

Editorial note: Certain information has been redacted from this judgment in compliance with the law.



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

(1)	REPORTABLE:
(2)	OF INTEREST TO OTHER JUDGES:
(3)	REVISED.
_____	_____
DATE	SIGNATURE

CASE NO: 27010/2018

In the matter between:

ANNA KGOMOTSO SELOMA

Plaintiff

(ID NO: [...])

obo

ORATILE KGOMOTSO SELOMA

(ID NO: [...]) and

TSHEGOFATSO SELOMA

(IDENTITY NO: [...])

and

MINISTER OF POLICE

Defendant

JUDGMENT

MBONGWE J:

INTRODUCTION

- [1] This is a damages claim for loss of support instituted by the plaintiff on behalf of her two minor grand-children following the killing of their mother, Lisbeth Seloma (the deceased) on 15 October 2017. The deceased was wrong fully and unlawfully shot with a firearm by Constable Kgabo Vincent Rammutla, her live -in boyfriend who, at the time, was in the employ of the South African Police Service (SAPS). Rammutla was working in the detective unit at the Eesterus Police Station. The incident occurred when Rammutla was off-duty, at a residence rented, and shared by him and the deceased. The plaintiff seeks to hold the defendant vicariously liable for the wrongful conduct of Rammutla.
- [2] The deceased was 29 years of age at the time of her death and a mother of two minor children: - the younger was six weeks old at the time and born of the relationship between the deceased and Rammutla. The deceased's older child was born of her earlier relationship and was six years old when the incident occurred. The deceased had been employed as a professional nurse and had supported her two minor children. Since her death the minor children are in the care and custody of the plaintiff, their grandmother, who is a pensioner.

[3] The plaintiff seeks to hold the defendant vicariously liable for the wrongful and unlawful conduct of Rammutla even though Rammutla was off duty at the time of his commission of the murder.

PREMISE OF THE PLAINTIFF'S CLAIM

[4] In amplification of its contention that the defendant is vicariously liable for the conduct of Rammutla, the plaintiff alleges that;

4.1 Rammutla ought not to have been in possession of his official firearm as he

was officially off duty. The plaintiff contends that by permitting Rammutla to be in possession of the firearm whilst off duty, the officials of the defendant had created a risk and failed to comply with the provisions of paragraph 6 of the South African Police Service Standing Order 48.

4.2 Rammutla was not competent to be in possession of the official firearm as he had not attended the compulsory annual shooting practice between 15 October 2016 and 15 October 2017 as required by the Standing Order 48 and Regulations 79 and 80 of the Firearms Control Regulations. The plaintiff's case is that in granting Rammutla access to the firearm in such circumstance and particularly at a time when he was off duty, the defendant had created a risk which manifested itself with the shooting and killing of the deceased;

4.3 By placing Rammutla in possession of the firearm in the two circumstances described above, the defendant had intended that Rammutla continued to carry out his official duties, despite him being off duty. Based on this

contention the plaintiff alleges that the conduct of Rammutla falls within the definition of a deviation case.

THE DEFENCE

- [5] The defendant admitted that Rammutla was officially off duty when he shot and killed the deceased using his official firearm, but denied that it had created a risk or failed to comply with the provisions of para 6 of Standing Order 48 and Regulation 79 of the of the Firearms Control Regulations.
- [6] The defendant admitted that Rammutla had used his official firearm to shoot and kill the deceased, but denied that Rammutla had not been competent to be in possession of the firearm as he had not attended the compulsory shooting practice between 15 October 2016 and 15 October 2017 and the defendant further denied that, by permitting Rammutla to be in possession of the firearm the defendant was negligent and had created a risk.
- [7] The defendant further denied that it is liable for the conduct of Rammutla on the particular facts and circumstances of this case.
- [8] The defendant alleged that Rammutla was competent to be issued with and be in possession of the firearm for use whilst performing his official duties and not for his personal and private use.
- [9] The defendant further alleged that Rammutla had not been declared unfit and, therefore, incompetent to be in possession of the firearm and that, as a Detective in the SAPS, Rammutla was issued with the official firearm.
- [10] The defendant denied that Rammutla was acting within the course and scope of his employment when he shot and killed the deceased.
- [11] The defendant alleged that there is insufficient link between the conduct of Rammutla in his commission of the murder and his official function as a police officer.

