



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

Not reportable

Case number: 3358/2024

In the matter between:

BUONADONNA TRANSPORT CC

PLAINTIFF

and

MATJABENG LOCAL MUNICIPALITY

DEFENDANT

Neutral citation: *Buonadonna Transport CC v Matjabeng Local Municipality*
(3358/2024) [2026] ZAFSHC 254 (23 April 2026)

Coram: BOONZAAIER AJ

Heard: 19 November 2025, 16, 17 and 18 January 2026

Delivered: 23 April 2026

Summary: Delict – an imminent danger tree falling across public road – public authority responsible for safety of road users – liability of public authority for loss and damage caused foreseeability of the danger.

ORDER

The defendant is liable to pay 100% of the plaintiff's proven or agreed damages. The defendant shall pay the plaintiff's cost of suit to date, such costs to include the counsel's fee to be taxed on scale B.

JUDGMENT

Boonzaaier AJ

[1] This is a delictual claim for damages arising from a collision. The plaintiff alleges that the defendant is liable in delict for losses sustained when a truck struck a tree that constituted an unlawful and/or negligent obstruction of the public roadway. The claim is pleaded on the basis that the defendant owed the plaintiff a duty to ensure the road was reasonably safe, breached that duty by failing to take preventative measures (failing to remove or adequately warn of) the hazardous tree-obstruction, and that such breach was the factual and legal cause of the collision and the plaintiff's resultant damages. The plaintiff seeks compensatory damages for property damage together with interest and costs.

[2] It is common cause that:

- (a) An accident occurred on 2 December 2023 in Voortrekker Street, Hennenman, Free State, a municipal road falling under the jurisdiction of the defendant.
- (b) If a tree was lying in the roadway, as alleged by the plaintiff, the defendant had a legal duty to remove the tree and to take reasonable steps to warn members of the public of the danger created by its presence in the roadway.

[3] It is the plaintiff's case that on 1 December 2023, its employee, acting within the course and scope of his employment as a driver, departed for Gauteng to deliver a load to be collected from the premises of Tiger Milling in Hennenman. He did not, however, reach his destination. At approximately 00h33 on the morning of 2 December 2023, the vehicle he was driving collided with a tree that had fallen across the roadway in Voortrekker Street, Hennenman (the collision). As a result of the collision, the plaintiff's vehicle sustained damages. Consequently, the plaintiff instituted action against the defendant for payment of the damages suffered.

[4] Mr Linda Hlatwako testified that he is employed as a driver by the plaintiff, transporting goods between Hennenman and Gauteng. He collects truckloads from Tiger Brands and performs his duties in accordance with a loading schedule issued by his controller stationed at Tiger Brands. He was on leave prior to the incident and resumed work on Friday, 1 December 2023. The collision occurred shortly after midnight, at approximately 00h33 on Saturday, 2 December 2023. He was returning from Albany Bakery in Pretoria, refuelled diesel at the plaintiff's premises located on a small holding in Hennenman and left for Tiger Milling in Hennenman to fetch another load to return to Pretoria.

[5] He arrived in Hennenman from Pretoria at approximately 23h00 on Friday, 1 December 2023, with the heavily loaded 18-ton truck (the truck is generally between 10 to 12m in length) Upon arrival, he proceeded to the plaintiff's yard, where he refuelled the truck. Thereafter, he departed for Tiger Milling in Hennenman with the intention of collecting another load. He did not reach his destination, as he collided with a tree that was lying across the road on Voortrekker Street, between the offices of Buonadonna Transport CC and the premises of Tiger Milling. Referring to photographs contained in Exhibit A, he explained the route he had taken and confirmed that Voortrekker Street is a gravel road which becomes a tarred road. He further stated that, within approximately 100 metres of joining Voortrekker Street, he encountered and struck the tree lying in the roadway which completely obstructed the road. The witness conceded under cross-examination that he did not apply brakes because he only noticed the tree when he was less than 20 meters away, contradicting his earlier version that he applied brakes. He explained that dust arising from the muddy gravel road and clinging to the truck's twenty wheels obscured his vision. which he accepted contributed to his failure to see the tree

in time. He further confirmed that the truck's lights were on bright and were functioning properly and agreed that dust generated by the vehicle may have impaired visibility. The lack of street lights in Voortrekker Street contributed to the impaired visibility.

