

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

The Minister of Safety and Security v Allister Roy Luiters

Case CCT 23/06

Date of Hearing: 17 August 2006

MEDIA SUMMMARY

The following explanation is provided to assist the media in reporting this application and is not binding on the Constitutional Court or any member of the Court.

This case arises from a shooting incident that took place in Jacaranda Street, Eesterivier on 14 October 1995. Both parties accept that on the night of the shooting the respondent, Allister Luiters, was shot by Lionel Siljeur, an off-duty police constable. As a result of the shooting the respondent is now a tetraplegic.

On the night in question Siljeur also opened fire on two other groups of people. He was later convicted in the Parow Regional Court on eight counts of attempted murder arising from that night. He was sentenced to an effective 11 years imprisonment.

Mr Luiters sued the applicant, the Minister of Safety and Security, in the Cape High Court for damages. The basis of the claim was that the constable Siljeur had acted in the course and scope of his employment as a police officer and the Minister was therefore vicariously liable for his conduct. The High Court found in favour of Luiters and the Minister appealed to the Supreme Court of Appeal. Applying the test for vicarious liability set by this Court in *K v Minister of Safety and Security*, the SCA confirmed the finding of the High Court and dismissed the appeal. The Minister has now brought an appeal before this Court.

The main issue for determination in this case is whether constable Siljeur acted in the course and scope of his employment when he shot Mr Luiters. The Minister argues that the SCA was wrong in concluding that Siljeur had intended to act as a police officer on that night. It is argued that he was engaged in an activity of his own which was not related to his police duties and the Minister should, accordingly, not be held liable for the shooting.

Mr Luiters argues that Siljeur had the intention to act as a police officer because according to a statement made by Siljeur to witnesses on the night of the shooting; he was busy searching for some people who had attempted to rob him. This argument was accepted in the both High Court and the SCA.

A related question raised by this application is whether this case raises a constitutional issue.

Following on directions by the Chief Justice the parties submitted affidavits explaining the long delay in the civil matter being heard in the High Court.

The case has been set down for hearing on Thursday, 17 August at 10pm.