

SOUTH AFRICA / JUDGMENT

Redhouse v Walker (17795/03)

[2005] ZAGPHC 4 (1 January 2005)

[2005] ZAGPHC 4**COURT**

High Courts - Gauteng

BEFORE

Bosielo

CASE / FILE NUMBER

17795/03

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

Source record

A...../ImIN THE HIGH COURT OFSOUTH AFRICA(TRANSVAALPROVINCIAL DIV-ISION)CASE NO:
17795/2003In the matter between:Sandra Redhouse

Plaintiffand

A...../Im

IN THE HIGH COURT OF
SOUTH AFRICA

(

TRANSVAAL
PROVINCIAL DIV-ISION)
CASE NO: 17795/2003

In the matter between: Sandra Redhouse
 Plaintiff
 and
 Howard Walker
 Defendant

JUDGMENT**BOSIELO, J**

[1] The plaintiff, a British citizen sued the defendant as owner of a horse called Maverick (the horse) for damages which she sustained during an outride on the defendant's premises, a guest lodge situate at Walkersons Estate on 6 January 2001.[2] The plaintiff's claim is based on three (3) alternative causes of action i.e. theactio de pauperie,based on the allegation that the horse "suddenly bolted" thus causing the plaintiff to fall (the horse actedcontra naturam sui generis); a delictual claim based on breach of duty of care, in that the defendant failed to

take all reasonable steps to ensure that the outride was safe, taking into account the plaintiff's level of experience in horse riding and thirdly, a contractual claim based on the alleged breach of an oral agreement to take all reasonable steps, given plaintiff's level of experience to ensure that the outride was safe, to provide plaintiff with a horse which was suitable and safe for her ride and further to ensure that the outride would be properly supervised.[3] The defendant raised a number of defences in his plea, inter alia, denying that Maverick, the horse, acted contra naturam sui generis, relied on the indemnity which the plaintiff signed; the defence of volenti non fit iniuria; denied a breach of either a delictual or contractual duty and finally alleging that the accident occurred solely due to plaintiff's own conduct. At the beginning of the trial and with the concurrence of both parties, I made an order in terms of Rule 33(4) separating the issue of merit from quantum. The trial concerning the quantum of damages was postponed sine die.[4] The plaintiff was the first to take the witness-stand. She testified that she came to the Walkerson's Resort during January 2001 as a tourist. She was accompanied by her companion, one Mr Winkelman. A day or two after their arrival at Walkerson's they were invited by one Ally, representing by management of Walkersons, to go for horse-riding. Despite the fact that she had not been riding horses for approximately fifteen (15) years, she accepted the invitation, as horse-riding was one of the offered available to the guests at Walkersons. She, accompanied by Winkelman went to the stables where each was allocated a horse. One Karlien Malan was in charge of the horses at the stables. Karlien made them sign an indemnity form. I pause to state that this indemnity form was accepted into evidence as Exhibit W1. Plaintiff testified further that she told Karlien that she regarded herself as a novice as she last rode horses approximately fifteen (15) years ago. She was unequivocal that Karlien never gave them any briefing about how to ride horses prior to the outride. They were then joined by another couple. Karlien then saddled the horses. She rode on her horse and moved about in the paddock. They all set off on the walk, each on his/her horse, with Karlien leading the pack.[5] According to plaintiff all the horses were walking and not running. They walked through the trees for approximately twenty to thirty minutes until they stopped. They started chatting together in a group, apart from Winkelman, whose horse was lagging behind. As they were chatting, Maverick suddenly and unexpectedly bolted and took off very fast. As the horse sped off, she tried to sit on the saddle. She then felt the saddle slipping away underneath her. She then fell off the horse but one of her feet, was caught in the stirrups. The horse then pulled her for a while until her foot was dislodged and she fell off the horse. However before she was released from the stirrups, the horse had dragged her on the ground whilst running for a considerable distance. She fell in some soft mud alongside the lake where she was ultimately rescued by some unknown fishermen. A vehicle was arranged to take her to a doctor whereafter she was taken to hospital where she was admitted for a night.[6] Upon her discharge from hospital, she returned to the lodge. On her second day after her release from hospital, she met with Karlien when she was at the breakfast table with Winkelman. Karlien expressed her sympathies to her for the accident and opined that something had spooked the horse. Furthermore she said that the horse was new at their stable. Of importance, Karlien told her that the horse was nervous and had a history of being beaten. As a result of her injuries, she

cut her visit short and returned to the UK prematurely. After her arrival home, she wrote a letter to the management of Walkerson's wherein she made a comprehensive report of the events of the day. This letter was admitted as Exhibit A2.[7] She was cross-examined extensively by Mr Snijmann S. C. for the defendant. She strenuously denied the suggestion that she had given the impression that she was an experienced jockey. She furthermore denied that she had specifically asked for a lively (wakker) horse. Of great significance, she pertinently denied that Karlien gave her any briefing concerning the ride. She also denied all suggestions that she caused the horse to behave in the manner it did as she screamed; left the reins; leaned forward on the horse and grabbed the horse by its neck.[8] Mr Winkelman testified for the plaintiff. To a large extent he corroborated the plaintiff's version. Significantly he confirmed that after they arrived at the stables as per the invitation by one Ally, they were allocated horses. Plaintiff climbed onto her horse after it was saddled and moved about in the paddock. He expressly denied that they were given any briefing before the ride. He also confirmed that before the ride they all signed the indemnity forms. When the ride started, they were with another couple and Karlien led the outride on her horse. According to Mr Wilkeman all the horses walked leisurely on the lawns with Karlien leading the pack. His horse was always lagging far behind as it appeared to be more interested in grazing than walking. He testified that at some stage as he looked up to see the group, he saw plaintiff's horse galloping. He did not know what was happening. He did not hear the plaintiff screaming. He saw the plaintiff leaning forward in the saddle. His opinion is that at the time, he thought she was actually showing off. He was not unduly alarmed as he had heard no noise apart from the hooves. He then saw Karlien galloping after plaintiff. He did not see the plaintiff falling from her horse. He then rode around the water up to the point where he saw plaintiff's horse with the saddle on its side. He then saw the plaintiff alongside the horse, her clothes torn and muddy and badly injured. He confirmed that plaintiff was then taken to the doctor and then to hospital. He testified further that a day or two after her release from hospital, they were approached by Karlien and Ally while at a breakfast who table who offered their sympathies. Karlien then told them that Maverick was reasonably new to the Walkerson's stable and further that it had a history of being beaten. In cross-examination, he denied emphatically that before the ride, they were instructed on how to ride. He confirmed however that before the actual ride, they moved about on the horses in the paddock. He denied that anyone of the horses ever trotted before the ride.[9] Karlien Malan testified on behalf of defendant. I find it necessary to state that she was called as an expert witness. A summary of her expert evidence was duly filed in terms of Rule 36(9)(b) of the Uniform Rules. Karlien testified that at the material time, she was responsible for all leisure and extra-mural activities at Walkerson's resort. As at the time of the accident, she had been working there for one year and few months. For the past three (3) years she has had no contact with Mr Walker, the defendant. She considers herself as an expert on horses. She has been riding horses since she was thirteen (13) years old. She also takes part in horse competitions. At the age of 21 years, she was a grade E at the Rand Show. She has also participated in horse-rides in Swaziland, Sudwana and Dulstroom. Currently she owns three (3) horses of her own which she has had for seven (7) years. She also has a Diploma on