[6] Mr Hlatswako testified that the last time he travelled on that road prior to the collision was on the 25th of November 2023. His work schedule is structured in such a manner that he is on duty for two days, followed by two days off. He works one weekend and is off the next. It was his first day on duty following his previous rest period. He admitted that he had been driving for approximately 19 hours since 05h00 that morning. It was put to him that his lack of reaction suggested he may have been asleep and his demeanour indicated a lack of alertness, which he strongly denied. He stated that he only observed the tree after stopping the truck and described it as lying almost horizontally. During cross-examination he was also inconsistent with his prior explanation, which included not seeing the trees, and taking no evasive action. The video evidence showed that the truck maintained speed until impact and only slowed thereafter. He testified that he drove about 29 km/hour and took photographs after the collision, but not of the tree, alleging that only branches remained after the collision. He conceded that the dust explanation was not supported by the video. Following the incident, he reported the matter to his employer but not to the police or the defendant, stating that he acted in accordance with instructions. Lastly, he did not dispute the version of the defendant's version that they had no prior knowledge of the tree on the road.

[7] Mr Ryno van Wyk testified that he has been employed by the plaintiff as a truck controller for the past 15 years. On a daily basis he attends at the premises of Tiger Milling in Hennenman. On the night of the accident, Mr Hlatswako, the driver of the truck, notified him of the incident. Mr van Wyk then took the necessary steps to ensure that the truck was safely brought to the yard at Tiger Milling. He further testified that on 28 November 2024, four days prior to the accident, between 08h00 and 09h00, he took a screenshot on his own cell phone of a tree lying across the road. This was the same tree that caused the accident in this matter. The tree was positioned across the road and obstructed normal traffic. He was unable to pass and had to take an alternative route. He then posted the photograph of the tree to all the drivers in order to alert them to the obstruction. Unfortunately, Mr Hlatswako was not on duty on 28 November 2024.

and therefore did not receive the warning. Mr van Wyk did not report the danger to the Matjabeng Local Municipality (Municipality) or the South African Police Service at the time, as he believed that the tree would soon be removed. He does not know if the tree was eventually removed because he used an alternative road. There are three possible routes that may be taken. Drivers follow predetermined routes that they choose for themselves.

[8] The plaintiff presented the last witness as Mr Ignus Jordaan who is employed by the plaintiff as a workshop manager for the past eight years. He was called by Mr Ryno van Wyk at the night of the accident who informed him about the situation which occurred. He instructed Mr van Wyk to take the truck to the yard and to also take pictures of the truck. He elaborated about a video that was taken at the time of the collision. There is a device installed in the truck which recalls the impact at the time of the accident. It started about 10 seconds before the impact and lasts until 20 seconds after the impact of the collision. It depicts and captures the video automatically and the libra cloud server is automatically connected to his e-mail address which enables him to receive the footage on his WhatsApp and e-mail. This Libra system is an I-cam installed in the trucks especially installed for the purpose of incidents of this kind. On the footage it is clear that the driver was caught by surprise. This video footage captures approximately 20 seconds before and 20 seconds after the collision; however, the witness explained that the timing may vary.

[9] The following morning, the tree was removed by a member of the community. Mr Jordaan stated that numerous oak trees line both sides of Voortrekker Street. During storms, strong winds often cause these trees to fall into the roadway. The area, known as Unipark, was previously a rugby field and recreational centre. It becomes particularly hazardous during periods of heavy rain and storms. On occasion, fallen trees remain in the road for as long as two to three weeks before being removed. Due to the frequency of such incidents, a particular community member has taken it upon himself to regularly clear the fallen trees.

[10] Counsel for the plaintiff prefaced the submissions by emphasizing several legal principles relating to pleadings in civil proceedings as follows:

- a) Admissions made on record do not need to be proven, as parties are bound by them.
- b) Further particulars for trial (under Uniform Rule 21(3)) form part of the pleadings, must be properly signed, and serve to amplify the particulars of claim and plea.
- c) Their purpose is to prevent surprise and define the case each party must meet; parties are bound by these pleadings and cannot present a different case at trial. The plaintiff alleged that its vehicle collided with a fallen tree in Voortrekker Street, Hennenman, on 2 December 2023. The defendant issued a bare denial, stating no tree had fallen on or immediately before that date. Upon request for further particulars, the defendant confirmed it had no knowledge of any tree obstructing the road. The plaintiff contends that the defendant is bound by its pleadings and cannot now advance a different version.

