

SOUTH AFRICA / JUDGMENT

S.D.N v Sunwest International (Pty) Ltd t/a Grand West Casino and Entertainment World (7659/2021) [2025] ZAWCHC 327 (31 July 2025)

[2025] ZAWCHC 327

COURT

Western Cape High Court, Cape Town

BEFORE

Mthimunye

CASE / FILE NUMBER

7659/2021

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

Source record

Latest

amended version: 5 August 2025

FLYNOTES:

FLYNOTES:

PERSONAL INJURY – Electrical cables – Gross negligence –
Exposed
live wire – Child electrocuted while holding metal rail at kiddies ice-skating rink – Posed a significant danger –
Failing to secure a live wire in a high-traffic public area –
Departed radically from standard of a reasonable person –
Disclaimer or indemnity notices cannot be relied on to limit liability for gross negligence –
Vicariously liable for
gross negligence of employees – Failure to ensure safety of premises – Disregarded foreseeable risk of harm.
SAFLII
Note: Certain
personal/private details of parties or witnesses have been redacted from this document in compliance with the law and SAFLII
Policy
IN
THE HIGH COURT OF SOUTH AFRICA
(WESTERN
CAPE DIVISION, CAPE TOWN)

JUDGMENT

Reportable

Case no: 7659/2021

In the matter between:

S[...] D[...] N[...]

Plaintiff

(in his representative capacity as father and natural guardian)

of A[...] N[...]

and

SUNWEST INTERNATIONAL (PTY) LTD t/a

Defendant

GRAND WEST CASINO AND ENTERTAINMENT WORLD

Neutral citation: S[...] D[...] N[...] v SUNWEST INTERNATIONAL (PTY) LTD t/a GRANDWEST CASINO AND ENTERTAINMENT WORLD (Case no 7659/21) [2020] ZAWCHC (31 JULY 2025)

Coram: MTHIMUNYE AJ

Heard: 24 March 2025

Delivered: Judgment was handed down electronically by circulation to the parties' representatives email and release to SAFLII. The date and time for hand-down is deemed to be 14H30 on 5 August 2025.

Summary: Delict - Gross negligence - The matter concerns the question of whether the Defendant (by virtue of its vicarious liability for the conduct and/or omissions of its personnel, staff, employees, and/or contractors), had acted wrongfully and with gross negligence by allowing a live wire to be exposed on the floor of their premises, thereby creating a danger to the public, whom they knew or should have known were walking or likely to walk on the floor of their premises. Similarly, that the exposed live wire would pose a danger to members of the public who might hold onto the metal railing at the kiddie's ice-skating rink.

ORDER

The defendant is liable to pay the plaintiff's damages to be proven or agreed upon arising from the injuries sustained by his minor child on 8 January 2020 on the Defendants premises. The defendant is liable for the plaintiff's cost of the action on a party and party scale C, including cost of counsel.

MTHIMUNYE AJ

- [1] The Plaintiff, the father of the minor child, sued the Defendant for damages resulting from an incident that happened on 8 January 2020 at Grand West Casino ("Grand West"), where the minor was electrocuted by a live wire while clinging to the metal rail at a kiddie ice-skating rink while observing other children.
- [2] It was agreed between the parties that the trial proceed for the determination of liability only. An order was made to separate the issues of liability and quantum of damages in terms of Rule 33(4) of the Uniform Rules of Court.
- [3] The minor's injuries referred to in paragraph 12 of the particulars of claim have been admitted by the Defendant. The parties further agreed that the question of causation and the sequelae of the injuries, along with the issue of disclaimer of indemnity notices, will stand over until the court has decided the degree of negligence. An order to this effect was made by the court.
- [4] The Plaintiff's case at paragraphs 4, 6 and 11 of their amended particulars of claim are that the Defendant, (by virtue of its vicarious liability for the conduct and/or omissions of its personnel, staff, employees, and/or contractors) had acted wrongfully and with gross negligence by allowing a live wire to be exposed on the floor of their premises, thereby creating a danger to the public, whom they knew or should have known were walking or likely to walk on

the floor of their premises. Similarly, that the exposed live wire would pose a danger to members of the public who might hold onto the metal railing at the kiddie's ice-skating rink.