[12] The defendant further alleged that there was an intimate relationship between Rammutla and the deceased and that the incident occurred in the house in which they both resided in, which rendered the commission of the offence distant from Rammutla's execution of official duties. There was, therefore, insufficient connection between Rammutla's commission of the offence in his residence and his mere employment did not render the defendant liable.

THE LAW

VICARIOUS LIABILITY

[13] Vicarious liability is a common law principle in terms of which an employer may be held liable for the wrongful conduct of his employee committed during the latter's execution of his duties.

LEGAL PRINCIPLES

[14] The circumstances under which an employer may be held liable for the wrongful conduct of his employee in terms of the common law principle of vicarious liability were defined in *Mkize v Martens* 1914 AD 382 para 319, in the following words:

"...a master is answerable for the torts of his servant committed in the course of his employment, bearing in mind that an act done by a servant solely for his own interests and purpose, and outside his authority, is not in the course of his employment, even though it may have been done during his employment."

[15] The law underpinning the application of the principle of vicarious liability was developed further in the following matters; *Minister of Police v Rabie* 1986 (1) SA 117 (A), *K v Minister of Safety and Security* 2005 (3) SA 179 (SCA), *F v Minister of Safety and Security and Another* (CCT 30/11) [2011] ZACC 37; 2012(1) SA 536 (CC); 2012 (3) BLC 244 (CC); (2012) 33 ILJ 93 (CC) 2013 (2) SACR 20 (CC).

[16] In the *Rabie* matter at 134C - E, the court set out the two tests necessary in an inquiry to determine whether an employer is vicariously liable for the conduct of its employee. In this regard the court said the following;

“It seems clear that an act done by a servant solely for his own interest and purposes, although occasioned by his employment, may fall outside the course or scope of his employment, and that in deciding whether an act of the servant does so fall, some reference is to be made to the servant’s intention. The test in this regard is subjective. On the other hand, if there is nevertheless a sufficiently close link between the servant’s acts for his own interests and purposes and the business of his master, the master may yet be liable. This is an objective test.”

[17] In the matter of *K* at para 31, the court determined that the connection or proximity of the employer’s mandate / function to the actions of the employee was a factor for consideration in the determination whether the actions were taken by the employee during his execution of his mandate. In this regard the court said the following:

“The legal principles underlying vicarious responsibility are well - established. An employer, whether a Minister of State or otherwise, will be vicariously liable for the delict of an employee if the delict is committed by the employee in the course and scope of his or her employment. Difficulty frequently arises in the application of the rule, particularly in so – called ‘deviation’ cases. But the test, commonly referred to as the ‘standard test’, has been repeatedly applied by this Court. Where there is a deviation the inquiry, in short, is whether the deviation was of such a degree that it can be said that in doing what he or she did, the employee was still exercising the function to which he or she was appointed or was still carrying out some instruction of his or her employer. If the answer is yes, the employer will be liable no matter how badly or dishonestly or negligently those functions or instructions were being exercised by the employee.”

[18] Prior to embarking on an analysis of the plaintiff's contentions and applying the above legal principles to the facts, it is necessary to traverse the relevant laws relied upon by the plaintiff relating to the issuing and possession of firearms in the SAPS for purposes of determining the veracity of such contentions.

THE LAW

[19] The provisions of the law pertaining to the issuing and possession of firearms are wide and are to be found in the Firearms Control Act 60 of 2000 (the Act). While they are of general application, including to the SAPS, other legal measures were put in place under the Act to specifically regulate the issuing and possession of firearms in the South African Police Service. In light of the basis of the issues in this matter, this judgment will focus on both the provisions of the Act and the ancillary measures specifically relating to the issuing and possession of firearms in the SAPS.

