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NOT REPORTABLE

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE, GRAHAMSTOWN)**

Case no: 751/2014
Date heard: 29 July 2015
Date delivered: 06 August 2015

In the matter between

ALFA PORSCHIA RUITERS
(Acting herein in her personal capacity
and in her representative capacity as
Mother and natural guardian to her minor
Children: A..... C..... and
A..... R.....)

First Plaintiff

YOLANDA ALICE ESTERHUIS
(Acting herein in her representative
capacity as mother and natural guardian
to C..... K..... E.....)

Second Plaintiff

RENEL RENATIA KLEINHANS
(Acting herein in her representative
capacity as mother and natural guardian
to R..... R..... J.....)

Third Plaintiff

vs

THE MINISTER OF SAFETY AND SECURITY

Defendant

JUDGMENT

PICKERING J:

1. It is common cause that Gareth Donald Ruiters ("*the deceased*") was arrested and detained at King William's Town police station on Wednesday 12 June 2013 and that he died whilst in police custody on the evening of Thursday 13 June 2013 as a result of asthma ("*obstructive airway disease*".)

2. In consequence of his death the three plaintiffs instituted action in this Court claiming damages for loss of support. First plaintiff, Alfa Porschia Ruiters, claims damages both in her personal capacity and in her capacity as the mother and natural guardian of her two minor children, namely, A..... G..... C....., a boy born on 24 October 2006 and A..... G..... C..... a boy born on 23 September 2010.
3. Second plaintiff, Yolanda Alice Esterhuis, claims damages on behalf of C..... K..... E..... a girl born on 14 June 2001.
4. Third plaintiff, Renel Renatia Kleinhans, claims damages on behalf of R..... R..... J....., a boy born on 8 March 2003.
5. At the commencement of the trial the issues of the merits and quantum were separated by consent and the trial proceeded on the merits only.
6. All three plaintiffs alleged that the deceased was the father of their respective children. Defendant admitted that the deceased was the father of the minor child A..... G..... C..... but placed the paternity of the other minor children in issue. This necessitated the calling of all three plaintiffs.
7. It is not necessary to burden this judgment with a detailed exposition of their evidence in this regard. What emerges clearly therefrom is that the defendant was quite unable meaningfully to challenge the evidence of the three plaintiffs to the effect that the deceased had fathered their children. Indeed, at the conclusion of the trial, Ms. Redpath, who appeared for defendant, conceded as much.
8. I turn then to the merits of the claim.

9. In their particulars of claim the plaintiffs alleged that the deceased's death on 13 June 2013 was occasioned by the negligence of certain police officers in that they:

- "1. Failed to establish whether the deceased suffered from any chronic illnesses;*
- 2. Failed to ensure that the deceased had or was provided with appropriate medication;*
- 3. Failed to ensure that the deceased was afforded appropriate and timeous medical and/or hospital treatment;*
- 4. Failed to adequately supervise the deceased."*

10. These allegations were denied by the defendant who pleaded thereto, *inter alia*, as follows:

"Defendant pleads as follows:

- 1. After his arrest the deceased was informed, in Afrikaans, of his right to medical treatment at State expense and that he could exercise this right at any stage during his detention.*
- 2. The deceased informed members of the South African Police Services that he was asthmatic.*
- 3. The member of the South African Police Services who arrested the deceased enquired whether the deceased would prefer to be detained in a cell alone as opposed to being detained in a holding cell with other detainees.*
- 4. The deceased declined to be detained alone and stated that he would rather be detained in a holding cell with the other detainees.*
- 5. The deceased requested that his asthma medication be collected and brought to him in the holding cell in which he was being detained.*
- 6. The deceased was provided with his asthma medication as per his request.*

