IN THE SOUTH GAUTENG HIGH COURT

JOHANNESBURG

CASE NO: 12735/07

DATE: 22/03/2013

In the matter between

G4S INTERNATIONAL UK LTD PLAINTIFF

and

MINISTER OF SAFETY & SECURITY 5TH DEFENDANT

J U D G M E N T

WILLIS J:

[1] The plaintiff, which was at all material times a consigner as defined

in terms of the 1929 Convention for the Unification of Certain Rules relating to International carriage by air as amended by the 1955 Haig Protocol, was the consigner of currencies by way of airway bills issued at Heathrow Airport in the United Kingdom. These notes had been dispatched to the plaintiff as the consigner by the Royal Bank of Scotland PLC. The persons to whom the notes were destined were the Standard Bank of South Africa Ltd, FirstRand Bank Ltd and Barclays Bank of Tanzania. The notes were intended for allocation to banks within the African continent.

[2] The consignment consisted of batches of US $11 350 000.00, R1 600 000.00 and €20 000.00, as separate currencies, respectively. There was a heist at the Oliver Tambo International Airport on 25 March 2006, during which, this consignment of notes was 'hijacked'. '*Knap speurwerk*' by one Mr John Pearson, an international loss adjuster who had previously worked for the British South Africa Police resulted in arrests being made within a matter of hours at Beitbridge. These arrests at Beitbridge led to further information and further arrests.

[3] The money recovered by the South African Police Services was kept in a safe at the police station in Benoni. An audit was to be done on either 25 or 26 May 2006 (it does not really matter). On the night before the audit took place there was a break-in at the Benoni Police Station. There has been evidence to suggest that it was a simulated break-in because the evidence did not tally as precisely as it should. The

damage inflicted by the break-in was inconsistent with what would have been necessary to remove the moneys recovered.

[4] Be that as it may, all the money that had been recovered by the police from that which was stolen in the heist, had disappeared from the safe. It is quite clear that this money could only have been taken by police officers. The defendant has raised the question of whether the theft could have been perpetrated by police in the course and scope of their employment as such. I shall deal with that later.

[5] The evidence is overwhelming that the access to the safe in order to remove the sums of money could only have been achieved through the inside knowledge and insider activity of police officers. The critical question, of course, is how much was recovered by the South African Police in the course of their investigations and then stolen by them such that they were unable to hand it over to the plaintiff. This is the issue of the quantum of the loss.

[6] It is common cause that one Erica Gibbons, who was employed by Rennies Bank, counted a number of US Dollars and a number of South Africa Rand using counting machines in the presence of police officers. The amount of US Dollars so counted by Erica Gibbons amounted to $1 174 300.00 and, in South African Rand, to R1 599 950.00. Insofar as US Dollars are concerned, the plaintiff claims a further $77 000.00

described, for ease of reference, as the so-called ‘Billings notes’ and a further $450 000.00 as the so-called ‘Beitbridge’ notes and a further $100 000.00 as the so-called ‘Booysens notes’.

[7] The Booysens notes, although they were not common cause at the beginning of the trial, were later accepted by Lieutenant Colonel Joubert, a police officer who testified for the defendant, as indeed having been seized in the so-called Booysens incident and sent through to Benoni. Therefore, in summary, insofar as the United States dollars are concerned all that remains in contention is the $77 000.00, the so-called ‘Billings notes’ and the $450 000.00 as the so-called ‘Beitbridge notes’.

[8] Of the rand amounts there was, as I have already indicated, an amount of R1 599 950.00 which was counted by Erica Gibbons and was put in the safe in Benoni. There is no debate about that. Furthermore, there is a claim for R8 700.00, being the so-called ‘Booysens rand’. Lieutenant Colonel Joubert conceded this amount. That has been accepted. All that remains in contention insofar as the rand are concerned is an amount of R502 700.00 the so-called ‘Inyanga notes’.

[9] I, therefore, in terms of quantum, need merely to analyse the evidence and the issues with regard to the Billings notes, the Beitbridge notes, (US Dollars items) and the Inyanga notes, (rand amounts). If one adds together the US Dollars counted by Erica Gibbons, the claim for

the Billings notes, the Beitbridge notes and the Booysens notes one gets to a figure of $1 801 300.00. At the rate of exchange prevailing at the time of the so-called break-in at the Benoni Police Station on 25 May 2006 being of the order of 6.6, the dollar amount translates into around R11 888 580.00. If one adds together the Rand amounts of around R1 599 950.00 counted by Gibbons, the R8 700.00 in the Booysens incident and the R502 700.00 in the so-called Inyanga notes incident one comes to a total of just under R14 million. The significance of this figure of R14 million will appear later but it is indeed a highly significant figure.

[10] There is much to suggest that the break-in at the Benoni Police Station on 25 May 2006 was simulated. It took place precisely because police officers knew that an audit was going to take place on either the 25th or the 26th and that the missing amounts would be discovered. Be that as it may, I need simply to point out at this stage that the plaintiff accepts 25 May 2006 as a date from which interest should run and has not attempted to recover from an earlier date even though the date giving rise to the claim for interest may have been earlier.

