

SOUTH AFRICA / JUDGMENT

N.S v Member of the Executive Counsel for the Department of Health, Eastern Cape (2930/13) [2017] ZAECMHC 5 (28 March 2017) [2017] ZAECMHC 5

COURT
Eastern Cape High Court, Mthatha

BEFORE
Griffiths

CASE / FILE NUMBER
2930/13

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

SAFLII

Note: Certain

personal/private details of parties or witnesses have been
redacted from this document in compliance with the law
and SAFLII

Policy

IN THE HIGH COURT
OF SOUTH AFRICA
EASTERN CAPE LOCAL
DIVISION

:

MTHATHA
CASE NO. 2930/13
In the matter

between:

N.
S.
PLAINTIFF
and
MEMBER OF THE EXECUTIVE
COUNSEL
FOR THE DEPARTMENT OF
HEALTH,
EASTERN
CAPE
DEFENDANT

JUDGMENT

GRIFFITHS, J.:

- [1] The plaintiff in this matter has sued in her representative capacity as mother and natural guardian of Y. S. (to whom I shall refer as "Y."), a girl born on [...] 2004. She has also purportedly sued in her personal capacity, a matter which is in contention between the parties. She has claimed damages from the defendant arising from the alleged negligence of the defendant's servants during her period of labour in 2004 at the Zitulele hospital, and/or during the course of the birth of Y. on 30 November 2004, which caused Y. to suffer hypoxic ischemic damage to her brain and consequent cerebral palsy.
- [2] The defendant has raised two special pleas to this claim and, in pleading over, has denied liability. In the first special plea the defendant has raised prescription and in the second, a failure on the part of the plaintiff to comply with section 3(1) of the Institution of Legal Proceedings against Certain Organs of State Act[1]. To both of these special pleas the plaintiff has replicated that the debt arose in 2013 when she received an explanation as to Y.'s medical condition and the underlying cause of her cerebral palsy from medical professionals.
- [3] At the outset of the trial it was agreed, and I accordingly ruled, that the issues of liability and quantum of damages would be separated, and that the question of liability would be determined first.
- [4] At that stage, Mr. Schoeman, who appeared on behalf of the plaintiff, intimated that no medical records had been provided by the defendant despite their having been called for. Accordingly, the plaintiff's experts had examined the case, and prepared their reports, based solely upon the information they had gleaned from the plaintiff herself, and from other medical sources such as radiological scans. Mr. Kunju, who appeared on behalf of the defendant, conceded that the medical records from the hospital were unavailable but informed the court that the reasons for this would become clear "in due course".
- [5] In support of her case of the plaintiff led the evidence of four witnesses, those being herself, her attorney Mr. Sakhela, Professor Odendaal and Dr. Van Toorn. I shall briefly summarize their evidence but, for the sake of convenience, shall not do so in the same order that they were led.
- [6] The plaintiff testified that she was born on 23 November 1987 and had completed grade 11 at school. She had fallen pregnant with Y. during 2004 and had duly attended at a local clinic. She had been examined for various potential ailments, such as diabetes and high blood pressure, but had been found to be healthy. At no stage were any concerns raised about the fetus.

- [7] On 10 November 2004 she had felt pains "in the waist area". She was told at the clinic that as her waters had not yet broken, she should return home. The pains became worse and on the following day she went to the hospital. Her waters broke whilst en route thereto. She had been taken to the maternity ward at about 5 PM after which a vaginal examination had been undertaken. The nurses who were examining her intimated that the child appeared to be normal but had given no indication as to when the baby would be delivered. She had been admitted to the ward.
- [8] The pains appeared to become worse and she again approached the nurses who informed her that she remained far from delivery but, to ease the pains, she should simply walk around the passages. She had followed their advice. During the night she approached the nurses approximately 3 times complaining of pain and on each occasion was given the same advice.
- [9] During the course of the following day, 12 November 2004, the same procedure was repeated over and over again despite the fact that she was suffering from extensive abdominal pains. At one stage a nurse placed something on her ears and on her stomach as a precursor to a vaginal examination and said to her "Lady, still walk around!"
- [10] She continued to approach the nurses during the remainder of that day and night to the extent that the nurses became annoyed. They continued to give her the same advice. On the 13th the pains had become severe and she requested that a caesarean section be performed. The response from one of the nurses was "You seem to know a lot. You are going to deliver your child in the normal way like other people."
- [11] Eventually, she was so exhausted from the pain that she collapsed in front of the maternity theatre. She was hoisted by nurses onto a bed, one of them commenting "now she is losing strength, we must call the doctor". This occurred at about 4 PM on [...] 2004. She remained on the bed until approximately 8 PM when she was conveyed to the theatre. At this stage one of the nurses stated "It is best that we save the mother as compared with the child who is not known." At no stage during the course of these examinations did the medical staff check for a foetal heart rate.
- [12] She stated that she had been rushed to the theatre where she found two doctors and was given a series of injections into her back. This caused the lower part of her body to "become numb" such that she could not feel anything. Thereafter she was unable to see what was happening until such time as Y. was born. A nurse held Y. upside down and tapped her on the feet mentioning the fact that the child was "exhausted". She particularly noticed that Y. did not cry.
- [13] Once back at the ward, Y. was taken from her and remained away for a long period of time. When she was returned, the plaintiff attempted to breast-feed her but she would not latch onto the breast. Y.'s mouth simply remained closed. At this stage, she also noticed the baby tensing her body and doing something which approximated to smiling. Whilst doing this, she had kept her eyes shut. Because this was her first child, and she had lacked experience,

