



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: 10 September 2009
Status: Immediate

**DOLORA PETERSEN in her capacity as
mother and natural guardian of
JUSTIN LEROY PETERSEN
and
THE MINISTER OF SAFETY & SECURITY**

APPELLANT

RESPONDENT

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 10 September 2009 the SCA dismissed the appeal of Mrs Dolora Petersen, acting in her capacity as mother and natural guardian of her minor son Justin Petersen, against the Minister of Safety and Security.

The appeal arose from an incident that occurred on 19 July 2002 at Gansbaai near Hermanus when Justin sustained gunshot wounds in his right leg. It was common cause that the shots had been fired by a policeman acting in the course and scope of his employment as a servant of the respondent. Departing from this premise, the appellant instituted action against the respondent in the Hermanus Magistrate's Court for the damages that Justin had sustained as a result of his injuries.

The police relied on the defence of necessity. In support of this defence they testified that the problem started when they attempted to seize a large quantity of illegally harvested abalone or perlemoen. A crowd of about 200 people then gathered and began to stone the police in order to enable members of the crowd to remove the perlemoen from the scene.

In the process, so the police testified, an officer was struck on the chest and police vehicles were damaged. In order to defend themselves, the police first fired rubber bullets from shotguns in the direction of the crowd. When they ran out of rubber bullets they started firing sharp point ammunition from their 9mm pistols. According to the police version, Justin could only have been hit by sharp point ammunition aimed in the general direction of the stone throwing crowd.

Both the Magistrate's Court and the Cape High Court on appeal held that the police action was justified by circumstances of necessity. The Supreme Court of Appeal essentially found that these courts could not be faulted in their finding. In consequence the appeal was dismissed with costs.