Tourism and Management of Racing Practices.[10] She was involved in the purchase of Maverick in 2000. According to her, the previous owner wished to get rid of Maverick as he considered him being too lazy and “vreeslik rustig.” In her opinion, Maverick was comfortable and calm in a group. This horse was purchased approximately six (6) months before this accident. She also used to ride Maverick once per week and she never experienced any problems. Before this incident, there were no reported incidents, where someone fell off Maverick. Significantly she testified that before the outride, she enquired about the ability of the participants to ride horses. The participants were then asked to sign the indemnity forms which they did. She then gave them their helmets, where after she gave them a briefing. Essentially this encompassed how to sit, that they should ride behind her, how to keep their feet and hands and how to stop the horses. Furthermore she testified that plaintiff told her expressly that she does not want a dead horse, she requires a lively horse. She further testified that plaintiff told her that she was experienced. However she was unable to give plaintiff a lively horse. Instead she gave her a calm horse.[11] She testified that after all of the participants had walked around in their horses, with plaintiff alone trotting, they then started the ride. She moved in front whilst the rest followed. Whilst they so moved, they came to a place where there was a gentle descent. At this stage, so she testified, Maverick was at the rear. She was looking forward and did not see what happened to Maverick. She opined. “..... hy kon skeef getrap het of iets beweeg of wat ookal,”. Maverick then moved up to her and calmed down. All of a sudden, plaintiff stood up her and grabbed the horse by its neck. Maverick started to gallop and plaintiff then screamed. They told plaintiff to sit down but she stood upright and grabbed the horse at the throat (Keel) and the horse galloped. She then took a different direction so that she could try to stop Maverick. When she appeared the other side of the dam, she found that plaintiff had already fallen in the mud. Karlien opined that Maverick probably got a fright when plaintiff screamed and then bolted. She expressed the view that the reaction of Maverick under the circumstances was natural. In conclusion she reaffirmed her summary of her expert evidence as it appeared in Exhibit A6. When asked as to what could have caused Maverick to act in that manner, Karlien stated thus

[1] The plaintiff, a British citizen sued the defendant as owner of a horse called Maverick (the horse) for damages which she sustained during an outride on the defendant's premises, a guest lodge situate at Walkersons Estate on 6 January 2001.

[2] The plaintiff's claim is based on three (3) alternative causes of action i.e. the

actio de pauperie,

based on the allegation that the horse “suddenly bolted” thus causing the plaintiff to fall (the horse acted

contra naturam sui generis)

; a delictual claim based on breach of duty of care, in that the defendant failed to take all reasonable steps to ensure that the outride was safe, taking into account the plaintiff's level of experience in horse riding and thirdly, a contractual claim based on the alleged breach of an oral agreement to take all reasonable steps, given plaintiff's level of experience to ensure that the outride was safe, to provide plaintiff with a horse which was suitable and safe for her ride and further to ensure that the outride would be properly supervised.

[3] The defendant raised a number of defences in his plea,

inter alia

, denying that Maverick, the horse, acted

contra naturam sui generis

, relied on the indemnity which the plaintiff signed; the defence of

volenti non fit iniuria;

denied a breach of either a delictual or contractual duty and finally alleging that the accident occurred solely due to plaintiff's own conduct. At the beginning of the trial and with the concurrence of both parties, I made an order in terms of Rule 33(4) separating the issue of merit from quantum. The trial concerning the quantum of damages was postponed

sine die

.

[4] The plaintiff was the first to take the witness-stand. She testified that she came to the Walkerson's Resort during January 2001 as a tourist. She was accompanied by her companion, one Mr Winkelman. A day or two after their arrival at Walkerson's they were invited by one Ally, representing by management of Walkersons, to go for horse-riding. Despite the fact that she had not been riding horses for approximately fifteen (15) years, she accepted the invitation, as horse-riding was one of the offered available to the guests at Walkersons. She, accompanied by Winkelman went to the stables where each was allocated a horse. One Karlien Malan was in charge of the horses at the stables. Karlien made them sign an indemnity form. I pause to state that this indemnity form was accepted into evidence as Exhibit W1. Plaintiff testified further that she told Karlien that she regarded herself as a novice as she last rode horses approximately fifteen (15) years ago. She was unequivocal that Karlien never gave them any briefing about how to ride horses prior to the outride. They were then joined by another couple. Karlien then saddled the horses. She rode on her horse and moved about in the padlock. They all set off on the walk, each on his/her horse, with Karlien leading the pack.