she presumed that the child was playing. However, a nurse had also noticed this and had commented that the child was undergoing a series of fits or seizures.

- [14] She had also noticed that Y. slept most of the time but when she awoke, she would suffer from such seizures. The child was also very floppy. She did not see the nursing staff administering oxygen but Y. was given injections. When this was done, she particularly noticed that the child did not react or cry.
- [15] She and Y. were retained in the hospital for a long period of time and were only discharged on 28 November 2004.
- [16] She first heard that she might have a claim for damages during September, 2013, when she approached an official to query the termination of Y.'s social grant. This official had asked her to explain the facts surrounding the delivery of Y. after which she had informed the plaintiff that her grandchild had suffered from a similar affliction and had been assisted by the attorney, Mr. Sakhela. She had been provided with Mr. Sakhela's telephone number, had contacted him and had later consulted with him during October
2013. Consequent upon this consultation, Mr. Sakhela had issued a letter of demand on 9 October 2013 and had followed up with a summons which was issued on 2 December 2013.
- [17] Prof. Odendaal, an obstetrician and gynecologist, testified that he had examined the plaintiff and had obtained information relating to the birth of Y. from her. He had lamented the lack of medical records from the hospital which were of vital importance in determining the causes of cerebral palsy. However, from the information available, particularly the report of Dr. Van Toorn, the MRI scan and the facts elicited from the plaintiff, there was little doubt but that Y. had suffered from Hypoxic Ischemic Encephalopathy ("HIE"). This was a specific condition in the new-born caused by asphyxia, i.e. lack of oxygen and poor blood circulation. Often no specific sentinel event as a cause of HIE is to be found. If, however, the damage had occurred during labour, it was very unlikely that there was no underlying event. According to Dr. Odendaal, it is most common in these circumstances for observations, or monitoring, to be lacking during the course of labour. Accordingly, the underlying causal event would generally go unnoticed.
- [18] He stated further that the main cause of HIE is a prolonged period of partial asphyxia during labour, or immediately after delivery. Foetal distress usually preceded HIE. According to him, it is accepted that foetal distress could be detected by abnormalities of the foetal heart rate pattern which would easily be detected by listening to the heartrate for decelerations during contractions. There are also other means by which the medical staff, during the course of proper monitoring, would be able to diagnose such foetal distress.
- [19] Prof. Odendaal concluded as follows:

"As the labour of Ms. Sontundu extended over a prolonged period of time and as there is no indication that the accurate observations of the fetal heart rate were done, it is most likely that the prolonged labour and therefore the continuing stresses of uterine contractions eventually caused the hypoxia and ischemia. The abnormal fetal heart rate patterns, which almost always precede fetal asphyxia, were therefore not detected"

[20] And later:

"As infant death from asphyxia and newborn babies suffering from HIE are closely related regarding the underlying cause, it is not difficult to conclude that poor monitoring for fetal distress is a main cause of HIE."

[21] It was his view that the abnormal foetal heart rate had clearly not been detected and that had proper steps been taken by the medical staff during labour, Y.'s condition would have been prevented. In his view, she had received substandard treatment and had she received proper treatment Y. would have been born a normal baby. Furthermore, in his view the prolonged labour explained how the child was damaged and that there were no other possible or plausible explanations in this particular matter. The scan had excluded congenital and metabolic abnormalities as being a cause.