THE FIREARMS CONTROL ACT 60 OF 2000 ('The Act')

[20] The Firearms Control Act 60 Of 2000 was enacted to regulate the practical and procedural limitations on obtaining and handling firearms. The Act also stipulates certain prohibitions and imposes requirements for eligibility to obtain and possess a firearm. The provisions of section 2 of the Act set out the purpose of the Act, being to:

- “(a) enhance the constitutional rights to life and bodily integrity;*
- (b) prevent the proliferation of illegally possessed firearms and, by providing for the removal of those firearms from society and by improving control over legally possessed firearms, to prevent crime involving the use of firearms;*
- (c) enable the State to remove illegally possessed firearms from society, to control the supply, possession, safe storage, transfer and use of firearms and to detect and punish the negligent or criminal use of firearms;*

- (d) *establish a comprehensive and effective system of firearm control and management; and*
- (e) *ensure the efficient monitoring and enforcement of legislation pertaining to the control of firearms.”*

[21] The provisions of section 3(1) of the Act impose general prohibitions relating to firearms and muzzle loading firearms at state thus:

“(1) No person may possess a firearm unless he or she holds for that firearm-

(a) A licence, permit or authorisation issued in terms of this Act; or

(b).....

(2) No person may possess a muzzle loading firearm unless he or she has been issued with the relevant competency certificate.”

[22] In terms of section 9(2) a person may only be issued with a competency certificate if he or she;

“(c) is a fit and proper person to possess a firearm, to trade in firearms, to manufacture firearms...

(l) is not been convicted of an offence in terms of the Domestic Violence Act, 1998 (Act No. 106 of 1998), and sentenced to a period of imprisonment without the option of a fine;

(m) has not been convicted of an offence involving the negligent handling of a firearm;

(p) has not become or been declared unfit to possess a firearm in terms of this Act or the previous Act;

- (q) *has successfully completed the prescribed test on knowledge of this Act;*
- (r) *has successfully completed the prescribed training and practical test regarding the safe and efficient handling of a firearm;.....*

[23] In terms of section 102 the registrar may declare a person unfit to possess a firearm if, on the grounds of information contained in a statement under oath or affirmation, including a statement made by a person called as a witness, it appears that:

- “(a) *a final protection order has been issued against such person in terms of the Domestic Violence Act, 1998 (Act 116 of 1998)*
- (b) *that person has expressed the intention to kill or injure himself or herself or any other person by means of a firearm or any other dangerous weapon;*
- (c) *because of that person's mental condition, inclination to violence or dependence on any substance which has an intoxicating or narcotic effect, the possession of a firearm by that person is not in the interests of that person or any other person;*
- (d) *that person has failed to take the prescribed steps for the safe-keeping of any firearm; or*
- (e) *dies, or*
- (f) *that person has provided information required in terms of this Act which is false or misleading.”*

THE FIREARMS CONTROL REGULATIONS 2004

[24] Firearms Control Regulations were made under and are, therefore, subject to the provisions of the Firearms Control Act. Sections 79(b) and 80 of the Regulations provide for the prescribed training and test in respect of the employees of the SAPS. The Regulations state that in order to sustain the competency of an employee of an Official Institution to whom a firearm was issued the head of the Official Institution must –

- “(i) ensure that he or she undergo at least one practical training session at least every 12 months or within a shorter period as may be reasonably necessary in the circumstances, in the proper and safe handling and use of the relevant firearm and ammunition; and*
- (ii) undergo psychological debriefing within 48 hours after experiencing any violent incident, discharging their firearm or witnessing a shooting.”*

FIREARMS AND AMMUNITION STANDING ORDER 48

[25] Standing Order 48 provides for the training of police officers before they may be issued with official firearms and regulates the control of firearms and ammunition. Paragraph 6 of Standing Order 48 reads thus:

“A member is not entitled to be issued with an official firearm on his or her personal inventory for use in his or her private capacity when off duty.”

