

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

- (1) REPORTABLE: ~~YES~~/NO  
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO  
(3) REVISED.

**CASE NO: 51706/2014**

In the matter between:

**THANDI SOPHIE NDALA**

Plaintiff

And

**MINISTER OF EDUCATION**

1<sup>st</sup> Defendant

**MEC FOR EDUCATION, GAUTENG**

2<sup>nd</sup> Defendant

**SCHOOL GOVERNING BODY OF FATHER**

**SMANGALISO MKHATSHWA SECONDARY SCHOOL**

3<sup>rd</sup> Defendant

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**JUDGMENT**

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**RAULINGA J,**

- [1] The plaintiff instituted action proceedings against the defendants for damages arising out of an incident that occurred whilst she was employed as an educator on the 22 January 2014 at Father Smangaliso Mkhathswa Secondary School, when she was stabbed several times by a learner, one I[....] N[....]i ("I[....]").
- [2] It is alleged that I[....], whose hairstyle was not according to the code of conduct at the school, was instructed by Mr Ramasia to come to school with a

proper hairstyle. On the day of the incident, I[...] who did not do as instructed was again confronted by Mr Ramasia whereafter, he went home and fetched a knife. When he came back he went to class during the plaintiff's teaching period. Mr Ramasia spotted him and followed him to class, and ordered him to go outside. The plaintiff requested I[...] to leave the classroom. On his way out I[...] stabbed the plaintiff on the upper shoulder as she was seated.

- [3] The plaintiffs claim is that the defendants were negligent in that they failed to offer protection. This is denied by the defendants.
- [4] The plaintiffs case is that on or about 22 January 2014, at Father Smangalis Mkhathshwa Secondary School, Winterveldt, in Gauteng Province, the plaintiff whilst on her normal duty in the Grade 11 classroom was stabbed by a learner, one I[...] N[...]. As a result of the said wrongful stabbing and unlawful act or alternatively negligence failure or omission to offer protection by the first defendant and/ or alternatively the second defendant and/or alternatively the third defendant, the plaintiff sustained three stab wounds on her left shoulder.
- [5] It is common cause that I[...] is not cited as a defendant or party in the proceedings. This matter therefore proceeds on the alternative claim, which is the negligent failure or omission to offer protection by the defendants.
- [6] The action is based on section 60 of the South African Schools Act<sup>1</sup> ("SASA"). Paragraph 8 of the particulars of claim reads as follows:

*"At all material times and by virtue of section 60 of the South African Schools Act, 84 of 1996, the defendant and second defendant are liable for any delictual or contractual damage or loss caused as a result of any act or omission in connection with any school activity conducted by a Public School."*

- [7] The allegations of negligence by the plaintiff are denied by the defendants. The defendants have raised a special plea that the plaintiff's claim against the MEC is precluded in terms of the provisions of section 35(11) of the Compensation for Occupational Injuries and Diseases Act<sup>2</sup> ("COIDA").
- [8] The defendant's special plea in respects of COIDA reads thus:

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<sup>1</sup> Act 84 of 1996

<sup>2</sup> Act 130 of 1993

"5     *The plaintiff is an educator and is employed as such by the second defendant at Father Smangaliso Mkhathshwa Secondary School at Winterveldt, Pretoria, Gauteng Province.*

6     *At all material times relevant hereto:*

6.1   *the plaintiff was an employee of the second defendant as defined in terms of section 1 of the Compensation for Occupational Injuries and Diseases Act No 130 of 1993 ("COIDA'J;*

6.2   *the second defendant was the employer of the plaintiff as defined in terms of section 1 of COIDA.*

[9]   In this matter, the plaintiff claims damages for personal injury out of an incident that occurred when she was stabbed by a learner whilst she was performing her normal duties in a classroom.

[10]   During January 2014 the plaintiff instituted a claim for compensation in terms of COIDA. In terms of section 22 of COIDA the plaintiff is entitled to compensation.

[11]   Section 35(11) of COIDA provides"

*" No action shall lie by an employee or any defendant of an employee for the recovery of damages in respect of any occupational injury of any occupation injury or disease resulting in the disablement or death of such employee against such employee's employer, and no liability for compensation on the part of such employer shall arise save under the provisions of this Act in respect of such disablement or death."*

[12]   In her reply to the defendants' special plea the plaintiff stated as follows:

*". . . . the injuries of knife stab wounds or injuries sustained are not related or incidental or ancillary to occupational injuries in the ordinary course of*

*employment and as such do not ordinarily arise in the workplace. The plaintiff is entitled to claim remedies in whatever form, and not necessarily restricted to Compensation for Occupational Injuries and Diseases Act 130 of 1993."*

[13] In order to be successful, the plaintiff needs to allege that

13.1 The claim is not precluded by the provisions of section 35(11) of COIDA;

13.2 Whether the defendant was negligent as alleged by the failure or omission to offer protection.

[14] This matter can be determined under 13.1 only, for it is evident that neither of the defendants were negligent.

[15] I am in agreement with Rampai J's conclusion in *Susan van De Venter v MEC for Education, Free State Province*, Case No 3545/2010, that:

*"In a case where a public school as an employer would not have been liable to an injured employee by virtue of the provisions of section 35 of CO/DA, so too a respondent organ of the state would not have been liable to such an injured employee. The legislation provides for compensation as a special remedy for employee injured in whatever circumstances. The crux of the matter is that section 35 expressly precludes an injured employee from holding her employer delictually liable and suing such employer for the recovery of delictual damages in respect of any occupational injury."*

[16] The plaintiff in refuting the defendants' special plea, contends that the injuries of knife stab wounds or injuries sustained are not related or incidental or ancillary to occupational injuries in the ordinary course of employment and as such do not ordinarily arise in the workplace. This argument is of no moment when considering the definition of occupational injury.

[17] In *Urquhart v Compensation Commissioner*<sup>3</sup>, Jones J, stated:

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<sup>3</sup> 2006 (1) SA 75 (ECO)

*"[40] Occupational injury is defined as "personal injury sustained as a result of an accident - section 1. The same section defines the word accident as "an accident arising out of and in the course of an employee's employment and resulting in a personal injury. There is no magic in any of the two definitions. The crux of both definitions is to be found in the words personal injury. The injury which the applicant sustained during the course of the robbery was and remains an occupational injury. It seemed to be of little moment whether a particular injury was causatively brought about by a criminal act or not. The provisions of the particular legislation have to be generously construed in favour of employees. Whether doing so is good or bad remains a debate for another day.*

*[41] It follows, therefore, that any personal injury sustained by an employee caused by any criminal act arising out of and during the course of an employee's employment amounts to an accident as defined in section 1"*

- [18] What is stated in *Urquhart* above, consequently applies in the instant case. The plaintiff sustained an occupational injury just like what was decided in *Van De Venter* above.
- [19] In the result, the plaintiff is not entitled to damages claim against any of the defendants.
- [20] The special plea succeeds with costs.

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**TJ RAULINGA**  
**JUDGE OF THE GAUTENG HIGH**  
**COURT DIVISION**

Heard on: 5 September 2018

Delivered: 07 August 2019

## **APPEARANCES**

For the Plaintiff: Adv. M.S. Mangolele

Instructed by: Hlahane Incorporated

For the Defendants: Adv. MM Mojapelo, N R Choeu

Instructed by: State Attorney, Pretoria