

South African resort responsible for Flemish tourist drowning at sea.

On the 2nd of September 2019, the lawsuit filed by the family of Bavo Verheyden (21) against the resort in South Africa at which Bavo and his brother stayed, and from where the Ntafufu beach where Bavo drowned on the 18th of April 2011 is a mere stone's throw away, has finally come to an end. A settlement was reached, sanctioned by Cape Town's High Court, in which the resort has acknowledged that it failed to comply with its legal duty to take all of the reasonable precautions to warn the brothers of potential dangers of the sea.

Bavo is a Flemish fourth year Bioscience Engineering student when he visits his older brother Bart during the Easter break of 2011. Bart lives and works since one year as a doctor in the rural regions of the province North West of South Africa. Together the brothers would follow the route along the East Coast in the direction of Cape Town, where Bart was to attend a congress. During the evening of the 17th of April, they arrive at the Khululeka Retreat (now Ntafufu Eco Lodge) close to Port St Johns, where they're welcomed by Mr. and Mrs. Von Lengeling. The resort is recommended to them by an acquaintance of Bart's who stays there regularly in the context of his job as a consultant social worker. Bavo describes the place as paradise: "We woke up with the sun shining on our bed. Could it get any better than this? In a mud hut with a thatched roof". It's April 18th. The owners provide them with tips about things to do, among which is swimming in the sea, but they mention none of the risks that come with swimming in the ocean at this beach. Nor do they point out that swimming in the ocean along the East Coast of South Africa is risky, with sharks and dangerous rip currents, and that drowning is common at the South African coasts. On their website they praise 'their' beaches for swimming and surfing.

The weather is beautiful for the first time in days. The brothers don't plan anything else that day other than spend the afternoon by the sea. They rent two canoes at the resort, which take them over the river to the sea. It's spring tide, but the brothers don't know that. Spring tide alerts issued by local newspapers and radio stations don't reach them, being foreign travellers, neither does anyone warn them. They're only a few metres into the sea when fate strikes. Bavo is pulled into sea and drowns, his body washes ashore a week later. Bart is thrust onto the beach by a wave and survives.

In 2012, Bavo's family filed a lawsuit against the resort. The charge being that they had neglected to warn the brothers of the dangers of the sea at the nearby beach, and that they hadn't provided them with this information, which resulted in the brothers going in the sea and Bavo drowning. With this, they hoped to obtain a judicial sentence that determines that there be a so-called 'legal duty' to warn bathers of the potential dangers of the sea. The family hoped to create a precedent with this trial to direct the tourism sector to its responsibility to warn tourists of the dangers of the sea and not to conceal those dangers for fear of losing tourists.

However, the judicial process was averted at the last moment, two weeks before the scheduled start of the trial on the 3rd of September 2019, when the counterparty offered a settlement. There was further negotiating and on the 2nd of September the settlement was sanctioned by Cape Town's High Court. The counterparty acknowledged that "it had a legal duty to take all reasonable steps to warn the brothers of the potential hazards of swimming at Ntafufu beach, where local knowledge is required to identify the risks of, for example, the presence of rip currents". It acknowledged that it had failed to comply with this legal duty and the family was paid a sum of R500.000.

This amount goes entirely to the non-profit organisation Safe Coastal Tourism, which was founded by the family a year after Bavo's death. The main objective of this non-profit organisation is to convince the tourism sector of the importance of informing tourists and of raising awareness about the dangers of the sea, as well as to inform youngsters at school about such dangers by means of educational tools.

Note for the publisher

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