[5] According to plaintiff all the horses were walking and not running. They walked through the trees for approximately twenty to thirty minutes until they stopped. They started chatting together in a group, apart from Winkelman, whose horse was lagging behind. As they were

chatting, Maverick suddenly and unexpectedly bolted and took off very fast. As the horse sped off, she tried to sit on the saddle. She then felt the saddle slipping away underneath her. She then fell off the horse but one of her feet, was caught in the stirrups. The horse then pulled her for a while until her foot was dislodged and she fell off the horse. However before she was released from the stirrups, the horse had dragged her on the ground whilst running for a considerable distance. She fell in some soft mud alongside the lake where she was ultimately rescued by some unknown fishermen. A vehicle was arranged to take her to a doctor where-after she was taken to hospital where she was admitted for a night.

- [6] Upon her discharge from hospital, she returned to the lodge. On her second day after her release from hospital, she met with Karlien when she was at the breakfast table with Wilkelman. Karlien expressed her sympathies to her for the accident and opined that something had spooked the horse. Furthermore she said that the horse was new at their stable. Of importance, Karlien told her that the horse was nervous and had a history of being beaten. As a result of her injuries, she cut her visit short and returned to the

UK

prematurely. After her arrival home, she wrote a letter to the management of Walkerson's wherein she made a comprehensive report of the events of the day. This letter was admitted as Exhibit A2.

- [7] She was cross-examined extensively by Mr Snijmann S. C. for the defendant. She strenuously denied the suggestion that she had given the impression that she was an experienced jockey. She furthermore denied that she had specifically asked for a lively (wakker) horse. Of great significance, she pertinently denied that Karlien gave her any briefing concerning the ride. She also denied all suggestions that she caused the horse to behave in the manner it did as she screamed; left the reins; leaned forward on the horse and grabbed the horse by its neck.
- [8] Mr Winkelman testified for the plaintiff. To a large extent he corroborated the plaintiff's version. Significantly he confirmed that after they arrived at the stables as per the invitation by one Ally, they were allocated horses. Plaintiff climbed onto her horse after it was saddled and moved about in the paddock. He expressly denied that they were given any briefing before the ride. He also confirmed that before the ride they all signed the indemnity forms. When the ride started, they were with another couple and Karlien led the outride on her horse. According to Mr Wilkeman all the horses walked leisurely on the lawns with Karlien leading the pack. His horse was always lagging far behind as it appeared to be more interested in grazing than walking. He testified that at some stage as he looked up to see the group, he saw plaintiff's horse galloping. He did not know what was happening. He did not hear the plaintiff screaming. He saw the plaintiff leaning forward in the saddle. His opinion is that at the time, he thought she was actually showing off. He was not unduly alarmed as he had heard no noise apart from the hooves. He then saw Karlien galloping after plaintiff. He did not see the plaintiff falling from her horse. He then rode around the water up to the

point where he saw plaintiff's horse with the saddle on its side. He then saw the plaintiff alongside the horse, her clothes torn and muddy and badly injured. He confirmed that plaintiff was then taken to the doctor and then to hospital. He testified further that a day or two after her release from hospital, they were approached by Karlien and Ally while at a breakfast who table who offered their sympathies. Karlien then told them that Maverick was reasonably new to the Walkerson's stable and further that it had a history of being beaten. In cross-examination, he denied emphatically that before the ride, they were instructed on how to ride. He confirmed however that before the actual ride, they moved about on the horses in the paddock. He denied that anyone of the horses ever trotted before the ride.

- [9] Karlien Malan testified on behalf of defendant. I find it necessary to state that she was called as an expert witness. A summary of her expert evidence was duly filed in terms of Rule 36(9) (b) of the Uniform Rules. Karlien testified that at the material time, she was responsible for all leisure and extra-mural activities at Walkerson's resort. As at the time of the accident, she had been working there for one year and few months. For the past three (3) years she has had no contact with Mr Walker, the defendant. She considers herself as an expert on horses. She has been riding horses since she was thirteen (13) years old. She also takes part in horse competitions. At the age of 21 years, she was a grade E at the Rand Show. She has also participated in horse-rides in

Swaziland

, Sudwana and Dulstroom. Currently she owns three (3) horses of her own which she has had for seven (7) years. She also has a Diploma on Tourism and Management of Racing Practices.

- [10] She was involved in the purchase of Maverick in 2000. According to her, the previous owner wished to get rid of Maverick as he considered him being too lazy and "vreeslik rustig." In her opinion, Maverick was comfortable and calm in a group. This horse was purchased approximately six (6) months before this accident. She also used to ride Maverick once per week and she never experienced any problems. Before this incident, there were no reported incidents, where someone fell off Maverick. Significantly she testified that before the outride, she enquired about the ability of the participants to ride horses. The participants were then asked to sign the indemnity forms which they did. She then gave them their helmets, where after she gave them a briefing. Essentially this encompassed how to sit, that they should ride behind her, how to keep their feet and hands and how to stop the horses. Furthermore she testified that plaintiff told her expressly that she does not want a dead horse, she requires a lively horse. She further testified that plaintiff told her that she was experienced. However she was unable to give plaintiff a lively horse. Instead she gave her a calm horse.
- [11] She testified that after all of the participants had walked around in their horses, with plaintiff alone trotting, they then started the ride. She moved in front whilst the rest followed. Whilst they so moved, they came to a place where there was a gentle descent. At this stage, so she testified, Maverick was at the rear. She was looking forward and did not see

what happened to Maverick. She opined. “..... hy kon skeef getrap het of iets beweeg of wat ookal,”. Maverick then moved up to her and calmed down. All of a sudden, plaintiff stood up her and grabbed the horse by its neck. Maverick started to gallop and plaintiff then screamed. They told plaintiff to sit down but she stood upright and grabbed the horse at the throat (Keel) and the horse galloped. She then took a different direction so that she could try to stop Maverick. When she appeared the other side of the dam, she found that plaintiff had already fallen in the mud. Karlien opined that Maverick probably got a fright when plaintiff screamed and then bolted. She expressed the view that the reaction of Maverick under the circumstances was natural. In conclusion she reaffirmed her summary of her expert evidence as it appeared in Exhibit A6. When asked as to what could have caused Maverick to act in that manner, Karlien stated thus

“Ek dink Mevrouw Redhouse het paniekbevange geraak en die perd haar optrede het die perd laat skrik en dit is hoekom hy gedoen het wat hy gedoen het.”

