IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No 5462/11

In the matter between:

FEDERICA ZA Plaintiff

and

ANDRÉ FREDERICK SMITH First Defendant
MATROOSBERG RESERVAAT CC Second Defendant

Court: GRIESEL J
Heard: 17, 19 & 24 February 2014
Delivered: 19 March 2014

JUDGMENT

GRIESEL J:

[1] This claim arises out of an incident on 27 June 2009 when the late Mr Pier Alberto Za ('the deceased') slipped on snow and fell

from a precipice to his death. The incident occurred near Matroosberg, the highest mountain peak in the Boland, situated on the farm *Erfdeel* some 35km north of Ceres. The first defendant, Mr André Frederik Smith, is the owner of the farm, on which the second defendant conducts the business of *Matroosberg Private Nature Reserve*.

[2] The plaintiff, Mrs Frederica Za, was married to the deceased during his lifetime. She is suing the defendants herein, both in her personal capacity and in her capacity as the natural guardian of her three minor children, L…. (born on 28 August 2001), M… (born on 30 January 2004) and M…… (born on 3 July 2007), for their loss of support suffered as a result of the death of their breadwinner. By agreement between the parties, the court has been asked at this stage only to determine the issue of liability, with the *quantum* of the claims standing over for later determination if necessary.

The facts

[3] The facts are uncomplicated and largely undisputed, no evidence having been adduced on behalf of the defendants. In conducting the business of a private nature reserve on the property, the second defendant (with the full knowledge and approval of the first defendant) invites and allows members of the public access for a fee to make use of the available recreational activities. In particular, there are a number of 4x4 routes on the property which can be accessed by members of the public in four-wheel drive vehicles. One of the main attractions of the property, particularly during winter snow, is an elevated mountain peak named Conical Peak in the immediate vicinity of Matroosberg. One of the 4x4 routes, taking in excess of one hour over

very rough terrain, ends in an open, flattish plateau at the foot of the peak where members of the public can park their four-wheel drive vehicles and alight into the snow to enjoy the spectacular 360° views. In the immediate vicinity of this 'parking area' there is a precipice falling down steeply into a ravine or gorge, known as Groothoekkloof, in excess of 150 metres deep. All of this appears from a collection of photographs handed in as exhibits during the trial,[1] some of which were taken on the day of the incident. In addition, the court has had the benefit of attending an inspection *in loco* on 6 September 2013 when there was a significant amount of snow, both at the scene and along the 4x4 route to the top.[2]

[4] It is common cause that on the day of the incident the deceased, accompanied by a friend, Mr Ben Moggee, drove from Cape Town to Matroosberg, each in their own four-wheel drive motor vehicle. Moggee had been to Matroosberg on at least four previous occasions. The deceased, who hailed from the Dolomites in north-eastern Italy, had expressed a keen interest in going up to Matroosberg in the snow and he and Moggee finally managed to make arrangements to go on the particular day in question.

[5] At the office on the farm they paid an entrance fee to the second defendant and signed an indemnity acknowledging that they were using the facilities offered at their own risk. Thereafter, they drove their vehicles along the designated 4x4 track up the mountain to the parking area referred to, where there were already 20 to 30 other people.[3] They

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[1] See Exhibits A1–139, B, C, F and G.
[2] A minute of the inspection, illustrated with photographs taken on that occasion, forms part of the pleadings bundle (Pleadings, p 33 *et seq*).
[3] Record, p 9/5. At a later stage in his evidence, Moggee estimated that there were '20, 30 vehicles' (Record, p 14/5).

parked their vehicles and alighted. The whole area was covered in 'white snow', as Moggee described it. They intended taking their folding chairs to a position close to the edge where Moggee had picnicked with his family on a previous occasion. Moggee took two folding chairs and two beers from his vehicle and set off in the direction of the spot chosen by him, where they wanted to 'soak up the view'[4] and drink a beer each before returning down the mountain for a braai at the camping area. There was no warning of any danger they might face in the direction in which they were walking. According to Moggee, they walked parallel to the edge of the precipice, although this version was challenged during cross-examination, when it was pointed out to him that in his statement to the police, he had stated that he had 'nader na die kloof se kant toe [geloop]'. Be that as it may, after walking a short distance, both Moggee and the deceased unexpectedly and almost simultaneously slipped on the snow, fell and started sliding towards the precipice. The surface was hard and slippery. Moggee was able to arrest his slide before the edge. Sadly, however, the deceased slid over the precipice and fell to his death.