[11] I should also point out that although the consignment from Heathrow Airport consisted of R1 600 000.00, rather more than R1 600 000.00 was recovered by the police and put into the safe at the Benoni Police Station. The amount is just over some R2 million. The reason for this is that there was unchallenged evidence that those

participating in the heist had converted foreign currency into rand. This is perfectly plausible in all the circumstances of the matter. Therefore, although there was only R1 600 000.00 consigned from Heathrow and the plaintiff says more than R2 million was recovered ,one should not be misled into drawing erroneous conclusions by reason of this discrepancy.

[12] Before dealing with the quantification of the amount, I need briefly to deal with the question of the liability of the Minister. I have been referred to the very helpful case of *Commissioner of South African Revenue Service and another v TFN Diamond Cutting Works (Pty) Ltd* 2005 (5) SA 113 (SCA) where the facts it bear a remarkable similarity to the present ones. It was held that the State was vicariously liable for the delictual acts of an employee. Goods have been detained by the state for safekeeping in State custody. An employee of the State, whose duty it was to keep the goods safe, had stolen the goods. It was held in that case that the State was liable. The goods had been seized in terms of the Customs and Excise Act 91 of 1964 and stored in a state warehouse.

[13] Another case that has a helpful similarity with the present one is the judgement of *Giesecke and Devrient Southern Africa [Pty] Ltd v The Minister of Safety and Security* 2012 (2) 137 (SCA). This was a unanimous judgment of the Supreme Court of Appeal written by Brand JA. At paragraph [39] he held that the Minister was liable where police

had failed to account for money which they had recovered from robbers. In that judgment Brand JA referred to the case of *Minister van Veiligheid en Sekuriteit v Japmoco Bpk H/A Status Motors* 2002 (5) SA 649 (SCA) in paragraph [16] and also *Minister van Veiligheid en Sekuriteit v Phoebus Apollo Aviation BK* 2002 (5) SA 475 (SCA) in paragraph [15].

[14] There are two Constitutional Court cases which put the issue beyond any doubt whatsoever. The first is *K v Minister of Safety and Security* 2005 (6) 419 (CC); [2005 (8) BCLR 749 (CC)], where it was held that the Minister was liable where a police officer perpetrated rape. But the position becomes mortised beyond any doubt, in my respectful submission, in the case of *F v Minister of Safety and Security and another (Institute for Security Studies and others as amici curiae)* 2012 (3) BCLR 244 (CC). This concerned a case where a police officer who was not on duty and was in civilian dress at the time also perpetrated a rape and it was held that the Minister was liable for the rape perpetrated by the police officer. This being the case, *a fortiori*, how much more strongly is the case established where police officers must, by virtue of their acting as police officers, have had information and access and the opportunity to steal money which it was their duty having recovered from criminals to keep in safekeeping for handing over to the rightful owners. I, therefore, have no difficulty in finding that there was negligence on the part of police officers, that the police officers acted in the course and scope of their employment and accordingly that the Minister is liable.

[15] All that therefore remains to be considered is the computation of quantum in respect of so-called Billings notes, the Beitbridge notes and the Inyanga notes. The Billings notes are contested by the defendant on the basis that the affidavit of Erica Gibbons records, in paragraph 11 thereof, that a sealed evidence bag FSD-372679 brought to her was counted in her presence and contained $77 000.00. Mr *Khoza* submitted accordingly that the amount of $77 000.00 was already part of the amount of $1 174 300.00, which, it is common cause, Gibbons counted.

[16] The essential difficulty for the defendant is the following. There were two separate amounts of $77 000.00 recovered. The amount which Erica Gibbons counted was the amount recovered from so-called *beskuldigde 6* where the money was in the presence of one Hilda. It was recovered by an officer named Paulse and that money was put into the sealed bag FSD-372679. This money does not constitute the so-called Billings notes which were recovered in a separate incident. Furthermore, the handwritten notes of Inspector Viljoen that were handed in as evidence also record two separate amounts of $77 000.00, the first $77 000.00 being recovered indeed from Chris Billings and the second $77 000.00 from one Ananias.

[17] Accordingly, it is clear that the $77 000.00, which the plaintiff wishes to recover as the so-called Billings notes, were not included in

the account by Gibbons. In other words, one must accept, lest the point be lost, that although Gibbons counted sums of money there were further sums over and above the Gibbons count that were put into the safe in Benoni.

[18] I turn now to consider the Beitbridge notes. As I have already indicated, the Beitbridge notes were the first that were recovered as a result of *knap speurwerk* of John Pearson. There is a trail of evidence that indicates that notes were seized by one police officer, and/or Paulse, they were moved to the Police Station at Maizina, placed in a evidence bag, then moved to the S and VC Unit in Pretoria under the control of Superintendent Coetzee and that Superintendent Coetzee in turn handed over the bag containing these notes to one Joubert on 5 April 2006 who, in turn, handed it to Steyn in Benoni who on the same day put it in the Benoni safe.