- [5] Furthermore, that the Defendant created a potential and foreseeable risk of harm by failing to take reasonable measures to prevent such risk from materializing, in not displaying adequate signs warning users of the floor of the premises of the presence of the exposed live wire or indicating that it was unsafe for members of the public to hold onto the metal railing near the kiddies ice-skating rink.
- [6] Whereas the Defendant in paragraphs 8 and 9 of their amended plea, admits that it had acted negligently and relied on certain disclaimer notices situated and/or displayed at the premises, which it pleads, indemnifies it against liability for any negligent act and/or omission on its part. The Defendant conceded that these disclaimers do not absolve them from liability for gross negligence.
- [7] In their pre-trial minute dated 5 September 2024, the Defendant stated that the incident invoked the doctrine of *res ipsa loquitur*, meaning the facts speak for themselves. The Defendant conceded that they have a legal duty of care to the members of the public more specifically, the minor child, as was pleaded in paragraph 10 of the Plaintiff's amended particulars of claim. The Defendant further in their amended plea dated 5 September 2024, admitted that they acted wrongfully and negligently as was pleaded in paragraph 11 of the Plaintiff's particulars of claim as amended.

- [8] Even though the Defendant have admitted that they were negligent, they however deny that they were grossly negligent. They further accept that if the court were to find that they were grossly negligent that they cannot be exempted from liability.
- [9] The Defendant further accepts that they cannot rely on their Disclaimer or Indemnity Notices to limit liability for gross negligence.
- [10] In order to determine whether the Defendant was indeed grossly negligent on the day of the incident, I will firstly proceed with a consideration of all the relevant circumstances in this matter and briefly summarize the evidence presented by all the witnesses.

EVIDENCE FOR THE PLAINTIFF

I[...] N[...]

- [11] He testified that he was the Plaintiff in this matter and the biological father of the minor child who was electrocuted. On the day in question during the middle of the day during the festive period the food court at Grand West was bustling with foot traffic and lively children. His minor child was standing next to him at the kiddies ice-skating rink, holding on to a steel/metal pole, when his child suddenly cried out loud. He looked at his child and could see her visibly trembling. He then pulled his child towards him, who was screaming and at the same time showing him her hand. He took a moment to survey the surroundings and noticed an exposed electrical wire lying on the floor. A red mark was visible on his child's hand. He then concluded that his child had been electrocuted. Making use of the images in Exhibit "A", especially images 2, 3 and 4, the Plaintiff identified the area where incident occurred and the exposed electrical wire, his child had stepped on.
- [12] Mr Titus, the floor manager of Grand West Casino, arrived on the scene and asked him what had transpired. When the security wanted to switch off the main electricity plug point, which was approximately 6 or 7 meters away from where the ice-skating rink was stationed, Titus prevented the security from doing so, as Mr Titus first needed to do an incident report.
- [13] Subsequently the paramedics arrived, examined his child and applied some burn gel to his child's hand and under her feet. Thereafter, he took his child to the emergency medical center.
- [14] He further testified that he never expected that his child would under normal reasonable circumstances step on a live wire at Grand West, a public venue, as there was no warning or any indication that there was work in progress, or that his child might step on a live wire. Furthermore, he noticed the disclaimer notices on the Defendant's premises but failed to read them.
- [15] During cross-examination, his evidence was briefly that he was informed by a lady at the ice rink reception that prior to the incident there was a Christmas tree to the left hand side of the ice rink, which was removed on the 7th of January 2020.