7. *The cell in which the deceased was being detained was visited every hour by members of the South African Police Services for the purpose of checking on the detainees.*
 8. *As soon as it became apparent to members of the South African Police Services that the deceased was in distress, an ambulance was called and, upon arrival of the ambulance, the deceased was taken to Grey Hospital."*
11. Mrs. Dorothy Ruiters, the mother of the deceased, testified that the deceased lived at her home. At approximately 5pm on Wednesday, 12 June 2013, she had sent the deceased to the shop. At some time thereafter she was informed by her daughter that the deceased had been arrested by a policeman, one Dennis Block. Later that same evening Dennis Block came to her house. According to Mrs. Ruiters "*hy het geskrik gelyk*". He told her that he had not known that deceased was asthmatic. He asked for the deceased's asthma pump or inhaler which she gave to him. She could not give him the deceased's pills because there were none at the house. She told Dennis Block that if deceased had an asthma attack the pump would not help and that in such case he must be taken to hospital for oxygen and a drip.
 12. She stated that at approximately 8am the next day she received a telephone call from one Deon Jacobs who was employed at the police station in King William's Town. He said that deceased needed another pump and pills. She telephoned her husband at work and he undertook to take the pump and pills to deceased.
 13. Later that day Dennis Block came to her house and told her that the police had "*got the other man*", this apparently being a reference to deceased's alleged accomplice in the case of housebreaking in respect of which deceased had been arrested. Mrs. Ruiters reiterated to Block that deceased should go to hospital if he was suffering from asthma but Block did not respond to this, saying only that he was on his way with the other man.

14. At some time that day, which she estimated as being in the vicinity of 5 p.m., she received another telephone call from Deon Jacobs who told her that deceased's condition had deteriorated. She contacted her husband who rushed to the police station with a pump and pills.
15. She stated that deceased's asthma attacks became worse in cold weather and winter. In the year before his death he had been taken to hospital on approximately three occasions. He also on occasion had to go to the doctor. Stress or shock would precipitate an asthma attack.
16. She denied that deceased smoked or took drugs. I should mention that this denial was reiterated by all three of the plaintiffs who testified that deceased had never smoked or taken drugs.
17. The deceased's father, Mr. Charles Ruiters, testified that on 12 June 2013 he was at home in bed when his wife informed him that Dennis Block had come to fetch deceased's asthma pump. The following day, 13 June, he was at work when his wife phoned and asked him to take another pump and pills to the deceased. He bought two more pumps and proceeded with them to the police station. He met deceased who was in the company of a policeman whom it is now common cause was one Franklin Block. He gave deceased one of the pumps and kept the other pump. Deceased told him he was feeling better but that his chest was tight. The deceased also asked for food and Mr. Ruiters brought him some Kentucky fried chicken.
18. Mr. Ruiters told Franklin Block that if the deceased was in trouble he must get him to a doctor. Franklin Block agreed to do so.
19. Mr. Ruiters then returned to work. In the afternoon he was told by his wife that Deon Jacobs had telephoned and that it was not going well with the deceased. He rushed to the police station with the other pump. His

evidence as to the time he arrived there was somewhat confused but it would appear that it was at approximately 5pm. There were two plain clothes policemen on duty at the police station, one in front of the counter and one behind. He asked them where deceased was and they pointed to the cells. They told him that he was not allowed to enter the cells and that only Dennis Block could give him the requisite permission to do so. They also refused to take the pump to deceased.

20. Mr. Ruiters tried desperately to persuade them to let him into the cells but without success. According to him at least an hour passed and he was at his wits end as to what to do. He left the building and was in the parking area when he met another policeman who gave him permission to go to the cells. He went to deceased's cell and, on entering, found deceased lying on the floor. His body was cold and he appeared to be dead. He then screamed and rushed outside. There were policemen outside but none of them said anything to him. An ambulance eventually arrived approximately half an hour later.
21. According to Occurrence Book entry no 664 at 18h00 (E371) the deceased was "*taken by ambulance suffering from asthmatic illness to Grey Hospital to escort by Cpt Gqamane*". (sic)
22. Deon Jacobs testified that deceased was his best friend. He confirmed that he worked at the police station as a groundsman.
23. On 13 June he visited the deceased in the cells shortly before 8am. Deceased told him that he was not feeling well because of the asthma and asked him to telephone his mother in order to obtain another asthma pump. Jacobs did telephone Mrs. Ruiters but in the meantime he borrowed a used pump from a friend who worked at the police station and gave it to the deceased.
24. He also saw the deceased at approximately midday when he was in the company of Franklin Block. He sat and spoke to the deceased for some

time. It was put to him that according to Franklin Block he and the deceased had gone outside in order to have a smoke. He denied this, stating that neither he nor the deceased smoked.

