Can I be held liable for a fire that spreads beyond my property?

A question a lot of farm owners ask is whether they can be held accountable for fires that spread beyond their property. The next question would normally be under which circumstances they could indeed be held liable.

The National Veld and Forest Fire Act 101 of 1998 (the "Act") provides some answers to these questions. Section 34 of the Act specifically deals with the liability of a landowner if a fire spreads from his property to another.

Section 34 reads as follows:

"(1) If a person who brings civil proceedings proves that he or she suffered loss from a veldfire which-

(a) the defendant caused; or

(b) started on or spread from land owned by the defendant, the defendant is presumed to have been negligent in relation to the veldfire until the contrary is proved, unless the defendant is a member of a fire protection association in the area where the fire occurred.

(2) The presumption in subsection (1) does not exempt the plaintiff from the onus of proving that any act or omission by the defendant was wrongful."

It is clear from the above that there is a presumption of negligence against an owner of a property if a veldfire spreads from his property and he is not part of a local fire protection association.

If the owner is part of a fire protection association, a claim for damages can still be instituted against him or her if it is found that he or she was negligent. Membership to the association does therefore not preclude an owner from claims, but merely abolishes the presumption of negligence against him or her.

The court in the case of *MTO Forestry (Pty) Ltd v Swart NO* found that negligence is measured against reasonable steps taken by the owner to prevent fires from

spreading.

Section 12 of the Act also provides guidance on what actions would constitute reasonable steps. This section, amongst others, stipulates that all owners from whose property a veldfire may start or spread must prepare and maintain a firebreak. Failure to do so could constitute negligence and ultimately lead to liability for damages suffered by other parties.

Thus, it is important to advise all farm owners to always try to be part of a local fire protection association as this would automatically refute the statutory presumption of negligence if a claim for damages is instituted against them. They should also always ensure that there is a firebreak between their property and that of their neighbour, as this could play a crucial part in determining whether they are liable for damages occasioned by a veldfire.

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