[26] In terms of para 8 of Standing Order 48 an official firearm may be withdrawn by a station commander, unit commander or section head from the personal inventory of a member if the member:

- “(a) no longer requires a firearm for the execution of his or her duties;*
- (b) is not competent to handle a firearm in terms of regulation 79 and of the Regulations;*
- (c) is suspended in terms of the Discipline Regulations;*
- (d) dies*
- (e) is absent from duty without leave; or*
- (f) resigns from the Police.”*

APPLICATION OF THE LEGAL PRINCIPLES TO THE FACTS

[27] The principle in *Mkize v Martens* established the liability of an employer for wrongful conduct of his employee. The riders to the principle are of significance. The employee must have committed the tort in the course of executing his duties for the employer to be held vicariously liable. This principle was developed further in *K v Minister of Safety and Security* where the court laid down the two-leg inquiry to be employed to determine vicarious liability of the employer; the first being the subjective test which relates to the employee’s state of mind when committing the tort. The inquiry in this regard is whether the employee was executing his duties when committing the wrongful act. In the present matter Rammutla was off duty and in his residence when committing the murder. He had resorted to engage in domestic violence, an act of criminality to serve his own interests and that went against the vein of his employment. The first leg of the inquiry thus exonerates the defendant from vicarious liability.

[28] On the aspect of the law the question that begs for an answer is whether the defendant had been negligent in letting Rammutla be in possession of the firearm while off duty and, therefore contravened the provisions of para 6 of

Standing Order 48, as contended by the plaintiff. The plaintiff's argument in this respect is formulated as follows;

" .. when granting Rammutla a firearm even when he was off duty the Minister of Police had intended to enable Rammutla to perform the employer's functions and duties with that firearm whilst he was off-duty. Otherwise, it would defy logic as to why the employer would grant Rammutla access to its resources in the first place, whilst Rammutla was off-duty.

In carrying his State issued firearm, Rammutla had been enabled by the Defendant to continue to perform the function for which he had been appointed" (paras 5.5 and 5.6 of the Plaintiff's HOA).

ANALYSIS

[29] The plaintiff's contentions in para [28] emanate from the plaintiff's own misinterpretation of the provisions para 6 of the Standing Order 48 it purportedly seeks to rely on. The plaintiff has underlined self-selected words in that paragraph as follows;

"A member is not entitled to be issued with an official Firearm on his or her personal inventory for use in his or her private capacity when off duty."

Read in context, the provisions of Para 6 of the Standing Order 48 forbid a police officer issued with an official firearm from entertaining the thought that he is entitled to use the firearm for personal or private matters whilst off duty. The provisions do not prohibit an officer issued with an official firearm from being in possession thereof when he is off duty. Once an officer had fulfilled the requirements in para [22], above, and has been issued with the so-called SAP Items 108, which include a firearm and ammunition, *inter alia*, he remains in possession thereof whether on or off duty. It is only in the circumstances mentioned in paras [23] and [26], above, that the firearm may be withdrawn by any of the officials mentioned in para 8 of Standing Order 48.

[30] Furthermore, the plaintiff's misinterpretation referred to earlier above brought with it the plaintiff's unwarranted reading of the defendant's intention expressed

in the latter part of the plaintiff's contentions quoted in para [28], above. The contention was disingenuously crafted to lay a foundation that this was a deviation case. Rammutla's mere possession of the firearm whilst off duty did not mean that he was intended to carrying out any function of the defendant whilst off duty as suggested by the plaintiff. His shooting of the deceased four times and killing her in the presence of their six weeks old baby, whom he left behind and was later found lying in its dead mother's pool of blood, was plainly criminal and for his own interest and purpose. To argue otherwise was misplaced. A deviation case occurs when a police officer commits a tort while executing his lawful duties. The plaintiff's contention otherwise lacks merit and stands to be rejected.

