



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case number: 20392/2015

In the matter between:

R[...] T[...] N.O.

obo the estate of the late E[...] T[...]

R[...] T[...]

First plaintiff

Second plaintiff

G[...] N[...] M[...]

M[...] M[...]

Third plaintiff

Fourth plaintiff

and

**MEMBER OF THE EXECUTIVE COUNCIL,
WESTERN CAPE DEPARTMENT OF EDUCATION
MINISTER OF EDUCATION**

First defendant

Second defendant

Coram:	Van Zyl, AJ
Heard on:	7-9 October 2025; 4-6 November 2025; 17-18 March 2026
Order granted:	18 March 2026
Reasons delivered:	30 March 2026

Summary: Delict – absolution from the instance – drowning of learners during school camp – on particular facts, defendants unable reasonably to foresee – if foreseen, then reasonable steps taken to prevent – no evidence upon which a court, reasonably applying its mind, could find that the defendants were negligent

ORDER

1. Absolution from the instance is granted.
 2. Each party shall pay their own costs.
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REASONS

VAN ZYL, AJ:

Introduction

1. On the night of 13 October 2014 an unimaginable tragedy occurred. Two Grade 12 learners from the Luhlasi High School drowned while on a school camp at the Rotary camp site in Strandfontein. Their names were B[...] T[...] and O[...] M [...], and their untimely deaths have left a gaping hole on the lives of their loved ones. B[...] was 18 years old at the time of his death, and O[...] was 17.
2. The learners' parents, as plaintiffs, claimed damages from the defendants on the basis of the alleged negligence of the staff at the school, resulting in the death of their children.
3. The defendants applied for absolution from the instance at the close of the plaintiffs' case. On the well-established test for absolution, this court had to consider whether there is evidence upon which a court, applying its mind

reasonably to such evidence, could or might (not should or ought to) find in favour of the plaintiffs. This test was reaffirmed by the Supreme Court of Appeal in *Gordon Lloyd Association v Rivera and another*:¹

"The test for absolution to be applied by a trial court at the end of a plaintiff's case was formulated in Claude Neon Lights (SA) Ltd v Daniel 1976 (4) SA 403 (A) at 409G-H in these terms:

'... (W)hen absolution from the instance is sought at the close of plaintiff's case, the test to be applied is not whether the evidence led by plaintiff establishes what would finally be required to be established, but whether there is evidence upon which a Court, applying its mind reasonably to such evidence, could or might (not should, nor ought to) find for the plaintiff. (Gascoyne v Paul and Hunter 1917 TPD 170 at 173; Ruta Flour Mills (Pty) Ltd v Adelson (2) 1958 (4) SA 307 (T)'

This implies that a plaintiff has to make out a prima facie case - in the sense that there is evidence relating to all the elements of the claim - to survive absolution because without such evidence no court could find for the plaintiff ... As far as inferences from the evidence are concerned, the inference relied upon by the plaintiff must be a reasonable one, not the only reasonable one The test has from time to time been formulated in different terms, especially it has been said that the court must consider whether there is 'evidence upon which a reasonable man might find for the plaintiff' ... - a test which had its origin in jury trials when the 'reasonable man' was a reasonable member of the jury Such a formulation tends to cloud the issue. The court ought not to be concerned with what someone else might think; it should rather be concerned with its own judgment and not that of another 'reasonable' person or court. Having said this, absolution at the end of a plaintiff's case, in the ordinary course of events, will nevertheless be granted sparingly but when the occasion arises, a court should order it in the interests of justice."

4. A *prima facie* case is sometimes referred to as sufficient evidence or *prima facie* evidence. *Prima facie* evidence is evidence which requires an answer from the other party in relation to every element of the claim,² and in the absence of an answer from the other side, it can become "*conclusive proof*".

¹ 2001 (1) SA 88 (SCA) para 2. Emphasis supplied.

² See *South African Local Authorities Pension Fund Msunduzi Municipality* 2016 (4) SA 404 (SCA) para 32.

