

SOUTH AFRICA / JUDGMENT

E M v Member of the Executive Council for Health and Development (Gauteng)

(4026/2014) [2020] ZAGPJHC 155 (4 March 2020)

[2020] ZAGPJHC 155

COURT

South Gauteng High Court, Johannesburg

BEFORE

Senyatsi ML

CASE / FILE NUMBER

4026/2014

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REPUBLIC

OF SOUTH AFRICA

IN THE HIGH COURT OF

SOUTH AFRICA

GAUTENG LOCAL

DIVISION, JOHANNESBURG

CASE NO: 4026/2014

In the

matter between:

M
E
obo Applicant
M
K
and
THE
MEMBER OF THE
EXECUTIVE Respondent
COUNCIL FOR HEALTH AND
DEVELOPMENT
(GAUTENG)

JUDGMENT

SENYATSI J:

A:

INTRODUCTION

[1] This is an interlocutory application to compel the Respondent to identify what he/she deems to be the remaining issues in dispute

between the parties.

[2] The action was instituted by the Applicant in her representative capacity on behalf of K M.

[3] The action furthermore, relates to the admission and confinement for childbirth of the Applicant during the term of gestation at the Chris Baragwanath Hospital on 4 October 2010. The action also relates to the ultimate parturition of the then unborn child, K M at the Chris Baragwanath Hospital on 4 October 2010 by means of caesarean section.

[4] The trial was originally set down for 2 September 2019. The trial was postponed sine die.

[5] During the trial DJP Mojapelo gave certain orders. Of relevance to today's application are the following orders:

5.1. The reports of the Defendant's obstetrician and nursing expert shall be served to the plaintiff by 17 September 2019;

5.2. Joint minutes between the obstetrician and nursing expert shall be procured by 27 September 2019.

[6] It is common cause between the parties that the orders set out above, were complied with.

[7] It is also common cause that an extensive follow up pre-trial was held on 15 November 2019 by the Applicants attorneys and Respondent's

counsel.

[8] According to the Applicant's Counsel the Respondent admitted the statements quoted following what DJP Mojapelo ordered in so far as the statements were consistent with the joint minutes.

[9] It is averred on behalf of the Applicant that she recorded that she could not identify disputes after having regard to the joint minutes. The Respondent also contends the Applicant, was required to state what she/he deemed to be in dispute. It is further averred that the Respondent recorded that she/he required time to formulate the dispute.

- [10] The Applicant avers furthermore that it was agreed that the Respondent would identify the disputes and revert to the Applicant by 18 November 2019 to indicate how much time was needed to commit with the Respondent's experts to formulate the dispute.
- [11] The Applicant's rights to approach interlocutory court for relief were reserved.
- [12] In opposition to the relief sought, the Respondent contends that the Application has no merits, is unwarranted and that it must be dismissed with punitive costs order.
- [13] The Respondent contends that the Applicant does not disclose the true facts relating to the parties on disputes issue. According to the Respondent, the Applicant is misleading this Court.
- [14] The Respondent states in amplification of his/her contention that paragraphs 21, 22 and 23 of the pre-trial minute clearly creates a dispute.
- [15] In paragraph 21 of the pre-trial minute, there were three questions which were put to the respondent. No admissions were made on these questions. In my respectful view, these would be disputes on their own requiring to be proven at trial. I am in agreement with Mr Sibuyi that in so far as these are concerned, these are clearly identifiable as disputes.
- [16] In so far as paragraph 22 of the pre-trial minutes is concerned sub paragraph 22.1 following a request by the Applicant that " the following can no longer be disputed by the defendant and should be admitted forthwith:

22.1. The negligence of the employees of the clinic and hospital resulted in an absence of appropriate monitoring of the progress of birth prescribed by the applicable guidelines;

22.1.1. Answer: The plaintiff should identify the specific clauses of the guidelines she is of the view the Defendant did not adhere to."

This in my view, creates a dispute and therefore not need to amplify same as contended by Mr Uys.

- [17] In regards to paragraphs 22.2 to 22.5 of the joint minute, the answer given by the Respondent was that the Respondent does not make any admission and that legal causation has to be proved. From this answer, the only inescapable conclusion is that the statements made are disputed.
- [18] With regards to paragraphs 23 of the joint minutes, the answer given was that the statement contained a legal conclusion and it was not admitted. This thus created a dispute.
- [19] The only contentious issue is in paragraph 24 of the joint minutes where a statement is made that the Respondent is required to state, in terms of provisions of the Practice Directive 2 what she/he deems to be in dispute. The answer was that the Respondent required time to formulate the dispute. This was vehemently denied by the Respondent. Mr Sibuyi admitted that he was present at the pre-trial conference and that no such agreement was reached. He referred me to the email he wrote to his instructing attorney. I am in agreement that the

email is consistent with the submission.

[20] Having regards to the disputes that could easily be identifiable from the pre-trial minutes, I am of the view that the Respondent is not in breach of Practice Directive 2. In the contrary, the issues in dispute are clearly identifiable from the pre-trial joint minutes.

[21] I hold the view that the Applicant has not proved that she is entitled to the relief sought.

[22] I have considered the submission by Mr Sibuyi that I should consider a punitive cost order against the Applicant or her attorneys. In exercising my discretion and I am not persuaded that such punitive cost order would be justified under these circumstances. I am not persuaded that the Respondent needed to brief two counsel to argue this application.

ORDER:

[23] The following order is made:-

- (a) The application is dismissed with costs.
- (b) The applicant is ordered to pay the costs of one Counsel.

SENYATSI ML

Judge of the High Court of South Africa

Gauteng Local Division, Johannesburg

Date interlocutory application heard: 03 March 2020

Date of Judgment: 04 March 2020

Applicants Counsel: Adv. P. Uys

Instructed by: Rene Fouche Inc

Respondents Counsel: Adv. W. Sibuyi SC

Adv. V.P. Ngutshana

Instructed by: State Attorney

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