



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

CASE NO: 9654/2015

In the matter between:

ARNOLD FOURIE RAATH

PLAINTIFF

and

THE MINISTER OF POLICE

DEFENDANT

ORDER

Having read the papers and after hearing counsel, the following order is made:

1. The defendant is liable to the plaintiff for damages in the amount of R2 029 000.
2. The defendant shall pay interest on the above amount at the rate of 9% per annum, calculated from date of demand to date of final payment.
3. The defendant shall pay the plaintiff's costs of suit, as well as the plaintiff's reasonable travelling and accommodation expenses, such costs to be taxed on scale C given the serious nature and extent of this matter.

JUDGMENT

Date Delivered: 16 September 2025

MASIPA J

Introduction

[1] This case concerns the liability of the Minister of Police for damages suffered by the plaintiff when a large group of community members entered his farm on 19 May 2015, set alight equipment, and slaughtered valuable game animals. The central question is whether the police, despite repeated warnings, failed in their constitutional and statutory duties to protect the plaintiff and his property, and whether such failure was wrongful and negligent.

[2] The plaintiff, Mr Arnold Raath, a game farmer, seeks damages following the events of 19 May 2015, when members of the Mdletshe community entered his farm, destroyed crops and machinery, and brutally slaughtered some 80-90 head of valuable game.

[3] The plaintiff contends that members of the SAPS, despite repeated warnings and their visible presence, failed to take reasonable steps to prevent the incursion and destruction. He alleges that their omission was both wrongful and negligent, engaging constitutional and statutory duties.

[4] The defendant denies liability, contending that the police were focused on the plaintiff's safety, were overwhelmed by the scale of the protest, and that the plaintiff lacked lawful entitlement to some of the game animals.

Pleadings and issues

[5] In his particulars of claim, the plaintiff pleaded that SAPS members were negligent in, inter alia, failing to:

- (a) properly dispose of dead cattle on 18 May 2015, thereby fuelling unrest;
- (b) prevent the community from assembling and trespassing on 19 May 2015;
- (c) employ available public-order methods such as water cannons, teargas, or rubber bullets;
- (d) allow neighbouring farmers and community policing forum members to assist; and

(e) protect his farm and animals despite repeated reports and pleas for help.

[6] The pre-trial minutes recorded the issues for determination as:

- (a) whether the plaintiff had lawful entitlement to the game;
- (b) whether the animals listed were in fact killed;
- (c) whether SAPS acted negligently and wrongfully;
- (d) causation; and
- (e) damages.

[7] At the close of the defendant's case, an application was brought to amend the plea to introduce a defence that the plaintiff lacked a commercial game reserve permit under the Natal Nature Conservation Ordinance 15 of 1974. After hearing the parties, I ruled that the amendment would cause undue prejudice if introduced at such a late stage and refused it.

The evidence

[8] The plaintiff testified that he farmed macadamias, pineapples and game on Kroonvrug. Within a ten-hectare camp adjoining his house, he kept approximately 80-90 animals, including nyala, black impala, reedbuck, bushbuck and red duiker.

[9] On 17 May 2015, cattle belonging to members of the Mdletshe community strayed onto his farm and were later found dead. SAPS attended with SPCA officials and initially intended to bury the carcasses. The community objected, insisting that the MEC and media view them the following day. SAPS acceded, leaving the carcasses in situ.

[10] On 18 May 2015, the plaintiff worked near the N2 and was visible to passing traffic. He was not approached by police or community representatives.

[11] On 19 May 2015, at about 06h20, he was alerted to a planned protest. He immediately phoned Captain Ntuli, the Hluhluwe station commander, asking him not to allow entry. Ntuli's response was dismissive. The plaintiff phoned Ntuli at least six further times that morning, reporting that people were gathering along the fence,

setting machinery alight, destroying crops, and later slaughtering his animals. Each time Ntuli acknowledged the call but did nothing.

[12] From vantage points near his house, the plaintiff saw groups move from the cattle site to the camp, setting fire to a Caterpillar bulldozer and raiding pineapple fields along the way. He later received calls from his worker, Lucky Mngomezulu, confirming that animals were being chased and killed inside the camp. Neighbouring farmers who arrived to assist were turned away by police.

