

SOUTH AFRICA / JUDGMENT

Stone v Mangaung Metropolitan Municipality (4976/2016) [2018] ZAFSHC 98 (25 May 2018)

[2018] ZAFSHC 98

COURT

Free State High Court, Bloemfontein

BEFORE

M Opperman

CASE / FILE NUMBER

4976/2016

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IN

**THE HIGH COURT OF SOUTH AFRICA,
FREE
STATE DIVISION, BLOEMFONTEIN**

Case number:

4976/2016

In

the matter between:

ADRIE
STONE
PLAINTIFF
and
MANGAUNG
METROPOLITAN MUNICIPALITY
DEFENDANT

CORAM:

M
OPPERMAN, AJ
HEARD

ON:

8,9
AND 11 MAY 2018

JUDGEMENT

BY: M OPPERMAN, AJ

DELIVERED ON: 25 MAY 2018

INTRODUCTION

[1] This was a trial on merits only.[1] The case eventuates from an incident that occurred at the Stadium Swimming Pool, Bloemfontein; a public swimming pool, the property of the defendant and under its control and management in terms of the:

Swimming Pools By-Laws, Local Authority Notice No. 98 of 2002, Date of Commencement: 27 September 2002, Published in Provincial Gazette No. 63 Dated 27 September 2002. Amended by Provincial Notice 95 in Provincial Gazette 34 dated 24 June 2016.

[2] It is common cause that the plaintiff was injured whilst ascending steps to exit the pool.

THE JURISTIC RELATIONSHIP BETWEEN THE PARTIES

[3] The plaintiff, a 45-year-old lady sues in her capacity as private citizen on the basis of delict. [2] The defendant is Mangaung Metropolitan Municipality an organ of the state; established by Provincial Notice Number 261 of 28 March 2011, issued in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998).[3]

[4] The facts and arguments demonstrated that the juristic relationship that was formed between the parties on this day of the 6th of December 2015 might have stemmed from a hybrid of contract and public law obligation that culminated into delict.

THE CLAIMS

[5] The plaintiff claims that the defendant acted wrongfully and in a culpable way that caused harm to her. It is alleged that: [4]

5.1 The lower step of the steps/ladder was broken and as the plaintiff stepped on the top of the steps/ladder it too broke. Plaintiff fell back into the swimming pool and a part of the steps/ladder ribbed her right leg and permanently bruised her left lower leg.

5.2 The cause of the accident was due to the sole negligence of the defendant and the defendant owed the plaintiff, and the public in general, a duty of care to prevent accidents of this nature from occurring. The ownership of the pool requires extra diligence and care.

[6] The defendant

6.1 The defendant denies negligence or that it contributed to the incident or the injuries sustained by the plaintiff. The municipality did not owe the plaintiff any duty of care. The defendant claims, in the alternative, that the plaintiff was contributory negligent and that the plaintiff's claim should be apportioned in terms of the provisions of the Apportionment of Damages Act 34 of 1956.

6.2 It is further claimed that they are indemnified from liability due to a notice: "Enter at your own risk" and that the plaintiff accepted the "risk".

6.3 Lastly; the defendant claims that the plaintiff did not take reasonable care to prevent the incident.

THE DISPUTES

[7] The disputes are mainly located in conduct, wrongfulness and negligence in that the defendant denies that it neglected to maintain

the steps, replace or repair the broken step, warn the public of the risk of using the steps and that it did not act with due diligence

regarding to the safety of all persons entering its premises. The defendant specifically denies that it owed and owes the plaintiff and the public a duty of care to prevent accidents of this nature from occurring and that ownership of the swimming pool in itself to require extra diligence and care. There was an attempt to also deny that the defendant placed the steps in the pool again and it was alleged that the plaintiff committed the act (conduct).

[8] The judgement will deal with the case of the defendant first. Adjudication of the defendant's case on the law and the facts causes a logic conclusion. The plaintiff's case will draw the judgement to an end.