25. At approximately 16h20 the deceased telephoned him, saying that he wanted his pills and another pump. He accordingly proceeded to deceased's home but on the way received a telephone call from one Norman Izally, whom it is common cause was in the cell with deceased. Izally told him to hurry up because the deceased was dying. He then telephoned Mrs. Ruiters and told her of the urgency of the matter.
26. Norman Izally testified that he was arrested on 13 June 2013 and placed in a cell at the King William's Town police station with the deceased at approximately 16h00. The deceased appeared to be ill and after he had been in the cell for some twenty minutes deceased gave him his mother's telephone number. According to Izally he banged the steel door with his steel mug and Dennis Block came to the cells. Izally told Block to telephone deceased's mother to bring an asthma pump but Block said that it was not his business.
27. At some stage the deceased collapsed and lay on the floor of the cell. Izally placed his jacket underneath him. He called again and Block again arrived. Even though he could see the deceased lying on the floor he again stated that it was none of his business. Approximately an hour later an ambulance arrived.
28. Mr. McConnachie, who appeared on behalf of the plaintiffs, sought to introduce into evidence in terms of s 3(c) of the Law of Evidence Amendment Act, 45 of 1988 an affidavit attested to by one Andile Dlula, the driver of the ambulance which took deceased to hospital. It is common cause that Dlula has since died. In this affidavit he stated, inter alia, as follows:

“On arrival at the police station a male coloured who was lying inside the police cells was pointed out to me. I observed him and I noticed that there was no pulse and he was not breathing. He was already dead. His family was angry at the police station. In order to deal with the situation we pretended as if he was still alive. We put the oxygen on him but it was off and I conveyed him to Grey hospital. I informed the doctor who confirmed that he was dead.”

29. After hearing argument from both Mr. McConnachie and Ms. Redpath I provisionally admitted the affidavit.
30. Dennis Block testified on behalf of defendant. During June 2013 he was a Warrant Officer in the employ of the South African Police stationed at King William’s Town Detective Branch. He is presently employed as a private investigator.
31. He stated that he had been acquainted with deceased and his family for several years. On 12 June 2013 he arrested deceased on a charge of housebreaking and detained him at King William’s Town police station.
32. Deceased then told him that he was asthmatic and that his chest was “closing”. He asked Block to fetch his asthma pump from his home. According to Block he drove at a speed of between 120 and 140 km per hour to deceased’s home in Breitbach in order to fetch the pump from Mrs. Ruiters and then rushed back to the police station with it. He did so, so he said, because he was concerned that deceased’s asthma attack could have “consequences” but despite this he denied under cross-examination that he knew that asthma could be life-threatening.
33. He stated that when he spoke to Mrs. Ruiters he told her that if deceased’s condition worsened he would make the necessary arrangements with the police officers in the cell block to have him admitted to hospital. Under cross-examination he denied that Mrs. Ruiters had pleaded with him to take deceased to hospital if necessary. Describing her evidence as a lie

he stated that she had said nothing. This evidence, however, contradicted his evidence in chief where he had stated that in response to his assurance about the hospital Mrs. Ruiters had said *“please, if there is a problem, make sure he goes to hospital.”*

