

Internal Publications: Loureiro and Others v Imvula Quality Protection (Pty) Ltd (CCT 40/13) [2014] ZACC 4 (20 March 2014)

Summary

The First Applicant (Mr Loereiro) arranged for extensive security systems to be installed at his private residence in accordance with an oral agreement that was entered into with the Respondent. Security guards were prohibited from allowing access to visitors without prior authorisation. The First Applicant provided the key to the pedestrian gate to the security guards in order for them to change shifts but made it clear to the Respondent that in no way whatsoever was the key to be used for any other purpose.

One night, men posing as policemen gained entry into the premises through the pedestrian gate as a result of the security guard (Mr Mahlangu) opening it for them. As a consequence of Mr Mahlangu's conduct, the Applicant's family was held up in their home and belongings worth R11 million were taken.

Held

In High Court proceedings, the Court found there was a breach of contract as the Respondent failed to take reasonable steps to eliminate and reduce the harm and thus was in breach of its obligations. In addition, the Court held that the Respondent was also vicariously liable in delict for failing to both meet the standard required from a security company and to discharge its duty of care.

The Court also concluded that Mr Mahlangu was negligent by way of his conduct.

On appeal, the SCA set aside the Order of the High Court and found that the term in the contract which prohibited access into the premises without prior authorisation included a tacit term which excluded the police from the groups of people who fell into this category, so as to comply with the CPA. Furthermore, the Court found that Mr Mahlangu was not unreasonable in believing the imposters were police officers.

With regards to the delictual claim, the Court found that for the same reasons Mr Mahlangu was not negligent for the purposes of breach of contract, he was also not negligent in delict.

Leave to appeal to the Constitutional Court was granted on the basis that common law actions in contract and delict give effect to the rights to security of a person, privacy and property.

The Court found that strict liability should apply to Mr Mahlangu and that he could not rely on the 'tacit term'. Further, the Court noted that whether or not he was negligent was irrelevant in deciding if the contract between the Applicant and the Respondent had been breached.

In terms of the delictual claim, the question was whether the policy and legal convictions of the community, constitutionally understood, regard the conduct as acceptable. The Court found Mr Mahlangu did act wrongfully by not succeeding to prevent the avoidable harm when considerable public interest demands him to do so. Further, Mr Mahlangu's conduct was seen as negligent as a reasonable person would have foreseen that the man at the gate was an imposter.

Value

Given the major role security companies play in giving effect to fundamental rights in South Africa, this case serves as a precedent when determining the correct approach to security companies liability in similar situations. This can only serve to benefit the public because if security companies are too easily insulated from claims for these types of harms due to mistakes on their part, they would have little incentive to conduct themselves in a way that avoids causing harm to the public.