



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 28 March 2025

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Kristine Kalmer v Gaironisa Davids NO (in her capacity as the Executor in the Estate: late Yasmin Salie) and Another (Case no 501/2023) [2025] ZASCA 26 (28 March 2025)

Today the Supreme Court of Appeal (SCA) handed down judgment, dismissing an appeal with costs, against an order by a full court of the Western Cape Division of the High Court, Cape Town, sitting as court of appeal (the High Court).

This appeal concerns an incident which occurred during a ladies' race in 2014 on the promenade (or pavement) in Mouille Point, Cape Town, on a part of the course that was open to the public. The appellant, an elite runner, collided with a member of the public, Ms Yasmin Salie (Ms Salie) causing her to fall to the ground. Despite the collision, the appellant continued running without stopping. The incident happened shortly after Ms Salie had taken a photo of another participant and her family, who had not yet started the race. Ms Salie and the participant were stationary and in the middle of the pavement, when the collision occurred.

As a result of injuries sustained in the collision, Ms Salie instituted an action for damages in the High Court against the appellant and the second respondent, Western Province Athletics (WPA), the race organiser. The High Court (Cloete J) dismissed her claim. It held that as a spectator, Ms Salie must have been aware of other runners approaching at similar speed; and that Ms Salie failed to prove negligence against the appellant and WPA.

An appeal to a full court succeeded. It found the appellant liable for 30% of the damages that Ms Salie may prove against her; and dismissed her claim against WPA with costs. The respondent's application for special leave to appeal the dismissal of her claim against WPA was refused by this Court, which granted the appellant special leave to appeal. Ms Gaironisa Davids NO, the executrix of Ms Salie's estate, was substituted as the first respondent in the appeal.

The SCA held that a reasonable person in the appellant's position would have been alert to the possibility that a pedestrian might be in her path. The Court rejected the appellant's reliance on

English authorities concerning the ‘duty of care’ doctrine of participants and spectators at sporting events. The Court held that the race was not at a stadium or similar venue where the organisers are responsible for the safety and security of spectators, and where their attendance and risks are regulated through ticketing. The Court found that the appellant, on her own showing, when running, focused solely on the ground immediately in front of her and on her fellow competitors, oblivious to what was happening around her. She testified that she runs every race this way. The Court found that she could have avoided the collision: the pavement is six metres wide; and she could have slowed down or run past Ms Salie on either side. In addition, the appellant conceded that she had failed to keep a proper lookout.

As a result, the SCA dismissed the appeal with costs. No costs order was made regarding Western Province Athletics’ participation in the appeal.

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