When asked about the discussion which she allegedly had with plaintiff after her return from hospital, she responded that she could not recall. She could however not deny it. She also maintained that she took all reasonable steps necessary to ensure that the ride was safe. She reiterated that she was there all the time and exercised proper control. She testified further that it was not the first time Maverick went on such an outride and further she was sometimes used even by beginners.

- [12] The next witness to testify was Mr Naudwho testified that he was also a guest at Walkersons during the time of the accident. He was accompanied by his wife. They were also invited for a horse-ride. He testified that although he had ridden horses in his teens, his wife had never ridden a horse before. They agreed to go on this outride so that his wife could have a taste of it. He testified that when they arrived at the saddles, the plaintiff was already on her horse moving about. He confirmed that they also signed indemnity forms and thereafter they were given helmets. Significantly he testified that when plaintiff came to them, he enquired from her about her experience. The plaintiff told him that she had ridden horses a lot. He gained the impression that plaintiff was more experienced than all of them. He testified that after Karlien had carefully checked if all their horses were in order, she then gave them a “comprehensive briefing” about how to ride horses, how to sit, how to keep their feet in the stirrups, that you keep their weight on your legs, how to sit on saddle and how to control a horse. She also warned them against using a whip and frightening horses as horses are natural animals. She cautioned them against beating horses and further that this was going to be a slow walk. After the briefing they all followed Karlien. As to how the accident occurred, he testified that they all walked up to point near Karlien. Plaintiff’s horse passed his. Plaintiff’s horse then missed a step with its left rear foot, but it regained its balance and moved forward. It then stopped. Plaintiff’s horse, according to Naudwas frightened (half geskrik)but still under control. However the plaintiff inexplicably left her reins and the horse started to trot (sy het begin draf en vinninger gallop). The horse then ran. According to Naud, in so running, Maverick acted as it should have as plaintiff had left the reins.

According to Naud plaintiff was standing slightly on the horse leaning forward with her hand around the horse's neck. In short, plaintiff behaved in a wrong manner contrary to their briefing. With the consent of plaintiff's counsel, an affidavit of Krstene Smuts was admitted into evidence. This concluded the evidence.[13] Mr Swart S.C. for the plaintiff argued vigorously that I must reject the defendant's version as it was fraught with serious contradictions. He argued that Karlien Malan was an unsatisfactory witness whose evidence must be treated with caution, particularly as her evidence differed with what was put by defendant's counsel to plaintiff, purporting to have come from her. Contrary to her assertion that she had briefed all the participants, her report which she compiled for her employer, shortly after this accident is silent about any briefing? Of importance she conceded in her evidence, that in her alleged briefing, she did not tell the participants what to do should any horse, suddenly and for whatever reason(s) bolt. When confronted with the plaintiff's version, supported by Winkelman that two days after the accident, she (Karlien) told them during breakfast that Maverick was a new acquisition with a history of being beaten and further that Maverick was a nervous (senuweeagtig) horse, she could not dispute this. All she could say was that, although she can recall the meeting, she cannot recall the contents of the discussion. Concerning Mr Naud, Mr Swart argued with zeal that his evidence calls for serious circumspection. He argued that Naud's evidence must be viewed against the fact that he was presented as an impartial and independent witness who saw the accident. Of great importance is that Naud conceded that even before he told defendant's counsel his version, he had been given a copy of Karlien's typed version to read. Mr Swart's submission is that Naud's recollection of the accident is therefore not independent. It also emerged during cross-examination, that Naud disavowed many of the statements attributed to him by defendant's counsel, e.g. he denied having overheard when plaintiff said that she was an expert at horse-riding; he conceded that he made an inference (which could be wrong) from what she said about having ridden horses approximately 15 (fifteen) years ago; he denied that he overheard when plaintiff insisted that she did not want a lazy horse; he conceded that when he arrived at the stables, plaintiff was already on her horse and as a result, he does not know what was explained to plaintiff before his arrival; of great significance, he could not dispute the assertion that Karlien never told them what to do should the horse run all of a sudden. Mr Swart argued, with vigour that there is a serious contradiction between Naud and Karlien as to how Maverick came to bolt or gallop. Karlien testified that Maverick apparently missed a step but regained its balance. It then moved next to her where it stopped. All of a sudden, plaintiff stood up, the horse bolted and she then screamed as the horse galloped. On the contrary, Naud's version is to the effect, that after Maverick had apparently missed a step (geswik of gewandel) it came to a stop and all of a sudden plaintiff screamed, stood up on the horse, leaning forward towards its neck having left the reins and the horse then ran. However, of great importance, Naud conceded that, in all probability, plaintiff screamed because she was frightened. As regards the plaintiff and her witness Mr Swart submitted that they were both credible and reliable witnesses. He submitted further that plaintiff's version was in accord with her letter of 5 February 2001. In conclusion he submitted that I must find that after Maverick had initially missed a step, it regained its balance but that all of

a sudden and without any provocation bolted, thus throwing the plaintiff off in the process of running. He submitted that by so acting Maverick acted *contra naturam sui generis*.^[11] On the other hand Mr Snijmann S. C. for the defendant, submitted that both Karlien and Naud must be treated as impartial and independent witness who have no interest in the outcome of this case. He submitted that the nub of their evidence, on which they corroborate each other, is that after Maverick had regained its balance after the initial stumble, it corrected itself by trotting a short distance forward where after it had stopped, plaintiff, for some inexplicable reason, went into a state of panic, screamed and in so doing frightened the horse which then went into a canter and later a gallop. To compound the problem, plaintiff got up from the saddle, leaned forward, grabbed at the horses neck and left her reins which suggested to the horse that she wanted it to run. Based on the foregoing Mr Snijmann, argued that, on the probabilities, I must find that Maverick reacted naturally and according to the nature of its class and that therefore the defendant cannot be held liable under the action de pauperie.^[12] It is correct, as both counsel submitted that I am confronted with a classical situation where the version of the plaintiff and defendant are mutually destructive. In an attempt to resolve this legal conundrum, Mr Swart referred me to the well-known case of *National Employers Mutual General Insurance Co Ltd v Jagers* 1984 (4) SA 437(ECD) at 440 D-441A where the learned Eksteen AJP held that:

- [12] The next witness to testify was Mr Naud who testified that he was also a guest at Walkersons during the time of the accident. He was accompanied by his wife. They were also invited for a horse-ride. He testified that although he had ridden horses in his teens, his wife had never ridden a horse before. They agreed to go on this out-ride so that his wife could have a taste of it. He testified that when they arrived at the saddles, the plaintiff was already on her horse moving about. He confirmed that they also signed indemnity forms and thereafter they were given helmets. Significantly he testified that when plaintiff came to them, he enquired from her about her experience. The plaintiff told him that she had ridden horses a lot. He gained the impression that plaintiff was more experienced than all of them. He testified that after Karlien had carefully checked if all their horses were in order, she then gave them a “comprehensive briefing” about how to ride horses, how to sit, how to keep their feet in the stirrups, that you keep their weight on your legs, how to sit on saddle and how to control a horse. She also warned them against using a whip and frightening horses as horses are natural animals. She cautioned them against beating horses and further that this was going to be a slow walk. After the briefing they all followed Karlien. As to how the accident occurred, he testified that they all walked up to point near Karlien. Plaintiff’s horse passed his. Plaintiff’s horse then missed a step with its left rear foot, but it regained its balance and moved forward. It then stopped. Plaintiff’s horse, according to Naud was frightened (

half geskrik)

but still under control. However the plaintiff inexplicably left her reins and the horse started to trot (

sy het begin draf en vinniger gallop)

. The horse then ran. According to Naud, in so running, Maverick acted as it should have as plaintiff had left the reins. According to Naud plaintiff was standing slightly on the horse leaning forward with her hand around the horse's neck. In short, plaintiff behaved in a wrong manner contrary to their briefing. With the consent of plaintiff's counsel, an affidavit of Krstene Smuts was admitted into evidence. This concluded the evidence.

[13] Mr Swart S.C. for the plaintiff argued vigorously that I must reject the defendant's version as it was fraught with serious contradictions. He argued that Karlien Malan was an unsatisfactory witness whose evidence must be treated with caution, particularly as her evidence differed with what was put by defendant's counsel to plaintiff, purporting to have come from her. Contrary to her assertion that she had briefed all the participants, her report which she compiled for her employer, shortly after this accident is silent about any briefing? Of importance she conceded in her evidence, that in her alleged briefing, she did not tell the participants what to do should any horse, suddenly and for whatever reason(s) bolt. When confronted with the plaintiff's version, supported by Winkelman that two days after the accident, she (Karlien) told them during breakfast that Maverick was a new acquisition with a history of being beaten and further that Maverick was a nervous (senuweeagtig) horse, she could not dispute this. All she could say was that, although she can recall the meeting, she cannot recall the contents of the discussion. Concerning Mr Naud, Mr Swart argued with zeal that his evidence calls for serious circumspection. He argued that Naud's evidence must be viewed against the fact that he was presented as an impartial and independent witness who saw the accident. Of great importance is that Naud conceded that even before he told defendant's counsel his version, he had been given a copy of Karlien's typed version the read. Mr Swart's submission is that Naud's recollection of the accident is therefore not independent. It also emerged during cross-examination, that Naud disavowed many of the statements attributed to him by defendant's counsel, e.g. he denied having overheard when plaintiff said that she was an expert at horse-riding; he conceded that he made an inference (which could be wrong) from what she said about having ridden horses approximately 15 (fifteen) year ago; he denied that he overheard when plaintiff insisted that she did not want a lazy horse; he conceded that when he arrived at the stables, plaintiff was already on her horse and as a result, he does not know what was explained to plaintiff before his arrival; of great significance, he could not dispute the assertion that Karlien never told them what to do should the horse run all of a sudden. Mr Swart argued, with vigour that there is a serious contradiction between Naud

and Karlien as to how Maverick came to bolt or gallop. Karlien testified that Maverick apparently missed a step but regained its balance. It then moved next to her where it stopped. All of a sudden, plaintiff stood up, the horse bolted and she then screamed as the horse galloped. On the contrary, Naude's version is to the effect, that after Maverick had apparently missed a step (geswik of gewandel)

it came to a stop and all of a sudden plaintiff screamed, stood-up on the horse, leaning forward towards its neck having left the reins and the horse then ran. However, of great importance, Naudconceded that, in all probability, plaintiff screamed because she was frightened. As regards the plaintiff and her witness Mr Swart submitted that they were both credible and reliable witness. He submitted further that plaintiff's version was in accord with her letter of 5 February 2001. In conclusion he submitted that I must find that after Maverick had initially missed a step, it regained its balance but that all of a sudden and without any provocation bolted, thus throwing the plaintiff off in the process of running. He submitted that by so acting Maverick acted contra naturam sui generis.