DEFENDANT'S EVIDENCE

Ms Karien Maritz

- [16] She stated that she has been employed by Grand West since 2020, serving as the manager of the engineering, electrical, and operations department. An independent contractor ("contractor") was engaged by Grand West to set up its Christmas tree, mount the lights and to remove and dismantle the tree afterwards. Grand West's electrical department were responsible for connecting and disconnecting the Christmas tree lights to the electrical supply of the Defendant. She was not able to confirm whether on the day of the incident, whether the team from the electrical department switched the main plug on or off as she was not there. She firmly stated that after the contractor removed the Christmas tree, they left the wires at the ends of the strands of the Christmas tree lights for the Defendant's electrical department to connect. She conceded that had the electrical wire been removed by the electrical department the injury to the minor child would not have occurred.
- [17] She further testified that she maintained a WhatsApp group which served the purpose of connecting all the relevant departments, including the Defendants electrical department, which she would inform regarding the timing for connecting or disconnecting the electrical supply to the Christmas tree. According to her the Christmas tree had been dismantled and removed a day prior to the incident, and she promptly notified the electrical department through WhatsApp to disconnect the electrical supply and make sure the area was safe.
- [18] During cross examination she conceded that electricity poses a great danger. She further testified that the electrical department sometimes had to cut the electrical wires depending on the type of plug or connection to the Christmas tree lights. She further conceded that the electrical cable was exposed in a busy area where there were plenty of foot activity by the public and that the ice-skating rink which constituted a water source was near to where the electrical cable was lying.

Faizel Pietersen

- [19] At the time of the incident, he was employed by Fidelity Security as an investigator, contracted to Grand West. He was stationed at the outer building on the Grand West premises, when the control room notified him about the child that had been electrocuted. Upon arriving at the scene, he observed the Plaintiff cradling the weeping child in his arms. He then noticed a white electrical cable with one connector block. Within the connector block was a black insulated wire, and a red live wire which was not insulated was protruding, outside of the connector block. According to him he knows what a connector block is and has seen one before. His evidence was further that the purpose of the white cable was to feed electricity to the lights on the Christmas tree. However, by the time he reached the scene, the Christmas tree, the lights and the cable were already removed by the contractor. He was unaware of the methods the contractor used to remove the Christmas tree and lights.

- [20] According to him the maintenance department of Grand West connected the cable and plugged it in near the ice rink. The Christmas lights were the property of Grand West and was mounted and removed from the Christmas tree by the contractor.
- [21] He never inspected the location where the Christmas tree was placed before or after the said incident. He only spoke to Mr Cookson the day after the incident and their conversation was about when the wire would be removed.
- [22] During cross-examination, he speculated that it could have been the contractor who caused the live wire to protrude from the connector block, or that it could have been as result of someone who had inadvertently stepped on the wire. Further, the live wire may have been laying there for quite a few hours. He further confirmed that Ms Maritz had a WhatsApp group with several employees. That she was the person who informed him that Grand West needed to go and secure the area. He further conceded that the removal of the wire was not safely done.
- [23] During cross-examination, he testified that he could not recall the date when the incident occurred as it happened a long time ago. He further could not confirm when the Christmas tree had been removed by the contractor. He can also not say why the red wire was protruding from the connector block. He confirmed that the red wire was live and lying there for several hours and that Ms Maritz informed him that the electrical and maintenance department had to have secured the area after the Christmas tree had been removed.

Titus Martin Cookson

- [24] At the time of the incident, he was employed as the Safety and Health manager at Sunwest International who operated as Grand West. At approximately 7h30 pm on the day of the incident, he received a call from SA Paramedics informing him that a child had been electrocuted by an electrical cable. He then spoke and instructed Faizel Pietersen ("Faizel") who was the investigator on duty that day, to proceed to the scene and ensure that the area is secured. He did not go to Grand West on that day to check out the incident as he only goes in when summoned for situations that are of a critical nature. He confirms that it was the responsibility of the electrical and maintenance department to ensure that the place where the incident had occurred was safe and secure. When the electrical cable was shown to him by the maintenance department, he noticed that there was a connector block with a black wire within it. There was also a red wire with exposed naked copper wires which were not within the connector block. He conceded that if the cable were to be plugged it would result in a person being shocked as the exposed red wire was live. According to his opinion the child was electrocuted as a result of the live red wire being exposed. He further conceded that he never inspected the area where the wires were prior, or after the incident had occurred. He cannot say what had exposed the red wire.

