

Who is liable for damages suffered on school premises?

Events at schools are an everyday occurrence. Think about games and practice sessions for sports, matric farewells or seasonal dances, fundraising events, choir concerts, etc. Whilst these events can be quite fun for scholars, accidents can easily occur, causing serious injury to someone attending an event at a school. This then raises the question with regards to a school's liability for damages.

The Supreme Court of Appeal was recently tasked with the question on who should be sued if a school is liable for damages. In the matter of *Parktown High School for Girls v Hishaam & Another* a scholar attended a fashion show organised by the Representative Council of Learners (RCL). While attending the fashion show, the scholar stood next to a round concrete table which was a permanent fixture at the school. The scholar leaned against the table top. Due to the downward pressure, the top flipped over and crushed the scholar's right hand. The scholar's father sued for damages suffered and cited the school as the defendant in the action.

The school raised a special plea in which they alleged that the school was wrongfully cited. According to the Schools Act, it was contended, the MEC should have been sued. In terms of section 60(2) of the South African Schools Act, the State Liability Act is applicable to a claim under section 60(1) of the Schools Act. Section 60(1) of the Schools Act provides that the state is liable for any delictual damage or loss caused as a result of any act or omission or in connection with any school activity conducted by a public school and for which such public school would have been liable but for the provisions of this section. If a claim falls within this category, the MEC should be cited as the defendant in a summons, and not the school.

Unfortunately, the enquiry into who should be cited as defendant does not end here. Section 60(4) provides an exception to the state's liability where the negligent conduct, giving rise to a claim, occurred in connection with any enterprise or business operated under the authority of a public school for purposes of supplementing the resources of the school as contemplated in section 36. In turn, section 36 refers to activities conducted under the auspices of the

school governing body to supplement its resources for purposes of improving the quality of the education of its learners.

The plaintiff argued that the exception contained in section 60(4) was applicable in this case and that, the state was consequently excused from liability. He (?) further argued that the fashion show was an enterprise under the school's authority for purposes of supplementing their resources.

However, the Supreme Court of Appeal differed from this view. Based on the uncontested evidence of the school, the fashion show was organised by the RCL and the proceeds thereof was for the benefit of the students. In the accounting books of the school, the proceeds of the fashion show were indicated as a liability in favour of the RCL. If the RCL wanted to organise an event for the students, such as a matric dance, the school would have to pay the relevant money to the RCL. The school governing body had nothing to do with the fashion show and it could therefore not be considered as an activity under the auspices of the school governing body to supplement its resources. The RCL was not a business or an enterprise. Accordingly, the exception under section 60(4) did not find application in this case. This had the result that the MEC should have been cited as the defendant in this matter, and not the school.

In deciding whether the school or the MEC should be cited as a defendant, a proper interpretation of all the relevant sections in the Schools Act must be conducted. Attorneys should properly evaluate the facts of the matter to ensure that the correct defendant is cited.

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