34. He stated that he had not told the cell block commander about deceased's asthma and had not made any official entry about it because he had told the officers on duty on 12 June that he was going to fetch the asthma pump and they were accordingly aware thereof. He confirmed, however, that when a suspect was booked in to the cells with a known medical condition a report had to be made to the cell commander or his assistant. He stated further that a sufferer from asthma was allowed to take an inhaler into the cell but not any other medication which had to be left with the cell commander.
35. He stated that when booking the deceased into the cells on 12 June he had asked him whether he wished to be detained in a single cell or with other prisoners. Deceased opted for the latter. Block then left the police station at approximately 9pm at which stage deceased was in good health.
36. He next saw the deceased at approximately 15h15 on Thursday 13 June 2013. During the course of an interview with him deceased indicated a desire to make a confession. He also asked whether Block could fetch another asthma pump for him. Block told him that it would be difficult for him to do so. The complainant in the deceased's housebreaking case, one Clifford, who was also deceased's cousin, was, however, present at the police station and Block requested him to fetch the pump. Clifford agreed to do so but Block was unaware whether or not he did. It is common cause that he did not. According to Block deceased was fine when he requested the pump. When Block left the police station he asked deceased whether he was all right and deceased replied that he was fine.
37. He stated that shortly after 5pm he was in Zwelitsha when he received a telephone call from a King William's Town attorney, one Ashley Meyer,

who was acting on behalf of deceased's family. Meyer told him that deceased was ill and asked Block to release him. Block replied that that would be difficult because of the serious charge and the fact that deceased intended to make a confession. Meyer in turn stated that deceased's condition was serious and that Block did not want the same thing to happen as had happened to an Indian man who had died in custody.

38. Block then said he would meet Meyer at the police station so that they could speak to the Station Commander. He rushed back to the police station, arriving there approximately ten minutes later. On arrival at approximately 17h20 to 17h30 he saw members of the deceased's family as well as an ambulance already present. The family members were angry and aggressive.
39. With regard to Dlula's affidavit Block denied that this could be true. He stated that if a detainee died in custody his body could not be removed until such time as all the necessary forensic investigations had been completed. If in fact the contents of Dlula's affidavit were the truth then he had acted in an improper manner. Meyer was not present.
40. Block denied Izally's evidence to the effect that he had spoken to him at approximately 16h30. He confirmed that he had not been present at the police station from 15h15 until his return from Zwelitsha. He described Izally as being nothing more than a common criminal with a grudge against him, whose evidence was a pack of lies.
41. Sergeant Bili testified that he was on duty from 6am on 13 June 2013 at the King William's Town police cells. He was alone but, when making cell visits, he was accompanied by Lt. Jonas who was working in the charge office. He confirmed that deceased was detained in the cells and confirmed the entries in the Occurrence Book contained in Exhibit E to the effect that from 06h05 to 07h15 no prisoners, including deceased, had had any complaints.

42. He confirmed that at 07h55 he had visited the cells with Col. Hobana, the Station Commander. The relevant entry in the occurrence book, number 636, at E29 reads as follows:

“12 awaiting trial prisoners in lawful custody with no complaints except suspect Gert Ruiters who is asthmatic and must be taken to the doctor for treatment.”

43. Bili then went to inform Lt. Jonas that deceased must be taken to a doctor because he needed an inhaler. Jonas said that no motor vehicles were available at that time to transport deceased and that when one became available he would tell Bili. Bili stated that before any motor vehicle became available he made two further cell visits until, at 10h20 (OB entry 641, E30) deceased was booked out by Warrant Officer Thandazo for further investigation. Bili told Thandazo that deceased was waiting to be taken to the doctor. Thandazo said he would take him. Thandazo brought deceased back at approximately 2pm and told Bili that he had not taken deceased to the doctor because the deceased had obtained an inhaler from someone else and no longer wished to go to the doctor. Deceased confirmed to Bili that he did not want to visit the doctor.
44. Bili stated that thereafter a number of visits were made to the cells and that deceased had no complaints. At approximately 17h30, however, he heard prisoners banging on the cell door and went to investigate. He observed that the deceased was having trouble breathing. Bili then rushed to call Jonas and advised him to call an ambulance. According to Bili, Jonas panicked and made numerous calls for the ambulance without success. Eventually he went to fetch the ambulance himself. It arrived at about 17h30.
45. Bili stated that deceased's father arrived at around 17h30 before the arrival of the ambulance. He confirmed that he had refused Mr. Ruiters permission to visit the cells because deceased was not ill and it was not

visiting time which was between 13h00 and 14h00. He denied that Mr. Ruiters had wanted to give deceased an inhaler. According to him Mr. Ruiters said nothing and accepted calmly the refusal to allow him in. He stated that he could not make any exception for him.