[31] Police officers may be obliged to take action to prevent or intervene to stop the

commission of a crime even when off duty. Where that situation occurs, the officer would, in my view, be acting in line with his appointment and the Minister may be held liable for any wrongful conduct the police officer may commit, just as he would if the wrong was committed by the officer while on

duty. A wrong committed by the officer in this instance will constitute a deviation case and, therefore, render the Minister liable. Each case should be considered on its own merits in this regard. As a detective, Rammutla's duties related to the investigation of crimes that had already been committed. He was in his residence as he was off duty and not to investigate a crime.

[32] The plaintiff's seeking to hold the defendant vicariously liable merely on the basis of Rammutla's employment and despite the fact that Rammutla was not executing his official duties, but engaged in unlawful conduct when he shot and killed the deceased, is misplaced and against the legal principle in *Mkize v Martens, above*.

[33] The plaintiff's argument suggesting that an employee's wrongful conduct is attributable to the employer by virtue of his employment even where such conduct is not connected with the employment is incorrect and ought to be rejected. There existed no link whatsoever between the criminal action of Rammutla and his employment. The defendant cannot be held liable in the circumstances of this case (see *Mkize v Martens*).

PLAINTIFF'S 'EXPERT' EVIDENCE

[34] The plaintiff called and led the evidence of one witness on the aspect of causation and basis for seeking to hold the defendant vicariously liable, namely, Mr Mpho Boshielo, a retired former Colonel in the employ of the defendant who currently serves as a Commissioner of the CCMA in Tshwane and whom the plaintiff described as its expert witness. The plaintiff has filed a notice in terms of Rule 36(9) relating to the evidence of this witness.

[35] The witness testified that he was the trainer of aspirant police officers during the period 1991 to 2004. He did not know nor did he train Rammutla. He was no longer directly involved with trainees at the time Rammutla was a trainee, but had been involved in the supervision of trainers. During his time as a trainer, he had taught the theoretical aspects of the training of officers such the law relating to the handling of firearms. He had scant to no knowledge of

the practical aspects of the training such as the frequency of practice shooting and competency assessments in shooting and the general handling of issued firearms nor the sustenance of competence and matters of disqualifications and withdrawal of possession of firearms and the remedial training involved. These were crucial aspects of the plaintiff's case. Thus the plaintiff had effectively presented no evidence to support its contentions on the law it seeks to rely on to hold the defendant vicariously liable for the conduct of Rammutla.

[36] The witness did confirm, however, that police officers issued with firearms and ammunition, *inter alia*, are entitled by law to remain in possession thereof even when off duty. This evidence contradicted the plaintiff's contention and basis for reliance on the provisions of para 6 of Standing Order 4.

[37] It transpired during the cross examination of the plaintiff's second witness that the contentions raised by the plaintiff emanated from documents the plaintiff's attorneys allegedly obtained from IPID, the body that is still investigating the case against Rammutla. The witness testified that he was supplied by the plaintiff's attorney with those documents for him to study in preparation for this case. It came as no surprise to that the defendant's counsel objected to the admission of the evidence of the plaintiff's second witness that was based on documents from incomplete or ongoing investigations.

EVIDENCE OF DEFENCE WITNESSES

[38] The defendant called four witnesses, *inter alia*, Lft Colonel Msiza who has been in the SAPS for 34 years and is currently in the Tshwane Police Training Academy. His duties include the monitoring and evaluation of what he called street survival firearms. He also evaluates the performance of police trainers. He became a trainer of officers in 2002 and was involved in both theoretical and practical training of aspirant police officers. He testified mainly on what the training entails, the provisions of the Firearms Control Act, Firearms Control Regulations and the Standing Order 48. He confirmed the evidence of Captain Neveling that the frequency of firearm shooting practice and

competency testing of firearm shooting and handling was amended in September 2016 from once in twelve months to once in five years. He further testified that the change was effected through the publication of the National Instructions of 2016. This aspect of the evidence was later confirmed by another defence witness, Brigadier P.W. Nienaber, who was directly involved in the drafting of the National Instructions of 2016 and saw to its publication on 29 September 2016 – the date the instructions became operational.