It is used to refer to the probative value of the proponent's case after discharging its burden of proof, but before the opponent has rebutted it.³

5. I granted absolution after hearing argument. Various peripheral issues were debated between the parties but the central issue for determination boiled down to whether the defendants should have foreseen the drowning, and whether they should have taken steps – other than those in fact taken – to prevent the tragedy.
6. The plaintiffs' claim was formulated as one for emotional shock, trauma, post-traumatic stress, depression, and funeral expenses. The defendants' counsel argued that it was not sufficient merely to infer emotional harm to the parents because of the incident. The pleadings had to allege that the defendants should have foreseen the emotional impact of their conduct on the parents, in other words, that a duty of care was owed to the parents as well as the learners. Without such an explicit allegation, the claim lacks a necessary element to establish liability. The plaintiffs' counsel, in turn, emphasized that claim arose from the wrongful and negligent causing of the death of their children. The duty of care arose in relation to the persons placed under the control and supervision of the defendants, namely the learners. The damages suffered by the parents flowed directly and legally from that primary wrong.⁴ While the plaintiffs may not have explicitly stated that the defendants ought to have foreseen harm to the parents, the foreseeability of harm to the learners inherently included the possibility of harm to their parents, given the close relationship between them.
7. Whilst the particulars of claim admittedly did not make this specific averment, the defendants never raised an exception on this ground. I was not inclined

³ See *S v Boesak* 2001 (1) SACR 1 (CC) para 24; *Ex parte Minister of Justice: In re: R v Jacobson and Levy* 1931 AD 466 at 478–9.

⁴ In Ahmed "*The Influence of Reasonableness in Determining Delictual or Tort Liability for Emotional Distress or Mental Harm in American and French Law*" *PER / PELJ* 2023(26) – DOI, the author states that: "Negligently inflicted emotional distress may be sustained directly by the plaintiff (the "primary victim") or indirectly by a third person (the "secondary victim"). Cases involving emotional harm arising from the risk of harm to others are often referred to as bystander cases, where the third person is a plaintiff in his own right and the emotional harm usually results from witnessing or hearing of a disturbing event."

to grant absolution on the basis of the defendants' technical argument. I tended to agree with the plaintiffs' counsel's submissions in this respect. In any event, all of the relevant issues were thoroughly covered in the evidence as well as in argument, and both parties were agreed that the question on application for absolution was the issue of the defendants' alleged negligence in relation to the drowning. In *Minister of Safety and Security v Slabbert*⁵ the Supreme Court of Appeal held as follows:

"[11] A party has a duty to allege in the pleadings the material facts upon which it relies. It is impermissible for a plaintiff to plead a particular case and seek to establish a different case at the trial. It is equally not permissible for the trial court to have recourse to issues falling outside the pleadings when deciding a case.

*[12] There are, however, circumstances in which a party may be allowed to rely on an issue which was not covered by the pleadings. This occurs where the issue in question has been canvassed fully by both sides at the trial. In *South British Insurance Co Ltd v Unicorn Shipping Lines (Pty) Ltd*,³ this court said:*

'However, the absence of such an averment in the pleadings would not necessarily be fatal if the point was fully canvassed in evidence. This means fully canvassed by both sides in the sense that the Court was expected to pronounce upon it as an issue'."

8. As indicated, this court was expected to pronounce, for the purposes of absolution, on whether the plaintiffs had furnished evidence upon which it, reasonably applying its mind to such evidence, could find that the defendants were negligent in failing to prevent the learners' deaths. I accordingly proceed to consider this issue.

The relevant evidence

9. Only two persons were able to give factual evidence as to what transpired on the fateful day. They were Mr Saki (the deceased learners' friend, and camp attendee), and Mr Jobela (teacher at the school, and one of the educator attendees at the camp). They were called by the plaintiff.

⁵ [2010] 2 All SA 474 (SCA) at paras 11-12. My emphasis.

10. The plaintiffs subpoenaed Mr Jobela to give evidence on the events of the day and night. The defendants' counsel indicated at the time that the defendants had themselves intended to call Mr Jobela, as he was the only person with first-hand knowledge of the entire period in question. As he was ultimately called by the plaintiffs, the defendants' counsel duly cross-examined Mr Jobela on the factual events, as well as on the steps taken to ensure that the learners remained safe.
11. Mr Saki testified that he and his fellow Grade 12 learners attended the Matric revision camp organised by the school. They did not know beforehand that there was a pool but they were, on arrival, expressly and repeatedly instructed not to swim. They were directed to be in bed by 22:00, because they had a full academic programme. No time had been set aside for swimming. Mr Saki was in the same room as B[...]. O[...] was in another room. They all knew that they were to follow camp rules.
12. Late at night, when the teachers were gone, they heard noise coming from outside, like people who were enjoying themselves. They went out and discovered some learners were already swimming and they joined them. No teachers were present. On their return to their rooms, when it became too cold to swim, they discovered that O[...] and B[...] were missing and went searching for them. They woke the parents who were at the site, in charge of cooking, to assist in the search. Mr Saki speculated that some of the learners had been waiting for the teachers to leave the site, and then went to swim. He was of the view that if teachers had been present, the incident could have been avoided.
13. Mr Jobela testified that he arrived at the camp site with the last group of learners to arrive from the school around 18:00. The learners had been supervised from 12:00 that day, when they had gathered at the school to board the taxis that would take them to the camp. The school had during previous years used the same camp site, and Mr Jobela was not aware of any previous incidents there. The camp assisted learners in their preparation for the Matric exam, and had previously yielded good results. The camp