[13] The plaintiff's wife, Mrs Kim Raath, corroborated the number of animals and testified that after the incident nothing remained. She confirmed that the family abandoned the farm thereafter.

[14] Mr Anton Louw, a neighbouring farmer, observed the events from across the N2. He saw the crowd enter the camp, chase and kill animals, and destroy crops. He contacted police officers but saw no intervention.

[15] Mngomezulu gave vivid evidence of how the crowd entered, burned machinery, destroyed crops, and then trapped and slaughtered the game with pangas, bush knives and knobkerries. He telephoned the plaintiff throughout. He testified that SAPS stood at the gate but did not act.

[16] Video footage showed MEC Cyril Xaba, General Jula and Brigadier Mbatha addressing the crowd on the farm, dead cattle on the ground, the bulldozer burning, and people inside the camp killing animals. Police vehicles and officers were visible but passive.

[17] Colonel Ntuli, the station commander at Hluhluwe SAPS, was the main witness for the defendant. He testified that on 17 May 2015, he attended to the plaintiff's farm after reports of cattle deaths. Accompanied by other officers and SPCA officials, he initially intended to bury the carcasses but desisted when members of the community insisted that the MEC and media should view them the following day. He conceded that this resistance demonstrated the anger of the community and the volatility of the situation.

[18] On the morning of 19 May 2015, Ntuli stated that he first attended to a protest at a local school before making his way to the plaintiff's farm. He admitted that by the time he arrived, the crowd had already begun assembling near the site of the dead cattle. He positioned himself with other officers at the entrance to the plaintiff's camp, claiming that his primary concern was the safety of the plaintiff and his family, who resided in the farmhouse. He said he instructed his members not to leave their positions because he feared the farmhouse would be attacked.

[19] Ntuli admitted under cross-examination that throughout that morning he received several calls from the plaintiff reporting the situation as it escalated. He also conceded that he received a call from Mr Conrad Botha, another farmer, warning him of the planned march. Ntuli accepted that he had been with the community earlier that morning and knew they were angry, and that he was aware that a meeting with the MEC, General Julia and Brigadier Mbatha was to take place on the plaintiff's farm. Significantly, he conceded that no consultation was undertaken with the plaintiff before agreeing to such a meeting.

[20] He denied, however, that the plaintiff called him six or more times or that he was specifically told animals were being slaughtered inside the camp. He said his response to the plaintiff's calls was to 'take note' and to assure him that the matter was being managed. Ntuli maintained that from his position at the gate he did not see any animals being killed. He insisted that his line of sight was obstructed by the layout of the camp.

[21] When pressed, Ntuli admitted that, had he known the crowd was entering from the rear of the camp, he had sufficient manpower on the day to intervene and stop them. He also acknowledged that public order policing units with riot-control equipment were present but were not deployed until later. He could not explain why he did not instruct reinforcements to disperse the crowd at an earlier stage.

[22] Ntuli further conceded that the allegation of poisoning levelled by the community was unfounded. Laboratory tests conducted on specimens from the carcasses showed no evidence of poisoning. He accepted that it would have made no sense for

the plaintiff to poison cattle when other farmers rented grazing from him. Nonetheless, he maintained that the community believed the plaintiff was responsible and that this belief fuelled their anger.

[23] His overall stance was that he prioritised the personal safety of the plaintiff and his family over the protection of his property. He acknowledged, however, that the plaintiff's life was never under immediate threat, whereas his animals were visibly being targeted.

[24] Ntuli's evidence revealed an attitude of passivity in the face of a foreseeable and escalating risk. His failure to consult the plaintiff, to prevent the gathering, or to employ available riot-control measures, lay at the heart of the omissions complained of by the plaintiff.

[25] Captain Fakude, the unit commander of the Public Order Policing Division at Richards Bay, testified that he was deployed to the plaintiff's farm on the morning of 19 May 2015 after being instructed to provide support to the Hluhluwe police. He stated that he arrived at approximately 10h30 with a contingent of public order officers and vehicles, including a Nyala. On arrival he observed that a large crowd was already present on the farm and that the situation was tense.

[26] As he approached the camp he saw smoke rising from the Caterpillar bulldozer which had been set alight. He further observed people moving away from the camp carrying what he later realised were animal carcasses. Fakude and his team gave chase and were able to recover four or five carcasses from fleeing individuals, though no arrests were made. He explained that the crowd dispersed rapidly when his unit advanced and that his priority was to secure the area and prevent further confrontation.