[39] The second defence witness was Captain Neveling who testified that he has been in the police service for 29 years and is responsible for the monitoring and recording of the officers' attendance of shooting practices and, importantly, the compulsory annual competency assessments of firearm shooting and handling. He testified on the circumstances an officer may be disqualified and dislodged of his possession of a firearm such as the commission of a violent offence, a failure to attend the competency assessment practice despite a directive to do so which comes after an officer had failed to present himself when due for assessment and the circumstances stated in para [26], above.

[40] He testified that Rammutla was stationed within the area the witness was in charge of and that he had known him, but had not had direct dealings with him. The witness was and continues to be in charge of the supply chain that issues firearms, *inter alia*, to qualified officers. He was involved when Rammutla was issued with an official firearm. By virtue of his position, he has access to the records of officers within his area, including those of Rammutla. He agreed that

Rammutla had not attended the compulsory annual competency assessment practical firearm shooting and handling session between 15 October 2016 and 15 October 2017. He further stated that such failure *per se* did not render the officer concerned incompetent to possess and handle a firearm and that even the withdrawal of the firearm in such instance is discretionary to the Station Commander. He testified that Rammutla had not been declared incompetent to be in possession of his official firearm nor had he committed any of the prohibited acts that warranted the withdrawal of his firearm. To his knowledge

there was nothing untoward in Rammutla being in possession of the firearm even when he was off duty.

[41] Of particular interest and part of the issues in this case was the evidence of this witness relating to the plaintiff's contentions with regard to Rammutla's alleged incompetence to possess the firearm for his failure to attend the practical shooting practice between 15 October 2016 and 15 October 2017. The witness' undisputed evidence drew the distinction between the attendances of the ordinary practice shooting session and the compulsory annual practical firearm shooting and handling competency assessment session. The witness testified that the Plaintiff's contention that Rammutla was incompetent to be in possession of a firearm at the time of his commission of the murder on the ground that he had "*not attended the compulsory annual shooting practice between 15 October 2016 and 15 October 2017*" was incorrect. This aspect is dealt with specifically hereunder.

[42] Counsel for the plaintiff appeared to make no distinction between the attendance of practice shooting and that of the compulsory annual practical firearm shooting and handling competency assessment. He referred to both as being compulsory annual training sessions the failure whereof resulted in incompetence. He even appeared to refer to the two sessions interchangeably.

[43] According to the witness a shooting practice is not compulsory, but members to attend at least one session in a year prior to 29 September 2016. Members of the SAPS could and may still attend practice shooting at anytime and as many times they wished, depending on availability of space. The attendance of practice shooting is not recorded and a failure to attend does not render the member concerned incompetent.

[44] The attendance of the then annual assessment of competency to shoot and handle a firearm was and is still compulsory, save that the period of compulsory attendance has since 29 September 2016 been extended to once in five years by the National Instruction of September 2016. The evidence of this witness was confirmed by Brigadier Nienaber who was

involved in the development and drafting of the National Instruction of 2016 and also saw to its publication on 29 September 2016 – the date on which it became operational. Brigadier Nienaber further testified that the National Instruction of 2016 did not repeal or replace Standing Order 48, save that where there was conflict between the two, the National Instruction of 2016 would prevail. A copy of the National Instruction of 2016 was handed in as an exhibit as well as the proof of its publication thereof on 29 September 2016. The plaintiff's contention based on the provisions of Standing Order 48 was consequently misinformed and stands to be rejected.

ANALYSIS OF THE EVIDENCE OF DEFENCE WITNESSES

[45] Rammutla commenced training in 2010 which he successfully completed in 2012 when he was issued with the letter of competency to be issued with a firearm in March 2012. He complied with the requirements stated in para 22 and was consequently issued with the firearm, *inter alia*. He had not been declared incompetent to possess the firearm or been subject to the circumstances stated in paras [26] and [26] or committed any of the acts stated in para 8 of Standing Order 48. He was, therefore, by law entitled to be in possession of the official firearm issued to him.

