



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

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Minister of Police & 2 Others v Umbhaba Estates (Pty) Ltd & 53 Others (1281/2021) [2023] ZASCA 85 (1 June 2023)

Today, the Supreme Court of Appeal (SCA) handed down judgment dismissing an appeal against a decision of the Gauteng Division of the High Court, Pretoria (the high court).

The issue before the SCA was whether the response by members of the South African Police Services (SAPS) to violence that occurred at private property during a strike action was wrongful and negligent.

Umbhaba Estates (Pty) Ltd (Umbhaba) was a large agricultural enterprise operating out of three geographical locations situated at Hazyview, Hectorspruit and Kiepersol. On 5 July 2007 and for the remainder of the month of July there was a prolonged strike in one of Umbhaba's operations. The strike was centred at the Kiepersol farm situated in Hazyview. The reason for the strike action at Kiepersol appeared to have been the fact that the conditions of employment offered by Umbhaba to the employees who worked at Kiepersol were less favourable than those that had been offered by its previous owner. Umbhaba required the employees to work on Saturdays when they had previously not done so. The strike commenced on 5 July 2007 and was characterised by various acts of intimidation, assaults, malicious damage to property, vandalism, theft and looting.

Umbhaba asserted that since the commencement of the strike, its management team had repeatedly and consistently asked the police for assistance in order to prevent the striking employees from continuing to commit unlawful acts, to ensure compliance with the court orders and to generally maintain public order. However, SAPS took no action, alternatively failed to take adequate action to prevent the unlawful actions of the striking employees. In their plea, SAPS admitted the various requests for assistance but asserted that: reasonable steps were taken by inter alia negotiating with the employees on numerous occasions; adequate action was taken to restore order as and when requested; and arrests were effected to restore order.

In respect of the issue of wrongfulness, the SCA held that there can be no doubt that the legal convictions of the community require that an unjustified failure to fulfil the objects of the police service be regarded as wrongful. Having considered the harm-causing conduct, the SCA held that the high court correctly found that the conduct of SAPS was unacceptable and wrongful.

In respect of negligence, the SCA found that that it was clear that the steps taken by the police from 5 July 2007 up to 24 July 2007 fell far short of the steps that reasonable police officers would have taken to comply with the court orders that were issued by the Labour Court, and in general compliance with the constitutional imperatives set out in s 203 of the Constitution. By the time the police took decisive action on 17 July 2023, the proverbial horses had already bolted, as extensive damage had already been caused to Umbhabya's property. It held that both the foreseeability and preventability legs of the negligence test set out in *Kruger v Coetzee* had been satisfied.

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