

Can I be held liable for a fire that spread beyond my property?

The question that a lot of farm owners ask is whether they can be held accountable for fires that spread beyond their property? If the aforementioned is answered in the affirmative the next question is normally in which circumstances?

The good thing about the question is that the National Veld & Forest Fire Act 101 of 1998 (the "Act") provides some answers thereto. Section 34 of the aforementioned Act specifically deals with the liability of a landowner in the event that a fire spreads from his property to another.

Section 34 reads as follows:

(1) If a person who brings civil proceedings proves that he or she suffered loss from a veldfire which-

(a) the defendant caused; or

(b) started on or spread from land owned by the defendant, the defendant is presumed to have been negligent in relation to the veldfire until the contrary is proved, unless the defendant is a member of a fire protection association in the area where the fire occurred.

(2) The presumption in subsection (1) does not exempt the plaintiff from the onus of proving that any act or omission by the defendant was wrongful.

It is clear from the above that there is a presumption of negligence against an owner of a property if a veldfire spreads from his property and he is not part of the local fire protection association.

In the event that the owner is part of the fire protection association it is important

to note that a claim for damages can still be instituted against him if it is found that he was negligent. Membership to the aforementioned association does therefore not preclude him from claims but merely abolishes the assumption of negligence against him.

Regarding what would constitute negligence the court in the case of *MTO Forestry (Pty) Ltd v Swart NO* found that negligence is measured against reasonable steps taken by the owner to prevent fires from spreading.

Now obviously the next question that comes to mind is definitely what would constitute reasonable steps. Luckily the act once again provides guidance thereto in section 12. The section among other things stipulates that all owners from whose property a veldfire may (bears the potential to) start or spread must prepare and maintain a firebreak. A fire break can be prepared in numerous ways of which the most popular among farmers is “brandpaaie” and “voorbrande”. Failure of the aforementioned could constitute negligence and ultimately liability towards the damages.

On this note it is important to advise all farm owners to always try to be part of their local fire protection association, as this would lead to the presumption of negligence against them falling away if a claim for damages is instituted against them. They must also always ensure that there is a firebreak between their property and that of their neighbour as this could play a crucial part in determining whether they are liable for damages occasioned by a veldfire.

- Hein Papenfus