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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA (MAIN SEAT)**

4360/2021

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

SIGNATURE: GUMEDE AJ

DATE: 20/08/25

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

1ST PLAINTIFF

C[...] P[...] T[...]

2ND PLAINTIFF

and

SOUTH AFRICAN NATIONAL PARKS

DEFENDANT

JUDGMENT

GUMEDE AJ

1. The first and the second plaintiffs sued the defendant for damages made up of funeral expenses, pain and suffering (psychological scaring), as a result of the death of their minor child who was attacked and killed by a leopard at the staff quarters of the Malelane Camp in the Kruger National Park.

2. The first plaintiff was an employee of the defendant as such, he and his family (the second plaintiff as well as their late minor child, C[...]) were residing at the said staff quarters.

3. The matter came before me as a stated case. The parties agreed to separate the issues and the only issue that I am required to determine is the special plea by the defendant, whether the first plaintiff is barred from suing the defendant by virtue of section 35(1) of the Compensation for Occupational Injuries and Diseases Act (COIDA) 130 of 1993.

4. Should the special plea be unsuccessful, the liability of the defendant will have to be determined.

5. In their stated case, the parties agree that the first plaintiff who was at all relevant times an employee of the defendant, instituted an action against his employer for the recovery of damages he claims to have sustained when his minor child, C[...] was attacked and killed by a wild leopard at the staff quarters of the Malelane Camp in the Kruger National Park. In terms of his employment contract, the first plaintiff was obliged to reside in the said staff quarters and was residing as such at the time of the incident. By residing at the staff quarters, he was furthering the interests of his employer.

6. The first plaintiff submits that he is entitled to sue the defendant under common law for damages suffered as a result of the killing of his minor son, C[...].

7. The defendant contends that if an employee has been employed to work and reside in the Kruger National Park and suffers bodily harm due to an attack by a wild animal while so working or residing within the Park, that such injury would be an occupational injury and in which event the employee, by virtue of section 35(1) of COIDA, will have no claim against his employer but rather have a claim against the Commissioner in terms of COIDA.

8. Section 35(1) of COIDA, reads as follows:

“No action shall lie by an employee or any dependent of an employee for the recovery of damages in respect of any occupational injury or disease resulting in the disablement or death of such employee against such employee's employer, and no liability for compensation on the part of such employer shall arise save under the provisions of this Act in respect of such disablement or death.”

9. An “occupational injury” is defined in COIDA as one that is sustained as a result of an accident arising out of and in the course of an employee's employment and resulting in a personal injury, illness or the death of the employee.

10. To be barred under section 35(1), the plaintiff must not only be an employee of the defendant but must also be claiming damages in respect of an “occupational injury”, which means a personal injury sustained as a result of an accident arising out of and in the course of an employee's employment.

11. In **MEC for Health, Free State v DN**¹, a doctor was raped by an intruder while on duty at Hospital. Mocumie J [as she then was], held that the incident did not arise out of and in the course of the doctor's employment and that consequently the rape was not an accident contemplated by s 35. She held that the attack on the doctor bore no

¹ 2015 (1) SA 182 (SCA), para 31

relationship to her employment and dismissed the defendant's special plea. This decision was upheld by the SCA on appeal by the MEC Health.

12. The SCA held that the relevant question to be asked when applying Section 35 (1) of COIDA is "whether the wrong causing the injury bears a connection to the employee's employment, ie, the event or act causing the injury must be a risk incidental to the employment. If it be such a risk, and if the injury flows from that risk, it must be held to be an injury arising out of the employment.

13. Navsa ADP concluded as follows *"I have difficulty contemplating that employees would be assisted if their common law rights were to be restricted as proposed on behalf of the MEC. If anything, it might rightly be said to be adverse to the interest of employees injured by rape to restrict them to COIDA. It would be sending an unacceptable message to employees, especially women, namely, that you are precluded from suing your employer for what you assert is a failure to provide reasonable protective measures against rape because rape directed against women is a risk inherent in employment in South Africa. This cannot be what our Constitution will countenance."*²

14. In **De Gee v Transnet SOC Ltd**³, an employee was injured on his way to work on 48th floor of Carlton Centre, a building owned by his employer, when an elevator boarded by employee fell seven floors.

15. In De Gee, the court reviewed English cases and concluded that as in our law, there is no brightline test. Each case must be considered on its own merits. It was held that one of the questions to be asked was whether an employee was within the sphere or area of his employment when an accident occurred and concluded that a workman is acting in the course of his employment when he is engaged **'in doing something he**

² MEC for Health, Free State v DN at para 33

³ 2020 (2) SA 488 (GJ)

was employed to do' or 'when he is doing something in discharge of a duty to his employer, directly or indirectly, imposed upon him by his contract of service.'

16. The Defendant argued that the incident occurred whilst the plaintiff was at its premises and during the course and scope of his employment and that the plaintiff's claim is covered under COIDA and the plaintiff is not permitted to claim directly from the Defendant.

17. The plaintiff argued that this was not an injury on duty arising out of or in the course of his employment and that when the incident occurred he was not executing his contract of employment but was on his way to his place of work.

18. Despite the fact that the incident occurred whilst plaintiff was at premises owned by the defendant, the court found that for purposes of the enquiry under section 35 (1) of COIDA – the relevant and important question is whether the injury was sustained as a result of an accident "arising out of and in the course of an employee's employment and answered that question in the negative. The court concluded that the accident was not an occupational injury.