- [25] During cross-examination, his evidence was briefly that he is unable to specify when the Christmas tree had been removed. He speculated that it could either have been removed on the morning or the day before the incident. He was adamant that it was the duty of electrical and maintenance department of Grand West who were responsible for removing electrical cables and ensuring that the area is safe after such removals.
- [26] The Defendant attempted on numerous occasions throughout the testimonies of its witnesses to introduce physical evidence of a connector block, discussing its uses and speculating on the possibility whether the red live wire might have been disconnected from the connector block by an intervening act. It is important to note that the court already ruled on the admissibility of the connector block and how, if used as evidence, should be led. It was never pleaded by Defendant that they would lead evidence on a connector block. The evidence by the Defendant's witnesses with regard to this connector block was thus mere speculation and hypothetical suggestions.

PLAINTIFF'S

SUBMISSIONS

- [27] Adv Van Wyk, on behalf of the Plaintiff, submitted that the Defendant's negligence is neither ordinary nor aligned with the standard of the reasonable person. She submitted that when the court has to determine the extent of the deviation from the standard of the reasonable man, it is essential for the court to consider the fundamental principles outlined in the case of *Ngubane v South African Transport Services* [1990] ZASCA 148; 1991 (1) SA 756 (A) at 776E - 777C, where the Appellate Division laid down the test for negligence as follows:

"Once it is established that a reasonable man would have foreseen the possibility of harm, the question arises whether he would have taken measures to prevent the occurrence of the foreseeable harm. The answer depends on the circumstances of the case. There are, however, four basic considerations in each case which influence the reaction of the reasonable man in a situation posing a foreseeable risk of harm to others: (a) the degree or extent of the risk created by the actor's conduct; (b) the gravity of the possible consequences if the risk of harm materializes; (c) the utility of the actor's conduct; and (d) the burden of eliminating the risk of harm" needs to be considered."

- [28] She submitted that the degree of the risk and the gravity of the consequences suffered by the child is extreme as conceded by the Defendant's witnesses, noting that electrocution can lead to death. Further, that it is common knowledge that when electricity is exposed to water, it can result in devastating outcomes and certain death. She submitted that it is not in dispute that the ice-skating rink was a water source that was in the near vicinity of the exposed live wire and that the live wire was exposed in the food court where fluids were consumed and could be spilt. Furthermore, that it was the duty of the Defendant's electrical department to secure the area and ensure it safe, but failed to do so. Further, that even Maritz testified that the simplest way to have disconnected the electricity would have been to switch off the plug by a qualified electrician of the Defendant.

- [29] She further submitted that the Defendant failed to show any reasonable care and that its conduct can only be characterised as a neglect to give consideration to the consequences of their actions, in that the Defendant had an attitude of reckless disregard of such consequences.

DEFENDANT'S

SUBMISSIONS

- [30] Adv Tyler submitted that the doctrine of *res ipsa loquitor* allows for an inference to be drawn from specific facts based on common sense. If an explanation exists for specific facts, then the doctrine fails to function. He further submitted that the Defendant engaged an independent contractor, to mount the lights on the Christmas tree. He conceded that the contractor did not connect the cables carrying the Christmas lights to the electricity supply inside the Defendant's premises but that it was the responsibility of the Defendant's electrical and maintenance

department.