[6] Moggee was unable to get up by himself due to the slippery surface of the snow. He called for help and was pulled from his position by others present in the area using ropes. He immediately wished to return to the edge to see if he could see the deceased. A harness was fashioned from climbing rope and he attempted to approach the edge of the precipice. The surface was too slippery to enable him to do this and he used a spade to dig footholds in the surface. He had to dig about three times into the surface to make an indentation useful as a foothold.

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[4] Record, p 11/15.

[7] Moggee confirmed that he had previously encountered snow on a number of occasions (including at Conical Peak). The deceased was familiar with snow conditions, having grown up in the Dolomites in Italy, as mentioned earlier. Moggee testified that neither he nor the deceased saw the situation on Conical Peak that day as dangerous in any way.

[8] A second witness called by the plaintiff, Mr Otto Rall, arrived at the parking area shortly before Moggee and the deceased. He had not previously been to Matroosberg. On the way up the mountain, the snow was soft, but where the tyre tracks of the vehicles were it was hard and slippery. He parked with the other vehicles at Conical Peak. When he and his wife got out of the vehicle they found that the area where they had stopped and where they walked was hard and slippery (‘hard en glibberig’). Because the snow was very slippery, he had to dig his heels into the snow to prevent him losing his balance and falling onto his backside. He and his wife ventured to near the edge of the precipice, although he was unable to see exactly where the edge was. He took a photograph of his wife standing near the edge,[5] but decided not to go any closer because he was apprehensive that it might be dangerous to do so.

[9] He was aware of Moggee and the deceased arriving and he noticed that they walked between his vehicle and the deceased’s vehicle towards the point where the incident occurred. He recalls the deceased exchanging a few words with his wife. He did not see precisely where they had walked from there as he had his back to them after they had

[5] Exh A15.

passed his vehicle. He did not know what caught his attention, but he turned to see Moggee lying on the snow near the precipice. He could see from his expression that something was seriously wrong. He then set about assisting in recovering Moggee from his dangerous position.

[10] The plaintiff called expert evidence relating to the qualities, characteristics and potential dangers of snow. Dr Rik de Decker is a very experienced mountaineer, skier, ski mountaineer and mountain rescue practitioner. He was able to speak authoritatively and with experience about snow, ice, Alpine conditions and the dangers they pose. He knows the Matroosberg very well and in fact participated in the recovery of the body of one Andrew Johns, who fell to his death in 2007 from a spot close to where the deceased met his fate.

[11] His evidence was that snow and ice environments change continually, from time to time and from place to place and during the cycle of the day. This is not an unusual phenomenon and is entirely foreseeable. However, the overall impression, save for the area of lensing identified by him, was of a snow-covered mountain area. The danger, so he testified, lay in the fact that the soft layer of snow concealed a hard frozen snow layer, which was extremely slippery, particularly where it occurred on a slope. Once one slipped and fell on this surface, one would start to slide and only stop once something arrested one's slide, or one fell over a precipice. The combination of these factors makes the site where the deceased slipped and fell, 'objectively dangerous'. An 'objective danger' is one that is present due to the prevailing conditions, but is unlikely to be recognisable as being dangerous by people with no experience of such conditions. Experienced

mountaineers take precautions when encountering these or other objective dangers.

[12] The plaintiff also led the evidence of a Mr Dion Tromp, an expert in height safety equipment and working at height and holds the highest South African qualification for working at height, training people to work around high and dangerous sites and site risk assessment for working at height, including the risk of falling. In addition he has substantial mountaineering and rescue experience, including mountaineering and skiing in snow and ice conditions.

[13] He has been responsible for the technical planning of a number of mountain rescue operations using helicopters and was involved in the recovery of the bodies of Andrew Johns and Elaine Abrahams, who fell to their deaths from Conical Peak into the kloof in 2007 and 2010 respectively.

