vehicle approached and stopped to afford her a lift. Remarkably, it was the same vehicle and the same driver. Despite her misgivings she reluctantly boarded the vehicle. This she did partly owing to her desperate situation and partly because she believed that he was in fact a policeman and that she could for that reason trust him. He abused that trust and raped her.

[20] In F, the majority in the Constitutional Court held that there was a sufficiently close link between the conduct of the policeman

and the business of his employer. Mogoeng J writing for the majority, again had an occasion to discuss the nature of the test to be applied. He held:

‘As O Regan J stated in K the second question “does not raise purely factual questions but mixed questions of fact and law”. Accordingly, several interrelated factors have an important role to play in addressing the question whether the Minister is vicariously liable for the delictual conduct of Mr Van Wyk. The normative components that point to liability must here, as K indicated, be expressly stated. They are: the state’s constitutional obligations to protect the public; the trust that the public is entitled to place in the police; the significance, if any, of the policeman having been off duty and on standby duty; the role of the simultaneous act of the policemen’s commission of rape and omission to protect the victim; and the existence or otherwise of an intimate link between the policemen’s conduct and his employment. All these elements complement one another in determining the state’s vicarious liability in this matter.’[8]

[21] On a consideration of all these authorities and applying the test which emerges, this court, in *Minister of Safety and Security v Booysen* [2016] ZASCA 201, summarised the approach to be adopted thus:

‘The question remains whether in this case there is a sufficient link between the deceased’s conduct and his employment to impose vicarious liability on the minister. That question can only be answered by considering the normative factors referred to earlier, and the countervailing factors, thus conducting a balancing act.’[9]

It seems to me that this approach constitutes a fair reflection of what is required in terms of K and F.

Application of the test

[22] Applying the test in K in the present case the answer to the first question, which is subjective, does not establish liability. Thambo’s attendance at a meeting with Ms Msi was purely for his own purposes. He was summoned to attend a private meeting relating to personal affairs and he had no police function to perform there. Ms Msi had not summoned him by virtue of his employment as a police officer. She had no criminal complaint to lay and, on her own evidence, what was to be discussed was purely personal and between friends. There was nothing in the conduct of Thambo that suggests that he subjectively intended to advance the interests of the SAPS.

[23] I turn therefore to consider the second leg of the inquiry, whether there is a sufficiently close link between the assault of Ms Msi and the business of the SAPS. This enquiry is objective and it involves issues of fact and law. The point of departure is the recognition that the constitutional duty resting on the state, and more particularly on the police, to protect members of the public against crime and violence provides a normative basis for holding the state liable for the wrongful conduct by policemen. This liability, however, will only be imposed where there is a ‘sufficiently close connection’ between the conduct of the policemen and their employment.[10]

[24] In K and in F the trust which the public is entitled to place in the police and which the victims had placed in the policemen involved was pivotal to the conclusion reached. It weighed heavily with the court that an innocent citizen in distress had reposed her trust in the police as she was entitled to do and the policeman in issue had breached that trust. Thus, in F, Mogoeng J held:

‘In addressing the question of Mr Van Wyk’s personal liability and his employer’s vicarious liability it should make little difference that he was on standby duty, for which he was being paid. What matters is whether the trust placed in him as a policeman by a vulnerable member of the public, creates a sufficiently close connection between his delictual conduct and his employment.’[11]

[25] The trust in issue in F was explained thus:

‘. . . Additionally, if his employment as a policeman secured the trust of the vulnerable person placed in him, and his employment facilitated the abuse of that trust, the state might be held vicariously liable for the delict. The victim’s understanding of the situation would presumably be that she is being protected or assisted by a law enforcement agent, empowered and obliged by

the law to do so. Whether he is on or off duty would, in all likelihood be immaterial to her. From where she stands he is a policeman, employed to protect her, and should therefore be trusted to uphold, and not contravene, the law'.^[12]

[26] The court a quo held that there was an element of trust involved in the meeting to which Thambo was summoned, because the meeting was essentially a meeting to resolve conflict which had arisen as a result of an injuria, or an alleged injuria. It reasoned that this necessarily meant that the parties at the meeting were entitled to place their trust in Thambo to maintain decorum, law and

order. I disagree with this reasoning.

