



Republic of South Africa

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE No: 7953/2004

In the application for leave to appeal between:

TANIA MEGAN JACOBS

Plaintiff

and

KEITH LONG

Second Defendant

**THE MEMBER OF THE EXECUTIVE COMMITTEE
FOR EDUCATION, WESTERN CAPE**

Third Defendant

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL
DELIVERED ON 22 FEBRUARY 2011

MOOSA, J:

[1] In this matter second and third defendants have applied for leave to appeal against the whole of the judgment handed down by me on 4 November 2010. The said defendants base their application on a number of grounds covering all the elements of plaintiff's delictual claim, namely, unlawfulness, fault in the form of negligence, causation, harm and quantum.

[2] The judgment extends delictual liability in respect of an incident which occurred on 27 September 2001, when a learner, Bheki Kunene, attacked his educator, the plaintiff, with a hammer in the class in the presence of other learners. As a consequence thereof,

she suffered certain *sequelae* which form the subject matter of her claim.

[3] The plaintiff's counsel agreed that another court could come to a different conclusion with regard to the extension of delictual liability to the facts of this case. However, he submitted that I should limit the grounds of appeal to certain particular grounds where there are reasonable prospects of success on appeal.

[4] Counsel for the defendants on the other hand, contends that another court could reach another decision as to every aspect of the matter which was decided on. He furthermore submitted that considering the importance of the matter and its potential of extending liability for negligence arising from incidents on the school premises, it would not be fair and proper to limit the grounds of appeal as contended for by the plaintiff's counsel.

[5] The powers of appeal courts to consider grounds of appeal are succinctly set out in **Douglas v Douglas** [1996] 2 All SA 1 (A) at 8i-9c as follows:

*"It is trite that, in both criminal and civil matters, leave to appeal may be limited so as to allow only particular grounds of appeal to be advanced (see **Ngqumba en 'n Ander v Staatspresident en Andere; Damons NO en Andere v Staatspresident en Andere; Jooste v Staatspresident en Andere** 1988 (4) SA 224 (A) op 246C-247C; **S v Safatsa and Others** 1988 (1) SA 868 (A) at 877A-G). But it is also true that '... this Court will not necessarily consider itself bound by the grounds upon which leave has been granted. If this Court is of the view that in a ground of appeal not covered by the terms of the leave granted there is sufficient merit to warrant the consideration of it, it will allow such ground to be argued. (S v*

Safatsa, (*supra*) at 877B-D. See also **R v Mpompotshe and Another** 1958 (4) SA 471 (A) at 472H-473F.)”

[6] In view of the nature and importance of this matter and the fact that the matter covers a wide range of legal and factual issues. I am of the view that the grounds of appeal should not be limited. The defendants should be given the right to ventilate on appeal, all the grounds impacting on the various issues.

[7] After giving careful consideration to the matter, I conclude that there are reasonable prospects of success on appeal in respect of all the grounds and, in the circumstances, the defendants should be granted leave to appeal without any limitation.

[8] Counsel for the parties were *ad idem* that, should I decide to grant leave, the appeal be heard by the Supreme Court of Appeal. I agree with them. In view of the legal and factual issues concerned and the importance and nature of the matter, I exercise my discretion in favour of referring the appeal to the Supreme Court of Appeal.

[9] In the premises, the defendants are granted leave to appeal to the Supreme Court of Appeal against the whole of the judgment, handed down on 4 November 2010. Costs shall stand over for later determination.


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E MOOSA