[22] Dr. Van Toorn, a paediatric neurologist, also testified that he had, in reaching his conclusions, relied to a large extent on the history gleaned from the plaintiff. He had also seen limited medical records, the MRI brain scan performed on Y. on 27 February 2015 and a MRI report prepared by one professor Lotz. Before he had seen the MRI scan, he had prepared his report concluding as follows:

"Y. has a spastic quadriplegic type of cerebral palsy with microcephaly, cerebral visual impairment, epilepsy and severe global developmental delay. I am of the opinion that she suffered brain injury as a result of prolonged partial hypoxic-ischemic injury. The available evidence indicates that the brain injury probably occurred during the intrapartum period. It should be ascertained from the postnatal notes whether hypoglycemia was present. Pulvinar hyperintensity in conjunction with dominant occipital destruction classical signifies the additive effect of hypoglycemia in prolonged partial hypoxic ischemic injury of the brain."

[23] He further testified that he was qualified to give expert testimony with regard to the MRI scan performed by Professor Lotz, as this had been incorporated into his general training. He indeed had occasion to examine, and to interpret, such scans on a daily basis. He had the further additional advantage of having examined the patient and of knowing her history, information which would not have been available to the radiologist. His role therefore, as he described it, was to ascertain whether or not the MRI findings linked with, or conflicted with, his clinical findings. He concluded that they indeed corroborated one another.

[24] He testified that (and explained in clear and in minute detail how) the MRI scan revealed certain damage to the brain from which he could conclude (in concurrence with his already made clinical findings) as follows:

"So this tells us that the insult must have happened in a very short period, usually 20 minutes or 30 minutes. If the insult occurs over hours the brain adapts, so it protect the middle part and blood from the outer core goes to the middle. So most of the damage then is on the outside of the brain, the white matter. And this is the pattern that we see in this chart, and we call that prolonged partial. So it went on for a long time partial, because it managed to protect the middle part of the brain. So this is... And this is a typical pattern we see during prolonged labour.....

If the damage is acute total then I would look at things such as – then it means that there was no blood to the brain at all for a short period of time, then I would look at things like where the uterus ruptured, where the placenta dislodged, where the mother had a cardiac arrest and there was no blood going to the baby's brain. So I would look at that scenario. If I see that prolonged partial, which I am seeing here, then I look at the baby being stuck in labour for hours and not getting out. So it gives me an idea as to what the mechanism of injury is."

- [25] He was also able with some certainty and on an examination of the pattern of the brain injury, to determine that this injury was caused in the baby at term, not preterm. He was also able to determine, both from the history obtained from the plaintiff and from the MRI scan that Y. had suffered from HIE and consequent cerebral palsy as described earlier.
- [26] Prof. Van Toorn also examined whether there were any other possible causes of Y.'s HIE. He concluded that indeed there were not.
- [27] He was able to determine, by a process of exclusion, that the injury occurred during the process of prolonged labour. In his view, it was clear that the plaintiff had suffered from prolonged labour, that she had had to undergo a caesarean section on an emergency basis most probably because the baby was in distress and that the baby was severely compromised at birth. All of these, in his opinion, were strong indicators that the insult had occurred during labour and at term and pointed significantly to a failure on the part of the medical staff to monitor the plaintiff and the foetus during the period of time leading up to Y.'s birth.
- [28] Mr. Sakhela confirmed the evidence of the plaintiff with regard to her approach to him and the issuing of a letter in terms of the aforesaid Act, and the summons.
- [29] The defendant did not lead any evidence whatsoever to challenge, or contradict, the evidence of the plaintiff, and in particular the expert evidence to which I have referred. He contented himself with the evidence of two nurses who attempted to explain why the hospital records were not available. One Matebese, the hospital manager from 2009, as to some extent supported by a nurse Bewana, testified that there were no medical records to be found after they had received the letter of demand from Mr. Sakhela. She said that the policy in 2004 was that such medical records, in particular the maternity case record, were handed over to the patients on discharge. She had sought to recover such from the plaintiff to no avail. Both she, and Bewana, however conceded that there must have been records other than the maternity case record that the hospital had clearly mislaid.

