



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 27 November 2008
STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

***Brooks v The Minister of Safety and Security
(036/2008) [2008] ZASCA 141 (27 November 2008)***

Media Statement

During October 1995, Neil Brooks went on a shooting spree in Bothasig on the Cape Peninsula. Those events formed the subject of the judgment of the Supreme Court of Appeal (SCA) in *Minister of Safety and Security v Van Duivenboden* 2002 (6) SA 431 (SCA). Today the SCA dismissed an appeal by his son Aaron Brooks, who had instituted proceedings in the Cape High Court against the Minister of Safety and Security for the recovery of damages. The basis of his claim – like that of Van Duivenboden – is that the police were negligent in failing to take steps available to them in law to deprive Neil Brooks of his firearms. Had that been done, so it has been postulated, the tragedy would not have occurred. The appellant alleges that as a consequence of the shooting incident his father was sentenced to imprisonment for a term of 20 years, which he still serves. As a result thereof he has been rendered permanently unable to support the appellant as he would otherwise have done. Of the total amount claimed by the appellant, R168 000 is in respect of loss of support from his father and R2 400 000 in respect of loss of a proper education opportunity as a result of loss of support. That portion of the appellant's particulars of claim was met with an exception, which was upheld by the Cape High Court. The High Court granted him leave to appeal to SCA. The nature of the appellant's claim, according to the SCA, was one by a dependant for loss of support. According to existing South African law, a basic ingredient of the dependant's action is the death of the breadwinner. The SCA reasoned that Van Duivenboden's claim was one for compensation for bodily injuries sustained by him during the events giving rise to the claim, namely, the shooting incident. The appellant's claim on the other hand was located elsewhere. It was one for loss of support, which is alleged to have occurred in consequence of the incarceration of the breadwinner. The SCA held that that could hardly give rise to a claim, as the lengthy period of imprisonment and the consequent deprivation of the breadwinner's liberty was expressly sanctioned by law. Moreover, according to the SCA, for as long as the breadwinner is alive, should it be proved that the conduct on the part of the

respondent's servants was wrongful, such conduct would only be wrongful *vis-à-vis* the breadwinner and not the dependant. It followed, that so long as a right of action existed in a breadwinner, there could not also be a right of action in his/her dependant's for loss of maintenance. The SCA accordingly held that it would be nothing short of preposterous that a person in the position of Brooks could by his own intentional wrongful act create in favour of his dependant a cause of action that would otherwise not exist. It thus dismissed the appeal with costs.

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