[14] In his expert summary, filed in terms of Uniform rule 36(9)(b), he suggested that the site at Conical Peak where the deceased fell to his death could be made significantly safer to members of the public, at a relatively minimal cost, in a number of ways, eg (a) by prohibiting access to the 4x4 route that leads to the site and Matroosberg itself when dangerous conditions present themselves; (b) by putting up catching fences that will prevent people from falling over the edge, as is done at sites in Europe and elsewhere; (c) by prohibiting access, and specifically vehicular access, to the site itself by providing a turning point and parking area for vehicles before and below the point where the route to the site levels out; (d) by warning and educating people, by way

of signs and notices, when dangerous conditions present themselves so that people who do venture onto the site know that they are entering a very treacherous area.

[15] In his evidence, he did not recommend proposals (a) and (b) above, conceding that they were not practical. Instead, he concentrated on the other two proposals. In this regard, he suggested *inter alia*, that 'some type of barrier' in the form of a stone wall or wire fence be built with an opening closed by a simple gate or chain to serve as an entrance gate, through which visitors would have to pass before getting to the parking area and the area of danger near the edge of the precipice. At the entrance thus created by the stone wall or wire fence, he recommended that 'lots of warning signs' be placed that make it clear to visitors to keep away from the precipice and of the dangers of slipping and sliding on the surface. He suggested also that a line of poles connected by markers should be placed along the line beyond which visitors should not be allowed to go closer to the precipice and warning that treacherous conditions existed on the other side of the line.

[16] In addition, he suggested that an 'induction' or formal briefing should be held at the office area, prior to visitors commencing the ascent on the four-wheel-drive route to Conical Peak, so as to alert visitors to the dangers posed by the conditions to be encountered at the top.

The pleadings

[17] In her particulars of claim, the plaintiff pleaded that the first and/or second defendant and its employees 'owed the deceased a duty to

ensure that he was protected from or warned of any unusual risks arising from his partaking in the recreation activities offered by the second respondent, including the risk of injury or death caused by falling at or near the vicinity of Conical Peak'. Such duty, according to the plaintiff, arose from the following facts:

'13.1 The second defendant conducted business in the supply of recreation and related facilities to members of the public attending the private nature reserve, including the provision of four-wheel drive vehicle tracks to remote areas of the private nature reserve on the first defendant's property with the knowledge and consent of the first defendant.

13.2 The second defendant was obliged to and, in certain respects, did provide information regarding the dangers likely to be encountered by visitors to the private nature reserve.

13.3 The first and second defendants knew that in the immediate vicinity of the area where members of the public parked four-wheel drive motor vehicles in which they had travelled to Conical Peak, there was a sharp precipice falling to in excess of 150 metres, which was not readily discernible, particularly in inclement weather and when snow had fallen.

13.4 The first and second defendants were aware, or ought to have been aware, that the phenomenon of snow coating a layer of ice occurred in the area which members of the public parked their vehicles near Conical Peak and its immediate vicinity and that, as a result –

13.4.1 members of the public would perceive the area to be covered with snow; and

13.4.2 members of the public would be unaware that the snow covered a layer of slippery ice sloping towards the precipice referred to above.

13.5 The first and second defendants were aware that members of the public had previously slipped and fallen in the vicinity of the parking area and that, as a result thereof, on at least one occasion prior to 27 June 2009, a member of the public had fallen to his death in the vicinity of Conical Peak.

13.6 The first and/or second defendants were in a position to provide warning signs and/or barriers to warn against and/or prevent members of the public slipping on ice, or rhime ice and/or in any other manner injuring themselves in the vicinity of the parking area at Conical Peak.

[18] According to the plaintiff, the defendants (either individually or jointly) breached the duty owed by them to the deceased in that –

'14.1 they failed to erect any warning signs at or near Conical Peak, warning of the danger of slippery surfaces and the proximity of the unguarded precipice;

14.2 they failed to issue any warnings at the time of entrance to the reserve and/or at the time the deceased purchased a "permit" to enter the reserve or at any other time of the dangers referred to above;

14.3 they failed to erect any barrier, railing or any similar structure to prevent visitors to the reserve, including the deceased, approaching too close to the precipice for safety and/or slipping or falling towards and/or over the precipice;

14.4 they failed to take any steps to prevent the deceased falling from the precipice whatsoever in circumstances where they could and should have taken precautions referred to above.'

[19] In their plea, the defendants denied that they owed the plaintiff any duty as pleaded. Instead, they alleged 'that the risk of injury

of [sic] death caused by falling in the area in question is patent'. They also denied the allegations of negligence.