46. He stated that Mr. Ruiters wanted to enter the cells again upon the arrival of the ambulance and tried to force his way in with the ambulance personnel. He accordingly chased him away because again, he reiterated, it was not visiting time and there was nothing that Mr. Ruiters could have done.
47. He was confronted under cross-examination with the evidence of Izally and Jacobs to the effect that at approximately 16h15 the deceased was becoming desperate. He replied that it was impossible for deceased and Izally to have made their respective telephone calls because no cell phones were allowed in the cell. Their evidence in this regard was therefore, so he said, a lie.
48. Furthermore, so he said, the deceased was in any event not ill at that time and would therefore not have made the alleged call to Jacobs.
49. He again denied that Mr. Ruiters had tried to hand over a pump and stated that Mr. Ruiters was lying in this regard. He reiterated that Mr. Ruiters had been polite and calm and had merely wanted to see his son. When Bili told him he could not do so he had walked away without being upset. When it was put to him that Mr. Ruiters had proceeded to the police station in response to a call that his son was dying he stated again that Mr. Ruiters was lying. He reiterated that at the time Mr. Ruiters arrived wanting to see deceased the deceased was not ill.
50. Lt. Jonas confirmed that he was on duty at the charge office at 05h45 on 13 June 2013. He confirmed that Bili had come to him after 8am on 13 June and informed him that deceased should be taken to hospital in order to obtain an asthma pump. He went to look at the deceased and saw that

his condition was not serious. The deceased said, however, that he wanted a pump and could get one at Grey Hospital.

51. He confirmed that he made hourly cell visits with Bili and that no complaints had been received. The first that he heard that deceased's condition was serious was at 17h30 when Bili came and made a report concerning the deceased's ill health. Jonas checked on the deceased and immediately telephoned the ambulance but could not get through. He then proceeded himself to the ambulance department at approximately 17h35. He told them to rush back to the cells and they followed him. He stated that deceased was still breathing when the ambulance driver put an oxygen mask on him and denied that deceased was dead at that time. He stated that if deceased had been dead then he would not have arranged an escort for him which he did as is apparent from the occurrence book entry 664 (E37).
52. He stated that he was unaware of the fact that deceased had needed three inhalers in less than twenty four hours. Had he received a report to that effect he would have foreseen that there was a problem and would in his words "*have been forced to take him to Grey Hospital*".
53. Franklin Block, the brother of Dennis Block, testified that at the relevant time he had been a Warrant Officer in the employ of the police but that he was presently self employed as a private investigator. He stated that on 13 June at approximately 10h30 deceased was brought to his office by Warrant Officer Thandazo for further investigations. The deceased appeared to be healthy and he could not see that he was ill in any way. He stated that he would have expected Thandazo to have told him that the deceased required an inhaler. If he had done so he would not have continued to interview the deceased but would have taken him back to the cells and told the officials there to take him to hospital.
54. He confirmed that Mr. Ruiters had arrived at the time that he was consulting with the deceased. Although he did not see Mr. Ruiters hand

over any inhaler he did not dispute that he had done so. He stated that Deon Jacobs was also present at his office and that he and the deceased had gone outside on occasion to smoke.

55. The relevant principles applicable to a matter such as this appear from the following authorities.
56. In Minister van Veiligheid en Sekuriteit v Geldenhuys 2004 (1) SA 515 (SCA) the following was said at page 529 A – C, paragraph 25:

“[25] In bepaalde omstandighede kan die vraag na die bestaan van 'n regsplig om positief op te tree, erg problematies wees. In 'n saak soos die onderhawige lê die antwoord op hierdie vraag egter voor die hand. Dit is so omdat hierdie Hof reeds meer as 25 jaar gelede - in Minister of Police v Skosana 1977 (1) SA 31 (A) op 40A - C - in 'n saak, soortgelyk aan die onderhawige, beslis het dat die polisie, net soos die gevangenisdiens, regtens verplig is om toe te sien dat aangehoudenes in hulle sorg sodanige mediese behandeling ontvang as wat redelikerwys nodig mag wees. Hierdie uitgangspunt is slegs maar 'n variasie op die tema wat blyk uit die volgende antwoord wat Innes AR reeds in 1912 gegee het op 'n kontensie deur die gevangenisowerheid dat 'n aangehoudene slegs sodanige regte het as wat by regulasie aan hom verleen word:

'(T)he directly opposite view is surely the correct one. They were entitled to all their personal rights and personal dignity not temporarily taken away by law, or necessarily inconsistent with the circumstances in which they had been placed.’”

57. At page 531 J – 532 C, paragraph 33 the learned Judge of Appeal continued as follows:

“Die mees algemeen aanvaarde maatstaf vir die bepaling van feitelike oorsaaklikheid is die sine qua non toets. Die werking van hierdie toets blyk byvoorbeeld uit Minister of Police v Skosana (supra) waar die

vraag was of die dood van die eiseres se eggenoot oorsaaklik verbind kon word met die polisie se versuim om hom op 'n vroeër stadium van mediese hulp te voorsien. Hieroor laat Corbett AR hom soos volg uit (op 35D - F):

*'Now, the prime cause of the death of the deceased was the occurrence (whatever it may have been) in which he sustained the injury to his bowel which in turn resulted in peritonitis. The negligent delay in furnishing the deceased with medical aid and treatment, for which [the two policemen] were responsible, can only be regarded as having caused or materially contributed to his death if the deceased would have survived but for the delay. This is the crucial question and it necessarily involves a hypothetical inquiry into what would have happened had the delay not occurred. Generally, the *onus* is on the respondent to establish this proposition on a balance of probabilities.'*"

58. In Minister of Safety and Security v Craig [2010] 1 All SA 126 (SCA) Navsa JA stated as follows at 137 a – d, paragraphs 60 and 61:

"[60] In Mtati v Minister of Justice 1958 (1) SA 221 (AD) [also reported at [1958] 1 All SA 473 (A) – Ed], this Court (at 224) emphasised the duty of officials who have prisoners in their charge to see to their well-being. Courts should obviously be vigilant to ensure that officials who have in their charge those whose freedom of movement has been restricted, comply with the obligation to ensure their well-being.

[61] In Minister of Police v Skosana 1977 (1) SA 31 (A), the policemen in question were negligent in not ensuring treatment expeditiously for an arrested person who had been drunk and had started showing obvious signs of pain after he had sobered up, and who had complained to the police about his condition. There was a further delay after an instruction by a medical doctor that he be taken to hospital immediately. The doctor concerned had written a note to the doctor in

charge of the hospital and had handed it to a policeman. Police standing orders place an obligation on members of the police to whom it appears that detainees are in distress and are therefore injured or ill to obtain the necessary medical assistance for them. The police in Skosana were found to be negligent and the Minister was consequently held liable.”

59. Mr. and Mrs. Ruiters both favourably impressed me as essentially honest witnesses. Mr. Ruiters in particular was obviously emotionally affected by the death of his son and understandably traumatised by the events at the police station. In my view this contributed to whatever confusion there may have been in his evidence in relation to those events. Be that as it may, the only real criticism which could be advanced against their evidence was their vagueness as to the times that the various events unfolded. Given the agony of the moment they can, in my view, hardly be criticised in this regard.
60. Deon Jacobs was also a good witness in my view and I am satisfied that he too was entirely truthful.
61. Norman Izally was an extremely poor witness. He described himself as being “*n eerlike die!*”. I have no doubt that the only truthful part of this oxymoronic statement is his description of himself as a “*die!*” and that he was being overly generous in his description of himself as being “*eerlik*”. I will have no regard to his evidence except where it receives corroboration from other credible evidence. His evidence was clearly calculated to implicate Dennis Block in the failure to have afforded deceased the requisite medical treatment. For his part, Block impressed me as an honest, albeit somewhat aggressive witness.
62. I accept his evidence that he was not at the police station at the times that Izally alleged he was. Block knew that deceased’s asthmatic condition was serious. He had, after all, rushed to Breidbach to fetch an inhaler