[9] The versions of the parties will be measured by the established five elements of delict namely, the act, wrongfulness, fault, causation and damage. The defenses will hereafter be deliberated.

[10] As said; the disputed elements are conduct, wrongfulness and fault.

10.1 Conduct in delict is defined as the damage causing event.[5]

10.2 Wrongfulness is an act committed in a legally inexcusable or unreasonable manner.[6] The test is whether a right and violation of a legal norm has been perpetrated and if harm was caused. [7]

10.3 Fault, in this case, lies in negligence and a defendant is negligent if the reasonable person in his position would have acted differently if the unlawful causing of damage was unreasonable and foreseeable.[8]

[11] The defenses advanced by the defendant are indemnity due to a "Enter at own risk"-notice and that the plaintiff did not take reasonable care when she used the steps.

PUBLIC USE AND AN ORGAN OF THE STATE

- [12] In terms of section 1 of the above By-Laws a "swimming pool" means a swimming pool, including the appurtenant grounds, buildings and works, that is owned and controlled by the municipality, and made available for public use from time to time.
- [13] "Public use" of a facility of an organ of the state (The municipality) is what the plaintiff had when she, her sister and her niece paid their entrance fees and entered the pool on the 6th of December 2015.

NEGLIGENCE

- [14] When an organ of the state makes its property available for public use the Constitutional Court pointed out in *Mashongwa v Passenger Rail Agency of South Africa* [2016] JOL 34753 (CC) at paragraph [39] that the standard of a reasonable person in our common law was developed in the context of private persons. However, given the fundamental differences between the state and individuals, what is seen to be reasonable from an individual's point of view is not necessarily also reasonable in the context of organs of state. The standard to be applied is not that of the reasonable person, but that of a reasonable organ of state.
- [15] Where harm to the public is foreseeable and the municipality only had to comply with its own operating instructions without requiring additional resources, a conclusion that the conduct was negligent naturally follows.

THE NORM TO MEASURE UNLAWFULNESS

- [16] The standard of a reasonable organ of state is sourced from the Constitution. The Constitution is abound with the phrase that the State must take reasonable measures to advance the realization of rights in the Bill of Rights. Simplistically put; unlawfulness in this instance will be in the denial of the right of the public to regard steps to get safely out of a pool as secure.
- [17] The factors[9] to consider are stipulated in the words of Mogoeng CJ and O`Regan J and still in *Mashongwa v Passenger Rail Agency of South Africa* at paragraphs 22 to 24.

17.1 Whether the operating statute[10] provides for a delictual claim for damages,

17.2 whether the legislation's scheme is primarily about protecting individuals or advancing public good,

17.3 whether the public power conferred is discretionary,

17.4 whether the imposition of liability for damages is likely to have a "chilling effect" on the performance of government functions,

17.5 whether the loss was foreseeable and

17.6 whether alternative remedies such as an interdict, review or appeal are available to the claimant.

17.7 An important consideration when delictual accountability of the State is to be enforced is to carefully analyze constitutional norms such as the principles of effectiveness and the need to be responsive to people's needs.

THE PRINCIPLES OF EFFECTIVENESS AND THE NEED TO BE RESPONSIVE TO PEOPLE'S NEEDS

[18] It is common cause that the steps caused the injury.

[19] THE STEPS

The evidence of Mr. Hoffman

19.1 Steps, on the evidence of witnesses for the defendant, were placed in the pool for the safety of the public. The lifeguard at the pool and witness for the defendant, Hoffman, testified that he recommended the use of steps to get out of the pool and that he offered to help people out of the pool should they struggle to get out. This is a definite indication that the public will believe the steps to be safe and for their safety.

19.2 Mr. Hoffman further testified that normally there were stepladders at each corner of the pool; that is four. On the day of the incident there was only one stepladder in the pool. Another one was removed and placed next to the pavilion because it was damaged and posed a danger to the public. He advised some members of the public not to use the steps next to the pavilion but was vague and confusing as to the identity of the people he spoke to.