[46] The plaintiff has not adduced any evidence to support any of its contentions and ultimately prove its case that Rammutla had not been competent to possess the firearm. His alleged failure to attend the firearm shooting practice between 17 October 2016 and 17 October 2017 does not establish that he had not done so for a period of five years as required in the National Instruction of 2016. In any event even if he had not done so in five years, the failure would not have resulted in his incompetence according to the undisputed evidence of Captain Neveling. Even a failure to attend the compulsory firearm shooting and handling assessment practice would not have affected his competency. The withdrawal of his firearm would have been discretionary to the Station Commander. This evidence is validated by the words used in para 8 of Standing Order 48 - "... firearm may be withdrawn by the Station Commander..." (own emphasis). The Station Commander did not withdraw the firearm from Rammutla.

[47] The evidence of Mr Khobo, the former overall Commander of the Detective Unit Rammutla was a member of, was that Rammutla joined the unit in March 2012. He testified that Rammutla was involved in the investigation of cases that were regarded as important and had been issued with an official firearm as he was qualified to be issued with one. The witness testified that an officer was allowed to remain in possession of the firearm issued to him until they resigned or were no longer competent or involved in domestic violence or substance abuse. He had not known Rammutla to be violent until the day he learned that Rammutla had shot and killed the deceased. The witness confirmed that Captain Neveling was in charge of matters relating the issuing of firearms, shooting practice and the recording of attendance of competence assessment shooting sessions.

[48] The evidence of defence witnesses disproved the allegations and contentions of the plaintiff that Rammutla had been incompetent to be in possession of the firearm he used to kill the deceased and that the defendant was negligent in allowing him to be in possession of the firearm when he shot and killed the deceased.

CONCLUSION

[49] The undisputed evidence of the second defence witness, Captain Neveling, that Rammutla was never declared incompetent nor had committed an act that would have warranted that he be dislodged of possession of his official firearm disproved the plaintiff's allegations of Rammutla's incompetence and of the defendant's negligence in not withdrawing the firearm from Rammutla. These aspects were important in this case and the evidence of Neveling in respect thereof was corroborated by that of the commander of the Detective Unit of which Rammutla was a member, Mr Khobo,

[50] The exact date of the commencement of the National Instructions of 2016 became an issue that became settled in particular in the undisputed evidence

of Brigadier Nienaber, who testified that the period of twelve months relating to practice shooting referred to in Standing Order 48 and relied upon by the plaintiff had already been extended to five years by the National Instructions of 2016. This evidence disposed of the plaintiff's contention that Rammutla had been incompetent to be in possession of an official firearm for his failure to attend the shooting practice between 15 October 2016 and 15 October 2017; the last being the date Rammutla shot and murdered the deceased.

[51] The plaintiff has not succeeded in demonstrating that Rammutla had been incompetent to possess a firearm nor that the defendant was negligent in allowing him to remain in possession of the firearm. Furthermore, the plaintiff failed to establish that the facts in this case meet the requirements to hold the defendant vicariously liable for the unlawful conduct of Rammutla. In consequence, the plaintiff's case stands to be dismissed purely on the merits.

COSTS

[52] The plaintiff engaged in these proceedings in pursuance of the rights of the minor children of their mother, the deceased, who was unlawfully murdered by Rammutla. In line with the *Baywatch principle*, it would be unjust to mulct the plaintiff with costs on the facts and circumstances of this case.

ORDER

[53] Flowing from the findings in this judgment, the following order is made:

1. The plaintiff's claim is dismissed.
2. There is no order as to costs.

MPN MBONGWE

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

APPEARANCES

Counsel for the Plaintiff: Mr Maoba, Attorney
with Adv Nosipho Khumalo

Attorneys for plaintiff: Maoba Attorneys Inc
PRETORIA
Email: Info@maobalaw.co.za
Tel: 012 386 8957

Counsel for the Defendant Adv M S Phaswane

Attorney for the Defendant Office of the State Attorney,
PRETORIA
Email: Msphaswane@law.co.za /

Tshif650i@gmail.com

THIS JUDGMENT WAS ELECTRONICALLY TRANSMITTED TO THE PARTIES
ON 05 JUNE 2023.