from Mrs. Ruiters. He was aware that should deceased's condition worsen he would require hospitalisation. In this regard it is not necessary to resolve the dispute between his evidence and that of Mrs. Ruiters as to who raised the issue of hospitalisation, although I am of the view that the probabilities favour Mrs. Ruiters' version because, as deceased's mother, it is quite improbable that she would have said nothing about it. Whatever the true position may be, the fact is that on Block's own version he knew that hospitalisation might be required. He had also asked Clifford to get deceased an inhaler. In these circumstances it is quite improbable that he would have told Izally that deceased's deteriorating condition was not his problem. Furthermore, it is clear that, contrary to Izally's evidence, at the time he was telephoned by Meyer he was not at the police station but was at Zwelitsha.

63. I should mention that his estimation of the time that certain events occurred was also unreliable. He said that he arrived back at the police station from Zwelitsha at approximately 17h20 and found the deceased's family and the ambulance already present there. What is clear from the evidence of Bili, Jonas and the relevant entry in the Occurrence Book is that the ambulance was not present at the police station before at least 17h50.
64. Sergeant Bili was, in my view, a most unimpressive and evasive witness. He was quick to categorise plaintiff's witnesses as lying in certain respect without even waiting for the context in which their statements had been made to be explained to him.
65. I have no doubt whatsoever that Bili himself was lying concerning the visit by Mr. Ruiters to the cells with the inhaler. According to Bili he refused Mr. Ruiters entry because deceased was "*fine*" and it was in any event not visiting time. This cynical piece of evidence quite simply cannot be true. The underlying reasons for Mr. Ruiter's visit are set out clearly in the evidence tendered on plaintiff's behalf. That visit was based in particular on the desperate and urgent telephone calls from deceased and Izally to

Jacobs. It was because of these telephone calls that Mr. Ruiters rushed to the police station with the inhaler. In these circumstances, Bili's evidence that Mr. Ruiters did not have an inhaler with him, merely wanted to see his son, and calmly accepted Bili's refusal to allow him into the cells, is not only utterly improbable but is patently false and I reject it.

66. I accept Mr. Ruiter's evidence that Bili not only refused him entry to the cells but also refused to accept the inhaler. Bili's actions were, in all probability, in consequence of a slavish adherence to standing orders concerning visiting hours and a total lack of appreciation of the dangerous consequences of an asthmatic attack. He has clearly tailored his evidence in order to attempt to escape responsibility to his actions.
67. This slavish adherence to standing orders is also reflected in the evidence of Jonas as to why he could not transport deceased to hospital in a police van once he was unable to raise the ambulance. He said he was not allowed by the standing orders to transport a prisoner to hospital in a police van. The standing orders, however, make it quite clear that he had a discretion in this regard in an emergency, as this clearly was. It is disturbing, in my view, that a police lieutenant could show so little appreciation of the discretion vested in him in cases of emergency.
68. I should mention that it is not necessary to resolve the dispute between Mr Ruiters and Block as to whether deceased was alive or not at the time that the ambulance driver, Dlula, saw him in the cells. What is clear is that if he was not already dead he was very close to death and the dispute about this issue is therefore irrelevant.
69. This is a tragic case. The system failed the deceased at every step of the way from the time of his detention until his death.
70. On Dennis Block's own evidence he was aware of the potentially fatal consequences of an asthma attack, hence his headlong rush to Breidbach to fetch the inhaler. Despite this knowledge, he failed to make any entry

into the Occurrence Book or elsewhere recording the deceased's condition and failed officially to advise the cell commander thereof, contenting himself with the fact that he had told the officials then on duty that he was going to fetch the inhaler. In consequence, the prison cell officers who took over duty at 06h00 on Thursday 13 June were in the circumstances quite unaware that deceased not only was asthmatic but that he had required an inhaler the previous night.

