

Supreme Court of Appeal of South Africa

MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 30 May 2008

Status: Immediate

*Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal*

On 30 May 2008 the Supreme Court of Appeal handed down judgment in the matter *J H Saayman v C A Visser*. It dismissed an appeal against a judgment of the Kimberley High Court in terms of which it dismissed a claim by the father of Gideon Saayman against Mr Visser, a diamond digger and businessman, who had contracted a security company to post a security guard permanently at his home. The security guard who had been employed by Griekwa Security, a close corporation trading as Barn Owl Security, had used a 12-bore shotgun to shoot Gideon during the early morning hours of 13 February 1999 causing him to sustain severe injuries. Shortly before the shooting Gideon and a friend, both of whom were inebriated, had entered the grounds to play a prank, namely, to overthrow a pot plant. The shooting incident took place whilst Mr Visser and his family were asleep in the house.

Mr Visser was often away from home and had diamonds and other valuables on the property. He required security services for the protection of his wife, his daughter and of his property.

The Kimberley High Court had granted judgment against the security guard and the close corporation – both chose not to defend the action.

It was contended on behalf of the appellant that Mr Visser had been negligent in that a reasonable homeowner in his position would have realised the danger of employing an armed guard in a residential area, would have

foreseen the possibility that trespassers would be injured and would have taken the necessary steps to guard against that eventuality. It was contended further that the area where the guard was stationed should have been well-lit and the public should have been warned about his presence by way of a prominent sign. It was also contended that the security guard should have been instructed beforehand to first discharge two blanks and only thereafter live ammunition.

This court held that when Mr Visser contracted Griekwa Security there was nothing to indicate that it did not possess the necessary expertise and that it would not operate within the law. Mr Visser had used their services before at another location without incident. Mr Visser had enquired about whether the guard to be posted at his house had received training in the use of a firearm and was reassured in this regard. The security guard took instructions only from the close corporation.

This court observed that even if a sign had been displayed indicating a guard on the premises Gideon and his friend were not in a state of mind where it would have prevented the intrusion. Furthermore, the court was not persuaded that a homeowner should inform the public of exactly where a guard is posted and that doing so might put the guard and occupants of the house at risk. The submission that an armed guard expecting to meet danger should as a matter of course first use blank ammunition before resorting to live ammunition was without merit.

The court noted that this case was a sad and dramatic illustration of how steps taken by an increasingly desperate and hapless populace to protect their lives and homes against the crime wave in this country can have negative effects, particularly when it involves the use of firearms. It demonstrates how far the consequences of rampant crime extend and how easily life can be lost in South Africa. It also serves as a warning to those who advocate a resort to lethal force (irrespective of circumstances) to thwart the threat of crime, against the awful results of such force, that are unfortunately all too predictable. On the other hand, it should also serve to prompt

government to harness every available resource, as a matter of pressing priority, to end the scourge of crime before confidence in our Constitutional order is lost or abandoned.

Regrettably, the appeal had to be dismissed. This court held that in the totality of the circumstances to land Mr Visser with liability would not only be inequitable but would extend our law beyond sustainable parameters.

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