



CONSTITUTIONAL COURT OF SOUTH AFRICA

F v Minister of Safety and Security and Another (the Institute for Security Studies, the Institute for Accountability in Southern Africa Trust and the Trustees of the Women's Legal Centre as Amici Curiae)

Case No.: CCT 30/11

**Date of Hearing: 4 August 2011
Date of Judgment: 15 December 2011**

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On Thursday 15 December 2011 the Constitutional Court handed down a judgment which reversed a decision of the Supreme Court of Appeal. That Court had held that the Minister of Police was not vicariously liable for the damages suffered by Ms F.

Ms F had brought a claim for damages against the Minister arising from the assault and brutal rape committed by a policeman on her when she was 13. At the time of the attack, the policeman was on standby duty. The question arose whether the Minister was vicariously liable for the damages flowing from the delictual conduct of the policeman. The answer to this question depended on whether a sufficiently close link was established between the policeman's wrongful conduct and the business of the police service.

In a majority judgment written by Mogoeng J, the Constitutional Court held that the facts gave rise to a sufficiently close link between the police detective's employment and the assault and rape of Ms F. This link was founded on the basis that the police vehicle facilitated the commission of the rape; that Ms F placed her trust in him because he was a police official; and that the state has a constitutional obligation to protect the public against crime. Consequently, the Minister was held vicariously liable for the damages suffered by Ms F as a result of the rape and assault.

Froneman J, in a separate concurring judgment, agreed with the outcome reached by the majority. He found, however, that the Minister should be held directly, rather than vicariously, liable on the grounds that the actions of state officials are in effect the state's own actions, and that the normative considerations for determining liability, may be appropriately assessed under the wrongfulness inquiry in a direct delictual action.

In a minority judgment, Yacoob J with whom Jafta J agreed, applied the same test as the majority but concluded that there was not a sufficient link between the delict and the employment of the policeman concerned. The policeman's heinous, unlawful conduct was too far removed in space and time from his employment to render the use of the police car and the presence of the police dockets in the motor car sufficient to establish vicarious liability, even if due regard was had to the victim's vulnerability and age.