

11/12/09
NOT REPORTABLE



DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO.	
(2) OF INTEREST TO OTHER JUDGES: YES/NO.	
(3) REVISED.	
11/12/2009 DATE	 SIGNATURE

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG, PRETORIA)

CASE NO: 16185/2008

In the matter between:

HANRIA KRIEK

Plaintiff

And

JOHANNES LODEWICUS STEINBERG

Defendant

JUDGMENT

LEDWABA, J

- [1] The plaintiff instituted a delictual action against the defendant claiming an amount of R 880 000 for the damages she suffered when she fell on the staircase in the defendant's house.
- [2] Some preliminary issues regarding a document which was sent to the defendant's attorney's by mistake containing the plaintiff's statement made

to her attorney during a consultation, the attending of an inspection *in loco* by the court and the notice of intention to amend filed by the plaintiff were raised before the witnesses testified. I ruled that the admissibility of the said document would be dealt with when the defendant's counsel decides to use it during the trial, the proposed amendment to the plaintiff's particulars of claim, the words "tripped and" by deleting the first line of paragraph 3 the words "and would therefore create" be deleted in paragraph 4.4 and be replaced with the words "and/or created" by adding the words "or fall" after the word "slip" in the last line of paragraph 4.4 was granted and I, together with the parties counsel and legal representation went to the defendant's house to inspect the area where the incident took place, see exhibit C, minutes of the inspection *in loco*. The inspection *in loco* was a beneficial exercise.

- [3] As the parties agreed, I further ordered in terms of Rule 33(4) that the merits and quantum be separated. The trial proceeded on the merits only and the quantum proceedings were stayed. Exhibit B, a bundle which was handed in by agreement, contained pleadings, house plans, homeowner's insurance policy, WinDeed Report of portion 6 of erf 680 Rietfontein, plaintiff's expert report (the contents of which

were admitted by the defendant's), photographs and admissions by the parties.

- [4] The plaintiff testified and closed her case without calling any witnesses. Thereafter, the defendant's counsel made an application for absolution from the instance, and it was opposed. The application was dismissed. The defendant testified and he also closed his case without calling any witnesses.
- [5] The factual backdrop which is common cause is that on the 9th June 2007, the plaintiff's children attended a party which was held at Rietendale Lodge in Pretoria. At about 18H00 some of the children and their parents went to the defendant's house to continue with the party. The plaintiff said she consumed about half a bottle of wine. At about 23H00 the plaintiff climbed the stairs shown on the photograph in exhibit B, up to the fourth or fifth step from the bottom to call her children. Whilst on the fourth or fifth step she made a U-turn to the left to her left to descend the stairs. She said in the process when she was facing the bottom of the steps she lost her balance and fell forward. As she was falling forward she grabbed the wooden rail of the balustrade next to the end of the rail where there is a knob attached to the rail. The hand that grabbed the rail slid to the knob and the knob just came out of the rail and she ended lying at the bottom of the steps in the passage.

- [6] The plaintiff further testified that what caused her to lose balance is a combination of one or more of all of the following:
- 6.1 the inadequate lighting and/or;
 - 6.2 the slippery tiles and/or;
 - 6.3 the unevenness of the stairs.
- [7] The defendant stated that he purchased and occupied the house in about November 2006. It has three bedrooms on the top floor and it was built about fifty years ago. The diagram and measurements of the staircase is as drawn and measured by the plaintiff's expert Len Eybers (the architect).
- [8] He further said that when he purchased the house the tiles, including the balustrade on the staircase, had already been fitted. The rail had always been firmly attached to the wall with some brackets. However, he testified that he could not comment on whether the knob had been loose or not prior to the plaintiff's incident. He mentioned that his children were three and six years old when they occupied the house and they managed to move up and down on the staircase. He stated that when he ascended the steps he did not generally hold the handrail but when he descended he would hold the rail and leave it before he reached the bottom knob that is why he cannot comment on how the knob was fixed to the rail.
- [9] The defendant testified that the light on the staircase clearly illuminated the staircase at night when it was switched on. It

is not in dispute that the light was on when the incident occurred. He also said the tiles were not slippery and they were cleaned with an ordinary tile cleaner.

