

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

The Minister of Safety and Security v Allister Roy Luiters

Case CCT 23/06

Decided on: 30 November 2006

MEDIA SUMMARY

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 Eesterivier late in the evening during October 1995. The respondent, Mr Allister Luiters, was shot by Constable Lionel Siljeur, an off-duty policeman, as a result of which Mr Luiters is now a tetraplegic. Constable 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 and 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 arising out of his injuries. The basis of the claim was that the Minister was vicariously liable for the unlawful conduct of Constable Siljeur. The High Court held that Constable Siljeur had subjectively intended to act as a policeman and that the Minister was therefore vicariously liable. On appeal by the Minister to the Supreme Court of Appeal, that Court relied on the test for vicarious liability set by this Court in *K v Minister of Safety and Security*, and dismissed the appeal, confirming the findings of the High Court. In a further appeal to this Court, the Minister argued that he should only be vicariously liable for the actions of off-duty police officers if they subjectively intended to act as police officers and, in addition, if their conduct was objectively sufficiently closely related to the interests of the Minister. In the alternative, the Minister argued that the Court should extend the current test to off-duty police officers and reconsider the Supreme Court of Appeal's factual conclusions which gave rise to the finding that the Minister was vicariously liable.

In a unanimous judgment delivered by Chief Justice Langa, this Court dismissed the application for leave to appeal. The Court held that it could not reconsider the determination of the factual issues by the Supreme Court of Appeal as this did not by itself raise a constitutional issue. The Court further held that, although the Minister's submissions relating to the extension and alteration of the test for vicarious liability in respect of off duty police officers did raise constitutional issues, it was not in the interests of justice to grant leave to appeal because there were no prospects of success. There was no reason why off-duty police officers who have placed themselves on duty should be subject to a different level of scrutiny than on-duty police officers and adopting the Minister's proposal would undermine the constitutional principle of accountability. There was also no need to "extend" the test as this Court has already made it clear that the test applies to all police officers, whether on or off duty.

The Court also expressed regret that, more than ten years after the incident, Mr Luiters has still not received any compensation. Delay in litigation is deeply undesirable and it is important for courts to investigate significant delays where possible. As final judgment had now at last been given in this matter, Mr Luiters could immediately apply for interim payments for medical costs and loss of income. Moreover the High Court which would now have to determine the amount of his damages could prescribe the procedure for the further conduct of the matter so as to ensure an early trial.