



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / NO,	<del>YES</del> / NO,
(2) OF INTEREST TO OTHER JUDGES: YES / NO,	<del>YES</del> / NO,
(3) REVISED.	✓
18/4/2018.	
DATE	SIGNATURE

18/4/18

Case Number: 86292/15

In the matter between:

**WILLEM HENDRIK BURGER**

Plaintiff

and

**CHAKA SECURITY**

Defendant

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JUDGMENT

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## POTTERILL J

[1] The plaintiff [Burger] is claiming delictual damages from the defendant Chaka Security [Chaka] constituting the replacement costs of his property being a golden wildebeest as well as veterinary expenses incurred. It is alleged that on 24 March 2015 an employee of Chaka, Joggie Ackerman [Ackerman], an employee of Chaka while acting in the course and scope of his duty negligently cause injuries to the golden blue wildebeest calf. As a result of the injuries and despite treatment by a veterinary surgeon at Onderstepoort hospital the animal died. It is common cause that the injuries to the wildebeest was consistent with the animal being struck by a motor vehicle. At the time of death the wildebeest was four months old and for ease of reference I refer to it as a "calf".

[2] By agreement between the parties the court ordered that the merits and quantum be separated in terms of Uniform Rule 33(4).

Common cause facts

[3] Burger rented the farm on which the wildebeest was roaming. Sixty to seventy farmers in that community started "Kleinfontein Aksie Netwerk" [KAN]. The purpose of KAN was to have a form of security patrolling in the area. The farmers paid the petrol of a

Toyota Hilux bakkie, provided the bakkie and Peet de Wet [De Wet] who patrolled the farms from 06:00 in the morning until 18:00 in the afternoon. Then Chaka took control of this Hilux bakkie and patrolled at night and then in the morning returned the bakkie to De Wet. The Toyota Hilux was inspected before taken over by the employees of Chaka. If there was any damage to the Toyota then it had to be entered into the occurrence book. There was no damage entry on the 24<sup>th</sup> of March 2015. Chaka provided security at the farm and if the alarm should sound then Chaka would provide armed response.

- [4] On the day that the wildebeest was injured the vehicle of Chaka, driven by Ackerman and the Toyota Hilux driven, by De Wet were on the farm. The reason for this was that the alarm at Burger's residence had gone off and Ackerman was on his way to check what had triggered it. De Wet's father passed away on this date in 2010 and as a family they had a tradition of getting together to commemorate him. He wanted to hand over the vehicle to Ackerman to attend to this between 17:00 and 18:00 on the 24<sup>th</sup> of March 2015. No matter the reason, it is undisputed that both vehicles were at Burger's residence on the 24<sup>th</sup> of March 2015 around the time that the wildebeest was hit by a vehicle. De Wet knew that Ackerman was to attend to the alarm at Burger's farm. He was however close to the farm and drove to the farm. There was no emergency as just a small lizard had stuck to the electric fence and had triggered the alarm. Ackerman arrived at the farm and then took control of the Hilux

in the sense that his passenger, Charlie Maggott, drove the Chaka vehicle and Ackerman drove the Hilux. Burger through the window of his house saw De Wet and Ackerman at that stage. It was in that time frame that the wildebeest must have been hit by one of the vehicles, i.e. driven by either De Wet or Ackerman.

[5] Although initially the impression was that the court had to decide "whodunnit", Ackerman did not at trial at all allege that De Wet hit the wildebeest. Ackerman's defence was that he did not hit the wildebeest with the Nissan.

[6] The road travelled on is a paved road. On the paving there was 11 metres of brake marks that was caused by the vehicle of Ackerman, the Nissan. The braking was necessary due to wildebeest and buck suddenly crossing the road. Mr. Bennet Tumbo [Tumbo] worked on Burger's farm. On the 25<sup>th</sup> of March 2015 he found the wildebeest while driving the tractor. It was injured and he tried to lift the calf, but could not. He called Burger and stayed with the calf until Burger arrived. He followed the tracks from where the wildebeest was lying. From the tracks he could detect that the wildebeest dragged himself to follow the other wildebeest. He saw other wildebeest tracks as well. The spoor from the wildebeest calf ended at the paved roadway at the point where the skid marks ended.



