

THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA
MEDIA STATEMENT – CASE HEARING IN SUPREME COURT OF APPEAL

Lubbe v Louw

Supreme Court of Appeal -531/03

Hearing date: 8 November 2004

Judgment date: 25 November 2004

Veld fire – failure by landowner to prevent fire spreading to neighbouring farms – whether omission unlawful – whether presumption of negligence rebutted.

Media Summary of Judgment

From: The Registrar, Supreme Court of Appeal

WDJ LUBBE v BWB LOUW

On 25 November 2004 the Supreme Court of Appeal dismissed an appeal brought by Mr WDJ Lubbe, a farmer of Philippolis, against a judgment given in the Bloemfontein High Court in terms of which he was ordered to compensate another farmer, Mr BWB Louw, who had leased farms abutting on Mr Lubbe's farm, Oranjevlei, for damage sustained when a fire which originated on Mr Lubbe's farm spread or to the farms leased by Mr Louw.

In the Philippolis magistrate's court the magistrate held that Mr Lubbe was not responsible for the fire, which had been started by two of his workers when they tried to collect honey by smoking out bees from a tree on a Saturday afternoon when they were off duty, and that he had shown that he was not negligent in failing to prevent the fire from spreading on to his neighbour's land.

The Bloemfontein High Court overturned this judgment on appeal, holding that he had not rebutted the statutory presumption of negligence imposed upon him by section 84 of the Forestry Act 122 of 1984.

The Supreme Court of Appeal agreed with the High Court on this point. It also reiterated earlier decisions of the Appeal Court in which it was held that a landowner is in our law under a duty to control or extinguish fires burning on his land.