



THE 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 27 May 2015

STATUS Immediate

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

Za v Smith (20134/2014) [2015] ZASCA 75 (27 May 2015).

MEDIA STATEMENT

On 27 May 2014 the SCA upheld the appeal of Mrs Federica Za against a judgment of the Western Cape high court in favour of the respondents. The appeal originated from a tragic incident on 27 June 2009 when the late Mr Pieralberto Za (the deceased) slipped on a snow covered mountain slope and fell over a 150 metre sheer precipice to his death. The incident occurred at Conical Peak, one of the highest mountains in the Western Cape. It is situated near the town of Ceres and in the Matroosberg private reserve. The reserve is the property of the first respondent on which the second respondent conducts the business of the private nature reserve for gain. The deceased was the father of three children. At the time of his death their ages varied from eight to two years of age. The appellant was married to the deceased and the mother of their children. She instituted action in the Western Cape Division of the High Court, Cape Town, in her personal capacity and in her capacity as mother and natural guardian of her three children, for the loss of support they had suffered through the death of her husband. In substance, her claim was based on the alleged negligent failure by the first and second respondents to take reasonable steps to avoid the incident which led to the death of hospital records husband. The high court held that the appellant had failed to discharge the onus of proving a causal connection between negligent omission of the respondents, on the one hand, and the death of the deceased, on the other.

The recreational facilities in the reserve included four-wheel drive vehicle routes, including a route leading up to Conical Peak. One of the witnesses called by the appellant, Mr Benjamin Moggee, was actually present when the tragic incident occurred. Moggee testified that the deceased grew up in the

Italian Alps known as the Dolomites. On the fateful day he and the deceased drove from Cape Town to Matroosberg to see the snow. The deceased expressed a keen interest in going up Matroosberg and on that day the two of them managed to arrange the excursion.

The two of them arrived at Conical Peak and parked their cars. According to Moggee's estimation, there were already about 20 to 30 people, including children. They got out of their vehicles and started walking to a spot chosen by Moggee where they could look down the gorge. They were carrying two folding chairs and beers. Without warning Moggee slipped. He landed on his hands and knees, jettisoning the chairs and the beers in the process. He then started sliding uncontrollably towards the precipice on his hands and knees. The surface was hard and slippery. He saw a patch of what looked like grass and as he went past, he stuck his left hand into it and was able to arrest his slide in this way. When he stopped he saw the deceased slipping past him on his backside towards the precipice with his arms folded across his chest. Sadly he slid over the precipice and fell to his death.

Experts testified that what rendered the conditions so dangerous was the fact that there was a soft layer of unfrozen snow concealing a hard layer of frozen ice which was extremely slippery and dangerous. And if one slipped and fell on the slope one could slide for hundreds of metres, only coming to a stop once the incline flattens or something else arrests the slide. The experts also testified as to practical steps that could have been taken to avoid the incident. In the main these steps consisted of measures to alert visitors against the hidden danger.

The court of appeal held that the respondents were under a duty to take these steps and that they had negligently failed to do so. The court further held that, but for this failure the harm that befell the deceased would not have occurred. In consequence, that the appellant had succeeded in establishing a causal connection between the respondents' negligent omissions and the death of her husband. On this basis the appeal was upheld.