

## RESPONSIBILITY OF HOME SECURITY SERVICES TO VET STRANGERS

*This month the Constitutional Court overturned a Supreme Court of Appeal judgment that related to whether a (high end) security company can be held liable for damages suffered by the home owner after robbers, dressed as policemen, gained access to his house and stole many valuables. In South Africa where many businesses and private individuals employ forms of security in an endeavor to safeguard against robbery and assault, the outcome is valuable, very relevant and shows an appreciation on the side of the highest Court of the reasonable expectations that clients of such companies may hold.*

The background to [the judgment](#) was briefly as follows. After suffering substantial trauma in a robbery at gunpoint at their previous home, the family Loureiro moved to a new house and installed a state of the art security system. This involved multiple alarm systems, beams, electric fencing, a guardhouse, intercom systems and closed circuit television. In the house were a number of safes and concealed "safe rooms". iMvula Quality Protection ("iMvula") was employed to provide a 24 hour armed guard who was situated in the guardroom at the entrance to the premises. There were transmitters (a long range receiver on the roof) for both silent and audible panic buttons linked to an armed response company.

So concerned were the Loureiros about security that Mr Loureiro was most unhappy when his brother simply arrived at the front door one day without there first having been an intercom query from the guardhouse before the gate was opened. This led to an instruction from Mr Loureiro to iMvula that no one was to be permitted onto the premises by the security guard before the guard contacts the house via the intercom and obtains permission. To ensure this instruction was adhered to, the intercom instrument in the guardroom was partially disabled so that it could not be used to open or close the main driveway gates. Vehicle access could only be granted from inside the house after the occupants had been alerted by the guardhouse. Mr Loureiro also met with one Mr Green (of iMvula) at his home on one occasion to give instructions that security would have no control over the main gate and have a key to the pedestrian gate for change of shift only. It appeared that these details were not communicated to the employees who took shifts in the guard house on the premises.

Despite these precautions, the Loureiro family was robbed in January 2009 by persons who gained access to their house whilst posing as members of the South African Police. They approached the security guard, gave him a glimpse of an alleged police identity card, and the guard then opened the pedestrian gate to enquire what they wanted. As

soon as he opened the gate, the imposters brought out their weapons. As such they gained entry to the house and robbed the home of valuables to the tune of some R11 million.

Mr Loureiro then instituted a claim for damages against iMvula, based on its failure to properly secure his home. The claim was based on the alleged breach of a security services agreement with iMvula and/or negligence in regard to such agreement. Mrs Loureiro joined the proceedings and based her claim for damages on the alleged failure of the security company to meet the duty of care owed to her and the children by reason of their negligence. This included an allegation that iMvula failed to meet the standards required of security service providers.

In a unanimous judgment the Constitutional Court found in favour of the Loureiro family, thereby overturning the judgment in the Supreme Court of Appeal in late 2011. The Court held that iMvula is liable for breach of contract. By allowing access to the imposters, a strict term of the contract was contravened. The Court also found iMvula vicariously liable in delict. The Court held that, in its conclusion on wrongfulness, the majority in the Supreme Court of Appeal failed to have regard to weighty normative and constitutional considerations. Wrongfulness was established because iMvula's employee opened the gate for the robbers.

There is a great public interest in ensuring that private security companies and their guards, in taking on the remunerated role of crime prevention, succeed in thwarting avoidable harm. iMvula's employee furthermore acted negligently by failing to foresee the possibility that an unauthorised person might try to gain access by purporting to be someone he is not; and by failing to take the fairly simple precautions a reasonable person in his position would have taken to guard against the harm. The amount of the claim (quantum) is to be determined by the High Court in separate proceedings.

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