[27] Fakude confirmed that by the time he arrived, many carcasses of dead animals were already lying on the ground. He could not say how many animals had been killed before his arrival but conceded that it was apparent that the bulk of the slaughter had already occurred. He did not witness the actual killing of animals, but

his impression was that the police presence had come too late to prevent the damage.

[28] In cross-examination, Fakude was pressed on why his unit, trained and equipped for riot control, did not use teargas, rubber bullets, or the water cannon to disperse the crowd earlier in the day. He responded that by the time he arrived, the crowd was already dispersing and that he judged it unnecessary to employ force. He was unable to explain, however, why such measures had not been used earlier by the Hluhluwe police or why no effort was made to secure the camp before the killings commenced.

[29] His evidence confirmed that public order policing resources were in fact available and capable of responding but that they were not utilised until the damage had largely been done.

Credibility

[30] The plaintiff and his witnesses gave consistent and corroborated testimony, supported by video evidence. Their evidence that the police stood by while the crowd gathered, trespassed and slaughtered animals is credible.

[31] By contrast, Ntuli's denial that he observed the killings is implausible. He was positioned at the camp gate, from where the north-eastern and south-eastern corners were visible. It is inconceivable that a large group chased and killed animals for over an hour without detection. His version is further undermined by his foreknowledge of the march, the planned meeting, and the anger of the community.

Wrongfulness

[32] In *Minister van Polisie v Ewels*,¹ the Appellate Division established that an omission by police may be wrongful where the legal convictions of the community require a positive duty to act.²

¹ *Minister van Polisie v Ewels* 1975 (3) SA 590 (A).

² *Ibid* at 597A-B.

[33] Counsel for the plaintiff submitted that the principle of subsidiarity requires reliance on the SAPS Act as the legislative framework giving effect to the constitutional rights in issue. This principle, articulated in *My Vote Counts v Speaker of the National Assembly*,³ obliges courts to consider legislation before resorting directly to constitutional provisions.

[34] Section 205(3) of the Constitution articulates the objects of the police service as being to prevent, combat and investigate crime, maintain public order, protect inhabitants and property, and uphold and enforce the law. Section 13(3) of the SAPS Act, by contrast, regulates the manner in which these duties must be discharged: reasonably and, where force is used, with the minimum force that is reasonable in the circumstances. Thus, the statutory duty in s 13(3) is informed and framed by the constitutional mandate in s 205(3). Together, they provide a coherent basis for determining wrongfulness.

[35] In *Carmichele v Minister of Safety and Security*,⁴ the Constitutional Court affirmed that the State bears positive duties to protect individuals against rights violations and that the common law must be developed consistently with those duties.⁵

[36] In *Minister of Safety and Security v Van Duivenboden*,⁶ the SCA held that where rights to dignity, life and security are imperilled, the State, through its officials, bears a constitutional duty to act. While public policy may in some instances limit liability, no such considerations arise where police, armed with material knowledge, fail to take reasonable steps to prevent harm. In such circumstances, accountability demands that a legal duty be recognised.

[37] This principle has been reinforced in subsequent cases: *Minister of Safety and Security v Hamilton*; *K v Minister of Safety and Security* and *Minister of Safety and*

³ *My Vote Counts NPC v Speaker of The National Assembly and Others* [2015] ZACC 31; 2016 (1) SA 132 (CC) para 53.

⁴ *Carmichele v Minister of Safety and Security and Another (Centre for Applied Legal Studies Intervening)* [2001] ZACC 22; 2001 (4) SA 938 (CC).

⁵ *Ibid* para 33.

⁶ *Minister of Safety and Security v Van Duivenboden* 2002 (6) SA 431 (SCA) para 22.

Security v F 2011 (3) SA 487 (SCA)⁷. Each recognises that the police service, as the arm of the State charged with protection of the public, may not remain passive in the face of foreseeable threats. On these facts, SAPS's omissions violated both their statutory duty under s 13(3) of the SAPS Act and their constitutional mandate under s 205(3) of the Constitution. The wrongfulness of their conduct is thus established.