Normally we use four access points to the pool. In the corners of the pool. How many ladders were in the pool? Only two. The step broke and caused the incident. The step was next the pavilion. The morning before the pool open uncle Ruben told me the step was damaged. He took it out and put it next to the pavilion. There was only one remaining in the pool. It is F2 in the corner. The one that caused the injury was at F1. The ladder was in the pool. I did see the ladder next to the pavilion.

Do you know how it got back? No.

Somebody in the F1 corner asked to use the ladder. They talk of the ladder next to the pavilion. It was the same ladder Fokase talked about. There were three or four people I just answered them; my focus was on the people. I said if they needed help they must call me. There was a lady and small kids young aged children. Teenagers. I do not remember am not sure how long after the incident the injury took place.

19.3 An allegation by the defendant that the steps were placed back into the pool by the plaintiff fell flat here and is rejected because not one of the witnesses for the defendant could testify as to the manner in which the steps got back into the pool. The act or conduct cannot be attributed to the plaintiff.

19.4 A vital consequence of Hoffman`s testimony is that it is the case of the defendant that it was a very busy day. Figures of three hundred (300) visitors were mentioned by the defendant during cross-examination. In essence there was only one stepladder to be use by this many bathers. An inference by the court will be justified that it caused somebody, in order to alleviate the traffic at the one ladder, to put the broken ladder back. This again to promote the safety of the bathers.

19.5 The defendant, indirectly caused the perilous situation. Firstly; one step was not enough to cater safely for the amount of bathers. Secondly; this caused the ladder to be placed back into the pool and lastly; if the ladder was placed in storage out of reach of the public the injury to the plaintiff would not have happened. Mr. Ruben Fokase`s evidence articulated the inference.

[20] Mr. Ruben Fokase that also testified for the defendant was an excellent and honest witness. He had been in the employ of the

defendant for decades and worked at the same pool all these years. Although not part of his duties he noticed that a ladder was broken. He took the ladder out and put it next to the pavilion. The worker responsible for this task was absent. When he arrived the morning of the incident, he pulled this ladder out and it caused only one to remain in the pool. The ladder was dangerous. The following excerpts from his testimony prove the point:

1. Why did you take the ladder out of the pool? This ladder was broken. That is why I took it out. I noticed it on that morning when I poured the chemical in the water in the morning. This ladder caused the injury to the plaintiff. I heard about it. This happened when I was off duty.
2. How did the ladder get back into the pool? I do not know.
3. As you inspect the pool is it the practice to take a broken ladder out of the pool? I would say so and it is the normal duty. When you see the thing is dangerous you remove it. It is part of my job.
4. My co-worker was not there so I did have to do his work as well. I must do his work. He had to clean the toilet and see that where the kids change is clean. My duty was the pools and filter at the back. You had a lot of extra work? Yes.
5. Did you have to report the broken ladder? Since my supervisor was not present I reported it to one of the lifeguards when he reported on duty because they arrive after us. I told Hoffman it was broken and may not be used. I do not know if that ladder was put back in the pool.
6. It was easy to take the ladder out of the pool. It would have been easy to put it back. It was dangerous to use and a risk to use it. If locked up nobody could have come and place it back into the pool. I forgot to take it to the room because I was in a hurry. If I did not have to do my co-workers work I would have placed it in the store room.

7. There were other two ladders that broke. It was not as strong as the older ones. These are not the strong ones. They were replaced after the renovations they put in steel ones. They do not use this type of ladder anymore.

[21] The testimony of the witnesses for the defendant proves beyond any doubt that the workers as well as the defendant was well aware of the fact that:

21.1 The broken steps were a danger to the public.

21.2 The broken steps were placed back into the pool by an unknown person or persons and this would not have happened if the broken and precarious stepladder was placed into secure storage.