[19] Lieutenant Colonel Joubert testified that he did not know how much was in the bag and could not confirm the amount. He was, however, clear that this money or the evidence bag which would have contained the money was handed over to Steyn on 5 April 2006 - in other words, after Gibbons had done her first count on 28 March 2006. Steyn, who could have been called as a witness, was not called by the defendant. De Klerk as well as Paulse and Coetzee were not called.

[20] In the face of evidence directly implicating police officers that there

was some R450 000.00 seized at Beitbridge which found its way into the safe at Benoni, one cannot hold it against the plaintiff that there is insufficient further precision on this aspect. After all, as I have said, there was evidence directly implicating various police officers who were not called.

[21] Furthermore, the total sum claimed by the plaintiff amounts to an amount of, in round figures, R14 million. There has been abundant evidence in this case that this figure was bandied about in discussions among the police at the time. Also, in the applications resisting bail, this figure of R14 million that had been recovered as a result of excellent police work and which was no longer available in the safe when it was due to be audited in May 2006. Accordingly, I accept therefore that the plaintiff's claim of $450 000.00 as part of the Beitbridge notes as being sufficiently proven according to the well-recognised standard set out in the *Stellenbosch Farmers' Winery Group Ltd and Another v Martell et Cie* 2003 (1) SA (SCA) at paragraph [5].

[22] Lastly, in terms of the evidence, there needs to be considered the question of the so-called Inyanga notes claim for R502 700.00. There is evidence that bank notes were seized on 1 April 2006 by Captain Claasen, that they were placed in evidence bag FSC-187952, that Claasen handed this evidence bag over to Inspector Mthembi of the S and BC Unit Northrand. There is also evidence that Mthembi claimed

that he entrusted the bag to Steyn and on Steyn's instructions placed in the Benoni safe. There is a record that Steyn himself claimed to have placed this money in the Benoni safe.

[23] An application was made by the plaintiff to lead evidence of a hearsay nature in terms of the Law of Evidence Amendment Act. That application in the end was correctly not opposed by the defendant. If one has regard to this evidence and the fact that Claasen Mthembi and Steyn were not called as witnesses plus the mathematics of the matter - namely that the total of the plaintiff's claim is in round figures R14 million, which coincides with the figure that had been repeatedly bandied about among the police themselves and also by persons such as the Loss Adjuster Pearson and Captain Manoj Bhawanibheekh it can, safely be accepted that the claim for the Inyanga notes of R502 700.00 has been proven satisfactorily according to the civil standard that prevails.

[23] In the case of *Skilya Property Investments [Pty] Ltd v Lloyds of London Underwriting* 2002 (3) SA 765 (T) Southwood J, in my respectful opinion, helpfully set out how an order should be cast in a matter such as this. I need simply to summarise the reasoning that lies behind the order that I have asked the attorneys acting for the plaintiff to prepare. The claim is clearly a liquidated one even though a trial might have been necessary in order to determine the extent of the plaintiff's loss on 25 May 2006 but, *par excellence*, notes in a safe that go missing

constitute a liquidated amount in money. Accordingly, interest would run on that liquidated sum (as found by the Court) from the relevant date, namely 25 May 2006.

[24 An order given in a South African Court in a foreign currency must always allow the option of the debt being paid in the rand equivalent of the foreign debt and the exchange rate that would prevail in the event that the defendant pays in rand would be the rate prevailing on the date of the payment of the Court's order.

[25] The amount that is reflected in my order is an amount of $1 801 300.00 which, for the sake of completeness I repeat, is made up as follows: (i) Gibbons notes, $1 174 300.00; (ii) Billings notes, $77 000.00; (iii) Beitbridge notes, $450 000.00 and Booysens notes, $100 000.00 which give total $1 801 300.00.

[26] The rand amount is R2 111 350.00 made up as follows: (i) Gibbons count, R1 599 950.00; (ii) Booysens recovery R8 700.00; (iii) Inyanga notes R502 000.00, giving a total of R2 111 350.00.

[27] There is an order made in terms of the draft marked 'X'. For the sake of completeness and to avoid any problems that might occur later on I shall read the draft into the record. The order of the Court is that the defendant, (The Minister of Safety and Security), is to pay the

plaintiff as follows:

1. Payment of the sum of $1 801 300.00 or the rand equivalent thereof as at the date of payment.
2. Interest thereon [on the sum of $1 801 300.00] at 15,5% from 25 May 2006 to date of payment.
3. Payment of the sum of R2 111 350.00.
4. Interest thereon [on the sum of R2 111 350.00] at 15,5% on 25 May 2006 to date of payment.
5. Costs of the action, including the costs of senior counsel.

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Attorneys for Plaintiff:	Norton Rose South Africa
Counsel for Defendant:	Adv *M Khoza* SC
	(with him Adv *E Lushaba*)
Attorneys for Defendant:	The State Attorney
Dates of Hearing:	13, 14, 15, 18, 20, 22 March 2013
Date of Judgment:	22 March 2013