[30] There are, essentially, four issues which remain for decision. Firstly, there is the question as to whether or not the plaintiff indeed incorporated in her particulars of claim a personal claim for damages based on emotional shock. If it is found that such a claim was pleaded, the second issue arises, that being founded in the special plea of prescription relating only to the plaintiff's personal claim, the special plea of prescription relating to Y. having been abandoned by Mr. Kunju. Thirdly, there is the question of compliance with section 3(1) of the Organs of State Act and finally the question as to whether the plaintiff has established on a balance of probability that it was the negligence of the defendant's servants which caused Y.'s injuries.

Did the plaintiff claim in her personal capacity?

[31] This aspect may be given short shrift. Mr. Kunju relies on subparagraph 1.2 of the plaintiff's particulars of claim which states that the plaintiff "acts herein in her representative capacity as mother and natural guardian of Y.....". However it is clear that the particulars must be interpreted in their entirety. In this regard, the following paragraphs thereof are relevant:

[32] Paragraph 9 states that the defendant and medical practitioners:

"at all times relevant hereto owed the plaintiff and her unborn child a duty of care,..."

[33] Paragraph 19 states as follows:

"As a consequence of the aforementioned negligent breach of the agreement and/or the negligent breach of the legal duty aforementioned, the plaintiff experienced severe psychological and/or psychiatric shock and trauma and will continuously experience same in future."

[34] Paragraph 21 states:

"The plaintiff, in her personal capacity and in a representative capacity as mother and natural guardian of Y., as a result of the complications suffered by Y. and the sequelae thereof consequent upon the aforesaid breach of legal duty, suffered damages in the amount of R6,490,000, computed and calculated as follows:

21.1...

21.2...

21.3...

21.4 General damages for the plaintiff: 1,750,000.00"

[35] As far as the prayer is concerned, paragraph 1 thereof states that the plaintiff claims:

"(a) in her personal and in her representative capacity, payment of the amount of R6,490,000.00;"

[36] For anyone to perceive that these particulars of claim are restricted solely to a claim on behalf of Y. would amount to placing form above substance. There is little doubt in my mind that any reasonable person reading these particulars of claim would understand that there are two claims emanating from the alleged negligent conduct, one for the plaintiff in her personal capacity and the other for the plaintiff in her representative capacity, acting on behalf of Y..

Prescription and compliance with the Organs of State Act

[37] The special plea of prescription, as I have mentioned, relates solely to the plaintiff's personal claim. Both with regard to the question of prescription and the defendant's reliance on the Organs of State Act, the plaintiff has replicated to the effect that, in the one instance, the debt became due within three years prior to issue of summons and, in the other, that the plaintiff only came to have knowledge of the debtor and the facts from which the debt arose within a period of six months prior to the delivery of the letter of demand in terms of section 3(1) of the Organs of State Act. Both of these contentions are based on the relevant sections of the Prescription Act[2] and the Organs of State Act respectively.

[38] With regard to the question of prescription, reliance is placed on sections 12(1) and section 12 (3) of the Prescription Act. In terms of section 12(1) prescription shall commence to run as soon as the debt is due. Section 12(3) reads as follows:

"(3) A debt shall not be deemed to be due until the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises: Provided that a creditor shall be deemed to have such knowledge if he could have acquired it by exercising reasonable care."

[39] As regards the Organs of State Act, the following provisions are relevant:

"3(1) No legal proceedings for the recovery of a debt may be instituted against an organ of state unless –

(a) the creditor has given the organ of state in question notice in writing of his or her or its intention to institute the legal proceedings in questions; or...

3(2) A notice must –

(a) within six months from the date on which the debt became due, be served on the organ of state in accordance with section 4(1); and

(b) briefly set out –

(i) the facts giving rise to the debt; and

(ii) such particulars of such debt as are within the knowledge of the creditor.

3(3)(a) For purposes of subsection (2)(a) –

- (a) a debt may not be regarded as being due until the creditor has knowledge of the identity of the organ of state and of the facts giving rise to the debt, but a creditor must be regarded as having acquired such knowledge as soon as he or she or it could have acquired it by exercising reasonable care ...

3(4)(a) If an organ of state relies on a creditor's failure to serve a notice in terms of subsection (2) (a), the creditor may apply to a court having jurisdiction for condonation of such failure."

[40] Section 12(3) of the Prescription Act and section 3(4)(a) of the Organs of State Act are very similar in their provisions. However, the two should not be conflated as they serve different purposes and have not entirely similar results[3].