Issues to be decided

- [7] The factual question thus is whether Ackerman while driving the Nissan collided with the wildebeest in question. On Ackerman's own version he on the day thought that he hit the wildebeest. He did not only think it he conveyed it to De Wet. He saw the wildebeest "juvenile", as he referred to it, coming past the front of the bakkie to thereafter see the wildebeest in his rearview mirror falling and making a somersault in the dust. He told Ackerman that he thought he hit a buck, but when he walked around the bakkie, he saw no damage and then deducted that he did not hit the wildebeest.
- [8] On the common cause facts Ackerman was on the scene, in the exact vicinity where the wildebeest was hit. He braked for wildlife crossing in front of him. He saw a wildebeest fall and he thought he hit the wildebeest. The wildebeest died of injuries due to being hit by a vehicle. On these facts Burger had proven on a preponderance of probabilities that Ackerman injured the wildebeest by colliding with it.
- [9] Does the fact that there is little to no damage to the Nissan vehicle been driven by Ackerman influence these common cause facts? No it does not. The driving of the vehicle cause the wildebeest to be injured. There is thus a causal connection between the damages and the act. No other vehicle could have caused the injuries to the wildebeest and no such inference can be drawn. It is also not argued that any other

inference can be drawn. Even if it is accepted that more damage is to be expected it cannot negate the fact that the delict, on the facts has been proven. There simply is no other inference to be drawn. The court has no reason to reject the evidence of Tumbo. His evidence was logical and consistent. He saw the wildebeest, phoned Burger, wondered what caused the injuries and followed the spoor. He later, with the instructing attorney, paced the spoor and it was 61 paces. The small road where the animal was found was never to be confused with the paved road where the animal was not found. This evidence is further corroboration for the fact that Ackerman's vehicle hit the animal; the tracks leading to the paved road where the brake marks were reflected.

[10] I have not found it necessary to rely on any of the other witnesses as the common cause facts speaks for themselves. However I found the evidence of Burger and De Wet reliable and truthful. The criticism of these witnesses is to be rejected. De Wet testified that Ackerman, while inspecting his vehicle for damage, a common cause fact, slammed the bonnet closed and the bonnet would not close and Ackerman then swore. He managed thereafter to close the bonnet. There is no burden on De Wet to explain why Ackerman did that and most certainly this lack of explanation does not render him an unreliable witness in any respect. Burger was a reliable witness and the fact that Burger did not mention the drag marks of the spoor to Chaka's investigator is very logical and accepted. Burger showed Chaka's investigator the brake marks

and he was then accused that it was in fact his brake marks. He was immediately angry and left and therefore did not refer to the drag marks. This conduct is very probable and in line with common human behaviour.

[11] The analogy that if there is an assault charge and there is an absence of wounds on the victim who alleges a very severe beating to no damage on the Nissan vehicle is ill-founded. If the charge was malicious damage to property and there was no damage to the vehicle then there would be a problem, but the damage to the wildebeest, the delict, was proven.

[12] Mr. De Beer was not an expert and as already stated that although damage is to be expected this does not have the effect that the act coupled with the damage to the animal was not causally connected and proven.

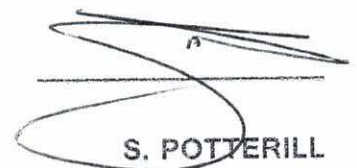
Did Ackerman drive negligently

[13] As for the negligence there is absolutely no address relating thereto on behalf of Ackerman apparently as it was only a secondary issue. I find that Ackerman was negligent. He knew there were animals on the farm. Although he was reacting to an alarm he had to keep the animals in mind. He tried to explain that he did see buck

out of the side of his eye, he braked, then accelerated and while doing that move buck and lastly the wildebeest crossed the road. On that version he clearly was negligent; he did not act as a reasonable person would in those circumstances. He accelerated while more buck and wildebeest were crossing. He thus did not adjust his speed and drove at an excessive speed under those circumstances.

[14] I accordingly make the following order:

- 14.1 The defendant's driver negligently caused the death of the golden wildebeest, the property of the plaintiff.
- 14.2 The defendant is ordered to pay to the plaintiff the proven alternatively agreed damages.
- 14.3 The defendant is ordered to pay the costs of suit, including the costs of two counsel where so employed.



S. POTTERILL

JUDGE OF THE HIGH COURT



CASE NO: 86292/2015

HEARD ON: 7-10 November 2017

FOR THE PLAINTIFF: ADV. C.F.J. BRAND SC

ADV. D.A. DE KOCK

INSTRUCTED BY: Langenhoven Pistorius and Partners Inc.

FOR THE DEFENDANT: MR. V. O'CONNELL

INSTRUCTED BY: V O'Connell Incorporated

DATE OF JUDGMENT: 18 April 2018