21.3 The need to place the steps back in the pool was clearly caused by the defendant itself because it had only one ladder available and for hundreds of patrons. The usual amount was four; one in each corner.

21.4 It was known by the defendant that the steps were flimsy; hence the fact that it was replaced by other stronger steps.

21.5 Steps were presented to the public as the safest manner to exit the pool and thus the impression was created that the steps itself is safe.

21.6 Significant is that the steps in the facts of this case are not in the same risk-league as a slide, the water, or a diving board.[11] Even on the version of the witnesses of the defendant it was used for safety; the public cannot on the basis of this evidence have regarded it as a risk.

“ENTER AT OWN RISK”: LEGISLATION[12] AND THE COMMON LAW

Statutory Provisions

[22] On the face of it section 19 of the By-laws gives one-sided statutory indemnity to the defendant. According to this, the mere fact that the plaintiff purchased a ticket and used the pool caused indemnity to the defendant. Although specific reliance was not placed on the legislation the defence of the defendant is substantially and in essence based on it. The section reads:

Injuries and damages: -

1) A person using a swimming pool or any diving board or other appliance, facility or apparatus in a swimming pool, do it at his own risk, and the Municipality accepts no liability whatsoever for any personal injuries sustained by such person or, subject to the provisions of section 6, for any loss of or damage to such person's property relating to or resulting from the aforementioned usage of the swimming pool.

[Sub-s. (1) amended by s. 25 of P.N. 95 in PG 34 dated 24 June 2016.]

(2) A person using a swimming pool or any diving board or other appliance, facility or apparatus in a swimming pool, accepts full responsibility for any incident, damages or injuries that may be caused by or that may result from the afore-mentioned use of the

swimming pool and by the purchasing of an entrance ticket, he indemnifies the Municipality, its members, employees or agents, whether in personal or official capacity, against liability for all claims from whichever nature by himself, his dependants or third parties in respect of any patrimonial loss, consequential damages, injuries or personal prejudice that may be suffered or sustained in connection with or resulting from such a person's use of the swimming pool.

[Sub-s. (2) amended by s. 25 and s. 29 of P.N. 95 in PG 34 dated 24 June 2016.]

[23] The defendant also places reliance on a self-styled disclaimer in that they at all times displayed a notice at the entrance to the swimming pool depicting: “TOEGANG OP EIE RISIKO/ENTER AT YOUR OWN RISK”

It is claimed that the notice:

Was visible to all members of public including the plaintiff, the plaintiff was aware of the content of the notice or it ought to have reasonably so, have come to the knowledge of the plaintiff. The defendant was reasonably entitled to assume from the plaintiff's

conduct that she has either read or assented to the terms of the disclaimer or is prepared to be bound by it without reading it and is bound by it. Either expressly or tacitly.

[24] There is no reliable or proper evidence whatsoever forthcoming from the defendant that proves the above except that the signs were displayed. Ms. Hepler for the defendant could only testify that the notices were displayed. Definitely not that:

The plaintiff was aware of the content of the notice or it ought to have reasonable so, have come to the knowledge of the plaintiff. The defendant was reasonably entitled to assume from the plaintiff's conduct that she has either read or assented to the terms of the disclaimer or is prepared to be bound by it without reading it and is bound by it. Either expressly or tacitly.