- [31] Adv Tyler further submitted that the court has to take judicial notice that plastic (of a connector block) does not conduct electricity and that the Christmas lights cable was connected to the external electricity cable, with the red and black insulated wires being secured inside a plastic connector block featuring recessed screws. Furthermore, that as a result of the engineering department's failure to remove the electricity supply, constituted ordinary negligence.
- [32] He conceded that the evidence by Faizel Petersen and Titus Cookson along with the photograph enlargements of photographs 2 and 3 of trial bundle "A", established that at the time of the incident the external source electricity cable was positioned near the kiddie's ice-skating rink. He noted that the neutral wire with black insulation remained secured within its electrical connector block, whereas the live wire with red insulation was not. The live red wire with its copper core was stripped and completely exposed, thus creating a risk of electrocution for someone who is bare foot.
- [33] He further speculated that the contractor exhibited gross negligence by creating and ignoring a clearly hazardous situation, having detached the external electricity cable from the Christmas lights cable in an excessively forceful manner and subsequently leaving the cable unattended. Furthermore, that there is no evidence that the Defendant was grossly negligent by failing to appreciate the possibility of such gross negligence on the part of the contractor. However, even if the Defendant were to appreciate the failure it would not constitute gross negligence on the Defendant's part, unless it can be proven that the Defendant should have doubted the competence or efficiency of the contractor. In addition, he submitted in his heads of argument that it has not been established that the conduct of the Defendant departed "from the standard of the reasonable person to such an extent that it may be categorized as extreme, found to be conscious risk-taking, a complete obtuse of

mind or a failure to take care.” He submitted that the court should find that the Defendant was guilty of ordinary negligence and not gross negligence.

DISCUSSION AND APPLICABLE LEGAL PRINCIPLES

[34] The test to determine negligence is set out in the matter of *Kruger v Coetzee* 1966 (2) SA 428 (AD) 430 E - H, where Holmes JA said the following:

“For the purposes of liability culpa arises if –

- (a) a diligens paterfamilias in the position of the defendant –
 - (i) would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss; and
 - (ii) would take reasonable steps to guard against such occurrence; and
- (b) the defendant failed to take such steps.”

[35] The central question is how a reasonable person would have acted in the given situation. In *The Law of Delict*, Butterworths 1989, a reasonable person is defined as follows;

“The reasonable man is merely a fictitious person, which in law invents in order to have a workable objective form for conduct in society. Accordingly, reasonable man is not an exceptionally gifted, careful or developed person, but neither is he underdeveloped, nor someone who recklessly takes chances or who has no prudence. Between the two extremes the qualities of a reasonable man are found.”

[36] In the environment of public entertainment, the reasonable man test in the event of an allegation of gross negligence made against the establishment, would suffice by determining whether the establishment in this instance Grand West was negligent by having children at a play area which was not made secure or safe for children to play in or be around the area.

[37] In *National Union of Metal Workers of South Africa obo Selepe v ORAWAB Investments (Pty) Ltd t/a Bergview Engen One-Stop* [2013] BALR 481 (MIBC), the difference between gross negligence and ordinary negligence was defined as follows:

“[5.3.5] Gross negligence can be described as a conscious and voluntary

disregard of the need to use reasonable care, which has or is likely to cause foreseeable grave injury or harm to persons, property or both. It is conduct that is extreme when compared to ordinary negligence. Gross negligence also focuses on the magnitude of the risks involved, such that, if more than ordinary care is not taken, a serious mishap is likely to occur ...

[5.3.6] Ordinary negligence and gross negligence accordingly differ in degree of consciousness or inattention; and both differ from ‘wilful misconduct’, which is conduct that is reasonable calculated to cause damage or injury.”

[38] In *MV Stella Tingas: Transnet Ltd t/a Portnet v Owners of the MV Stella Tingas* 2003 (2) SA 473 (SCA), the court referred to the concept of gross negligence as follows:

“Gross negligence is not an exact concept capable of precise definition. Despite dicta which sometimes seem to suggest the contrary, what is now clear, following the decision of this Court in S v Van Zyl 1969

- (1) SA 553 (A), is that it is not consciousness of risk-taking that distinguishes gross negligence from ordinary negligence ... If a person foresees the risk of harm but acts, or fails to act, in unreasonable belief that he or she will be able to avoid the danger

or that for some other reason it will not eventuate, the conduct in question may amount to ordinary negligence or it may amount to gross negligence (or reckless in the wide sense) depending on the circumstances...On the other hand, even in the absence of conscious risk-taking, conduct may depart so radically from the standard of the reasonable person as to amount to gross negligence.

