

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION - MAHIKENG**

CASE NUMBER: 1897/2021

Reportable: **NO**

Circulate to Judges: **NO**

Circulate to Magistrates: **NO**

Circulate to Regional Magistrates: **NO**

In the matter between:

M[...] M[...] E[...]

FIRST PLAINTIFF

M[...] D[...] S[...]

SECOND PLAINTIFF

L[...] M[...]

THIRD PLAINTIFF

I[...] M[...]

FOURTH PLAINTIFF

T[...] M[...]

FIFTH PLAINTIFF

and

MINISTER OF BASIC EDUCATION

FIRST DEFENDANT

**MEC OF DEPARTMENT OF EDUCATION
& SPORT DEVELOPMENT, NORTH WEST
PROVINCE**

SECOND DEFENDANT

M[...] PRIMARY SCHOOL NO

THIRD DEFENDANT

**SCHOOL GOVERNING BODY,
M[...] PRIMARY SCHOOL**

FOURTH DEFENDANT

CORAM: OOSTHUIZEN-SENEKAL AJ

Date judgment reserved: 21 May 2025

The judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for hand-down is deemed to be **29 August 2025 at 10H00am.**

ORDER

1. The defendants are held liable, jointly and severally, the one paying the other to be absolved, for the damages suffered by the plaintiffs arising from the death of K[...] M[...].
2. The defendants are ordered to pay to each of the first to fifth plaintiffs the sum of R150 000.00 (One Hundred and Fifty Thousand Rand), amounting in total to R750 000.00 (Seven Hundred and fifty Thousand Rand).
3. Interest on the aforesaid amounts calculated at a rate of 7.75% from date of issue of summons to date of payment.

4. The defendants shall pay the plaintiffs' costs of suit on the High Court scale B.

JUDGMENT

Introduction

- [1] One of the deepest fears that haunts every parent is that their child may leave home for school one morning and never return. Each day, thousands of parents entrust schools and teachers with their children, believing they will be kept safe, nurtured, and properly supervised. Siblings, too, say goodbye in the morning, expecting to be reunited later that day.
- [2] When tragedy strikes, however, that trust is shattered, and families are left to endure indescribable pain and grief. Such is the case before this Court. On 19 July 2019, the plaintiffs' daughter and sister, K[...] M[...], then 14 years and 2 months old, fell to her death from the top of Mmabatho Stadium during a school-organised arts and culture event. What ought to have been a day of pride and celebration became her family's worst nightmare.
- [3] This case illustrates, with stark clarity, the heavy duty of care that rests upon schools and education authorities to protect learners, particularly during school-sanctioned events beyond the classroom. It also underscores the anguish of parents and siblings who must pick up the pieces of their lives after such a calamity, bearing psychological wounds that no monetary compensation can ever truly heal, yet which they now ask this Court to recognise and redress.
- [4] The first to fifth plaintiffs, all close family members of the deceased, instituted this action claiming damages of R600 000.00 (Six Hundred Thousand Rand) each, amounting to a total of R 3 000 000.00 (Three Million Rand), against the first to fourth defendants. Their claim arises from the tragic death of K[...] M[...], who fell from the stadium whilst unsupervised.

- [5] The plaintiffs seek compensation for the psychological trauma, emotional shock, and grief they have suffered as a direct consequence of the incident.
- [6] The matter came before this Court as an application for default judgment. Although the defendants initially filed a notice of intention to defend and a plea, they subsequently failed to comply with an order compelling discovery in terms of Rule 35(12) and (14) of the Uniform Rules of Court (“the Rules”). Their defence was accordingly struck out by order of Gura J on 18 August 2022, enabling the plaintiffs to proceed unopposed.
- [7] Oral testimony was heard from the first plaintiff, the mother of the deceased. The plaintiffs’ expert evidence, as well as the eye-witness’ version of the incident, was admitted by affidavit pursuant to an application brought under Rule 38(2) of the Rules, which was granted

Issues for Determination

- [8] The questions for determination are:
1. Did the defendants act negligently and unlawfully in failing to safeguard the deceased?
 2. Does the harm suffered by the plaintiffs exceed ordinary grief and amount to a recognised psychiatric injury?
 3. Are the defendants liable for damages to the plaintiffs as claimed?

