

THE DEVELOPMENT OF VICARIOUS LIABILITY IN EMPLOYMENT LAW

By Alex Davies

1. INTRODUCTION:

- The recent judgement by the Supreme Court of Appeal Court (“SCA”) in *Stallion Security v Van Staden*^[1] focussed on the development of the doctrine of vicarious liability of employers.
- Simply put, vicarious liability means holding one person (e.g. an employer) liable for damages or harm caused by the actions of another person (e.g. an employee) by virtue of the relationship between the two parties.

2. BRIEF SUMMARY OF THE JUDGMENT:

- Stallion security was contracted to place security guards at premises of a client including a Mr Khumalo.
- By virtue of Mr Khumalo’s employment as a site supervisor at the premises, he was given access to an override key in order to access the premises and bypass the biometric system in the event of a power failure.
- Mr van Staden (the deceased) was employed at the premises.
- Mr Khumalo hired a firearm in his personal capacity (not issued to him by Stallion Security). He thereafter attended at the premises of the client and utilised the override key entrusted to him to gain access to the office of Mr van Staden.
- Mr Khumalo held Mr van Staden at gunpoint demanding money from the petty cash of the client to which Mr van Staden indicated he did not have access to.
- Mr Khumalo instead forced Mr van Staden to transfer an amount to R35 000.00 from his personal account to Mr Khumalo via EFT. Thereafter, Mr Khumalo drove Mr van Staden to Eastgate mall where he shot and killed him on realising that Mr van Staden may call the police.
- Mrs van Staden instituted a claim for damages, suffered as a result of the murder of her husband, against Mr Khumalo and Stallion Security.

3. THE DEVELOPMENT OF THE DOCTRINE OF VICARIOUS LIABILITY:

- Historically, in order for an employer to be held vicariously liable for the conduct of an employee the conduct in question should have been committed in the course and scope of the employee’s duties or had a close connection with them.
- It is clear from the facts at hand that Mr Khumalo’s conduct was not committed in the course and scope of his duties but that he acted independently of his employer when deciding to rob and murder Mr van Staden.
- The SCA considered various applicable judgements in South Africa as well as in foreign jurisdictions.
- In short, it was found that there was a sufficiently close connection in existence to hold Stallion Security vicariously liable for the damages suffered by Mrs van Staden.
- By virtue of his employment, Mr Khumalo was provided with the ability to access the area as well as intimate knowledge of the layout and the premises. Mr Khumalo’s access and knowledge resulted in a risk of abuse thereof.
- Stallion Security contracted to provide security to the client (including the premises and individuals present thereon) and were accordingly contractually burdened with the responsibility to protect the constitutional right to personal safety of the individuals including Mr van Staden.
- Stallion Security was held liable for damages suffered by Mrs van Staden.

4. CONCLUSION:

- Due to the potentially serious financial risks that the conduct of an employee may cause to an employer, in the event of a finding of vicarious liability employers should conduct a risk assessment and try to determine the risk exposure.
- Where risks are identified employers should take proactive precautionary steps to minimise their risk exposure.

^[1] Currently unreported judgement under case number (526/2018) [2019] ZASCA 127 (27 September 2019)