- [10] The plaintiff's claim is based on the defendant's negligence in that he was, *inter alia*:

10.1 *the stairs and the balustrade on the premises were safe and suitable for use by persons visiting the premises;*

10.2 *the stairs and balustrade were constructed in accordance with the relevant National Building Regulations and/or in compliance with the standards prescribed thereby;*

10.3 *the stairs and the balustrades did not create a dangerous situation;*

10.4 *the stairs were not slippery and dangerous for use; and*

10.5 *the balustrade was properly fitted and not dangerous for use.*

- [11] Legally an omission may in certain circumstances be regarded as a wrongful act can give rise to delictual liability.

In **Peri-Urban Areas Health Board v Munarin 1965 (3)**

SA 367 (A) as follows at 373E-H the court said:

"In general, the law allows me to mind my own business. Thus if I happen to see someone else's child about to drown in a pool, ordinarily

I do not owe a legal duty to anyone to try to save it. But sometimes the law requires me to be my brother's keeper. This happens, for example, when the circumstances are such that I owe him a duty of care; and I am negligent if I breach it. I owe him such a duty if a diligens paterfamilias, that notional epitome of reasonable prudence, in the position in which I am in, would -

- (a) *foresee the possibility of harm occurring to him; and*
- (b) *take steps to guard against its occurrence.*

Foreseeability of harm to a person, whether he be a specific individual or one of a category, is usually not a difficult question, but when ought I to guard against it? It depends upon the circumstances in each particular case, and it is neither necessary nor desirable to attempt a formulation which would cover all cases. For the purposes of the present case it is sufficient to say, by way of general approach, that if I launch a potentially dangerous undertaking involving the foreseeable possibility of harm to another, the circumstances may be such that I cannot reasonably shrug my shoulders in unconcern but have certain responsibilities in the matter - the duty of care."

- [12] In *casu*, it is trite that the stairs and the balustrade were not constructed in accordance with the National Building Regulations and/or the South African Bureau of Standards regulations, see contents of the report by the architect.
- [13] On the fact of this case non-compliance with the building regulations would not *per se* impute delictual liability to the defendant. Failure to comply with relevant regulations is merely a factor to be considered when determining presence or absence of negligence.

- [14] The defendant testified that he had been staying in the house for about eight months together with his family and he nor members of his family had not fallen whilst walking on the steps. He further said he did consider reconstructing the stairs but it would involve about R 50 000 and other astronomical costs to do major structural changes on the house. The burden and costs of eliminating the risk of harm is a factor to be considered in determining the liability of the defendant, see **Rocky Lodge v Livie 1977 (3) SA 231 RA 235.**
- [15] In assessing the standard of care required a reasonable man should have foreseen the real possibility of harm, an *ex post facto* knowledge is not sufficient. A mere possibility of harm is not enough, a reasonable person must foresee a reasonable possibility of harm, see **Lomagundi Sheetmetal & Engineering (Pvt) Ltd v Basson 1973 (4) SA 523 (RA) at 524-525.**
- [16] The defendant and his family have been using the staircase regularly, and according to him they were safe and to be used. According to him the balustrade was safe and he was not aware that the knob was loose. If he knew that the knob was loose, reasonably foresaw the possibility of harm to a person loosing balance and holding to a loose knob and he failed to take reasonable steps to fix his omission it would be regarded as negligence.

- [17] In assessing the plaintiff's evidence, she managed to climb the steps up to the fourth or fifth step and executed a three hundred and sixty degree turn on a staircase is, in my view, such a conduct is potentially dangerous conduct and it should be done with great care and circumspection.
- [18] The plaintiff cannot explain clearly what made her to loose her balance. Her explanation that it could have been a combination of the insufficient light and/or slippery tiles and/or the unevenness of the stairs is a speculation. She cannot justify her loosing her balance. There may be other factors, unknown to the court which could have caused her to fall which cannot be attributed to any wrongful conduct on the part of the defendant.
- [19] On the evidence presented the plaintiff failed to prove that the knob was loose before she touched it and that the defendant was aware that the knob was loose and he failed to take reasonable steps to prove the harm.
- [20] The defendant denied that the steps were slippery. Even if I was not at defendant's house in June 2007 when the incident occurred. The inspection in loco was helpful in assessing the quality of the tiles in the defendant's house. When I walked on the steps and in the house I did not experience any slipperiness on the tiles.
- [22] **In the light of the aforesaid, I make the following order:
Plaintiff's action is dismissed with costs.**



A. P. LEDWABA
JUDGE OF THE HIGH COURT

Date of hearing: 1 December 2009

Counsel for Plaintiff: Advocate L. Kilmartin

Instructed by: Adams & Adams

Counsel for Defendant: Advocate E. Ferreira

Instructed by: Gildenhuis Lessing Malatji