Negligence

[38] Applying the test in *Kruger v Coetzee*,⁸ the question is whether a reasonable police officer in Ntuli's position would have foreseen harm and taken steps to avert it.⁹

[39] The harm was plainly foreseeable. Ntuli received warnings from the plaintiff and Botha, knew of the community's anger, and knew that a meeting with the MEC, General Jula and Brigadier Mbatha was scheduled on the plaintiff's farm. From the previous day, he knew the community resisted burial of the cattle because they wanted the MEC and media present. He also knew laboratory tests excluded poisoning by the plaintiff, rendering the community's grievance unfounded. It was therefore reasonably foreseeable that violence would erupt.

[40] A reasonable police response would have ensured adequate reinforcements and the deployment of riot-control resources, including proactive measures by the public order policing unit to refuse unlawful entry onto private land. The plaintiff should have been consulted before any meeting was facilitated on his property. Yet Ntuli, as the local commander, took none of these steps. More significantly, senior officers including General Jula and Brigadier Mbatha either scheduled or attended a meeting with the angered community members at the plaintiff's farm without the plaintiff's consent. Despite their rank and authority, they too failed to ensure that necessary security measures were in place to prevent the violence that predictably erupted. Collectively, these omissions materially increased the risk of harm and fell short of the standard required by both the Constitution and the SAPS Act.

⁷ *Minister of Safety and Security v Hamilton* 2004 (2) SA 216 (SCA); *K v Minister of Safety and Security* 2005 (6) SA 419 (CC) and *Minister of Safety and Security v F* 2011 (3) SA 487 (SCA).

⁸ *Kruger v Coetzee* 1966 (2) SA 428 (A).

⁹ *Ibid* at 430E-F.

[41] The SAPS had available means – teargas, water cannon, rubber bullets, shields and batons. These were never used. Neighbouring farmers who offered to assist were turned away. The assertion that police were ‘outnumbered’ is contradicted by Ntuli’s own concession that adequate manpower existed, and by video evidence showing numerous officers and vehicles. In these circumstances, SAPS failed to act as reasonable officers would have. Their omissions constitute negligence.

Causation

[42] In *International Shipping Co (Pty) Ltd v Bentley*,¹⁰ the Appellate Division explained that causation involves two distinct enquiries between factual causation and legal causation. The first question is whether, applying the “but-for” test, the harm would have occurred in the absence of the defendant’s wrongful conduct. Only if factual causation is established does one turn to legal causation, which considers whether the harm is sufficiently closely linked to the conduct to justify liability, judged by considerations of reasonableness, fairness and justice.¹¹

Factual causation

[43] On the evidence, the plaintiff and his witnesses repeatedly warned SAPS of the impending danger. Ntuli received multiple calls from the plaintiff and from Mr Botha alerting him to the planned protest. The police also knew that the MEC and media were scheduled to attend on 19 May. The crowd’s anger was evident from the day before, when they resisted burial of the cattle.

[44] In *Van Duivenboden*¹², Nugent JA stressed that factual causation requires a sensible, retrospective analysis of what probably would have happened if the police had acted reasonably, not metaphysical certainty. Here, had the police dispersed the crowd or refused entry, the slaughter would probably not have occurred.

[45] But for SAPS’s failure to act on these warnings, the crowd could have been dispersed or prevented from entering the farm. Measures were available: refusing

¹⁰ *International Shipping Co (Pty) Ltd v Bentley* 1990 (1) SA 680 (A).

¹¹ *Ibid* at 700E-701H.

¹² *Supra* at paras 24–25.

access, employing riot-control techniques, or permitting the community policing forum to assist. Had these been taken, the animals would not have been slaughtered. The causal link between SAPS's omissions and the harm is therefore direct.

[46] In systemic omission cases, a rigid application of the "but-for" test may produce unjust results. The Constitutional Court in *Lee v Minister for Correctional Services*,¹³ adopted a more flexible approach, holding that it is sufficient if the negligent omission materially increased the risk of harm.¹⁴ Here, the failure of SAPS to plan adequately, to consult with the plaintiff, and to disperse the gathering materially increased the risk of the very harm that ensued. On either approach, factual causation is established.

Legal causation

[47] The second question is whether the harm suffered is sufficiently closely connected to the omission to justify legal liability.

