



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

FROM The Registrar, Supreme Court of Appeal

DATE 4 March 2021

STATUS Immediate

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

Churchill v Premier, Mpumalanga (889/2019) [2021] ZASCA 16 (4 March 2021)

The SCA today upheld an appeal by Ms Catherine Churchill against the dismissal by the Mpumalanga Division of the High Court of her claim for damages against the Premier, Mpumalanga.

The claim arose from an incident occurring on 5 April 2017 during a protest by members of NEHAWU at the offices of the Premier. Ms Churchill, then the Chief Director: Policy and Research in the Premier's office, was at work on the day of the protest. The protest was supposed to take place outside the gates of the complex, but some protestors obtained access to it and to the building containing the office of the Premier.

Ms Churchill encountered the protestors on two occasions during the morning without incident. What triggered the events that led to her being assaulted, was that she found herself locked out of her office, when she and other employees were preparing to leave the premises. A protestor reacted in a hostile fashion to her uttering an expletive. Shortly afterwards a group of twenty or so protestors came to find her in the office of a colleague. They

forcibly removed her from the office and, despite her protestations, carried her above their heads, upstairs to where the body of protestors was gathered. There she was surrounded by protestors, pushed, shoved and punched, whilst being jeered at and abused. She was eventually chased out of the building.

Ms Churchill suffered some physical injuries as a result and PTSD. Eventually she felt compelled to leave her job. Her claim against the Premier was based on a negligent failure to provide proper protection to staff in that situation.

The Premier defence was that the injuries sustained by Ms Churchill constituted an 'occupational injury' arising from an 'accident' as those expressions are defined in the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA) and accordingly that she was precluded from suing for damages by the provisions of s 35 of COIDA. This defence was upheld by the high court. The essential question was whether her injuries arose out of her employment, it being agreed that they arose in the course of her employment.

Whether injuries are suffered in the course of a person's employment depends on whether they arose from the performance of their duties and were incidental to those duties. Ms Churchill's duties were not concerned with labour matters or the issues giving rise to the protest. In the ordinary course an assault, even by a co-worker, is not incidental to the performance of one's duties in the workplace.

In this case the incident was unrelated to the issues giving rise to the protest. It was sparked by a protestor taking offence at her swearing when she found herself locked out of her office. His reaction escalated into an incident where she was assaulted and humiliated. The assault took on racial and gendered overtones. The SCA accordingly held that it did not occur in the course of Ms Churchill's employment. The appeal was upheld and an order declaring the Premier liable to compensate Ms Churchill for her proved or agreed damages was made.