[11] On the other hand Mr Snjimmann S. C. for the defendant, submitted that both Karlien and Naudmust be treated as impartial and independent witness who have no interest in the outcome of this case. He submitted that the nub of their evidence, on which they corroborate each other, is that after Maverick had regained its balance after the initial stumble, it corrected itself by trotting a short distance forward where after it had stopped, plaintiff, for some inexplicable reason, went into a state of panic, screamed and in so doing frightened the horse which then went into a canter and later a gallop. To compound the problem, plaintiff got up from the saddle, leaned forward, grabbed at the horses neck and left her reins which suggested to the horse that she wanted it to run. Based on the foregoing Mr Snijmann, argued that, on the probabilities, I must find that Maverick reacted naturally and according to the nature of its class and that therefore the defendant cannot be held liable under the

action de pauperie

[12] It is correct, as both counsel submitted that I am confronted with a classical situation where the version of the plaintiff and defendant are mutually destructive. In an attempt to resolve this legal conundrum, Mr Swart referred me to the well-known case of National Employers Mutual General Insurance Co Ltd v Jagers 1984 (4) SA 437(ECD) at 440 D-441A where the learned Eksteen AJP held that:

1984 (4) SA 437

"In a civil case the onus is obviously not as heavy as it is in a criminal case, but nevertheless where the onus rest on the plaintiff as in the present case, and where there are two mutually destructive stories, he can only succeed if he satisfies the court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the other version advanced by the defendant is therefore false or mistaken and falls to be rejected. In deciding whether that evidence is true or not the court will weigh up and test the plaintiff's allegations against the general probabilities. The estimate of the credibility of a witness will therefore be inextricably bound up with a consideration of the probabilities of the case, and if the balance of probabilities favours the plaintiff, then the court will accept his version as being probably true. If however the probabilities are evenly balanced in the sense that they do not favour plaintiff's case any more than they do the defendant's the plaintiff can only succeed if the court nevertheless believes him and is satisfied that his evidence is true and that the defendant's version is

false.”

Self –evidently I am in full agreement with the above-stated dictum as it not only state the correct legal position but it accords with both logic and common sense.

[13] I wish to state at the outset, that in the view that I take of this matter I do not intend to deal with the other alternative causes of action raised by plaintiff. I am of the firm view that this matter can be finally resolved on the *actio de pauperie* alone. The legal principles governing the *actio de pauperie* were lucidly and correctly enunciated as follows in *South African Railways & Harbours v Edwards* 1930 AD 3 at 9 at say by De Velliers CJ as follows:

[13] I wish to state at the outset, that in the view that I take of this matter I do not intend to deal with the other alternative causes of action raised by plaintiff. I am of the firm view that this matter can be finally resolved on the

actio de pauperie

alone. The legal principles governing the

were lucidly and correctly enunciated as follows in *South African Railways & Harbours v Edwards* 1930 AD 3 at 9 at say by De Velliers CJ as follows:

1930 AD 3

“This brings me to the main question. This court had occasion recently in the case of O’Callaghan v Chaplin once more carefully to consider the actio de pauperie. That was necessary because our South African decisions had not been harmonious, which is not to be wondered at seeing that hardly two commentators agree on the interpretation to be placed upon the law. Under these circumstances it may serve a useful purpose if I attempt to summarize the relevant principles of our law laid down in the more authoritative cases. They are the following

“This brings me to the main question. This court had occasion recently in the case of O’Callaghan v Chaplin once more carefully to consider the

. That was necessary because our South African decisions had not been harmonious, which is not to be wondered at seeing that hardly two commentators agree on the interpretation to be placed upon the law. Under these circumstances it may serve a useful purpose if I attempt to summarize the relevant principles of our law laid down in the more authoritative cases. They are the following

(1) The *actio de pauperie* is in full force in South Africa. But the right to surrender the offending animal in lieu of paying damages-*noxae deditio* is obsolete with us. (2) The action is based upon ownership. The English doctrine of *scienter* is not a portion of our law. (3) The action lies against the owner in respect of harm (*pauperie*) done by domesticated animals, such for instance as horses, mules, cattle, dogs acting from inward excitement (*sponte feritate commota*). If the animal does damage from inward excitement or, as it is also called, from vice, it is said to act *contra naturam sui generis*; its behaviour is not considered such as if usual with a well-

behaved animal of the kind.(4)On the other hand, if the act was not due to vice on the part of the animal but was provoked- in other words if there has been concitatio, the action does not lie. (5) Dating back as this form of remedy does to the most primitive times, the idea underlying the actio de pauperie, an idea which is still at the root of the action, was to render the owner liable only in case where so to speak the fault lay with the animal. In other words for the owner to be liable, there must be something equivalent to culpable conduct of the animal.(6) Hence if the fault lies with the injured person himself he cannot recover, as he would have only himself to blame. If for instance he has provoked the animal, or has acted in such a way that the outburst could reasonably have been foreseen.(7) But stroking or patting a horse is not considered to be provocation (concitatio). If a horse kicks when patted its behaviour is due to vice. The fault lies with the horse, not with the man who patted it, unless he had reason to know that the horse might kick. The learned Judge in the present case is of opinion that if the intentions of a person who stroked or patted a mule were met with a kick such person would only have himself to blame for doing such a foolish thing. The kick, in a case of a mule, could have been foreseen.(8) Alfenus gives the following instance. A groom was leading a horse into a stable. The horse sniffed at a mare which thereupon kicked the groom on the leg. The jurists hold that the action lies against the owner of the mare. In other words incitement did not justify the mare in kicking. This case has been much debated. But Alfenus was right or wrong, in his view the solicitations of the horse were not considered to excuse the behaviour of the mare. She was said to have acted from innate perverseness.(9) The action does not lie if the animal was provoked by a third party, if for instance the animal was struck by a goad and kicks out.(10) Nor does the action lie if the injury was due to pure accident (casus); here nobody is considered to be at fault, as in *Cowell v Friedman & Co.* (5 H. C. 22). It remains to apply the law to the facts of this case.....”

(1)

The

actio de pauperie

is in full force in

South Africa

. But the right to surrender the offending animal in lieu of paying damages-

noxae deditio

is obsolete with us.

(2)

The action is based upon ownership. The English doctrine of

scienter

is not a portion of our law

(3)

The action lies against the owner in respect of harm (

pauperie)

done by domesticated animals, such for instance as horses, mules, cattle, dogs acting from inward excitement (

sponte feritate commota).

If the animal does damage from inward excitement or, as it is also called, from

vice

, it is said to act

contra naturam sui generis;

its behaviour is not considered such as if usual with a well-behaved animal of the kind.