Factual Context

- [9] It is common cause that O[...] N[...], an eye-witness to the tragedy, did not testify at the hearing. Nevertheless, the evidence establishes that the incident occurred when the deceased, then aged 14, together with her classmate, O[...] N[...], requested permission from their teacher, Mrs Tladi, to use the bathroom

facilities at the stadium. The teacher permitted them to go unaccompanied and offered no further guidance or supervision.

[10] In the absence of adult assistance, the two learners approached other children for directions and proceeded to ascend to the top level of the stadium in search of the bathrooms. Whilst there, the deceased complained of dizziness and subsequently fell from the stadium to her death.

[11] The first plaintiff testified that, upon being informed of the accident, she rushed to the stadium where she found her daughter's lifeless body lying on the ground, covered by a silver plastic sheet. Her testimony, describing both the harrowing moment of that discovery and the devastating emotional impact on herself and the family, was credible and compelling.

[12] It underscored the profound consequences of the defendants' negligence, not only in the tragic loss of a young life but also in the enduring psychological harm inflicted upon those left behind. Her account accords with the uncontested expert evidence and demonstrates that the harm suffered by the plaintiffs goes well beyond ordinary grief. She further testified that, in the aftermath of the tragedy, neither the Department of Education nor the school rendered any meaningful support or assistance to her or the bereaved family. As her evidence was neither challenged nor contradicted, this Court accepts it in its entirety.

Expert Evidence

[13] The Court had the benefit of expert evidence from Ms Lenmarie Stanton; a clinical psychologist registered with the Health Professions Council of South Africa since 2000. Ms Stanton holds an MA (ClinPsych) *cum laude* from the University of Stellenbosch and has extensive experience in the assessment of psychopathology and psycho-legal evaluations. She has practised as a clinical psychologist in Kimberley, Northern Cape, for over two decades and has frequently provided psycho-legal input in matters of trauma and its sequelae.

- [14] Ms Stanton's assessment establishes that the traumatic death of K[...] M[...] has had a profound and enduring impact on the entire family system. All of the plaintiffs present with clinical disorders directly attributable to the trauma suffered. These disorders do not stem from pre-existing conditions, nor are they related to medication, drugs, or alcohol. Rather, they arise as the direct consequence of the traumatic loss.
- [15] The evidence indicates no significant antecedents or vulnerabilities in the plaintiffs' psychological history that could explain the disorders. The trauma and its consequences stand as the sole and proximate cause of the impairments. While life expectancy is not expected to be affected, the quality of life for each family member has been materially and severely diminished. Their emotional lives have been adversely impacted, and the prognosis suggests enduring challenges.
- [16] Ms Stanton further opined that all family members experienced acute emotional pain and suffering in the immediate aftermath of the incident. More significantly, they continue to suffer chronic residual symptoms that manifest in ongoing emotional pain, psychological distress, and impaired functioning. These symptoms are consistent with recognised trauma-related disorders and cannot be regarded as transient.
- [17] She recommends intensive psychotherapy for the family, structured initially as weekly sessions for six months, followed by monthly sessions for a further six months. Psychopharmacological treatment may also be indicated, aimed at moderating affectivity and improving energy levels.
- [18] In summary, Ms Stanton's expert testimony demonstrates that the emotional and psychological injuries sustained by the plaintiffs are serious, ongoing, and directly linked to the death of K[...] M[...]. Her professional assessment supports a finding that the family has suffered substantial pain and suffering and will continue to require significant therapeutic support.

Legal Framework

Duty of Care

- [19] Teachers and school officials act *in loco parentis*, assuming a duty of care to protect children under their supervision. This duty arises both at common law and under section 60 of the South African Schools Act 84 of 1996.
- [20] In *Jacobs v Chairman of the Governing Body of Rhodes High School & Others*¹, the Court affirmed that teachers and school authorities bear a legal duty to exercise proper control and supervision over learners under their care. This duty requires them to take reasonable steps to guard against foreseeable harm, a responsibility that flows from their position of authority over learners and the trust reposed in them by parents and society.
- [21] Furthermore, in *Wynkwart NO v Minister of Education & Another*², the Court held that those entrusted with the control of school premises bear a duty to take reasonable precautions to safeguard learners from injury while on such premises. This obligation extends beyond merely issuing warnings of potential dangers and requires active steps to avert harm. The scope of the duty is assessed against the standard of reasonableness, taking into account the age and vulnerability of the learner.