programme supervision roster indicated that Mr Jobela and other educators were responsible for supervising students from 22:00 to 12:30 the next day. However, Mr Jobela left the camp at 00:20 that night, because there was no provision for teachers' accommodation. There were a camp manager and a security guard on duty, and there were parents on site who assisted in the kitchen. These persons remained at the camp for the night.

14. Mr Jobela expressly warned the learners not to go swimming. This was done during dinner, and again later the evening when he went to check on them. He did rounds at 22:00 to ensure that everyone was in bed. At 23:30 he did a further check, and everything seemed quiet. Many of the learners were already asleep. He left the camp at 00:20, by which time everything was still in order. The camp manager, security guard, and some of the parents remained on site.
15. While the camp rules prohibited swimming at night, Mr Jobela admitted that the swimming pool area was accessible to students. The pool was fenced, but it is not clear from the evidence whether the gate to it was locked. The fence was about 1.2 metres high. Mr Jobela, prior to leaving the site, informed the camp manager that the children were not allowed to walk around during the night. He stated that a security guard was instructed to prevent learners from moving around the campsite or accessing the pool, but he could not verify whether these instructions were followed after he left. Mr Jobela said that no students went to the swimming pool while he was present. He could not account for what happened after he had left the camp at 00:20. He was informed the following morning that two boys were missing.
16. It appeared from the other evidence presented by the plaintiffs that O[...] and B[...] were known both at home and at school as disciplined and well-mannered children. O[...] was a good swimmer, and the pool was not very deep.

Did the plaintiffs' evidence establish a case for the defendants to answer?

17. The classic test for negligence was formulated in *Kruger v Coetzee*,⁶ which held that liability for negligence arises if a reasonable person in the position of the defendant would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss, and would take reasonable steps to guard against such occurrence and the defendant failed to take such steps. The reasonable person is not an actual person but is the personification of society's perception of the acceptable standard of conduct under certain circumstances. The reasonable person is the typical average member of society who is not exceptionally gifted, cautious or sophisticated, but who is nevertheless not careless or injudicious when taking chances.⁷
18. The plaintiffs' case was that the defendants failed properly to supervise the learners at the camp, "*particularly during swimming periods*", and choosing a campsite with a swimming pool that posed risks. They failed to foresee the potential danger of drowning, and they failed to take reasonable steps to guard against it.
19. The evidence established that no provision had been made in the timetable for any swimming. The pool was out of bounds at all times.
20. It was accepted for the purposes of argument that the defendants were *in loco parentis* at the time of the incident. In *Rusere v The Jesuit Fathers*⁸ such responsibility was explained as follows:

"The duty of care owed to children by school authorities has been said to be to take such care of them as a careful father would take of his children. This means no more than that schoolmasters, like parents, must observe towards their charges the

⁶ 1966 (2) SA 428 (A) at 430E-G.

⁷ *Harrington NO and another v Transnet Ltd t/a Metrorail and others* [2010] 2 All SA 220 (SCA) paras 34-35. Wrongfulness, which is distinct from negligence, is not constituted in all cases by the infringement of a legal interest. It is also present when a person who is under a legally recognised duty to act, fails to do so. This position is qualified by the principle that there is no general duty to prevent loss from occurring. Whether an omission is wrongful will depend on whether the particular omission offends against the legal convictions of society at large: see *Nelson Attorneys v Smit N.O and others* [2025] ZASCA 162 (24 October 2025) paras 43-48.