[48] The harm suffered by the plaintiff the destruction of his animals and property is precisely the type of harm that SAPS has a constitutional and statutory duty to prevent. Section 205(3) of the Constitution and s 13(3) of the SAPS Act require police to protect life and property and maintain public order. It is neither fair nor reasonable to regard the slaughter as too remote or accidental. It was the direct and foreseeable result of their inaction.

[49] As held in *Carmichele*¹⁵ and *Van Duivenboden*¹⁶, State officials cannot be immunised from liability when their omissions undermine fundamental rights. Accordingly, both factual and legal causation are established. The link between the police's omissions and the plaintiff's loss is direct, foreseeable and sufficiently close to ground delictual liability.

Constitutional implications

¹³ *Lee v Minister for Correctional Services* [2012] ZACC 30; 2013 (2) SA 144 (CC).

¹⁴ *Ibid* para 72-74.

¹⁵ *Supra* fn 4.

¹⁶ *Supra* fn 6

[50] This case illustrates in stark terms the constitutional obligations of the State. When individuals' lives and property are threatened, and when the police are forewarned and present, a failure to act undermines the Constitution itself.

[51] The exclusion of the plaintiff from discussions on his own land, while senior officials engaged with the community, reflects a disregard for his rights to dignity, equality, and property. It is not permissible for the State to negotiate away the rights of an individual in the face of threats from others.

[52] The fact that the gathering was premised on an unfounded allegation of poisoning disproved by scientific tests compounds the breach. The police permitted a politically charged assembly to proceed on private property without evidence or consultation. This subordinated the plaintiff's constitutional rights to mob pressure.

[53] In *K v Minister of Safety and Security*,¹⁷ the Constitutional Court with reference to *Carmichele*, held that constitutional norms require the common law to be developed to afford remedies against the State where rights are infringed.¹⁸ This case affirms that the State may be held delictually liable where the police fail in their constitutional duty to protect life and property.

Quantum

[54] The parties' experts prepared a joint minute in which they agreed on the values of the various animals lost, save for a single Nyala bull. The agreed schedule is as follows:

- (a) 1 black impala split ram – r15 000;
- (b) 20 nyala ewes – r400 000;
- (c) 8 reedbuck – r64 000;
- (d) 3 bushbuck – r60 000;
- (e) 22 red duiker – r220 000;
- (f) 7 baby nyala – r105 000;
- (g) 16 split impala ewes – r640 000; and
- (h) 1 black impala ram – r175 000.

¹⁷ Supra fn 7.

¹⁸ Ibid at 15.

Total agreed antelope – R1 679 000.

[55] The only dispute concerned the Nyala bull. The plaintiff's expert valued it at R600 000, while the defendant's expert placed the value at R350 000. For the sake of finality, the plaintiff accepted the defendant's valuation of R350 000. The total value of the plaintiff's loss is accordingly the agreed amounts for various antelope – R1 679 000 and Nyala bull (accepted at defendant's value) R350 000 with a total loss of R2 029 000.

[56] The plaintiff's damages are therefore quantified at R2 029 000. The plaintiff has also prayed for interest on this amount at the legal rate of 9.5% per annum from date of demand to date of final payment, as well as costs on scale C, inclusive of travelling and accommodation. Notably, when demand was made, the prescribed rate of interest was at 9%. Accordingly, interest will be calculated at that rate.

[57] I find that the omissions of the SAPS were both wrongful and negligent, and that they caused the plaintiff's loss. The plaintiff is entitled to damages in the amount of R2 029 000, together with interest and costs.

Order

[58] Having read the papers and after hearing counsel, the following order is made:

1. The defendant is liable to the plaintiff for damages in the amount of R2 029 000.
2. The defendant shall pay interest on the above amount at the rate of 9% per annum, calculated from date of demand to date of final payment.
3. The defendant shall pay the plaintiff's costs of suit, as well as the plaintiff's reasonable travelling and accommodation expenses, such costs to be taxed on scale C given the serious nature and extent of this matter.

MBS Masipa J

APPEARANCES

For the Plaintiff : Adv P Nortje
Instructed by : Loubser Van Wyk Inc.
For the Defendant : Advocate M Govindsamy SC
Instructed by : The Office of the State Attorney

Matter heard : 19, 20, 21, 22, 26, 27 and 30 May 2025

Date of Judgment : 16 September 2025