Negligence and Breach

- [22] In the present matter, it is clear that the defendants failed to provide accessible and safe bathroom facilities, allowed children to wander unsupervised into hazardous areas, failed to control overcrowding, and ignored the foreseeable risk of children accessing dangerous elevated sections of the stadium.
- [23] The expectation was that when learners sought permission to use the bathroom during school hours and events, Mrs Tladi or another teacher would accompany them. This duty of supervision arose from the broader obligation of

¹ 2011 (1) SA 160 (WCC).

² 2004 (3) SA 577 (C).

educators to exercise proper control over learners and to take reasonable steps to prevent foreseeable harm. The tragic event at the stadium, where a learner fell after being left unsupervised, underscores the consequences of a failure to adhere to this duty. Had a teacher accompanied the learner, the risk of such an incident could reasonably have been prevented or, at the very least, materially reduced. As confirmed in *Jacobs and Wynkwart*, the obligation resting on those entrusted with the care of learners extends beyond warnings or passive oversight and requires active, precautionary measures. The *omission* to provide such supervision in this instance is directly connected to the harm suffered, demonstrating both the foreseeability of the danger and the breach of the duty of care.

[24] It is important to note that the duty of care owed by schools and teachers is not confined to the classroom or school premises. It extends to all situations in which learners are placed under their authority and supervision, including school-sanctioned activities at external venues. Where learners are removed from the familiar environment of the school and exposed to the unfamiliar and potentially hazardous conditions of public facilities such as stadiums, the standard of vigilance required is greater.

[25] In this matter, the defendants permitted learners, including the deceased, to attend an event at Mmabatho Stadium, a facility not designed primarily for school children and not adapted to their needs. Public venues of this nature contain inherent risks, steep stairs, high balconies, and unsupervised access to elevated areas, which require heightened awareness and precautionary measures. To allow children to roam unaccompanied in such a space is to fail to meet the standard of reasonable care demanded by law.

Psychiatric Harm to Family Members

[26] In *Komape v Minister of Basic Education*³, the Supreme Court of Appeal considered the tragic death of a five-year-old learner who fell into a pit latrine at

³ 2020 (2) SA 347 (SCA).

his school. Although the family's claim for general damages for grief did not succeed on the basis that ordinary grief did not amount to compensable psychiatric injury, the case firmly established that education authorities owe a constitutional and statutory duty to provide safe facilities and to protect learners from foreseeable harm.

[27] The Constitutional Court, considering the matter further in *Komape v Minister of Basic Education and Others*⁴, emphasised that the right to basic education encompasses not only access to schooling but also the provision of an environment that is safe, adequate, and consistent with the dignity of children.

[28] The present case is distinguishable from *Komape* in two respects. First, the plaintiffs' harm has been clinically diagnosed as psychiatric disorders by an expert psychologist, thus surpassing the threshold of ordinary grief. Second, the risk of harm arose not from inadequate infrastructure but from a failure to supervise learners properly at a public venue, exposing them to hazards inherent in the facility. This context demanded a heightened standard of care, which was plainly not met.

[29] Courts recognise claims by close family members for psychiatric injury, provided the harm is medically recognised and proven⁵.

[30] In *Michael v Linksfeld*, the Supreme Court of Appeal clarified the evidential standard when expert testimony is relied upon to prove psychiatric harm. Expert opinion must be based on logical reasoning that can be demonstrated to the court and must establish a causal *nexus* between the negligent act and the psychiatric injury. The test is not preference for one opinion over another, but whether the reasoning is capable of withstanding logical analysis and is consistent with the probabilities.

⁴ 2020 (2) SA 347 (CC).

⁵ *Michael v Linksfeld Park Clinic (Pty) Ltd and Another* 2001 (3) SA 1188 (SCA) at paragraph [36]; *Komape* at paragraph [114].

[31] This principle is directly relevant. Ms Stanton has provided a diagnosis of trauma-related disorders, grounded in observable symptoms, the absence of alternative causes, and the proximate relationship between the incident and the harm. Her evidence, uncontested due to the defendants' default, satisfies the *Michael v Linksfield* standard of reliability and reasoning.

Evaluation

[32] Having considered the evidence, this Court is satisfied that the plaintiffs' have established the factual circumstances leading to the tragic death of K[...] M[...], on a balance of probabilities.

