

An Employer Can Be Held Liable For The Criminal Acts Of Its Employee

The question of whether an employer should be responsible for the unlawful acts of its employee has been the subject of many court cases. In one of the most recent cases, the court had to decide whether a security company should be held liable after its employee had murdered another person.

The case is *Stallion Security vs Van Staden*. Mrs Van Staden sued Stallion Security for loss of support after one of its employees had murdered her husband. The late Mr Van Staden was an employee of Bidvest at one of the three sites Stallion Security was providing security services to.

Mr Khumalo was employed by Stallion Security and was the site manager for the three Bidvest sites. He, at a certain point, decided to rob Bidvest, and during the robbery, murdered Mr Van Staden. The widow of Mr Van Staden sued both Mr Khumalo and Stallion Security for loss of support. Her claim against Stallion Security was based on the legal principle of vicarious liability. In terms of this principle, an employer may be held liable for the unlawful acts of its employee.

Mrs Van Staden succeeded in the High Court, and Stallion Security was found to be vicariously liable. Stallion Security appealed against this judgement to the Supreme Court of Appeal.

In the Supreme Court of Appeal, the court had to decide whether Stallion Security could be held liable for the self-serving interests of its employee. The court considered some of Mr Khumalo's duties, he:

- could perform spot checks at the three Bidvest sites,
- could inspect the interior of the premises,
- ensured that the exit doors were locked,
- was given an override key to gain access to the offices, which no other security officer had access to,
- was registered on Bidvest's biometric system.

On the fateful evening, Mr Khumalo entered the Bidvest premises via an emergency exit, then used the override key to gain access to the office area where he believed money was kept. He pointed a firearm at Mr Van Staden and demanded cash. He later shot and killed Mr Van Staden as he feared he might call the police.

The Supreme Court of Appeal reasoned that it must look objectively at whether there is a sufficiently close link between the self-serving actions of the employee and the business of the employer. If such a link does exist, the employer may be held liable. The court held that Stallion Security furnished Mr Khumalo with much more than a mere opportunity to commit the offence:

- It enabled Mr Khumalo to enter and exit the area without detection or concern on the part of Bidvest;
- He could make unannounced visits to the premises;
- He had knowledge that the deceased would be working late;
- He had possession of the override key to the premises;
- The special position in which he was appointed created a material risk that Mr Khumalo might abuse his powers.

The appeal was dismissed, and Stallion Security was found to be liable.

A lesson to be learned from this case is that an employer can be held liable for the criminal acts of its employee, even if the employer is not negligent in its conduct. Employers must be careful of the kind and level of power given to their employees.

Perhaps employers would do well to consider speaking to insurers about insuring against risks of this nature.

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