[11] The defendant called a single witness, Mr Tumelo Isaac Lebatla. He testified that he has been employed by the defendant for the past 20 years, initially as a caretaker, and has been acting as a recreation officer since 2012. His day-to-day responsibilities include monitoring municipal sites and overseeing inspections to ensure that areas are clear, including checking for fallen trees. Where trees have fallen, he ensures their removal to prevent obstruction or danger to road users. He explained that the Matjhabeng Municipality covers several towns, including Kroonstad, Ventersburg, and Hennenman. He performs his duties through daily inspections and compiles weekly and monthly reports. In addition to his own inspections, he also relies on reports from the South African Police Service and the local Fire Brigade. The Municipality maintains records reflecting all such reports and complaints received.

[12] Upon being informed of the incident by a senior chief officer, he travelled to Hennenman to determine whether the fallen tree had been reported prior to the accident. He made enquiries with the Matjhabeng Public Safety and Transport Emergency Services and consulted the Incident Book, which reflected no reported incidents between 27 November 2023 and 31 December 2023. He found no record of any such report. He thereafter visited the Fire Brigade Department, where it was similarly confirmed that no report had been lodged. To his knowledge, no prior report of the fallen tree existed. During cross-examination, he conceded that his duties as a recreation officer primarily involve monitoring parks, sports facilities, and graveyards, and not roads

as such. However, he maintained that monitoring fallen trees falls within his responsibilities, as they may obstruct traffic. He further testified that park assistants are tasked with conducting inspections and report to him. He is stationed in Ventersburg and Hennenman and travels between these areas on a daily basis. He acknowledged that the Municipality owes a duty to the general public to provide such services.

[13] He stated that he routinely drives around to check for trees that require cutting. It was put to him in cross-examination that no discovery had been made of the weekly or monthly reports to demonstrate that inspections of the Hennenman area had in fact been conducted. These reports, it was suggested, were essential to prove that the roads in question had been properly inspected. In response, he stated that all main roads are checked by assistants, even in adverse weather conditions. He confirmed that he issues instructions to the assistants to inspect the roads and thereafter verifies whether such inspections were carried out. At the time of the incident, he was in Ventersburg, where he resides, and was not in the vicinity of Hennenman. He testified further that he had personal knowledge that no tree had fallen and that he conducted inspections of Voortrekker Street on a daily basis throughout November 2023.

[14] The defendant denied any negligence or wrongfulness on its part and maintained that there was not any report of the fallen tree. The defendant pleaded in the alternative that if the collision is proved the driver of the plaintiff's vehicle was the one solely responsible for the collision by his acts of negligence. The defendant pleaded in the further alternative that if the court finds the defendant negligent then the defendant pleaded for an apportionment of damages in line with the legislation as per evidence presented in court. The defendant encored its defense and opposition to the plaintiffs claim on the fact and evidence on the fact that there was never any breach of any duty on its part as the tree incident relied upon was never known or reported to the defendant.

[15] The issues to be considered by this Court are the following:

- a) The duty of care pertaining to the roads including the duty to identify trees that might fall onto the road when falling over or being blown over.
- b) The defendant's employees in failure to remove a tree (so as to ensure the safety of motorists) obstructing that portion of the road under circumstances where the defendant's employees should have been aware of the existence of the obstructing

tree.

c) The prevailing circumstances on the night in question of the 2nd December 2023 necessitated the closure of the R -road or partially closed, alternatively that warning signs should have been erected to warn motorists of potential danger.

d) The failure of the defendant's employees prior to the on the night in question, and having regard to the adverse weather conditions, in not timeously closing the road and in particular Voortrekker Street in Hennenman.

The Law

[16] Central to this issue is the settled principle in South African law¹

'The *boni mores* criterion is an objective criterion. Therefore, the task of the Judge is to define and interpret the legal convictions of the community in a particular instance, having regard to legal policy, legal rules and Court decisions in which the convictions of the community have found expression in the past.'

[17] It is also a well-established legal principle that wrongfulness is a requirement for liability under the modern Aquilian action. A negligent conduct giving rise to loss, must also be wrongful, and if not, it is therefore not actionable. Finding a legal duty is not enough to establish negligence. After a finding of a legal duty the court must furthermore, enquire on the question of foreseeability. Once foreseeability is established the court must furthermore enquire as to what a reasonable person would have done if harm was foreseeable but in the absence of evidence pointing to foreseeability, legal duty on its own is not enough to determine negligence and wrongfulness.

[18] In *Minister of Finance and Others v Gore NO*² Cameron JA et Brad JA said:

'Application of the "but for" test is not based on mathematics, pure science or philosophy. It is a matter of common sense, based on the practical way in which the ordinary person's mind works against the background of everyday-life experiences.'

