



2 March 2016

PRESS SUMMARY

Mr A M Mohamud (in substitution for Mr A Mohamud (deceased)) (Appellant) v WM Morrison Supermarkets plc (Respondent) [2016] UKSC 11
On appeal from [2014] EWCA Civ 116

JUSTICES: Lord Neuberger (President), Lady Hale (Deputy President), Lord Dyson, Lord Reed, Lord Toulson

BACKGROUND TO THE APPEAL

On 15 March 2008 the Claimant entered the Respondent's premises in Small Heath, Birmingham which include a petrol station and a kiosk where customers pay for their purchases. Having parked his car he entered the kiosk to ask whether he could print some documents from a USB stick. Mr Amjid Khan was behind the kiosk desk, employed by the Respondent to see that petrol pumps and the kiosk were kept in good order and to serve customers. Mr Khan refused the Claimant's request in a rude manner, at which the Claimant protested. Mr Khan responded in foul, racist and threatening language and ordered the Claimant to leave. The Claimant returned to his car followed by Mr Khan. Before the Claimant could drive off, Mr Khan opened the passenger door, told the Claimant in threatening words never to return and punched him on the left temple. The Claimant got out and walked round to close the passenger door when Mr Khan subjected him to a serious attack. The Claimant had not done anything which could be considered aggressive or abusive.

The Claimant brought proceedings against the Respondent on the basis that it was vicariously liable for the actions of its employee Mr Khan. The trial judge dismissed the claim because he considered that there was an insufficiently close connection between what Mr Khan was employed to do and his tortious conduct in attacking the Claimant for the Respondent to be liable. The Court of Appeal upheld the judge's decision. The Claimant appealed, challenging whether the "*close connection*" test was the appropriate standard to apply and also arguing that his claim should have succeeded in any event.

JUDGMENT

The Supreme Court unanimously allows the Claimant's appeal and holds the Respondent vicariously liable for the actions of its employee, Mr Khan, in attacking the Claimant. Lord Toulson gives the lead judgment.

REASONS FOR THE JUDGMENT

The close connection test has been followed at the highest level [42] and there is nothing wrong with it as such [46]. In the present case, the court has to consider two matters. First, the court must ask what function or field of activities has been entrusted by the employer to the employee

(i.e. what was the nature of his job). This is to be viewed broadly [44]. Second, the court must decide whether there was a sufficient connection between the position in which he was employed and his wrongful conduct to make it right for the employer to be held liable [45].

Applying that test here, it was Mr Khan's job to attend to customers and respond to their inquiries. His conduct in responding to the Claimant's request with abuse was inexcusable, but interacting with customers was within the field of activities assigned to him by his employer. What happened thereafter was an unbroken sequence of events. The connection between the field of activities assigned to Mr Khan and his employment did not cease at the moment when he came out from behind the counter and followed the Claimant onto the forecourt. There are two reasons to draw this conclusion. First, it is not correct to regard Mr Khan as having metaphorically taken off his uniform the moment he stepped out from behind the counter - he was following up on what he said to the Claimant. Secondly, when Mr Khan followed the Claimant to his car and told him not to come back to the petrol station, that was not something personal between them, but an order to keep away from his employer's premises. In giving the order he was purporting to act about his employer's business [47].

Mr Khan's motive in the attack is irrelevant. It does not matter whether he was motivated by personal racism rather than a desire to benefit his employer's business [48].

Lord Dyson agrees with the reasons given by Lord Toulson [57] and emphasises that the close connection test is the correct test to apply [53].

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: www.supremecourt.uk/decided-cases/index.html