

UK COURT OF APPEAL FINDS UK PARENT COMPANY OWES NO DUTY OF CARE IN RELATION TO OPERATIONS OF OVERSEAS SUBSIDIARY

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Legal Briefings

The UK Court of Appeal has handed down its judgment in [AAA and others v Unilever PLC and Unilever Tea Kenya Limited](#), declaring that Unilever PLC (the UK parent company) owed no duty of care in relation to the operations of its Kenyan subsidiary, Unilever Tea Kenya Limited ("**UTKL**"). Without a good arguable case against Unilever PLC, the Court could not take jurisdiction in relation to the claims against UTKL. This judgment is the [second blow](#) this year to Claimants attempting to bring claims in the UK based on allegations of human rights issues overseas and stresses, perhaps the importance of an effective and efficient local operational-level grievance mechanism for resolving any issues.

The Claimants/Appellants were 218 Kenyan nationals who were all employees of or residents on UTKL's plantation in Kenya. The claims arose out of alleged injuries suffered on UTKL's plantation at the hands of third parties during serious inter-tribal ethnic violence following the Kenyan presidential election in 2007. The Claimants had alleged that: (i) the risk of this violence was foreseeable by the Defendants; (ii) the Defendants owed them a duty of care to protect them from the risks of such violence; and (iii) the Defendants breached that duty of care.

To establish a duty of care in these circumstances, the Court applies the three-limb test in *Caparo v Dickman* (proximity, foreseeability and fair, just and reasonable). The first instance Court [held](#) that Unilever PLC owed no duty of care in these circumstances as the damage was not foreseeable and it would not be fair, just and reasonable to impose a duty of care in these circumstances. With no real issue to be tried as against the Claimants and Unilever PLC (the only UK-based defendant), the Court declined jurisdiction over the other claims. In passing, however, the Court indicated that there was sufficient proximity between Unilever PLC and the Claimants.

The Court of Appeal has upheld the first instance decision, albeit on different grounds. On considering proximity, the Court of Appeal examined Unilever's corporate structure and crisis management policies, training and knowledge within the Unilever group. The Court of Appeal found that UTKL's business was managed locally by UTKL, which had the relevant experience in relation to local political or ethnic matters, and that UTKL had devised its own crisis and emergency management policy and training programme without any specific direction or detailed advice from Unilever PLC.

Applying the test for parental control set out in *Chandler v Cape*, the Court of Appeal also identified two basic types of case where the test for a duty of care might be capable of being alleged in respect of a parent company:

- where the parent has in substance taken over the management of the relevant activity of the subsidiary in place of (or jointly with) the subsidiary's own management; or
- where the parent has given relevant advice to the subsidiary about how it should manage a particular risk.

In the present case, the Claimants conceded that the first was not applicable and, having reviewed the evidence, the Court found that the appellants were "*nowhere near being able to show that they have a good arguable claim*" against Unilever PLC on the basis of the second.

On these bases, the Court of Appeal held that there was a lack of proximity between Unilever PLC and the Claimants. It dismissed the claims against Unilever PLC and (in the absence of a claim against a UK "anchor" Defendant) refused jurisdiction in relation to the claims against UTKL.

Given the difficulties that Claimants are having (and the costs and timeframes associated) with trying to bring these types of claims in the UK, this case further demonstrates the importance of an effective and efficient local operational-level grievance mechanism ("**OLGM**"), as set out in the UN Guiding Principles. An effective OLGM should be established in consultation with, and sensitive to the culture of, local stakeholders; it should be accessible (offering equal access to all groups within the local context) and it should offer effective and efficient remediation where appropriate (including a broad range of practical remediation steps that will best impact any affected stakeholders). Such an effective OLGM can help a company mitigate risk by providing a method for the quick identification of issues and a mechanism for any such issues to be resolved effectively and efficiently. From the perspective of local stakeholders who feel that they have been adversely impacted by a business' operations, a credible and effective OLGM offers a much better option for ensuring that their grievance is heard and, if appropriate, remediated.

You can read more about this decision [here](#).

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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