



CONSTITUTIONAL COURT OF SOUTH AFRICA

Licinio Loureiro and Others v iMvula Quality Protection (Pty) Ltd

CCT 40/13

Date of hearing: 6 November 2013

Date of judgment: 20 March 2014

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.

Today the Constitutional Court delivered a judgment upholding an appeal against a judgment and order of the Supreme Court of Appeal.

Mr Loureiro entered into an oral agreement with iMvula Quality Protection (Pty) Ltd (iMvula) for a 24-hour armed security guard service at his home. He instructed iMvula not to allow anyone onto the premises without his prior authorisation.

In January 2009, robbers masquerading as police officers approached the home and demanded entry. When iMvula's security guard on duty was not able to communicate over the intercom with the men seeking entry, he opened the pedestrian gate without first checking their identity or business. The robbers then accosted the Loureiros and their household staff, and stole items worth millions of Rands.

The Loureiro family was successful in the High Court, which held iMvula contractually and delictually liable. On appeal, a majority of the Supreme Court of Appeal overturned the High Court's decision, while a minority would have upheld it.

In a unanimous judgment, written by Van der Westhuizen J, the Constitutional Court granted leave to appeal and found in favour of the Loureiro family.

The Court held that iMvula is liable for breach of contract. By allowing access to the imposters, a strict term of the contract was contravened. The Court also found iMvula vicariously liable in delict. The Court held that, in its conclusion on wrongfulness, the

majority in the Supreme Court of Appeal failed to have regard to weighty normative and constitutional considerations. Wrongfulness was established because iMvula's employee opened the gate for the robbers. There is a great public interest in ensuring that private security companies and their guards, in taking on the remunerated role of crime prevention, succeed in thwarting avoidable harm. iMvula's employee furthermore acted negligently by failing to foresee the possibility that an unauthorised person might try to gain access by purporting to be someone he is not; and by failing to take the fairly simple precautions a reasonable person in his position would have taken to guard against the harm. The amount of the claim (quantum) is to be determined by the High Court in separate proceedings.