

SUMMARY OF THE JUDGMENT

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>> PROPERTY LAW UPDATE

OSTRICH “ATTACKS” VISITOR ON PROPERTY: WHO IS LIABLE?

Van der Westhuizen v Burger (204/2017) [2017] ZASCA 178 (1 December 2017)

Does a property owner become liable for injuries sustained by a visitor who ran from an ostrich on the property which he thought was attacking him? Yes, this is entirely possible, but the facts of the incident must support a finding both of causation and liability, as the present matter illustrates.

The Judgment can be viewed [here](#).

FACTS

Mr Burger visited Mr van der Westhuizen's farm on which there was an 'undomesticated' ostrich. The evidence showed that Mr Burger had knowledge of ostriches and how to handle them, and that he also enjoyed teasing them.

During his stay on the farm, he indeed teased the ostrich on Van der Westhuizen's farm and at some stage, while he was outside loading wildebeest onto a trailer, he interpreted the movements of the ostrich, which was roaming freely on the farm, as aggressive or intimidating and ran for the house, only to fall and injure his Achilles tendon.

Burger then instituted a claim for damages against Van der Westhuizen as owner of the farm and the ostrich. Van der Westhuizen denied that there was any attack or aggressive behaviour from the ostrich initially and that the ostrich's actions were provoked by Burger himself when he threw a stone at the bird. In any event, there were other options open to Burger to escape the ostrich and it was not necessary to run. He could simply have seated himself in the vehicle.

The trial court found in favour of Burger and this matter deals with Van der Westhuizen's appeal.

(The detail of the allegations and witness testimonies are not discussed here for purposes of this publication, but it can be read in the judgment itself.)

HELD:

- Burger threw a stone at the ostrich, which provoked its behaviour in chasing Burger. Provocation of a wild animal by the victim of an attack is a valid defence to the

imposition of strict liability on the owner of the wild animal.

- Also, on the facts, it appeared that Burger fell and tripped over a wooden block that protruded from the lawn and injured himself in this way, rather than as a result of the 'flight' from the ostrich.

The Court accordingly upheld Van der Westhuizen's appeal, i.e. that he was not liable for the injuries or damages.

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