[41] That notwithstanding, it has been held that both with regard to the Prescription Act[4] and with regard to the Organs of State Act[5], where these matters are pleaded in the form as pleaded in this case and the plaintiff relies on the deeming provisions of both Acts, the onus to establish that the plaintiff had knowledge of the debtor and/or organ of state and of the facts giving rise to the debt outside the three-year prescriptive period and the six-month notice period respectively, lies on the defendant.

[42] In this matter, the plaintiff and her attorney, Mr. Sakhela, have testified in this regard. Such evidence remains entirely unchallenged either by way of cross-examination or evidence to contradict their assertions. It is clear from the plaintiff's evidence that she only came to be aware of the fact that she might have a claim and against whom, well within both the prescriptive and the notice periods. Indeed, the evidence of the plaintiff in this regard accords entirely with the probabilities and cannot be gainsaid. In the circumstances, I find that the special pleas have no substance.

Were the defendant's servants negligent?

[43] There is no dispute that the plaintiff bears the onus in this regard. This would be discharged were the plaintiff to establish, on a balance of probability, that a reasonable medical practitioner in the circumstances in which the nurses and/or doctors at the hospital found themselves would have foreseen the likelihood of harm occurring (in this matter the likelihood of harm occurring to Y.) and would have taken steps to have guarded against its occurrence, and the practitioner concerned failed to take such steps[6]. In the case of an expert, such as a surgeon, the standard is higher than that of the ordinary layperson and the Court must consider the general level of skill and diligence possessed and exercised at the time by the members of the branch of the profession to which the practitioner belongs[7].

[44] Furthermore, where the plaintiff has presented evidence which of itself raises, at the very least, a prima facie case of negligence on the part of the defendant's servants, an obligation in the form an evidential onus passes to the defendant to rebut such prima facie case and to explain how the injury came about[8].

- [45] The careful and thorough analysis of all the facts available to them as presented to the court by Prof. Odendaal and Dr. Van Toorn clearly reveal that, as a matter of high probability, the foetus was compromised in one way or another during the course of a prolonged and unsustainable labour. These facts were established particularly in the case of Dr. Van Toorn not only based on the factual and historical input made by the plaintiff herself on consultation with him, but on a careful and thorough analysis of the MRI scan of Y.'s brain. Through an analysis of this scan and the damage revealed therefrom to her brain, he was able almost conclusively to conclude that the insult occurred at term and intrapartum. This accorded with his earlier assessment (prior to his having obtained a copy of the scan) of the situation which he had done based on the plaintiff's factual input and the other limited documentation available to him.
- [46] Once this fact was established as a matter of probability, then Prof. Odendaal's evidence comes to the fore in establishing that (in view of the fact that the plaintiff was in hospital for many days prior to the caesarean section, that she ought to have been fully and properly monitored on a regular basis, that she was in pain for a long period but the nurses simply told her to walk about in the corridors and the fact that an emergency caesarean section had to be performed) the care and treatment given to the plaintiff during this period was nothing short of substandard. This view was also supported by Dr. Van Toorn. This, in my view, created a strong and clear *prima facie* case of negligence on the part of the hospital staff. A reasonable nurse or other medical practitioner in the position of the nurses and other medical staff at the hospital who failed to properly carry out such monitoring or failed to do so at all, would have foreseen the likelihood of harm to Y. and would certainly have taken steps to guard against its occurrence. Their failure to do so in my view constitutes negligence.
- [47] As against this, the defendant led no evidence whatsoever. The only evidence placed before me was evidence which amounted to an attempt to exculpate the hospital staff for their loss of important and relevant hospital documents.
- [48] In argument Mr. Kunju appeared to raise two arguments which I could discern. The first of these was the submission that Odendaal and Van Toorn made their assessments based upon the factual input given by the plaintiff. In his submission, the plaintiff was untruthful and therefore the entire substructure of their evidence should fall away. In my view, the plaintiff was a good witness. It must be recalled that she gave evidence as to matters which occurred during 2004 and it would not be surprising that minor aspects of her evidence could be seen as being contradictory. Whether or not she was indeed given the maternity case records was never established and she maintained that she wasn't. This submission was based entirely on what was apparently the "policy of the day". In any event, the defendant, in order to establish that the evidence was generally false, would have had to make the submission that she, at a stage when she had no idea whatsoever that she had a claim against the defendant (in fact at a time when she was working with the defendant's employees at the hospital in helping other mothers with cerebral palsy children) had taken possession of the Maternity

Case Record, had perceived therefrom that there was evidence which was exculpatory to the defendant and, accordingly, had destroyed such evidence. Such submission is clearly so far-fetched in the circumstances that it merely needs to be stated to be rejected.