[27] It is true that Thambo was on duty, dressed in uniform and arrived at the meeting in a marked police vehicle. He was armed with a police issued firearm and handcuffs and he utilised the handcuffs in the course of the assault. These were factors which influenced the court a quo to come to the conclusion that a sufficiently close link had been established between the conduct of Thambo and the business of SAPS.

[28] There is, however, nothing in the evidence to suggest that Thambo knew that the alleged injuria would be raised at the meeting and, as a fact, it was not raised. As illustrated earlier herein, Ms Msi did not place her trust in Thambo by virtue of him being a policeman. From where she stood he was not a policeman employed to protect her but rather an old friend called to the meeting by virtue of their friendship and in order to confront him with his own misconduct. The commission of the delict was not facilitated by his employment as a policeman and the assault would have occurred in any event. In the context of the present case the fact that he was on duty, dressed in uniform and carrying paraphernalia issued to him in the course of his employment made no difference. Had he arrived in a private vehicle and in civilian clothes, without handcuffs, whilst off duty the result, it seems to me, would have been precisely the same. In fact, the evidence suggests that she had anticipated a possible violent response from Thambo, hence her suggestion to Madala that there should be no violence.

[29] I do not lose the sight of the fact that the trust which the public are generally entitled to repose in the police, is a factor to

be considered in the application of the test for vicarious liability. In Booyesen this court held:

'A careful and close reading of K and F reveals that the element of trust was central to the finding that there a sufficiently close link connection between the acts of the police officers and their employment, hence, vicarious liability. It is indeed doubtful, whether, without the element of trust, the outcome of the two cases would have been the same. K is explicit on this aspect:

"[57] In sum, the opportunity to commit the crime would not have arisen but for the trust the applicant placed in them because they were policemen, a trust which harmonises with the constitutional mandate of the police and the need to ensure that mandate is successfully fulfilled".^[13]

[30] In *Booyesen* a police officer on duty had utilised his police issue firearm to shoot his girlfriend. The fact that the police firearm was utilised in the shooting weighed heavily with the trial court when it held the minister liable for the conduct of a police official. On appeal, however, this court held:

‘The finding of liability based on the mere fact of the SAPS issuing a firearm to a police officer, amounts to the imposition of the strict liability, which is impermissible. For liability to arise under such circumstances, there must be evidence that the police officer in question was, for one reason or the other, known to be likely to endanger other people’s lives by being placed in possession of a firearm, and despite this, he or she was nevertheless issued with the firearm or permitted to continue possessing it. Such was the situation in *F*, where the police officer was retained in the employ of the SAPS as a detective despite previous criminal convictions.’[14]

[31] I do not think that the use of the handcuffs leads to the conclusion that the employment of *Thambo* provided the means to commit the crime. *Thambo* clearly reacted angrily to what he perceived to be provocation and struck *Ms Msi* repeatedly with clenched fists before striking her with his handcuffs. Had he not been in possession of handcuffs he would in all probability have utilised some other object to strike *Ms Msi*. It was merely a convenient object which was coincidentally available to utilise in the course of the assault which was already in progress. As stated earlier, the assault would, on the facts of this case, have occurred in any event.

[32] There is a further factor which on the facts of the present matter is deserving of consideration. It is that *Ms Msi* summoned *Thambo* to the meeting while he was on duty, which was contrary to police instructions. In *Bezuidenhout v Eskom* 2003 (3) SA 83 (SCA) an employee of Eskom had offered a lift to a minor child in a vehicle owned by Eskom and whilst on duty. This was contrary to the express instructions to the employee not to offer lifts to members of the public. In the course of such conveyance a collision occurred and the minor child was injured. This court held that Eskom was not vicariously liable for the conduct of its employee because he had been conveying the minor child contrary to express instructions.