It follows that whether there is conscious risk-taking or not, it is necessary in each case to determine whether the deviation from what is reasonable is so marked as to justify it being condemned as gross. ... It follows, I think, that to qualify as gross negligence the conduct in question, although falling short of *dolus eventualis*, must involve a departure from the standard of the reasonable person to such an extent that it may properly be categorised as extreme; it must demonstrate, where there is found to be conscious risk-taking, a complete obtuseness of mind or, where there is no conscious risk-taking, a total failure to take care. If something less were required, the distinction between ordinary and gross negligence would lose its validity.”

[39] The minor child accompanied by her parents, visited an establishment that caters for public entertainment, Grand West, which belongs to the Defendant. According to the evidence of the Defendant’s employee Ms Maritz, her electrical maintenance and operations department was in charge of ensuring that the electrical wire connections were done in order for the Christmas tree rental contractor to be able to mount the lights to the tree. Her evidence indicates that she has a WhatsApp group communication with her electrical and maintenance team to ensure that once Christmas tree had been removed by the contractor, the area is made safe, plugs are turned off and wiring is secured. At no specific time does she state that it was the duty of the contractor to ensure that all wires were safely secured or that the contractor had to make sure that the area where the Christmas tree and lights were mounted were safe for the public or children after it had been removed. By her own evidence the tree was removed the day before the incident, and it can only be attributed to the negligence of the Defendant’s electrical department not performing their duty that the exposed live was there that caused the electrocution to the Plaintiff’s child.

[40] It is clear from the evidence of the Defendant’s witnesses, Maritz, Petersen, and Cook, that the electrical and maintenance team of the Defendant failed in their duty to ensure that the area near the ice-skating rink had been secured after the tree was removed.

- [41] It is crucial to note that the Defendant failed to call any of the electrical or maintenance team that is on the WhatsApp group to come and testify. Whether this was done, or what could have caused the live red wire lying exposed, or whether, this wire was placed inside the connector block as the Defendant wants this court to believe.
- [42] In *Tshishonga v Minister of Justice and Constitutional Development and Another* 2007 (4) SA 135 (LC) at paragraph 112, it was held:
- “[112] The failure to call a witness is excusable in circumstances, such as when the opposition fails to make out a prima facie case. But an adverse inference must be drawn if a party fails to testify or produce evidence of a witness who is available and able to elucidate the facts, as this failure leads naturally to the inference that he fears that such evidence will expose facts unfavourable to him, or even damage his case. The inference is strengthened if the witnesses have a public duty to testify.”*
- [43] All three of the Defendant’s witnesses corroborated one another, that it was the duty and or responsibility of the Defendant’s electrical and maintenance department to check that the electricity source was properly connected and disconnected before and after the contractor had removed the Christmas tree. These witnesses were consistent and confirmed this version during cross examination. Ms Maritz, who was a satisfactory witness, confirmed that the electrical and maintenance department is employed by the Defendant. She however could not verify or confirm whether the electrical and maintenance department followed up on her WhatsApp instruction to secure the electrical cables and ensure that the vicinity where the Christmas lights were mounted to the tree was safe for the public.
- [44] Except for the Plaintiff’s evidence which was corroborated by all the Defendant’s witnesses that due to the negligence of the employees of the Defendant there was a live exposed wire lying next to a kiddies ice-skating rink, resulting in the child stepping on it and being electrocuted, constituted *res ipsa loquitur*, which is indicative of gross negligence on the part of the Defendant’s employees. The law is clear that unless the employees of the electrical or maintenance department came to testify or give a factual explanation that they were not grossly negligent by failing to secure the area or that they had switched of the main plug or secured the wires after being instructed by Ms Maritz via WhatsApp, the facts speak for itself, and the court can only draw the inferences from the facts so proven.
- [45] The Defendant’s failure to call the electrical and maintenance department, to testify, means that they cannot speculate that the live wire was properly connected to the connector block or that it might have been mistakenly stepped on by the public resulting in the wire lying exposed on the floor of the Defendant’s premises.
- [46] Considering the nature of the Defendant’s business and the public's expectation for proper conduct and safety of the premises for children and the general public, the lack of any explanation from the electrical department regarding the safety of the area after the contractor removed the Christmas tree and lights, leads to the conclusion that the electrical department did not fulfil their responsibilities as employees of the Defendant to secure the area as instructed by Maritz via WhatsApp. The negligence exhibited by the electrical and