71. Deceased had obviously required another inhaler the next morning but Colonel Hobana's order, issued at 07h55, was not acted upon because no van was available to transport the deceased to hospital. I would be failing in my duty if I did not express my disquiet at this shocking state of affairs where police officials are expected to perform their duties without being afforded the requisite means of transport to do so. Be that as it may, the police officials should not have sat back supinely and waited for a police van to become available. Proactive steps should have been taken by them to somehow transport deceased to hospital immediately upon the order to do so being issued.
72. Two and a half hours after Colonel Hobana had issued his order, deceased had still not been taken to hospital but instead had to rely on the good services of his friend, Deon Jacobs, who obtained for him a partially used inhaler to see him through the morning. He was then booked out for investigation by Warrant Officer Thandazo. Despite having undertaken to take deceased to hospital, Thandazo did not do so immediately but instead delivered deceased to Warrant Officer Franklin Block. Franklin Block himself stated that had he known what the situation was he would have stopped his interview with the deceased and sent him back to the cells with an instruction that he be taken to hospital.
73. Once again, however, in the face of the complete inertia of the police, Deon Jacobs came to the rescue and telephoned Mrs. Ruiters, telling her that deceased needed another pump and pills. Mr. Ruiters was

accordingly required to leave work and to take the pump to the deceased whilst he was with Franklin Block.

74. I should mention in this regard that I do not believe the evidence tendered on behalf of the police that the deceased was smoking. Deon Jacobs denied that either he or the deceased smoked and this denial was reiterated by all three plaintiffs as well as by Mr. and Mrs. Ruiters. In circumstances where deceased was quite clearly suffering the effects of his asthma it is also highly improbable that he would have smoked.
75. The pump which Mr. Ruiters had brought to deceased obviously did not have the desired effect because at 15h15 deceased asked Dennis Block for another inhaler. Here again the police failed in their general duty of care towards deceased. All that Block did was to ask Clifford, the complainant in deceased's case, to fetch another inhaler. He did not take the trouble to follow this up and to ensure that deceased did get the inhaler. In view of the fact that Clifford was the complainant in deceased's housebreaking case it is perhaps hardly surprising that he did not get deceased the inhaler.
76. It is clear that, in the absence of that inhaler, deceased's condition deteriorated rapidly as is evidenced by his urgent telephone call to Deon Jacobs. According to Bili the evidence of Jacobs in this regard was a lie because Izally could not have had a cell phone in his possession. That Jacobs had received the telephone call from deceased and from Izally was never disputed under cross-examination. As I have said, Jacobs was a good and honest witness and I accept his evidence that he did receive the telephone calls as stated by him. I reject Bili's evidence to the contrary. Once again, in my view, Bili was attempting to cover up for the defendant.
77. As set out above it is clear that up to the time of the telephone calls from deceased to Jacobs there had been a failure in the general duty of care by the police towards the deceased.

78. Thereafter Bili was responsible for the most egregious failure in this regard by his refusal to accept the inhaler from Mr. Ruiters at a time when deceased must have been in dire straits.
79. Ms. Redpath stressed the fact that plaintiff had adduced no medical evidence and submitted accordingly that there was no evidence to establish that, but for the conduct of the police, the deceased would not have died. I disagree. In my view, plaintiff has discharged the onus of establishing on a balance of probabilities that the members of the police force who dealt with plaintiff from the time of his detention were negligent in failing to ensure that at all times he was in possession of the requisite medical treatment. The only inference that can be drawn from the evidence is that had they not been negligent in that regard the deceased would not have died.
80. According the following order will issue:
1. The defendant is declared to be liable to the three plaintiffs for whatever damages they may in due course prove they have suffered in consequence of the death of the deceased on 13 June 2013.
 2. The defendant is ordered to pay the costs of suit.

J.D. PICKERING
JUDGE OF THE HIGH COURT

Appearing on behalf of Plaintiffs: Adv. J. McConnachie
Instructed by: Smith Tabata Inc., Ms. Thesen

Appearing on behalf of Defendant: Adv. Redpath
Instructed by: Whitesides Attorneys