Or, as was pointed out in similar vein by *Nugent JA in Minister of Safety and Security v Van Duivenboden*:

'A plaintiff is not required to establish the causal link with certainty, but only to establish that the wrongful conduct was probably a cause of the loss, which calls for a sensible retrospective

¹ Neethling, Potgieter, & Visser, (2020) *Law of Delict* LexisNexis at 42-43.

² *Minister of Finance and Others v Gore NO* [2006] ZASCA 98; 2007 (1) SA 111 (SCA) para 33.

analysis of what would probably have occurred, based upon the evidence and what can be expected to occur in the ordinary course of human affairs rather than metaphysics.”

[19] In *Minister of Polisie v Ewels*³ (Ewels) Rumpff CJ describes an omission as follows:

‘The stage of development appears to have been reached where an omission is seen as wrongful conduct when the circumstances of the case are such that the omission does not only elicit indignation, but the legal convictions of the community also require the omission to be regarded as wrongful, and the resulting harm to be compensated by the person who omitted to act in a positive manner.’

Their failure to remove the tree or close the road amounted to neglect of their duties which cannot be condoned.

[20] We are here dealing with an omission by the defendant’s employees at the time of the accident. In the case of an omission a negligent omission is unlawful only if it occurs in circumstances that the law regards as sufficient to give rise to a legal duty to avoid negligently causing harm. *Minister of Safety and Security v Van Duivenboden*⁴ However, the Court will not readily assume that the omission will simply attract liability but will do so only if the omission was also culpable as determined by the application of the separate test applied in *Kruger v Coetzee*⁵ where Holmes JA state at 430E-F:

‘For the purposes of liability culpa arises if –

- (a) a diligent paterfamilias in the position of the defendant -
 - (i) would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss; and
 - (ii) would take reasonable steps to guard against such occurrence; and
- (b) the defendant failed to take such steps.’

Foreseeability of harm

[21] In the South African law of delict, foreseeability is a central element of negligence, assessed according to the test laid down in *Kruger v Coetzee*.⁶ The enquiry is whether a reasonable person in the position of the defendant (here, the municipality) would have foreseen the reasonable possibility of harm and taken steps to prevent it, and whether

³ *Minister of Polisie v Ewels* 1975 (3) SA 590 (A) at 597, as translated by Neethling *et al* 6th ed at 47.

⁴ *Minister of Safety and Security v Van Duivenboden* 2002 (6) SA 439 at 449, para 25.

⁵ *Kruger v Coetzee* 1966 (2) SA 428 (A) at 430E-F.

⁶ *Ibid.*

the defendant failed to take such steps. A municipality has a legal duty to maintain public roads in a reasonably safe condition. This duty has been affirmed in cases such as *Cape Town Municipality v Paine*⁷ and more recently in *Van Eeden v Minister of Safety and Security*⁸ (in the broader context of duties resting on public authorities). *In casu* it is clearly reasonably foreseeable that:

- a) trees may fall onto roads (due to weather, decay, or external factors);
- b) such obstructions pose a danger to road users; and
- c) a collision with a fallen tree can cause serious damage or injury.

Thus, the vehicle damage due to a road obstruction is not remote or unusual – it is a classic and foreseeable risk.

Application of the law

Knowledge vs constructive knowledge

[22] The municipality's plea is contradictory and twofold: First by denying the existence of the tree, and secondly by alleging lack of knowledge. Even if the municipality did not have actual knowledge, the law recognises constructive knowledge – what the defendant ought to have known. Where the municipality had a duty to inspect roads regularly, and failed to do so for several days, prior to the collision. Failure to inspect means the municipality cannot rely on ignorance, because the ignorance is self-created through omission.

Reasonable steps expected

[23] When the court applying the second leg of the *Kruger v Coetzee* test: A reasonable municipality would have conducted periodic inspections of roads, implemented a reporting system for hazards, removed obstructions (like fallen trees) within a reasonable time. The failure to inspect for days constitutes a failure to take reasonable preventative steps.

Foreseeability linked to omission

[24] This is a case of negligent omission, which requires a legal duty to act. Given the municipality's public law obligations: The omission (failure to inspect and remove hazards) is wrongful, the harm is foreseeable and the failure to act is negligent.

⁷ *City of Cape Town v Paine* 1923 AD 207. This is a well-known decision dealing, among other things, with foreseeability and the municipality's duty of care.

⁸ *Van Eeden v Minister of Safety and Security* 2001 (4) SA 646 (T).