(4)

On the other hand, if the act was not due to vice on the part of the animal but was provoked- in other words if there has been

concitatio,

the action does not lie.

(5)

Dating back as this form of remedy does to the most primitive times, the idea underlying the

, an idea which is still at the root of the action, was to render the owner liable only in case where so to speak the fault lay with the animal. In other words for the owner to be liable, there must be something equivalent to

culpa

in the conduct of the animal.

(6)

Hence if the fault lies with the injured person himself he cannot recover, as he would have only himself to blame. If for instance he has provoked the animal, or has acted in such a way that the outburst could reasonably have been foreseen.

(7)

But stroking or patting a horse is not considered to be provocation (

concitatio

). If a horse kicks when patted its behaviour is due to

. The fault lies with the horse, not with the man who patted it, unless he had reason to know that the horse might kick. The learned Judge in the present case is of opinion that if the intentions of a person who stroked or patted a mule were met with a kick such person would only have himself to blame for doing such a foolish thing. The kick, in a case of a mule, could have been foreseen.

(8)

Alfenus gives the following instance. A groom was leading a horse into a stable. The horse sniffed at a mare which thereupon kicked the groom on the leg. The jurists hold that the action lies against the owner of the mare. In other words incitement did not justify the mare in kicking. This case has been much debated. But Alfenus was right or wrong, in his view the solicitations of the horse were not considered to excuse the behaviour of the mare. She was said to have acted from innate perverseness.

(9)

The action does not lie if the animal was provoked by a third party, if for instance the animal was struck by a goad and kicks out.

(10)

Nor does the action lie if the injury was due to pure accident (casus); here nobody is considered to blame, as in *Cowell v Friedman & Co.* (5 H. C. G 22). It remains to apply the law to the facts of this case.....”

Furthermore as the learned De Villiers CJ correctly held in *South African Railways & Harbours* case *supra*, at page 12

“No doubt the onus rests on the plaintiff to prove that the mule acted from vice or inward excitement. That onus is prima facie discharged when the plaintiff has proved that he was kicked by THE MULE without apparent cause. To escape liability the owner must then prove either that it was the fault of the plaintiff or that the mule had been provoked by some extrinsic cause.”

“No doubt the onus rests on the plaintiff to prove that the mule acted from vice or inward excitement. That onus is

prima facie

discharged when the plaintiff has proved that he was kicked by THE MULE without apparent cause. To escape liability the owner must then prove either that it was the fault of the plaintiff or that the mule had been provoked by some extrinsic cause.”

[14] Applying the above-stated principles to the facts of this case, it is common cause that on 21 January 2001, plaintiff, at the invitation of defendant’s employees went for an outride on Maverick, which is owned by defendant on defendant’s premises. This outride was supervised by Karlien, who acted on behalf of and as an employee of defendant. According

to plaintiff and his witness Winkelman, plaintiff told that Karlien that she had not been riding horses of approximately fifteen (15) years. As a result she regarded herself as a voice. Plaintiff and Winkelman pertinently deny that they were given any briefing before the outride. Both Karlien and Naud conceded that in the course of her briefing, which plaintiff denied, Karlien never told them what to do in the event where the horse suddenly bolts. It is clear that the alleged briefing was confined to simple manoeuvres regarding how to sit on the horse, how to turn the horse either way and how to stop the horse. Self-evidently this briefing did not cover the situation where a horse would suddenly and unexpectedly and bolts. Of crucial significance is the undeniable fact that both Karlien and Naud deviated substantially from submissions made by defendant's counsel to plaintiff and Winkelman. It should be borne in mind that defendant's counsel stated it expressly that those submissions were in accordance with the evidence to be tendered by both Karlien and Naud (i.e. his brief). Furthermore there is a glaring contradiction between the version of Karlien and Naud as to the sequence of events just before Maverick bolted. Of importance is the allegation that plaintiff screamed. The two witnesses contradict each other as to exactly when did plaintiff scream, i.e. was it before or after the horse had started to run. This piece of evidence is crucial as the allegation is that it is this unexpected screaming by plaintiff which caused Maverick to get frightened and to run. It is furthermore important to give proper weight to the allegation that plaintiff had grabbed Maverick by the neck. It is clear from the evidence that Naud merely assumed and elevated his assumption to evidence without any justification. I also feel obliged to comment on the fact that before Naud was interviewed, and furnished his statement of the event, he was given the typed version of Karlien which in all probability influenced if not contaminated his recollection. In my view it is not unreasonable to conclude that Naud's version is not his independent recollection of the events of the day but a recollection which to a great extent, is influenced if not tainted by Karlien's statement. Self-evidently his evidence calls for caution. As for Karlien, it is common cause that she testified as an expert witness. She had filed a summary of her expert opinion in terms of Rule 36 (9)(b) of the Rules. In addition thereto, she had prepared a report of this accident as early as 13 February 2001 for her employer. In cross-examination she conceded she had intended that this report to be the most detailed and comprehensive report as she had a duty to give her employer a complete and correct report concerning the accident. It is not in dispute that in this important report she omitted to mention the most important aspect relating to the alleged briefing. She found it extremely difficult (understandably so) to explain why she omitted such a crucial aspect in her report. This failure in my view lends support and credibility to the evidence of the plaintiff and his witness that there was no such briefing. Interestingly, in her report of 13 February 2001, Karlien stated as follows at paragraph 3 :

"Mrs Redhouse (plaintiff) jumped up in her stirrups after Maverick stopped, threw him off balance and nearly stepped into the dam. She then grabbed him around his neck and screamed. Maverick took off in a slow canter and just kept running."

However in her summary of expert evidence dated 26 January 2005, Karlien stated the following at paragraph 8:

“ Die Eiseres het paniek bevange gereageer deur te gil, op te staan in die stiebeuels en die perd om die nek te gryp, waarna die perd weg van die groep beweeg het en daarna op ‘n gallop gegaan het...”

