Who is liable for a veld fire?

A person may wonder who becomes liable when a controlled burn is initiated, but the resulting fire escalates beyond what was foreseen resulting in the fire spreading to neighbouring farms, including your property, but then who could be to blame?

Before even turning to this aspect, it is important to note that the National Veld and Forest Fires Act 101 of 1998 imposes clear duties on persons in control of land: they must prevent fires, maintain firebreaks, supervise burning activities, and respond to fire emergencies. The Act even goes so far as to create a presumption of negligence against landowners when a fire originates on their property, unless they can prove otherwise. As such, the Act serves as an extension of the common law, which has long recognised that occupiers of land bear a duty to prevent harmful activities on their property from causing damage to neighbours, such as when a veld fire spreads.

In the recent case of Plattekloof Saagmeule CC v Swellendam Plase (Pty) Ltd the Plaintiff (Plattekloof) attempted to argue that the aforementioned presumption would apply against the owner of the land, a company by the name of Swellendam Plase (Pty) Ltd, asserting that Swllendam, was in occupation of and exercising control over the farm at the relevant time of the fire.

Upon examination by the court, it was revealed that the owner was merely a holding company, lacking any farming operations, employees, and any operational authority over the farm and as such, the presumption, in terms of the Act, could not apply, as the company had no effective control over the property.

If you were to think about the matter practically, it is self-evident that only an individual or entity occupying and exercising control over the land would be capable of fulfilling the responsibilities imposed by the Act, such as preventing fires, maintaining firebreaks, overseeing burning activities, and responding to emergencies and without such a person / entity being present, and controlling the property, the responsibilities could not be fulfilled.

Nevertheless, it is still important to note that, delictual liability, in terms of the spread of a veld fire, may still be established if all elements are proven: conduct, wrongfulness, fault, causation, and harm. Each element must be satisfied, and if

any one is absent, no delict arises and no liability can be imposed. In this matter, given that, negligence could not be proven, the Plaintiff could not succeed with their delictual claim against the owner.

In conclusion, the law surrounding veld fires, and the presumption in terms of the Act, makes it clear that liability cannot rest on mere association with land but must be grounded in actual occupation and control, as only those with the practical ability to prevent and manage fire risks bear the statutory and common law duty to do so.

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