19. In **Churchill v Premier of Mpumalanga and Another**,⁴ the Supreme Court of Appeal found that an employer is not protected from a civil claim from an employee when the employer fails to take necessary and appropriate steps to protect non-participating employees during protest action.

20. In that case, the employee was caught in a protest action which occurred at the premises and in the building where she worked. She was assaulted by the protestors and suffered injuries which left her with post-traumatic stress disorder of significant intensity.

21. The SCA asked two questions:

⁴ 2021 (4) SA 422 (SCA)

- a. whether the incident arose out of Ms Churchill's employment so that her injuries, both physical and psychiatric, were sustained in an accident for the purposes of COIDA?
- b. whether the incident arose out of her employment? In other words, was it sufficiently closely connected (incidental) to her employment to have arisen from it?

22. It was held that since the injury to Ms Churchill occurred at her workplace when she was discharging her duties, it undoubtedly arose out of her employment with her employer. On the second question, the court found that the possibility of protest action turning violent and resulting in assaults on non-participating employees, in no way meant that the assaults were risks incidental to the employment of those assaulted. The court concluded that the only connection between the incident and Ms Churchill's employment was that she was at work at the time. The incident bore no relation to her duties and accordingly her injuries did not arise out of her employment.

23. The SCA confirmed that there is no bright line test and that the court must analyse the facts closely to determine whether on balance the accident arose out of the person's employment. And in the last resort an employer seeking to rely on s 35 to avoid liability bears the onus of satisfying the court that the accident arose out of the claimant's employment.

24. In the case before me, the defendant submitted that the risk was foreseeable and argued that ***“in this instance the clear cause of the incident was an attack by a wild leopard. It constitutes the eventuation of a hazard attached to that place. The presence of free roaming dangerous wild animals inside the Kruger National Park is a hazardous condition attached to the Kruger National Park namely to the place where the employee needed to be. It follows that the incident did arise out of the employment of the first plaintiff. The Supreme Court of Appeal has held that the***

question is if the act causing the injury is a risk incidental to the employment then the injury arose out of the employment.”⁵

25. The defendant, relying on De Gee case above, submitted that if an employee was acting in the course of his employment depends on if he was discharging some or other duty imposed upon him, directly or indirectly by his contract of service.⁶

26. The defendant's reliance on both the above cases is misplaced.

27. The Supreme Court of Appeal in both MEC Health Free state and Churchill v Premier of Mpumalanga above, made it clear that it is not only a question of whether the employee was on duty at the time of the injury causing incident but also whether the incident is sufficiently closely connected to or incidental to his employment.

28. On the first question, the parties in this matter agree on their stated case that by residing at the staff quarters at the time of the incident, regardless of what the first plaintiff was doing at the time, he was furthering the interests of the defendant who is his employer.⁷

29. The only question that is left to be answered is whether attack and killing of the minor child, C[...] is sufficiently closely related to the performance of the first plaintiff's employment.

30. I have pondered this question and cannot fathom how the killing of a child by an animal is in anyway incidental to the first plaintiff's employment.

31. For the defendant to argue that the mere presence of free roaming dangerous wild animals inside the Kruger National Park is a hazardous condition attached to the Kruger National Park namely to the place where the employee needed to be and that it

⁵ Defendant's supplementary HoA, para 23

⁶ Ibid, para 30

⁷ Stated case, para 4

follows that the incident arose out of employment of the first plaintiff,⁸ is no different to the Premier of Mpumalanga arguing that the risk of Ms Churchill and other non-protesting employees being injured during a protest action was foreseeable and unfortunate and covered by COIDA, which was rejected by the SCA.

32. If the person that was attacked and killed by the animal was a visitor and not the child of the first plaintiff, would the defendant escape liability? In my view, the answer is a resounding no. It appears to me that the defendant does not disagree with this view. I say so because it is not only the first plaintiff that has a claim against the defendant, but the mother of the deceased child is also claiming as a second plaintiff and the defendant has not raised the same special plea in relation to her claim.

33. Section 35(1) provides that no action shall lie by an employee or any dependent of an employee for the recovery of damages in respect of any occupational injury.

34. The second plaintiff is a dependent of the first plaintiff.

35. If the act of the killing of C[...] is indeed an occupational injury as contended by the defendant, then the section says no dependent of the employee should be able to claim. That means, the second plaintiff should also be barred from claiming directly from the defendant.

36. It cannot be that the act of killing of C[...] is an occupational injury only when it relates to the first plaintiff but not when it comes to the second plaintiff who is a dependent of the first plaintiff and should also be barred by section 35(1) of COIDA.

37. I concur with the words of Navsa ADP in **MEC Health Freestate** above that this cannot be what our Constitution will countenance.⁹

⁸ Defendant's supplementary heads, para 23

⁹ Para 33

38. This incident, although connected to the first plaintiff's employment, is not connected to his duties in that employment and is accordingly not an occupational injury as contemplated in COIDA.

39. The special plea must fail.

In the result, I make the following order:

1. The defendant's special plea is dismissed;
2. Section 35 of the Compensation for Occupational Injuries and Diseases Act does not prohibit the first plaintiff's claim against defendant;
3. The defendant is ordered to pay the costs.

Zodwa Gumede
Acting Judge of the High Court

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email. The date and time for hand-down is deemed to be 20 August 2025 at 10:00

APPEARANCES

For the Plaintiff	:	Mr DF Makhubele
Instructed by	:	BM Ndlovu Attorneys
For the Defendant:		Mr A Myburgh
Instructed by	:	Engelbrecht Attorneys

Date of hearing : 27 January 2025 (Heads submitted in February 2025)
Date of judgment : 20 August 2025