



**THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA**

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME
COURT OF APPEAL**

From: The Registrar, Supreme Court of Appeal
Date: 22 May 2017
Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

MTO FORESTRY (PTY) LIMITED

and

A H SWART NO

The appellant is a company which conducts a forestry business in the district of Humansdorp on what is known as the Witelsbos plantation. Its immediate neighbour is an entity commonly known as the Moravian Church in South Africa, who was represented in the proceedings by its superintendent, A H Swart. On 27 October 2005, a fire broke out on respondent's property and spread from there to Witelsbos where it burned for days. Pursuant to this, the appellant sued the respondent for damages, alleging the fire had spread onto its property due to negligence on the part of the respondent. The matter came

to trial in the Western Cape Division of the High Court, Cape Town which dismissed the appellant's claim, with costs. The appellant proceeded to appeal to the Supreme Court of Appeal against this order.

In delivering its judgment, the Supreme Court of Appeal analysed the requirements of delictual liability and concluded, in the light of various of authorities, that the time has now come to recognize that the foreseeability of harm is an issue which, whilst relevant to the delictual elements of negligence and causation, was not relevant in the determination of the issue of wrongfulness. It also referred to the presumption contained in s 34 of the National Veld and Forest Fire Act 101 of 1998 which had been the subject of the action in *Mondi South Africa Ltd v Martens & another* 2012 (2) SA 465 (KZP), and was followed by the court a quo. It found the appellant's criticism of the reasoning in that case to be compelling but that, as the presumption was really an evidential aid and the facts in the present matter were known, the case could be decided on the known facts making it unnecessary to reach a decision on whether the *Mondi* judgment had been correctly decided.

The court analysed the evidence that had been led in regard to the fire and the respondent's fire-fighting capabilities and concluded there had been no negligence on the part of the respondent, which had taken reasonable steps to avoid the fire on its property spreading to that of its neighbours. The appeal was therefore dismissed with costs.