⁸ 1970 (4) SA 537 (R) at 539D.

standard of care that a reasonably prudent man would observe in the particular circumstances”

21. In *Rusere*, a child of 8 years sustained an injury to his eye when, during an hour of unsupervised free time between a game of soccer and evening prayers, he and some 26 other little boys of his age group commenced to play a game of 'cowboys and Indians' resulting in his being struck in the eye by a grass arrow. It was submitted on behalf of the boy that it was negligent on the part of the school authorities to allow children between the ages of 7 and 10 to play in the school grounds for any appreciable length of time without the presence of some responsible person to keep them under surveillance. The court held as follows in this respect:⁹

“... the duty to keep children of this age under constant supervision depends essentially upon the risks to which they are exposed in their particular surroundings. No doubt, a reasonable man who is in charge of a number of young children at the seaside would be guilty of negligence if he were not to keep them under constant observation. To contend, however, that children of this age should never be more than momentarily out of sight of a responsible person even when they are in normal and familiar surroundings which are devoid of features that could sensibly be regarded as hazardous, is, I think, to exact too high a duty of care from the bonus paterfamilias.”

22. In *Gora v Kingswood College and others*¹⁰ the plaintiff was struck in the eye by a fellow learner after having been left unsupervised in a classroom for an hour. The learners were 15 years old. In discussing the issue of negligence (ultimately finding none on the part of the school) the court referred¹¹ to what was stated in *Minister of Education and another v Wynkwardt NO*:¹²

“In Minister of Education and Another v Wynkwardt NO supra Desai J, with whom Erasmus J and Yekiso J concurred, stated at 582G – I:

⁹ *Rusere supra* at 539F-G.

¹⁰ 2019 (4) SA 162 (ECG).

¹¹ At para 29.

¹² 2004 (3) SA 577 (C) at 582G-I. My emphasis.

'In a more recent judgment the Court in Minister of Safety and Security v Van Duivenboden 2002 (6) SA 431 (SCA), applying Kruger v Coetzee (supra), pertinently held (at 448F – G) that the answer to element (a)(ii) of the said case —

"will depend upon what can reasonably be expected in the circumstances of the particular case. That enquiry offers considerable scope for ensuring that undue demands are not placed upon public authorities and functionaries for the extent of their resources and the manner in which they have ordered their priorities will necessarily be taken into account in determining whether they acted reasonably."

'It is apparent from the authorities referred to by counsel that where pupils are not kept under the constant supervision of teachers this is not in itself a breach of the duty of care owed to such pupils. The degree of supervision required depends on the risks to which the pupils are exposed.'

23. In *S v Bochriss Investments (Pty) Ltd and another*¹³ the Supreme Court of Appeal considered the issue of negligence in the context of a culpable homicide charge.¹⁴ While on a family outing at a resort, a 9-year old child, Ryan, dived into the pool to show his father that he could touch the bottom. When he had not surfaced after about 10 seconds, his father dived in. He found Ryan jammed in an outlet pipe near a corner of the pool at the deep end. His body was doubled up, and only his hands and feet were visible at the entrance to the pipe. The father tried to pull Ryan out, but it was only later that the boy was extracted from the pipe. He had drowned.
24. The State's case was that the unguarded opening to the outlet pipe was potentially dangerous to pool users while the filtration plant was in operation; the accused's employee was in control of the swimming pool, which was open to the public (including children), and as such he had a duty to do all that was reasonably requisite to ensure the safety of users. Such employee, and thus the accused, realised or ought to have realised that the unguarded

¹³ 1988 (1) SA 861 (A).

¹⁴ See *S v Bochriss* supra at 865H-I: "The criterion of liability for culpa in both civil and criminal cases is reasonable foreseeability. In a case of culpable homicide, the question is whether a diligens paterfamilias in the position of the accused would have foreseen the possibility of death resulting from his conduct."

opening was dangerous: he ought to have foreseen that, unless reasonable steps were taken to prevent it, death to users could result.

25. As in the present matter, there was no direct evidence of the way in which the child had met his death, and the court had to rely on inferences from the evidence tendered. It accepted that Ryan dived down to the bottom of the pool and seated himself on the floor with his back to the opening to the outlet pipe in such a way as to block it with his posterior. The pressure of the water above him forced his buttocks into the pipe where he was trapped. The likelihood is that his seating himself at the opening was a deliberate, not an inadvertent, act. The Supreme Court of Appeal held as follows:¹⁵

“The crucial question arises in regard to (3): ought Joubert to have realised that the unguarded opening was dangerous - more specifically, ought he to have foreseen that, unless steps were taken to guard it, death could result to a user of the pool?