[25] There were two notices. The one only reads:

“ENTER AT YOUR OWN RISK:[13]

The second notice[14] reads:

ENTER AT YOUR OWN RISK

NO ALCOHOL

NO GLASS

NO HUBBLY

THANK YOU

RULES

TIMES 10H00-17H30

ENTRANCE FEE OPTIONAL FROM SWIMMING

NO REFUNDS

PASS OUT ONLY VALID FOR HALF AN HOUR (30)

ONLY TO FETCH THINGS IN CAR OR

BUY FOOD NOT FOR OTHER PURPOSE ONLY ONCE A DAY

[26] THE COMMON LAW

26.1 Exemption clauses from the side of the defendant generally do not offend constitutional norms and values.[15]

26.2 However, courts have questioned whether public policy, as informed by such norms and values, would favor the validity of clauses that exempt liability for negligently killing someone or for causing physical injury.[16]

26.3 The extent of a defendant's limitation of liability depends on the interpretation of the particular exemption clause in light of its context and the background circumstances.[17]

26.4 It is usual to follow a restrictive approach requiring that the extent to which one is to be absolved is plainly spelt out.[18]

26.5 Express and unambiguous terms must be adhered to.

26.6 If there is no express reference to negligence in the particular clause the court must consider whether the words are extensive enough in their ordinary meaning to cover negligence on the part of the defendant.

26.7 In case of doubt, ambiguity or secondary meaning, the issue must be resolved against the defendant.[19]

26.8 Unless it is clear that the parties intended this cause of action to be covered by the exemption, the exclusionary clause will be of no avail to the defendant.[20]

26.9 A defendant who relies on a clause exempting him or her from liability for negligence is not protected if the plaintiff was not aware that the document/contract contained contractual terms, or where the alleged negligent activity did not fall within the risks which were envisaged by the exemption clause.[21]

26.10 The State bears the obligation to ensure that the aspirations held out by the Bill of Rights are realized. The State, its organs and functionaries cannot be allowed to adopt an apathetic and careless attitude, at the expense of the interests of the public, without consequences. Such as section 19 of the By-laws in this instance.

26.11 Public authorities and functionaries might be tempted to disregard their duties to the public and that could create fertile ground for a culture of impunity. These obligations cannot therefore be ignored without any repercussions,

particularly where there is no other effective remedy for the private citizen.

REASONABLE CARE BY THE PLAINTIFF[22]

[27] Reasonable care depends to a large extent on the legitimate assumptions one may make about the situation one finds oneself in or the conduct of other persons. In this case; that the steps recommended for save-exit from the pool will be safe for use.[23]

IN

CONCLUSION

[28] Even if the version of the defendant is accepted that the notice was visible and the plaintiff took cognizance of it, the facts of the case does not allow indemnity when the above tests are applied. The content of the notices is so feeble that indemnity cannot follow.

[29] In short on the facts;

29.1 The risk was not described; it is wide and vague.

29.2 The municipality as an organ of the state may not superciliously, unilaterally and unconstitutionally decide and proclaim indemnity.

29.3 The steps were purported to be for the safety of the bathers and could not have been, in the widest sense, regarded as a risk.

29.4 It may never be legal to make a facility available for use by the public, demand that they pay money for such use, cause a risk of injury and then place the blame on the user. Conduct such as this does not pass muster in our common law of delict and definitely not constitutionally so.

[30] The defendant is, on its own version, the cause of the accident and this due to the sole negligence of the defendant. The law on the facts presented by the defendant prescribes that the defendant owed the plaintiff, and the public in general, a duty of care to prevent accidents of this nature from occurring. The ownership of the pool requires extra diligence and care and the indemnity claimed is moot and weak.

THE CASE FOR THE PLAINTIFF

[31] The facts as adduced in the case of the plaintiff is accepted where it is in conflict with that of the defendant. The case for the plaintiff is simple and straightforward. Her evidence was corroborated by that of her niece and sister where relevant and where it overlapped. They were good witnesses and trustworthy in their observations. The testimony of the witnesses for the defendant

corroborates their evidence on all the vital aspects. The biggest factual dispute is that they were not aware of the indemnity sign and they deny placing the steps in the pool.

[32] Their testimony is that they did not see any notices when they arrived at the pool. They looked for signs at the entrance to

establish the entrance fee but there was nothing.

