



## THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

### **MEDIA SUMMARY – JUDGMENT DELIVERED IN**

### **THE SUPREME COURT OF APPEAL**

#### **City of Cape Town v Carelse and Others [2020] ZASCA 117**

**From:** The Registrar, Supreme Court of Appeal

**Date:** 01 October 2020

**Status:** Immediate

*The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgment of the Supreme Court of Appeal*

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Today the Supreme Court of Appeal (SCA) handed down judgment in an application for leave to appeal against an order of the Western Cape Division of the High Court, Cape Town (Vos AJ, sitting as court of first instance), referred for oral argument in terms of s 17(2)(d) of the Superior Courts Act 10 of 2013. The application was dismissed with costs.

The matter concerned an attack on the first respondent, Ms Fatiema Carelse (Fatiema), by a Pit Bull dog, while Fatiema and her family and friends were enjoying a social visit to the Harmony Park Resort, a seaside resort and day camp (the Day Camp) in Strand, Western Cape, on 7 December 2013. The Pit Bull was owned by the second respondent, Quinton Eksteen (Quinton), and unlawfully brought onto the Day Camp premises through an unfenced (and unpoliced) area – a ‘free entry’ spot – by the third respondent, Dylan Eksteen (Dylan). The Day Camp is a public facility under the control of the appellant, the City of Cape Town, a metropolitan municipality constituted in terms of the Local Government: Municipal Structures

Act 117 of 1998, whose By-Laws prohibited dogs, amongst certain other things and activities, at facilities such as the Day Camp.

Fatiema and others were frolicking in one of the tidal pools at the Day Camp when the Pit Bull, apparently pursuing a ball that Fatiema was playing with in the pool, viciously attacked her, allegedly causing her to sustain serious physical injuries resulting in the development of post-traumatic stress disorder. The Pit Bull had recently been unleashed by Dylan in order to be rinsed and washed prior to returning home. Fatiema duly instituted an action in the high court to recover from the City damages in relation to the harm she had suffered, based on the alleged breach of its legal duty to ensure the safety of visitors to the Day Camp.

While admitting a duty owed to the public utilising the facility, the City denied liability to Fatiema on the basis that it had complied with its duty by taking reasonable precautionary steps to maintain the safety of the facility and thus of any members of the public utilising the same. The high court nonetheless held the City liable for any damages that Fatiema might prove; and Quinton, as owner of the Pit Bull, for a 50% contribution to the City. This, after it found that access control to prevent dogs from entering a public facility such as the Day Camp should be conducted in a reasonable and comprehensive manner; that it would be futile to conduct same at only one of the many entrances; and that no financial hardship would result from placing a law enforcement officer at the side 'entrance' hitherto unpoliced. It held that the City knew of visitors and dogs entering the Day Camp through the unfenced area yet took no reasonable steps to prevent it.

Before the SCA, the primary question to be addressed was whether there would be reasonable prospects of success. This was determined with regard to the evidence adduced and the conclusions reached by the high court.

The SCA found that wrongfulness and negligence had indeed been established. Taking the additional step of introducing access control at the 'free entry' spot would not be unduly financially burdensome on the City. Furthermore, visitors to a resort conducted by the City were entitled to expect that, within reasonable means, the City would take adequate measures to ensure their safety. The City's officials were aware that dogs entered the facility, either on their own or led by owners or controllers at the 'free entry' point, and could have taken the reasonable step of employing access control measures at that point. Merely placing a guard at

that point on the day in question would most likely have prevented Dylan from bringing the Pit Bull onto the Day Camp premises and the attack on Fatiema would not have occurred.

The SCA thus held that there were no prospects of success in relation to an appeal. It was also noted that it would be incongruous for Quinton to have been held partially liable as a joint wrongdoer, on the basis of the *actio de pauperie*, but not Dylan, who unlawfully brought the dog to the Day Camp, which led to the attack.

In the result the application for leave to appeal was dismissed with costs, including those attendant upon the employment of two counsel where so employed.

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