In considering this question, one must guard against what Williamson JA called ‘the insidious subconscious influence of ex post facto knowledge’ (in S v Mini 1963 (3) SA 188 (A) at 196E-F). Negligence is not established by showing merely that the occurrence happened (unless the case is one where res ipsa loquitur), or by showing after it happened how it could have been prevented. The diligens paterfamilias does not have ‘prophetic foresight’. (S v Burger (supra at 879D).) In Overseas Tankship (UK) Ltd v Morts Dock & Engineering Co Ltd (The Wagon Mound) 1961 AC 388 (PC) ([1961] 1 All ER 404) Viscount Simonds said at 424 (AC) and at 414G - H (in All ER):

‘After the event, even a fool is wise. But it is not the hindsight of a fool; it is the foresight of the reasonable man which alone can determine responsibility.’

It would seem that the only possible way in which death could have resulted from the fact that the opening was unguarded, was death by drowning. The fact that Ryan drowned shows that death can be caused where there is a combination of circumstances such as that in the present case; ... I do not think that the diligens paterfamilias would have foreseen that freakish combination of circumstances. On the evidence, it was not reasonably foreseeable that a child would try, the buoyancy of the human body notwithstanding, to sit on the floor of the pool against the

opening. (It may be that a child sitting across the opening with part of his buttocks on either side of it, would be pinned against the wall by the weight of the water above him, but this is speculation for which there is no support in the evidence.) ... Nor do I think that the diligens paterfamilias would have appreciated the magnitude of the forces involved, or the mechanism by which an accident of this kind could happen. Without such appreciation the possibility of death could not reasonably have been foreseen.

It can be accepted that, as the prosecutor put it to Joubert in cross-examination, children, being naturally inquisitive, 'always poke their hands and feet and noses into things that a normal person would not do'. Nevertheless, it was not Norman's evidence that such conduct could result in death, and in my view that was not a reasonably foreseeable consequence.”¹⁶

26. In the present matter, O[...] and B[...] were, respectively, 17 and 18 years old. Apart from the fact that they had drowned, there is no evidence from which the exact circumstances of their deaths could be gleaned. We do not know whether the learners climbed over the fence or whether they could access the pool via the gate. The pool was not deep. O[...], at least, knew how to swim. We do not know whether they slipped and fell into the water, whether they were trampled in a throng of swimmers, whether there was roughhousing going on in which they were forced under the water, or whether they simply could not keep themselves afloat.
27. The defendants' counsel emphasized that their actions in going to the pool were nevertheless deliberate and independent, and the school could not reasonably foresee or prevent their disobedience. It was common cause that the teachers had supervised the pupils throughout the day, ensured that they were in bed by 22:00, conducted checks at 23:30, and left the camp at 00:20 when all appeared quiet. The swimming pool was fenced, and the camp manager and security were informed to monitor the area. The learners had been repeatedly warned against going to the pool. They knew it was forbidden. Borrowing from *Wynkwart NO*,¹⁷ the “ ... degree of supervision to

¹⁶ See also *Minister of Safety and Security and another v Rudman* 2005 (2) SA 16 (SCA) paras 66-67.

¹⁷ *Wynkwart NO supra* at 583H-I.

be exercised in a particular case would depend upon a great variety of circumstances. It appears from the authorities referred to herein that a pupil of R's age need not be kept under continuous supervision on the school grounds unless there is some hazardous feature present. To guard against the possibility of a single pupil slipping away, climbing over a gate or fence and suffering injuries would require that each pupil should be kept under continuous supervision. It would not be reasonable to expect the appellants to have taken such steps in this instance."¹⁸

28. Wynkwart NO involved a 9-year old child, but these sentiments apply, in my view, to the present matter.
29. Even if the defendants had foreseen the possibility of the learners' deaths, the question arises what further steps could have been taken to prevent it. The camp manager and security guard were on the premises, as were the parents who saw to the cooking. They were, by all accounts, asleep by the time the learners went to the pool. Even if a teacher was present, he or she would, if asleep, have been unable to prevent the tragedy. Mr Saki conceded that even if a teacher had in fact stayed on the premises, such teacher would have been able to accept that the learners would obey the rules, and not go swimming. This was especially so in relation to O[...] and B[...], who were known as well-mannered and responsible young men.