[33] As they entered the pool it was so full they had to slide in. The witnesses testified that there were too many people to dive in. They bathed in the pool and when the plaintiff decided to get out she saw the bottom step was broken. Her niece pushed the plaintiff up to reach the middle step because she was too short to reach it. She put her left leg on the middle step. As she put her right leg on the top step it broke and she fell back into the pool.

[34] The steps looked steady when she used it. It looked safe because everybody used it. There were lots of people using the steps. The majority and a variety of people used the steps. People of small build and “big guys” used it. There was no need for her to inspect the steps. There was no other manner to get out of the pool.

FINDING

[35] The defendant`s conduct caused the incident that caused the harm to the plaintiff. The defendant`s conduct was unlawful because it did not show delictual and constitutional care and diligence for the safety of the patrons at the facility under its management. On the version of the defendant the incident was foreseeable and care was not taken to avoid injury and harm. The conduct, unlawful action and negligence caused the undisputed harm to the plaintiff.

[36] The plaintiff has succeeded in meeting the onus on it whilst the defendant has failed to prove its defenses. The court finds in favor of the plaintiff that the defendant is liable for whatever damages that might be proven. On the basis of the principle that the costs follow success the defendant must pay such.

[37] ORDER

The following order is made:

1. The defendant is solely liable for such damages as the plaintiff may prove to have sustained in the incident on the 6th of December 2015.
2. The defendant must pay the costs of suit.

M OPPERMAN, AJ

ATTORNEY FOR THE PLAINTIFF

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ADRIE STONE

PLAINTIFF

MANGAUNG METROPOLITAN MUNICIPALITY DEFENDANT

COURT ORDER

ORDER

25 MAY 2018

- [1] Paragraph 6 read with paragraph 12 of the Rule 37 Notice.
- [2] Neethling et al, Law of Delict, Fifth Edition, page 3-5. Also see <https://www.mylexisnexus.co.za/Index.aspx> dated 18 May 2018.
- [3] Definition of "municipality" substituted by s. 24 (b) of P.N. 95 in PG 34 dated 24 June 2016.
- [4] Paragraph 5, 6 & 7 of the Particulars of Claim and Exhibit A.
- [5] Neethling et al, Law of Delict, Fifth Edition, page 23.
- [6] Herschel v Mrupe 1954 3 SA 464 A at 490 and Gouda Boerdery BK v Transnet 2005 5 SA 490 SCA at 498.
- [7] Premier, Western Cape v Faircape Property Developers Pty Ltd 2003 6 SA 13 SCA at 31-32.

- [8] Kruger v Coetzee 1966 2 SA 428 A.
- [9] K v Minister of Safety and Security 2005 ZACC 8, 2005 6 SA 419 CC, 2005 9 BCLR 835 CC and Carmichele v Minister of Safety and Security (Centre for Applied Legal Studies intervening) 2001 ZACC 22, 2001 4 SA 938 CC, 2001 10 BCLR 995 CC, also reported at 2001 JOL 8613 CC. Steenkamp NO v Provincial Tender Board of the Eastern Cape 2006 ZACC 16, 2007 3 SA 121 CC, 2007 3 BCLR 300 CC, also reported at 2006 JOL 18364 CC at par 37. See also Le Roux and others v Dey (Freedom of Expression Institute and Restorative Justice Centre as amici curiae) 2011 ZACC 4, 2011 3 SA 274 CC, 2011 6 BCLR 577 CC, also reported at 2011 JOL 27031 CC.
- [10] Section 19 of the mentioned By-laws; see paragraph [22] of this judgement.
- [11] Shaun Rhooode v The City of Cape Town 923341/2011[2017 ZAWCHC 160 29 June 2017], the City of Cape Town v Rhooode (A314/2017[2018] ZAWCHC 49 (17 April 2018), Karlien van Vuuren v Ethekweni Municipality (1308/2016)[2017] ZASCA 124 (27 September 2017), Swinburne v Newbee Investments PTY LTD (10514/06)[2010] ZAKZDHC 16; 2010 5 SA 296 (KZD).
- [12] See the test in paragraph 17 in the text. 17.1 Whether the operating statute provides for a delictual claim for damages, 17.2 whether the legislation's scheme is primarily about protecting individuals or advancing public good, 17.3 whether the public power conferred is discretionary, 17.4 whether the imposition of liability for damages is likely to have a "chilling effect" on the performance of government functions,
- [12] See the test in paragraph 17 in the text.
- 17.1 Whether the operating statute provides for a delictual claim for damages,
- 17.2 whether the legislation's scheme is primarily about protecting individuals or advancing public good,
- 17.3 whether the public power conferred is discretionary,
- 17.4 whether the imposition of liability for damages is likely to have a "chilling effect" on the performance of government functions,
- [13] This is the yellow sign, Photos 1 and 3 of Exhibit A.
- [14] Photos 2,4 and 5 of Exhibit C.
- [15] Afrox Healthcare Bpk v Strydom 2002 4 All SA 125 (SCA); 2002 6 SA 21 (SCA).
- [16] Johannesburg Country Club v Stott 2004 5 SA 511 (SCA), Swinburne v Newbee Investments (Pty) Ltd 2010 4 All SA 96 (KZD); 2010 5 SA 296 (KZD).