maintenance department of the Defendant manifested itself in the form of conscious and voluntary disregard of a need to exercise reasonable care, which was likely to cause foreseeable significant injury or harm to the child or any other member of the public who visited the play or food court area on the day of the incident. The Defendant through the actions of its employees, electrical and maintenance department acted grossly negligent.

- [47] It is also important to note that the Defendant did not plead that there was an external company contracted to mount the lights to the Christmas tree and that they should be held grossly liable, thus this fact raised during the trial and argument by the Defendant is not substantiated and mere speculation.
- [48] A further aggravating factor is that not only was the child four years old at the time of the incident but a live wire with the copper outside was next to an ice rink with water substance. Grand West failed dismally in their responsibility of due diligence and care expected from an establishment in their position. Had the electrical and maintenance department conducted a thorough inspection and secured the area after the Christmas tree had been removed, not only would the live wire have been seen and removed, but the child would also not have been electrocuted. The actions of the employees of the Defendant in the scope of their employment, was reckless as they failed to give due consideration to the consequences of their actions by totally disregarding their duty to make sure all electrical connections were safe near a water substance ice-skating rink and an area where it was reasonably foreseeable that there would be significant foot traffic from the food court and the kiddies ice-skating rink area.

CONCLUSION

- [49] Having evaluated the evidence presented by the witnesses and considering the relevant case law, the only conclusion that can be drawn is that the Defendant was vicarious grossly negligent as the employer of the electrical and maintenance department, it consciously and voluntarily disregarded the need to take reasonable care of a likely foreseeable harm or grave injury to the Plaintiff's child or other persons who were on its premises on or near the ice-skating rink on the day of the incident. The conduct of the electrical and maintenance department and even Maritz, in failing to follow up whether the electricity supply had been secured was of an extreme nature when compared to ordinary negligence.
- [50] I am thus satisfied on a balance of probabilities, that the Plaintiff has proven that the Defendant was vicariously grossly negligent in its duty to ensure the safety of the child and the public at large as alleged by the Plaintiff in their amended particulars of claim.

COSTS

- [51] It is trite that costs ordinarily follow the result. The Plaintiff submitted that the costs of counsel be awarded on scale C. In the exercise of my discretion, I am inclined to agree with the Plaintiff.

[52] In the result, I grant the following order:

- (i) The defendant is liable to pay the plaintiff's damages to be proven or agreed upon arising from the injuries sustained by his minor child on 8 January 2020 on the Defendants premises. The defendant is liable for the plaintiff's cost of the action on a party and party scale C, including cost of counsel.
- (ii) The trial on quantum is postponed sine die.

ACTING JUDGE OF THE HIGH COURT

APPEARANCES

Counsel for the Plaintiff Adv R van Wyk roxy@capebar.co.za Attorney for the Plaintiff: A Batchelor & Associates Mr E Louw ruwaydah@batchelor.co.za Counsel for the Defendant: Adv T Tyler ttyler@caoebarr.co.za Attorney for the Defendant: Dicks van der Merwe Attorneys Mr J van der Merwe jakes@inlegal.co.za

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/ZAWCHC/2025/327.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/sdn-v-sunwest-unknown-topic-awchc-2025--6a3ea51b3b1caa9129811a4d>

Prepared on 10 October 2026 · Esheria