[49] The second argument which Mr. Kunju attempted to make was, as I understood it, that because there were no medical records available, "how was the defendant expected to make out a defence?" The adage "one is the author of one's own downfall" is of application to such a submission.

[50] I am accordingly satisfied that the plaintiff has established on a balance of probabilities that the defendant's servants were negligent and that such negligence causally contributed to the cerebral palsy which Y. now suffers.

Costs?

[51] It is clear that the plaintiff, as the successful party, is entitled to her costs. Mr. Schoeman has however submitted that such costs ought to be on the attorney and client scale in view of the fact that this is a matter which the defendant should, at a far earlier stage and certainly long before the trial commenced, have settled. There is much force in this. Whilst I have not had regard to the defendant's expert reports for the purposes of determining the question of liability, I am entitled, in my discretion, to have regard thereto for the purposes of costs. It appears therefrom that well before trial the defendant was possessed of his own expert evidence which indicated that the hospital staff was negligent. Despite this the trial has been doggedly and unnecessarily proceeded with. The only argument which the defendant might have is with regard to the question of the special pleas and the defendant's right to place the plaintiff under cross-examination in this regard. There are however two answers to this. Firstly, in the event the plaintiff was never placed under cross examination or challenged in this regard. Secondly, the defendant had the right to move the court to separate, and hear, the question of the special pleas separately from and before hearing the other issues which involved far more costs due to the expert evidence required. This was not done. I am accordingly satisfied that this is a matter where a punitive costs order ought to be made.

[52] In the circumstances, I grant judgment in favour of the plaintiff as follows:

1. The defendant is found to be liable for such damages as the plaintiff may prove in her personal and representative capacity as a result of the injuries which the minor child Y. sustained as a result of the treatment which they received at the Zitulele hospital;
2. The defendant is ordered to pay the plaintiffs costs of suit on the attorney and own client scale, including all reserved costs, together with interest thereon at the prevailing legal rate from 14 days after taxation or agreement to date of payment, such costs to furthermore include:

2.1 The costs of two counsel;

2.2 The costs of the hearing on 13, 14 and 16 February 2017;

2.3 The reasonable traveling and accommodation costs of plaintiff's legal representatives attending consultations with witnesses and court;

2.4 The costs of preparation for consultations and trial and heads of argument;

2.5 The reasonable traveling costs, reservation and appearance fees, if any, together with the costs of the preparation of reports and

consultations and the qualifying fees, if any, of the following expert witnesses as taxed by the taxing master or as agreed upon:

2.5.1 Prof. Odendaal;

2.5.2 Prof. Van Toorn;

2.5.3 Prof. Lotz.

R. E. GRIFFITHS

JUDGE OF THE HIGH COURT

COUNSEL FOR PLAINTIFF : Mr Schoeman Sc with

: Mr Sambudla

INSTRUCTED BY

: Sakhela Inc.

COUNSEL FOR DEFENDANT : Mr Kunju

INSTRUCTED BY

: State Attorney

HEARD ON

: 17 March 2017

DELIVERED ON

: 28 March 2017

[1] No 40 of 2002

[2] No 68 of 1969

[3] Premier of the Western Cape Provincial Government NO v Lakay (184/11) [2011] ZASCA 224 (30 November 2011) at paragraph 10

[4] See Gericke v Sack 1978 (1) SA 821 (AD)

- [5] See Member of the Executive Counsel for the Department of Health, Eastern Cape Government v Bonisile Chris Ndaliso (Eastern Cape Division, Grahamstown – case no. CA96/2015 – full bench)
 - [6] Kruger v Coetzee 1966 (2) SA 428 (A) at 430; Mukheiber v Raath & Ano. 1999 (3) SA 1065
 - [7] Mukheiber (supra) at paragraph 32
 - [8] Ntsele v MEC for health, Gauteng Provincial Government (2009/52394) at paragraph 113
-

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAECMHC/2017/5.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/ns-v-member-unknown-topic-aecmhc-2017>

Prepared on 25 October 2026 · Esheria