[33] In the course of the judgment *Heher AJA* considered an earlier judgment of South African Railways and Harbours v *Marais* 1950

(4) SA 610 (A) (SAR and H) and held:

‘In the specific circumstance of *SAR and H v Marais* (and those of the present case) it would be unfair to hold the employer liable to the passenger who has associated himself, albeit

innocently, with the forbidden conduct of the employee and who, in effect, assumes the risk of the association.’[15]

He proceeded to state:

‘Moreover, application of the elements of the standard test which are perhaps more prominently applied today than in 1950, namely the subjective state of mind of the employee, and the objective test of a sufficiently close link between the servant’s acts in his own interest and for his own purposes and the business of the master. . . would both point to conduct on the driver’s part which fell beyond the scope of his employment; the driver knew perfectly well that he was prohibited from allowing Marais on to the engine and had no intention of furthering his master’s affairs by doing so, and the reality was that Marais’ presence added nothing to the interests of the administration in the proper operation of its service – the “close connection” was demonstrably absent.’[16]

[34] Bezuidenhout was decided prior to K and F. In K, however, O’ Regan J distinguished the facts of Bezuidenhout and those in SAR and H from the situation in K. She proceeded to state, however:

‘Even were the transportation of the applicant to have been in breach of the standing order, however, it is clear that the fact that employees breach a rule of their own employment is not sufficient of itself always to avoid employer liability. It remains a factor to be considered in determining whether the connection between the wrong and the employment is sufficiently close or not. It cannot on its own always be determinative. In this case, the appellant accepted the assistance offered by the police. The fact that this may have been against standing order is not sufficient on its own in view of the other factors already mentioned to mean that the respondent cannot be vicariously liable.’[17]

[35] The consideration of a breach of a rule of the employment of a servant remains relevant for purposes of determining whether there is a sufficiently close link between the conduct of the wrongdoer and the business of his employer. In the present case, Ms Msi knew that Thambo was a police official. On her own evidence she knew that he was on duty and nevertheless summoned him to the meeting, not for any police purpose, but for a private matter. The attendance of a private meeting while on duty and the use of a police vehicle for purposes thereof was, on the undisputed evidence, prohibited. In these circumstances it may, on the facts of this case, rightly be said that she has associated herself with the forbidden conduct. This factor and the absence of trust operate as countervailing factors to the normative considerations.

[36] For these reasons I find that there is not a sufficiently close connection between the business of the SAPS and the conduct of Thambo to justify the imposition of vicarious liability.

[40] In the result:

1. The appeal succeeds with costs, including the costs of two counsel.
2. The order of the court a quo is set aside and is replaced with the following: ‘(a) The appeal succeeds with costs.

(a) The order of the Magistrate is set aside and replaced with the following:

‘The plaintiff’s claim is dismissed with costs.’

J.W. Eksteen

Acting Judge of Appeal

Appearances:

For Appellant: EAS Ford SC (with him J Bester)

Instructed by: Whitesides Attorneys, Grahamstown State Attorney, Bloemfontein

For Respondent: A G Dugmore SC (with him JR Koekemoer)

Instructed by: N. N. Dullabh & Co., Grahamstown Symington & De Kok, Bloemfontein

[1] F v Minister of Safety and Security [2011] ZACC 37; 2012 (1) SA 536 para 41.

[2] Ibid.

[3] Feldman (Pty) Ltd v Mall 1945 AD 733 at 742.

[4] Ibid at 471.

[5] Minister of Police v Rabie 1986 (1) SA 117 (A) at 134C-E.

[6] K v Minister of Safety and Security [2005] ZACC 8; 2005 (6) SA 419 (CC) para 44.

[7] Ibid para 45.

[8] F fn 1 above para 52.

[9] Minister of Safety and Security v Booysen [2016] ZASCA 201 para 19.

[10] F fn 1 above para 61.

[11] Ibid para 68.

[12] Ibid para 66.

[13] Booysen fn 9 above para 20.

[14] Ibid para 17.

[15] Bezuidenhout v Eskom 2003 (3) SA 83 (SCA) para 23.

[16] Ibid para 24.

[17] K fn 6 above para 55.

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