

DOWLING v DIOCESAN COLLEGE AND OTHERS 1999 (3) SA 847 (C) D

Headnote : Kopnota

The plaintiff sued the first defendant school and two prefects at the school, as second and third defendants, for damages arising out of assaults allegedly perpetrated on the plaintiff's minor son, a pupil at the school, by the second and third defendants. It was the plaintiff's case that the second and third defendants had been appointed as prefects; that among their duties were the supervision of pupils and the maintenance of discipline and good behaviour at the school; that the first defendant at all times had the right to control the second and third defendants' performance of their duties as prefects; and that the assaults had been carried out by the second and third defendants within the course and scope of their duties as prefects. The first defendant excepted to the plaintiff's particulars of claim as being bad in law, in that the first defendant's liability could only arise from the law relating to vicarious liability and the plaintiff had not pleaded facts and circumstances justifying such vicarious liability.

Held, that at the pleading stage it was not necessary to indicate whether the relationship between the school and its prefects was one between master and servant or between parent and child or something akin to either of them. (At 852G-G/H.)

Held, further, that on the facts pleaded a case of vicarious liability could be made out either on the extended meaning of the master-and-servant relationship or a relationship akin to that of parent and child in the sense that liability could flow from a service relationship between parent and child and damage occurred within the course and scope of the child's work activities. Furthermore, there was case law to the effect that a school would be vicariously liable for damages arising out of unlawful assaults by duly appointed prefects as it would be for assaults by a teacher employed by the school. (At 852G/H-H/I, 851H-I and 852I.) Exception dismissed.