Legal principles

[20] When it comes to damage, one of the first principles of the law of delict is that as a general rule everyone has to bear the loss he or she suffers; in other words, the damage rests where it falls.[6] In order to shift the burden of damage to another, a plaintiff must establish that the other party is legally obliged to compensate him or her for the loss suffered. This requires proof of all three elements of a delictual claim founded on negligence, ie a legal duty in the circumstances to conform to the standard of the reasonable person; conduct that falls short of that standard; and loss consequent upon that conduct.[7]

[21] It is common cause that the second defendant provided some information regarding the dangers likely to be encountered by visitors to the private nature. It is in dispute whether it should have provided more information than it did. In a well-constructed argument counsel for the plaintiff guided the court past various milestones in our law of delict, such as *Ewels*, *Herschel v Mrupe*, *Kruger v Coetzee* and many others in order to show – (a) that there was a legal duty on the defendants to protect persons in the position of the deceased against the foreseeable possibility of harm; (b) that a reasonable person in the same position

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[6] *Telematrix (Pty) Limited v Advertising Standards Authority SA* 2006 (1) SA 461 (SCA) para 12, quoted with approval in *Roux v Hattingh* 2012 (6) SA 428 (SCA) para 25.

[7] Per Nugent JA in *First National Bank v Duvenhage* 2006 (5) SA 319 (SCA) para 1 and *Minister of Correctional Services v Lee* 2012 (3) SA 617 (SCA) para 33. Nienaber JA prefers four elements (*HL&H Timber Products (Pty) Limited v Sappi Manufacturing (Pty) Limited* 2001 (4) SA 814 (SCA) paras 13–14), whereas Neethling & Potgieter prefer five (J Neethling & JM Potgieter *Neethling-Potgieter-Visser – Law of Delict*, 6ed, p 4).

would have taken the steps suggested on behalf of the plaintiff; and (c) that the defendants failed to take such steps.

[22] As far as the element of wrongfulness is concerned, counsel for the plaintiff relied on the principle that an owner or occupier of premises is ordinarily liable to ensure that the property does not present undue hazards to persons who may enter upon and use the property. In other words, it is the owner's legal duty to ensure that the premises are safe for those who use them.[8] Counsel for the defendants, on the other hand, as foreshadowed in their plea,[9] laid great stress on the exception to this rule as formulated by Innes CJ in *Skinner v Johannesburg Turf Club*,[10] to the effect that an owner of premises is not under any duty to protect a visitor from any danger which is 'clear and apparent': 'Open danger, manifest and apparent, it would be unreasonable to expect the owner to guard against.'

[23] In this context, counsel for the defendants referred by way of analogy to the well-known examples of Table Mountain and the Drakensberg escarpment at Tugela Falls, pointing out that in both instances, the danger was so clear and apparent that one simply does not find signs warning people that they are on top of a mountain – notwithstanding the fact that death or injury to visitors is entirely foreseeable at both places.

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[8] See eg MacIntosh & Scoble *Negligence in Delict*, 5ed p 196–199; *Delict* 8(1) *LAWSA* 2ed para 65 n 52; *Swinburne v Newbee Investments (Pty) Ltd* 2010 (5) SA 296 (KZD) para 13.
[9] Quoted in para [19] above.
[10] 1907 TS 852 at 860, quoted with approval in *Cape Town Municipality v Butters* 1996 (1) SA 473 (C) at 480E-G.

[24] Having been to the scene of the incident (and to the other two sites mentioned in the previous paragraph), I am inclined to agree with this line of reasoning. As mentioned earlier, one approaches the parking area below Conical Peak by way of a 4x4 trail, which gradually ascends the mountain along its western slope. One does so over very rough terrain, requiring a great degree of skill and a very powerful and sturdy four-wheel drive vehicle to reach the top. During winter months, a large section of the route is covered in snow, thereby increasing the degree of trickiness. On arrival at the top one is presented with a dramatic view of the various mountain ranges and peaks towards the north and the east. It is immediately apparent, even to the first-time visitor, that there must be a very deep gorge between the parking area and the cliffs clearly visible on the other side of the kloof. The fact that the land slopes slightly towards the edge of the gorge is likewise clear and apparent, even though the actual edge itself is not visible from the parking area. As for the condition of the snow underfoot, the qualities of snow can vary from moment to moment and from place to place and can be extremely treacherous. This likewise becomes clear and apparent as soon as visitors disembark from their vehicles, as confirmed by Mr Rall under cross-examination.

