

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

N K v The Minister of Safety and Security

CCT 52/04

Date of hearing: 10 May 2005

Date of Judgment: 13 June 2005

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

The applicant seeks to recover damages in delict from the Minister of Safety and Security for the harm she suffered as a result of being raped and assaulted in the early hours of 27 March 1999. Her assailants were three uniformed and on-duty police sergeants. Ms K who had had an argument with a boyfriend with whom she had been out for the evening was looking for a telephone to call home when she met the police officers at approximately 4 o'clock in the morning. They offered her a lift home which she gratefully accepted. Thereafter they took her to a deserted place, raped and abandoned her. The three policemen were subsequently convicted of rape and kidnapping, and sentenced to life in prison by the Johannesburg High Court.

The applicant argues that as the employer of the police officers, the Minister is vicariously liable for the delict. The High Court found that the actions of the police officers fell outside the course and scope of their employment, and that consequently the Minister could not be held vicariously liable for their conduct. On appeal, the SCA upheld this judgment.

The main issue in the case is whether the Minister is liable to pay damages for the actions of the policemen. O'Regan J, writing for a unanimous Court, holds that the Minister is liable and upholds the appeal with costs. She reviews the existing common-law

principles of vicarious liability and the approach taken to vicarious liability in some other jurisdictions. She then concludes that although it is clear that the policemen's conduct constituted a clear deviation from their duty, there nevertheless existed a sufficiently close relationship between their employment and the wrongful conduct. Three factors lead to the conclusion that the Minister is liable: First, the fact that the policemen bore a statutory and constitutional duty to prevent crime and protect the members of the public — a duty which also rests on their employer (the Minister); secondly, the fact that the applicant accepted an offer of assistance from the policemen in circumstances in which she needed assistance, it was their duty to supply it and it was reasonable of her to accept assistance; and thirdly, the fact that the wrongful conduct of the policemen coincided with their failure to perform their duties to protect the applicant.

The judgment emphasizes that the Constitution mandates members of the police to protect community members and that for this mandate to be performed efficiently reasonable trust must be placed in members of the police service by members of the public.

The Court accordingly holds that in these circumstances the Minister is liable to pay damages to the applicant for the wrongful conduct of the policemen and refers the matter back to the High Court for the amount to be determined by that Court.