FIRE DAMAGE LIABILITY: FARM OWNERS HAVE MANY RESPONSIBILITIES

Nel v Government of South Africa and Another (3861/2016) [2021] ZAECGHC 105 (16 November 2021)

Because of the severity of damages that runaway fires may cause, our legislature imposes very specific preventative duties on farm owners. They range from obliging them to store certain fire extinguishing apparel, to train staff, to maintain firebreaks and to belong to a fire prevention association in the area. Failing compliance with some of these triggers a presumption of negligence on the side of the non-compliant farmer. Apart from this onus, being held liable for subsequent damages will also constitute a financial calamity. The judgment is a reminder to farm owners to make sure their fire prevention plans are being implemented and maintained.

The Judgment can be viewed here.

FACTS

Nel was at the owner of a farm known as Paradys Hoogte in the district of Komga. The South African government was the registered owner of a neighbouring farm named Eversly Farm. Jubeni was the lessee and the person in control of the latter farm.

In September 2013 and August 2014, respectively, veldfires originated on Eversly Farm and spread onto Nel's farm where the fires caused damage.

Eversly was overgrown with grass, shrubs and black wattle trees. Firebreaks were not maintained and black wattle trees had fallen to the side where Nel's fence was. Nel complained to Jubeni on several occasions, in vain. As a result, the firebreaks on Nel's side of the fence were not effective in preventing the spread of the fires from Eversly Farm onto his farm. (The firebreaks on Nel's farm were effective, however, in preventing the fires from spreading onto neighbouring farms)

The government admitted that it was aware that: (a) during the winter season there is generally a danger of veldfires; (b) veldfires posed a threat to the neighbouring farms; and (c) at all material times the build-up of high fire fuel loads is extremely dangerous and could potentially cause a fire to originate on its farm or cause the uncontrollable spread of fires. Nonetheless, it argued that it was not responsible for the damages, as the fires were of such a nature, and driven by such strong winds, that there was nothing it as owner could have done to stop the spread, Thus, even if there were fire breaks and other preventative measures in place, the fires could not be controlled.

The evidence showed however that whilst the fires spread from Eversly to Nel's farm, neither of the fires had spread from there to other neighbouring farms and also that the build-up of high fire fuel loads on Eversly was extremely dangerous and could potentially have caused fires to originate on Eversly Farm, or spread to neighbouring properties.

An employee on Eversly Farm further testified that the farm was overgrown with grass and black wattle trees. He described the grass as being taller than he is. He also said that there was no firefighting equipment on the farm and it was left to him and three women to fight fires with water and tree branches. He confirmed that there were no persons on Eversly Farm with any experience or training in firefighting.

HELD

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- The Forest Fire Act 101 of 1998 (the Act) provides in section 34 as follows: If a person who brings civil proceedings proves that he or she suffered loss from a veldfire which the defendant caused, or which started on or spread from land owned by the defendant, such "***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 that the fire occurred***." The presumption does not exempt a claimant from the onus of proving that any act or omission by a defendant was wrongful.

- In section 12 of the Act certain obligations are placed on owners of farms. These include a duty to prepare and maintain firebreaks; specific requirements for firebreaks; firefighting readiness; and actions to fight fires. It was clear that these responsibilities were not adhered to on the side of Eversly Farm. It was also common cause that the government was at all material times not a member of a fire protection association in the area where the fires occurred.

- The test for negligence is whether: (i) a reasonable person in the position of the owner of Eversly Farm would have foreseen the reasonable possibility of its conduct causing injury or damage to another; (ii) would have taken reasonable steps to guard against such occurrence; and (iii) that the defendant has failed to take such steps. These facts were proven by the evidence: There was undisputed testimony regarding the absence of firebreaks, firefighting equipment or persons of suitable qualification or experience in firefighting on Eversly Farm. It was also common cause that the area was prone to veldfires and that, given the high fire fuel level, it was reasonably foreseeable that fires could start on Eversly Farm and spread onto Nel's farm. The Eversly Farm employee's testimony painted a picture of a neglected, overgrown farm, prone to fires and with absolutely no consideration on the part of either defendants for the foreseeable probability of fires starting and spreading onto neighbouring properties.

- Although being in breach of these statutory obligations does not necessarily equate to causal negligence, the surrounding circumstances show that it was the negligence of the owner of Eversly Farm that was the cause of the damages suffered by Nel as a result of the fires. It was significant that the fires started on Eversly Farm and then spread from there onto Nel's farm.

- There was no compliance with the statutory obligations to ensure safety measures are in place, despite the knowledge of the high fire risk in the area. The presumption of negligence was triggered as provided for in section 34, and the government failed to show why the presumption should not apply.

- It could also not be said that Nel had contributed to his damages, as was argued on behalf of the government. This was because Nel had prepared and maintained firebreaks on his farm; he had firefighting equipment; and had cleared vegetation with a bush cutter throughout the year, having initially cleared it with a bulldozer. As far as firefighting equipment is concerned, he had a tractor fitted with a 700 litre spray contraption and firefighting belts. He also co-operated with and shared firefighting equipment with owners of neighbouring farms, whenever needed. It was not disputed that it was through the efficacy of these measures that the fires did not spread from his farm onto other neighbouring lands.

CONCLUSION

The government as owner of Eversly Farm was therefore liable to Nel for the damages caused to his farm as a result of the fire.