[25] In short, the potential danger inherent in the snow-covered site near a deep precipice ought to be clear and apparent to a visitor upon arrival on the scene, which danger increases exponentially the closer one approaches to the concealed edge of the precipice.

[26] Having said that, I do not find it necessary to make any firm finding in this regard or to base the judgment on this issue. In the view

that I take of the matter, it may be assumed in favour of the plaintiff (without finding) that the defendants were under a legal duty to protect persons in the position of the deceased against the possibility of harm and that their failure to take adequate steps to prevent foreseeable harm was indeed unlawful and negligent. However, proof alone that reasonable precautions were not taken to avoid foreseeable harm, and that the harm occurred, does not establish that the former caused the latter. Before the defendants can be held liable, the court must be satisfied that there is indeed a causal link between the defendants' negligence and the death of the deceased. It is on this aspect, in my view, that the plaintiff's claim falters.

[27] In *FNB v Duvenhage, supra,* Nugent JA observed that it may in some cases be useful to commence the enquiry into liability with the third element of delictual liability, namely causation:

'At times it is worth giving thought to causation at the outset, . . . even if not on doctrinal grounds, because in practice claims often fail for want of a causal connection between the unlawful conduct and the loss.'[11]

[28] Adopting that approach in the present case, I proceed to consider whether the requisite causal connection between the alleged unlawful conduct and the loss has been established.

Causation

[29] As pointed out by Corbett CJ in *International Shipping Co (Pty) Ltd v Bentley*,[12] the enquiry as to factual causation (which is in

[11] *Supra,* n 7 para 22.
[12] 1990 (1) SA 680 (A) at 700E-H.

issue in this matter) is generally conducted by applying the so-called 'but-for test', which is designed to determine whether a postulated cause can be identified as a *causa sine qua non* of the loss in question. He proceeded:

'In order to apply this test one must make a hypothetical enquiry as to what probably would have happened but for the wrongful conduct of the defendant. This enquiry may involve the mental elimination of the wrongful conduct and the substitution of a hypothetical course of lawful conduct and the posing of the question as to whether upon such an hypothesis plaintiff's loss would have ensued or not. If it would in any event have ensued, then the wrongful conduct was not a cause of the loss; *aliter*, if it would not have ensued. If the wrongful act is shown in this way not to be a *causa sine qua non* of the loss suffered, then no legal liability can arise.'

[30] In *Siman & Co v Barclays National Bank*,[13] the same learned judge suggested that where the unlawful conduct of the defendant takes the form of a negligent omission, as in this case, it may be appropriate to apply a substitution process, as opposed to an elimination process in the case of a positive act. This process requires the court to postulate a hypothetical course of lawful conduct instead of the unlawful omission of the defendant and to pose the question as to whether in such case the event causing harm to the plaintiff would have occurred or not. However, as stressed by Corbett JA, this should not be regarded as an inflexible rule. Moreover, as Cameron *et* Brand JJA reminded us in *Minister of Finance & others v Gore NO*:[14]

[13] 1984 (2) 888 (A) at 915E-G.
[14] 2007 (1) SA 111 (SCA) para 33.

'Application of the "but for" test is not based on mathematics, pure science or philosophy. It is a matter of common sense, based on the practical way in which the ordinary person's mind works against the background of everyday-life experiences.'

[31] To the same effect is the judgment of Nugent JA in *Minister of Safety and Security v Van Duivenboden*,[15] where he held as follows:

'There are conceptual hurdles to be crossed when reasoning along those lines for once the conduct that actually occurred is mentally eliminated and replaced by hypothetical conduct questions will immediately arise as to the extent to which consequential events would have been influenced by the changed circumstances. Inherent in that form of reasoning is thus considerable scope for speculation which can only broaden as the distance between the wrongful conduct and its alleged effect increases. No doubt a stage will be reached at which the distance between cause and effect is so great that the connection will become altogether too tenuous but in my view that should not be permitted to be unduly exaggerated. A plaintiff is not required to establish the causal link with certainty but only to establish that the wrongful conduct was probably a cause of the loss, which calls for a sensible retrospective analysis of what would probably have occurred, based upon the evidence and what can be expected to occur in the ordinary course of human affairs rather than an exercise in metaphysics.'