[33] The evidence, though uncontested, presents a coherent narrative. It is undisputed that the deceased, aged 14, attended the arts and culture event as a participant representing her school. When she and her classmate, O[...] N[...], requested permission to use the bathroom facilities, their teacher, Mrs Tladi, refused to accompany them and explicitly disavowed responsibility, stating:

"I don't know where the toilets are, and I don't want to be involved in the toilet issue."

[34] This dismissive attitude, coupled with the absence of supervision or clear directions, created a situation of risk. Left to their own devices, the children ascended to the upper levels of the stadium. Whilst there, the deceased became dizzy and tragically fell to her death.

[35] The first plaintiff's testimony concerning her discovery of her daughter's body and the lack of meaningful support from the school and Department of Education was moving and credible. Her account of the devastation experienced by the family is consistent with the psychological trauma one would expect in such circumstances.

[36] The defendants' failure to participate leaves the plaintiffs' evidence unchallenged. The teacher's conduct and the absence of safety measures are indicative of negligence by those entrusted with the children's care.

[37] This Court finds that the failure to supervise the deceased adequately, to ensure her safety, and to provide accessible and safe sanitary facilities directly contributed to her death. These facts fall squarely within the principles in *Jacobs* and *Wynkwart*. The plaintiffs have discharged their *onus* of proving a breach of duty that was causally linked to the death.

[38] This Court is acutely mindful that no amount of money can ever negate the loss of a child or sibling. The death of K[...] M[...] has left a *void* in her family that cannot be filled by any financial award. Damages in cases such as this serve not as a replacement for the life lost, but as a legal recognition of the wrong that has been done and of the ongoing pain borne by those left behind.

[39] Whilst damages cannot restore the life of K[...] M[...] or erase the anguish of her family, they serve an important purpose in holding public authorities to account for their negligence and in affirming the constitutional and common-law rights of those entrusted to their care. This Court's award is therefore both a recognition of the harm suffered by the plaintiffs and a reaffirmation of the duty owed by schools and education authorities to safeguard the children placed in their charge.

Costs

[40] The general rule is that costs follow the result. As the Constitutional Court explained in *Ferreira v Levin NO and Others*⁶, the successful party should, as a matter of fairness and justice, recover the costs incurred in vindicating its rights unless exceptional circumstances dictate otherwise.

⁶ 1996 (2) SA 621 (CC) at paragraph [3].

[41] The plaintiffs were compelled to seek relief after the defendants failed both in their duty to safeguard the deceased and in their duty to comply with the Court's procedural orders. Their conduct unnecessarily prolonged the litigation and forced the plaintiffs to incur further expense.

[42] Given the tragic nature of this case, involving negligence by public authorities and implicating constitutional rights, it was reasonable for the plaintiffs to approach the High Court. As reaffirmed in *Motladile v Minister of Police*⁷, the Supreme Court of Appeal stated that, serious constitutional issues justify High Court litigation even where the *quantum* might ordinarily fall within a lower court's jurisdiction.

[43] In line with *De Klerk v Minister of Police*⁸, costs on the High Court scale are warranted where constitutional and common-law rights have been infringed by public officials.

Order

[44] In the result, the following order is made:

1. The defendants are held liable, jointly and severally, the one paying the other to be absolved, for the damages suffered by the plaintiffs arising from the death of K[...] M[...].
2. The defendants are ordered to pay to each of the first to fifth plaintiffs the sum of R150 000.00 (One Hundred and Fifty Thousand Rand), amounting in total to R750 000.00 (Seven Hundred and Fifty Thousand Rand).
3. Interest on the aforesaid amounts calculated at a rate of 7.75% from date of issue of summons to date of payment.
4. The defendants shall pay the plaintiffs' costs of suit on the High Court scale B.

⁷ (414/2022) [2023] ZASCA 94; 2023 (2) SACR 274 (SCA) at paragraph [26].

⁸ 2020 (1) SACR 1 (CC).

**CSP OOSTHUIZEN-SENEKAL
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

APPEARANCES

For the Plaintiffs: Mr Morweng
MORWENG ATTORNEYS
No 2, Molopo Road
Mafikeng, North West Province
Email: eric@morwenginc.co.za
Ref: M[...]/MAT677

For the Defendants: No Appearance
State Attorneys
Cnr Sekame Road & Dr James Moroka Drive
1st Floor, East Gallery, Mega City Complex
Mmabatho
Ref: 1893/21/P5