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DAMAGES

Departments must pay for prison fall

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THE ministers of Justice and Correctional Services and of Public Works are responsible for the damages caused to a woman, who seriously injured her leg when she fell on the pathway leading to and from the Pollsmoor Prison in Cape Town in 2017.

Nazley Lakay was visiting her son in prison with her neighbour, who was there to see her husband, when the accident occurred.

Lakay said the pathway was the only one leading to and from the prison and it was uneven and unkempt.

She claimed damages against the two government departments in the Western Cape High Court, where she argued that the prison had a duty to

ensure that those who visited their loved ones in jail were safe.

She contended that the departments had failed to maintain the path properly or place warning signs of the dangers. While Correctional Services agreed that the pathway was perhaps not in the best shape, it blamed Lakay for not looking where she was walking.

The department also said it was short of money and thus not able to upgrade the pathway.

However, shortly after the accident it repaved the pathway, something Judge Hailey Slingers said should have been done long before.

Pictures of the original pathway were handed to the court, showing a pathway of deteriorated and broken-down concrete with an uneven surface which abounded with large loose

stones.

Lakay testified that when a member of the public visited an inmate at Pollsmoor, they were first processed in the visitors' section and then taken through a security gate to a waiting room.

They were then collected by a taxi and transported to the relevant section where the inmate was held.

After she had visited her son, the taxi returned her to the pick-up point, from where she exited the area through the gates. She used the pathway to make her way back to the visitors' parking lot where she waited for her neighbour's return.

She again used the pathway to ask one of the wardens how long her neighbour would be. While walking along the pathway, Lakay fell due to

the uneven surface.

She said she stepped on a rugged piece of concrete which gave way, causing her foot to twist, which caused her to fall and land on her back.

She was taken to hospital, and due to her injuries she had to use a wheelchair for some time.

Judge Slingers noted that Pollsmoor was a correctional facility frequented by members of the public who visited their loved ones and friends incarcerated there, as well as by religious groups who ministered to the inmates.

She said both departments were part of the state and should be concerned with the safety of those who visited Pollsmoor.

The judge said in similar cases it had been held that an occupier of a property or a building where (poten-

tially) dangerous conditions existed had a legal duty to prevent injuries to persons, and even trespassers, who visited.

The defendants, as organs of the state, were constitutionally obliged to ensure the safety of members of the public who visited the prison. She said members of the public had the right to visit loved ones in the prison and had no choice but to use the one and only pathway leading to the prison.

"I am of the view that the defendants were obliged to prevent injuries to persons who visited Pollsmoor and to ensure that they could do so safely," Judge Slingers said.

She ordered that these departments were 100% liable for Lakay's injuries.

The amount payable to her will be determined at a later stage.