[32] The law relating to causation in the context of delictual liability has recently been examined in some detail by the Constitutional Court in *Lee v Minister of Correctional Services*.[16] In her judgment, writing for the majority, Nkabinde J pointed out that there are cases in which the strict application of the 'but-for test' would result in an injustice, hence a requirement for flexibility.[17] However, unlike the minority, she did not find it necessary to suggest that our law relating to

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[15] 2002 (6) SA 431 (SCA) para 25.
[16] 2013 (2) SA 144 (CC).

causation should be developed or that the but-for test was inappropriate. On the contrary, she referred with approval to the AD and SCA judgments referred to above. As subsequently explained by Brand JA in *Minister van Polisie v Van der Vyver*:[18]

'Soos ek dit sien, doen Nkabinde R hoegenaamd nie 'n wysiging van hierdie hof se benadering tot die toepassing van die "but-for test" aan die hand nie. Inteendeel, sy bevestig dit juis. Soos blyk uit die passasies wat sy aanhaal, word met "flexible" slegs bedoel dat 'n eiser nie oorsaaklikheid met matematiese presiesheid hoef te bewys nie, maar bloot op oorwig van waarskynlikheid.'

[33] I agree with counsel for the defendants that, unlike in *Lee's* case, there is no need in this instance to relax the application of the traditional but-for test, which I proceed to apply to the facts of the present case.

Discussion

[34] In approaching the question of causation in the present scenario it is necessary, first of all, to consider what steps a reasonable person in the position of the defendants would have taken to avoid foreseeable harm to visitors to Matroosberg. As mentioned earlier, Mr Tromp made certain suggestions in his expert report as well as his evidence. He frankly conceded that certain of his theoretical proposals would not be practically feasible, such as closing vehicular access to the site during snow, or erecting rails and/or catch nets along the precipice. What he persisted with were proposals aimed at informing and warning visitors of the dangers to be encountered at Conical Peak.

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[17] Para 41.

[35] The question that must be posed for purposes of the present enquiry is whether taking any or all of those steps would, on a balance of probabilities, have averted the death of the deceased. This requires a 'common sense' approach, entailing 'a sensible retrospective analysis of what would probably have occurred' had the defendants taken the steps suggested by Mr Tromp. In answering this question the court cannot allow itself to be swayed by the sympathy that one naturally feels for the victim and his dependants in this case.

[36] Reverting to the evidence in this case, one is confronted with the striking example of Mr Moggee, who had previously visited the site on no less than four occasions, both in summer and winter, and who was accordingly well acquainted with the lay of the land. He had previously seen the kloof and had sat with his family in the snow on the edge of the precipice, admiring the view. He wanted to repeat that experience with his friend on the day in question and to experience the thrill associated therewith. Both he and the deceased were also acquainted with the varying qualities of snow in different circumstances. The 'induction' and warning signs proposed by Mr Tromp would have equipped first-time visitors with the exact same knowledge that Mr Moggee already had. The fact that, notwithstanding this knowledge, he slipped literally to within an inch of his life demonstrates persuasively that the steps proposed by Mr Tromp would not, on the probabilities, have prevented the death of the deceased. It is noteworthy in this context that Mr Moggee was not asked during his evidence what steps, if any, would have

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[18] (861/2011) [2013] ZASCA 39 (28 March 2013), para 33.

deterred him from his chosen course, namely to go to the edge of the precipice to 'soak up the view' of the kloof below.

[37] To sum up, on the evidence as a whole, I conclude that the plaintiff has not discharged the onus of proving that there is a causal connection between the alleged unlawful and negligent omission of the defendants and the death of the deceased. In the result, the plaintiff has failed to establish that the defendants are legally liable to her for the loss of support suffered as a result of the death of their breadwinner. Unfortunately for her, the damage must accordingly rest where it falls.

Costs

[38] In the light of the findings above, costs must follow the result. One aspect of costs requiring attention relates to the costs occasioned by the postponement of the trial, which had originally been set down for 21 October 2013. In my view it is the defendants, who sought an indulgence in order to counter the plaintiff's expert evidence, who ought to be liable for the wasted costs occasioned by the postponement.

Order

[39] For the reasons stated above, the plaintiff's claims are DISMISSED with costs, excluding the wasted costs occasioned by the postponement of the trial set down for 21 October 2013, for which the defendants shall jointly and severally be liable.

B M GRIESEL
Judge of the High Court