Effect of inconsistent pleas

[25] The contradictory pleas may weaken the municipality's credibility: Denial of the tree's existence conflicts with the plea of lack of knowledge, it suggests an absence of a coherent defence, it may support an inference that proper systems (like inspections) were not in place.

[26] The plaintiff carries the burden of proof that the defendant was negligent. As such, it is clear that the officials of the defendant's department had a duty to have fallen trees obstructing the road removed. There was no evidence to the effect that the defendant's employees had made any attempt in that regard, except for Mr Lebatla who made a general statement that he inspected the roads every day.

Finding

[28] Accordingly, the following is clear:

- a) The defendant is bound by its pleadings, which reflect that neither it nor any of its representatives or employees has personal knowledge as to whether the tree in question actually fell onto the road.
- b) The defendant's witness testified that he made an effort to verify whether the fallen tree had been reported, indicating that he would, in any event, have relied on such a report before taking action.
- c) Regarding the witnesses, there is no reason to reject the evidence of the plaintiff's witnesses. They readily made concessions where appropriate, testified candidly, and created a favorable impression. I accept the evidence of Mr Hlatwayo as it is also supported by the probabilities. By contrast, the defendant's witness was evasive in responding to questions, lacked credibility, and his evidence was marred by several contradictions, particularly concerning the alleged routine inspections of the road in question.
- d) There is no evidence before this Court that the defendant had prior knowledge of the hazardous condition, namely the presence of the tree lying in the roadway, before the collision occurred.
- e) It is further evident that, even where the defendant's employees were aware of fallen or hazardous trees and had previously attempted to cut or remove them, such measures were not undertaken with the necessary frequency or urgency required by the circumstances. This failure constitutes an omission, particularly in light of the evidence

demonstrating that these trees required regular removal to ensure public safety. In such circumstances, the safety of motorists must take precedence over the mere objective of keeping the road open, especially where leaving it open exposes road users to a real and foreseeable danger.

f) It is evident from the evidence led in this case that the omission by the defendant's employees to take preventative action must of necessity result in the wrongful conduct of the defendant causing loss to the plaintiff.

g) In my view, on the facts of this case it is clear that the defendant's employees failed to prevent harm to the plaintiff when they should have done so. Their omission was not only negligent but also wrongful and was the factual cause of the plaintiff's loss. The result and damage were foreseeable. The main cause of the conduct of the defendant being the failure to, firstly to maintain the road by removing the trees that constantly grow and cause a potential danger to the road users coupled with the defendant's failure to close the road in time before the accident which killed the deceased occurred.

h) It is the duty of the responsible road authority that at the very least an inspection should have been done to check if there was not falling trees, if there was to decide whether the road should be closed or not. It seems that having regard to the circumstances on the day in question the road ought to have been closed at least for until the tree was removed. According to Mr Hlatswako due to the circumstances, the dust and the, time of night the tree in the road renders it nearly impossible to see it in time in order to avoid a collision.

i) From the evidence of the defendant's witness they concede that they have a legal duty to maintain the road free of falling trees. The reasonable and necessary inspections prior to the collision did not take place. Reasons which they simply proffer for not closing the road cannot be countenanced at all. The officials of the defendant's department have a duty to have tree lying in the road removed. There has not been any evidence to the effect that defendant's employees had made any attempt in that regard.

Conclusion

[29] In terms of *Ewe/s*, negligence is established where a reasonable person would foresee the possibility of harm and take steps to prevent it. In the present matter, a reasonable municipality would foresee that a fallen tree in a public road poses a danger to motorists and would implement a system of regular inspections. It is evident that a

reasonable municipality would have foreseen the possibility of such a hazard arising and would have detected it through proper inspection. The defendant's failure to inspect the road for several days before the collision indicates a failure to take reasonable steps to prevent foreseeable harm, thereby establishing negligence.

[30] In the result, the defendant is liable to pay the plaintiff her proved damages. There being no evidence of any contributory negligence on the part of the plaintiff, defendant is liable to pay 100% of the proven damages.

Order

[31] I make the following order:

The defendant is liable to pay 100% of the plaintiff's proven or agreed damages. The Defendant shall pay the plaintiff's cost of suit to date, such costs to include the counsel's fee to be taxed on scale B.

AD

AS BOONZAAIER
ACTING JUDGE OF THE HIGH COURT

Appearances

On behalf of the Plaintiff:
Instructed by:

R van der Merwe
EG Cooper Majiedt Inc
Bloemfontein

On behalf of the Defendant:
Instructed by:

DS Qwelane
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