The learners' ages

30. The defendants argued, somewhat by way of an afterthought, that because B[...] was 18 years of age at the time, it was debatable whether any legal duty was still owed to him on the basis of the school being *in loco parentis*. The plaintiffs argued that the defendants' reliance on the age of the learners was misplaced. While age is a relevant factor, it does not negate the duty of care where the learners are placed in a controlled environment under the supervision of the school. The context in which the relationship arises is

determinative. The learners were participating in a school programme, subject to rules and schedules, and under the authority of educators. They were not acting as independent adults in an uncontrolled environment.

31. I was prepared to accept the plaintiffs' argument for the purposes of the absolution application. In *Minister of Education and another v Wynkwart NO*¹⁹ the court held:

"It was not in dispute that the respondent's minor son R was injured at school while under the control and care of the appellants' employees and it was fairly and properly conceded that teachers owe young children in their care a legal duty to act positively to prevent physical harm being sustained by them through misadventure. It was submitted that in this instance, as in many other delict cases, the real issue is 'negligence and causation and not wrongfulness'."

32. This is the approach I took in considering this application. The learners' ages at the time of the incident were merely one of the factors relevant in determining whether a *prima facie* case of negligence had been established.

33. I have already discussed the fact that the learners had expressly been forbidden to swim, that no provision had been made for swimming during the period that they were to be at the camp, and that they knew that they were expected to adhere to the rules, which had been impressed upon the repeatedly. The plaintiffs' children were known as polite and obedient learners, from whom no trouble was expected. In *Gora*²⁰ the court held as follows:

"... this is not a case involving young children under the age of 10 years. Plaintiff and Moore were 15-year-old pupils who could be expected to act maturely and responsibly in the safe environs of the classroom. In my view therefore it was not reasonably foreseeable that an incident such as the present would occur and the conduct of the school employees in leaving the class unattended did not amount to negligence."

¹⁹ Wynkwart NO *supra* at 580A-C.
²⁰ Gora *supra* para 40.

34. These sentiments are, in my view, applicable in the context of the facts in the present case.

Evidence from the defendants?

35. In *Van Zyl NO obo A.M v MEC for Health, Western Cape Provincial Department of Health*²¹ the full bench of this Division, dealing with an appeal where absolution from the instance was granted, noted the following:

“Before concluding my remarks of the law on the subject, I must stress that rules of procedure are made to ensure that justice is done between the parties, and so far as is possible the court should not allow rules of procedure to be used to cause an injustice. If the defence is something peculiarly within the knowledge of the defendant, and the plaintiff has made out some case to answer, the plaintiff should not likely be deprived of his remedy without first hearing what the defendant has to say. A defendant who might be afraid to go into the box should not be permitted to shelter behind the procedure of absolution from the instance.”

36. In the present matter, the plaintiffs themselves furnished Mr Jobela’s evidence. As indicated, Mr Jobela had been the defendants’ intended witness on the facts, and he was thoroughly examined and cross-examined on the material events. He gave evidence on what the school had expected from the learners, and on the measures taken to warn the learners to keep away from the pool. It appeared from the evidence provided by the plaintiffs that there was no other person who could shed light on how the incident occurred. The court accordingly had the benefit effectively of hearing the defendants’ case at the outset. There was, following his evidence, nothing more “*peculiarly within the defendants’ knowledge*” which could provide evidence in support of a finding of negligence on the part of the defendants.

Conclusion

²¹ [2023] 1 All SA 501 (WCC) para 11. My emphasis.

37. This court has much sympathy for the plaintiffs – as a parent, one cannot fathom their pain. Their legal representatives did everything possible in preparing and presenting their case properly and fully. On careful and unemotional consideration, however, the evidence does not go far enough to sustain a finding of negligence against the defendants. Once one gets past the understandable parental reaction of searching for a culprit, it becomes clear that, on the available evidence, the school could not have done anything differently to prevent the incident, save for posting someone at the pool itself to stand guard for the duration of the night. This could, on the authorities, not reasonably have been expected of the defendants.

Costs

38. The plaintiffs suffered a tragedy. Despite the defendants being successful in this application, I was not inclined to make a costs order against these parents. Counsel for the defendants indicated, in answer to a question from the court in this respect, that the latter would not insist on a costs order in their favour.

Order

39. In the premises, I granted the application for absolution from the instance, with each party to pay their own costs.

P. S. VAN ZYL
Acting Judge of the High Court

Appearances:

For the plaintiffs:

Ms L. X. Dzai

Instructed by:

Reid-Kathemba Attorneys

For the defendants:

Mr E. de Villiers-Jansen SC

Instructed by:

The State Attorney