



**THE HIGH COURT OF SOUTH AFRICA**  
**FREE STATE PROVINCIAL DIVISION**

Reportable: yes/no  
Circulate to other Judges: yes/no  
Circulate to Magistrates: yes/no

Case Number: 5899/2017

In the matter between:

**ALBERTUS JOHANNES PETRUS DREYER**

**Plaintiff**

and

**METSIMAHOLO LOCAL MUNICIPALITY**

**Defendant**

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**HEARD ON:** 15 MARCH 2023

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**CORAM:** BERRY AJ

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**DELIVERED ON:** 07 FEBRUARY 2024

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**INTRODUCTION**

[1] The Plaintiff claims damages from the Defendant after he drove over a trench that was excavated across a public road on 27 December 2016.

[2] The Defendant raised two special pleas of non-joinder and misjoinder.

- [3] The Defendant approved the upgrade of a power substation for the development of three erven by a developer.
- [4] The Defendant gave approval that the Plaintiff may perform the upgrade of the substation himself.
- [5] Upgrading the substation entailed the laying of a power cable crossing Langeberg Street, Vaalpark, Sasolburg.
- [6] The developer appointed a sub-contractor to trench the tar road.
- [7] Trenching entailed cutting the tar surface and excavating the ground to the required depth. After laying the cable the trench was be backfilled and the tar surface had to be re-instated.

[8] The pleadings allege that the trench had been backfilled and the gravel was compacted on 27 December 2016, but the tar surface has not been reinstated at the time of the incident.

[9] It rained heavily on 27 December 2016 and the top of the gravel filling washed away, causing a cavity of 150 mm deep and 500 mm wide, across the road.

[10] The cavity was filled with water and the Plaintiff lost control of his vehicle when he drove over the cavity, which resulted in an accident.

[11] The Plaintiff suffered injuries and claim damages as a result of the Defendant's alleged negligence.

[12] The Defendant is statutorily mandated to exercise legislative and executive control authority to the municipal area under its control.

[13] The merits of the claim do not serve before court and only the two special pleas raised by the Defendant is dealt with.

**SPECIAL PLEAS**

[14] The Defendant raised two special pleas in that there is a non-joinder as the Plaintiff should have joined the developer of the project and the independent contractor who trenched the road.

[15] The second special plea of misjoinder is that the Defendant should not pursue its claim against Defendant, but against the developer and the sub-contractor.

[16] Both special pleas boil down to an argument that the Plaintiff is pursuing its claim against a wrong Defendant.

**EVIDENCE OF THE DEFENDANT**

[17] The Defendant called two witnesses.

[18] Mr. ME Molawa is a Senior Engineering Assistant in the Electricity Department.

[19] He approved the upgrade of the sub-station and testified that the road had to be crossed to install the reticulation to the new development.

[20] The developer elected to perform the construction work himself and was responsible to re-instate the road.

[21] The construction work was supervised by superintendent, Mr. Klasmoller.

[22] Mr. Klasmoller was responsible to ensure the construction work meet the Defendant's quality standards.

[23] Mr. Molawa testified that there was no way-leave issued.

[24] He testified that a way-leave is a more formal approval process than just the written approval granted by the Defendant's letter of approval addressed to the developer.

[25] He testified that the road belongs to the municipality and that the municipality is responsible for its maintenance.

[26] Mr. Mateboho Rapuleng, Legal Services Manager of the Defendant was called as its second witness.

[27] He testified that the Defendant did not have a process to approve way-leaves at the time of construction.

[28] He held the view that the Plaintiff should have joined the developer and the independent contractor to the claim, as the Defendant was not involved in the construction work.

[29] The Defendant only granted permission to the developer to proceed with the development.

## **ANALYSIS**

[30] The Defendant approved the development by the developer and knew its identity.

[31] It cannot be expected that a member of public that drives on a road under the control of the Defendant, should know the inner workings of the Defendant.

[32] How could the Plaintiff know of the approval granted to the developer and what such approval entailed, i.e., the trenching of the road and the upgrade of the sub-station.

[33] This knowledge rests with the Defendant.

[34] The Defendant could have joined the developer through a third-party notice.

[35] But it elected not to follow this process.

[35] **ORDER**

The following order is made:

1. The special pleas are dismissed.
2. Cost to be costs in the cause.

A handwritten signature in black ink, appearing to be 'AP BERRY, AJ', written over a horizontal line.

**AP BERRY, AJ**

For the Plaintiff

Mr P Uys

Instructed by

Mills & Groenewald Attorneys

For the Defendant:

Adv PS Mphuloane

Ponoane Attorneys