It is clear from the above stated two quotations that Karlien contradicted herself pertinently on the crucial question of what caused Maverick to run and the sequence of the events. Given such glaring contradictions in the evidence of both Karlien and Naud, I am of the view that their evidence is both unsatisfactory and unreliable. As against this, I have found the plaintiff to be a reliable witness who testified satisfactorily. Her demeanour, when compared with that of Karlien and Naud, both of whom appeared to be hostile, belligerent and plainly evasive at times, impressed me. She was never evasive or hesitant in her responses. Although Winkleman did not witness the actual accident, I was impressed by his general demeanour. He was frank and honest with the court. He never gave me any impression that he was taking sides. Whatever he did not see or hear, he fairly and candidly conceded. I have not been able to find any contradictions inherent in their individual versions or against each other. Furthermore I have found no inherent improbabilities in their version. On the other hand I have found the version of Karlien and Naud to be highly improbable. Their version is that after Maverick had missed a stop or stumbled (effens op sy agterpoot geskuifel/gewaggel/geswik) he managed to regain his balance and came to step next to Karlien's horse. After Maverick had calmed down and for no reason, plaintiff stood up on him, screamed (gegil) leaned forward, grabbed his neck and caused Maverick to flee in panic. None of the two witnesses was able to explain intelligibly or at all why at the time when Maverick initially stumbled, plaintiff did not scream, but started to scream and behave in a bizarre manner after Maverick had already regained his balance and calmed down. Having analysed the entire evidence and on a balance of probabilities, I find that it is probable that Maverick, possibly due to her past history of being beaten and nervous (senuweeagtigheid) panicked suddenly and unexpectedly bolted with the result that plaintiff lost her balance and fell off the horse as it increased its speed. In the circumstances it is clear to me that Maverick acted not out of extraneous provocation but from inward excitement or as it is also called vice. I venture to say that on the conspectus of the proven evidence it is clear that there was nothing plaintiff could do, in the circumstances to avoid falling. There is also no acceptable evidence that plaintiff did anything to frighten Maverick. No fault can be attributed to the plaintiff in the circumstances. On the undisputed evidence of Karlien, Maverick was a domesticated horse. It had no history of bolting. It follows logically that Maverick is so acting, acted *contra naturam sui generis*. See *Lawrence v Kondotel Inns (Pty Ltd)* 1989 (1) SA 44 (D&CLD) at page 52 C-F.

It is clear from the above stated two quotations that Karlien contradicted herself pertinently on the crucial question of what caused Maverick to run and the sequence of the events. Given such glaring contradictions in the evidence of both Karlien and Naud, I am of the view that their evidence is both unsatisfactory and unreliable. As against this, I have found the plaintiff to be a reliable witness who testified satisfactorily. Her demeanour, when compared with that of Karlien

and Naud, both of whom appeared to be hostile, belligerent and plainly evasive at times, impressed me. She was never evasive or hesitant in her responses. Although Winkleman did not witness the actual accident, I was impressed by his general demeanour. He was frank and honest with the court. He never gave me any impression that he was taking sides. Whatever he did not see or hear, he fairly and candidly conceded. I have not been able to find any contradictions inherent in their individual versions or against each other. Furthermore I have found no inherent improbabilities in their version. On the other hand I have found the version of Karlien and Naud to be highly improbable. Their version is that after Maverick had missed a stop or stumbled (

effens op sy agterpoot geskuifel/gewaggel/geswik)

he managed to regain his balance and came to step next to Karlien's horse. After Maverick had calmed down and for no reason, plaintiff stood up on him, screamed (gegil) leaned forward, grabbed his neck and caused Maverick to flee in panic. None of the two witnesses was able to explain intelligibly or at all why at the time when Maverick initially stumbled, plaintiff did not scream, but started to scream and behave in a bizarre manner after Maverick had already regained his balance and calmed down. Having analysed the entire evidence and on a balance of probabilities, I find that it is probable that Maverick, possibly due to her past history of being beaten and nervous

(senuweeagtigheid)

panicked suddenly and unexpectedly bolted with the

result that plaintiff lost her balance and fell off the horse as it increased its speed. In the circumstances it is clear to me that Maverick acted not out of extraneous provocation but from inward excitement or as it is also called

vice.

I venture to say that on the conspectus of the proven evidence it is clear that there was nothing plaintiff could do, in the circumstances to avoid falling. There is also no acceptable evidence that plaintiff did anything to frighten Maverick. No fault can be attributed to the plaintiff in the circumstances. On the undisputed evidence of Karlien, Maverick was a domesticated horse. It had no history of bolting. It follows logically that Maverick is so acting, acted

contra naturam sui generis.

See

Lawrence

v Kondotel Inns (Pty Ltd) 1989 (1) SA 44(D&CLD) at page 52 C-F.

1989 (1) SA 44

For the foregoing reasons, I make the following order:

1.It is hereby declared that the defendant is liable for any damages which the plaintiff might prove pertaining to the horse riding accident which occurred on 6 January 2001.2.The defendant is ordered to pay the costs of the action to date.3.The action is postponed sine die in order to have the quantum of damages finally determined.

1.

It is hereby declared that the defendant is liable for any damages which the plaintiff might prove pertaining to the horse riding accident which occurred on 6 January 2001.

2.

The defendant is ordered to pay the costs of the action to date.

3.

The action is postponed

in order to have the quantum of damages finally determined.

L. O. BOSIELO JUDGE OF THE HIGH COURT

L. O. BOSIELO

JUDGE OF THE HIGH COURT

FOR THE APPLICANT: ADV. B. H. SWART SC

INSTRUCTED BY: JAN S DE VILLIERS ATTORNEYS

FOR THE RESPONDENT: ADV. J. L. M. SNIJMAN SC

INSTRUCTED BY: HOWARD

WALKER

ATTORNEYS

DATE OF JUDGMENT:

HEARD ON: 11-18 FEBRUARY 2005

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/ZAGPHC/2005/4.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/redhouse-v-walker-unknown-topic-agphc-2005>

Prepared on 10 October 2026 · Esheria