

MTO Forestry v Swart (420/2016) [2017] ZASCA 57

The case was about a property owner who made a claim against his neighbour for a total of R 23 million. The claim was based on a fire that started on a portion of his neighbour's property consisting of thick alien invasive plants, which was highly flammable and spread into his plantation, resulting in the damages to a value of R 23 million. The fire also spread rapidly due to a strong wind that was blowing on the day of the fire.

The court ruled that the claim was rejected, and the owner appealed to the Appeal Court. The Appeal Court, after considering all the elements also ruled the same as the High Court, rejecting the claim on the basis that there was no negligence found.

The Appeals court investigated various elements within the claim;

1. The actions of the neighbour were investigated. The owner(claimant) asked the court not to hold the neighbour responsible for the starting of the fire, but rather the fact that he should have anticipated the damages and made provision timeously to react accordingly. Here the court found that the neighbour's actions depicted that he did indeed make provisions against possible fire, reacted immediately to the fire and contacted his contracted firefighting service to come and help.
2. The second element the court investigated was the element of wrongfulness. With this consideration all conditions are considered to establish if the neighbour acted differently than the reasonable farmer would have in the same circumstances.

The court emphasized that the neighbour acted immediately on the fire and tried to extinguish the fire. The fact that the veld was dry and there was a wind blowing was conditions that worsened the spread of the fire. The court ruled that on the matter of the neighbour not making provision for the fact of the invasive plant presence, was not a factor for determining

wrongfulness, the court emphasized that the provision of damages that may occur is not an element to prove wrongfulness.

3. The next element, that of guilt, wilful or negligence with regards to the damages the property owner suffered. The damages were according to the court clear and was not required to be proven. The property owner has already proven that the plantation did burn down, and great loss was suffered, a value of R 23 million was determined to be the correct value of the plantation.

On this matter the court said that there must be considered that the fire was firstly started deliberately by the neighbour. This was in fact not the case. The neighbour did react immediately. Conditions beyond his control contributed to the spread of the fire with the efforts of firefighting teams trying to assist.

4. The element of negligence: If the neighbour did remove the flammable alien invasive plants, it could have prevented future spread of the species. The court ruled that there was no negligence due to him not removing all the alien invasive species plants because it could contribute to the speed of the fire spread. It did indicate that should the plants have been removed, it could have prevented the fast spread of the fire, but by not removing, it does not indicate negligence. What would have been negligence would have been if he did not have implemented reasonable measures of which any reasonable farmer would have done in the same circumstances to try and put the fire out. The court determined that he did have measures in place to react quickly.

What the court did stress to all farmers is that it is not their duty to guarantee that a fire will not spread to you; there is only a duty to implement reasonable measures to prevent such a possible fire.

5. The last element taken into consideration of causality. This refer to the relationship between the actions of the neighbour and the resulting damages sustained, was there a casual line that could be drawn. The neighbour acted immediately and tried to extinguish the fire. It was determined that it was

not his reaction that led to the spread of the fire. There was therefore no causality found in this regard.

After the Appeals court considered all these conditions and requirements, it also rejected the claim. The court did say that even though the neighbour had flammable alien invasive plants on his property, his actions was of such nature that he cannot be criticized and that he tried his best to prevent the spread of the fire.

This case highlights the importance of having the necessary preventative measures in place against fires. If the farmer (Neighbour) did not put in place preventative measures, this claim would have been awarded, which could have cost him his farm. It is also very important to have your employees trained in this regard, as most of these fires are caused by an innocent fire started to cook some food or to stay warm.