



REPUBLIC OF SOUTH AFRICA

## SUPREME COURT OF APPEAL OF SOUTH AFRICA

### MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**FROM** The Registrar, Supreme Court of Appeal

**DATE**

**STATUS** Immediate

***Please note that the media summary is for the benefit of the media and does not form part of the judgment.***

***The Minister of Safety and Security & another v Madyibi  
(643/08) [2009] ZASCA 94 (17 September 2009)***

#### **Media Statement**

Today the Supreme Court of Appeal ('SCA') dismissed an appeal by the Minister of Safety and Security and one other against a judgment of Petse ADJP in the Transkei High Court, which allowed a claim for loss of support by the widow and children of a police sergeant who had used his state issue firearm to shoot and injure his wife and thereafter to take his own life.

On 21 January 2003, Sergeant Pumzile Madyibi ('the deceased') shot and injured his wife and thereafter took his own life with a firearm that had been allocated to him as a member of the South African Police Service for use even when not on duty. His widow, Ms Dideka Madyibi, thereafter instituted action, both in her personal capacity as well as on behalf of the four minor children born of her marriage with the deceased, against the Minister of Safety and Security and Superintendent Xolisa Dlakavu, the station commissioner of the station to which the deceased had been attached. She claimed general damages, damages for loss of income and impairment of earning capacity, and damages for loss of support for both herself and her minor children. All these claims succeeded in the Transkei High Court.

Ms Madyibi alleged that the shooting and commission of suicide by the deceased were caused by the negligence of the police who had failed to dispossess the deceased of his official firearm despite their knowledge, gained over a protracted period of time, that: the deceased had previously repeatedly threatened to shoot his wife, had pointed a firearm at her and had threatened violence towards her and other members of the SAPS; that the marriage relationship between the deceased and his wife had deteriorated significantly and that his family life was anything but stable; and that the deceased had manifested suicidal tendencies.

The only issue on appeal was whether the conduct of the police, in failing to remove the deceased's official firearm from him in these circumstances, was wrongful for the purposes of his dependants' claim for loss of support. The SCA held that the conduct complained of was plainly wrongful and that considerations of public or legal policy consistent with our constitutional norms certainly demanded the imposition of a legal duty on the police in a matter such as this one.

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