- [17] Van der Westhuizen v Arnold 2002 6 SA 453 (SCA) par 13 to 23; Walker v Redhouse 2007 4 All SA 1217 (SCA); 2007 3 SA 514 (SCA) par 12; Swinburne v Newbee Investments (Pty) Ltd supra par 26-29.
- [18] Wonderland (Pty) Ltd v Botha 1999 1 All SA 411 (SCA) 415; 1999 1 SA 982 (SCA) 989; Afrox Healthcare Bpk v Strydom supra par 9.
- [19] Durban's Water Wonderland (Pty) Ltd v Botha supra 415 (All SA) ; 989 (SA); Afrox Healthcare Bpk v Strydom supra par 9; Van der Westhuizen v Arnold 2002 4 All SA 331 (SCA); 2002 6 SA 453 (SCA) par 38.
- [20] Cardboard Packing Utilities (Pty) Ltd v Edblo, Tvl Ltd 1960 3 All SA 34 (W); 1960 3 SA 178 (W); Hughes v SA Fumigation Co (Pty) Ltd 1961 3 All SA 327 (C); 1961 4 SA 799 (C); Bristow v Lycett 1971 4 All SA 225 (RA); 1971 4 SA 223 (RA) 235-240; Lawrence v Kondotel Inns (Pty) Ltd 1989 1 All SA 178 (D); 1989 1 SA 44 (D) 53-54; Visagie v Transsun (Pty) Ltd 1996 4 All SA 702 (Tk) 720.
- [21] Payne v Minister of Transport 1995 4 SA 153 (C) 159-161; Holm v Sonland Ontwikkeling (Mpumalanga) (Edms) Bpk 2011 JOL 26649 (GNP); 2010 6 SA 342 (GNP) par 18. Weinberg v Olivier 1943 AD 181.
- [22] See paragraph [34].
- [23] Gallante v Dickenson 1951 2 SA 460 A; Southern Insurance Association Ltd v Danneberg 1976 3 All SA 585 (A); 1976 3 SA 253 (A); Griffiths v Netherlands Insurance Co of SA Ltd supra; Rondalia Versekeringskorporasie van SA Bpk v De Beer 1976 3 All SA 612 (A); 1976 4 SA 707 (A); Martindale v Wolfaardt supra 244; SAR&H v Reed 1965 3 SA 439 (A) 442-444; Roeloffze v M Ranchod & Sons (Pvt) Ltd 1972 4 All SA 130 (RA); 1972 4 SA 80 (RA) 85; Netherlands Insurance Co of SA Ltd v Brummer 1978 4 SA 824 (A).

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