

SOUTH AFRICA / JUDGMENT

**P.H obo S.H v MEC for Health for the Province  
of KwaZulu-Natal (11198/2016) [2020] ZAKZDHC  
38; 2021 (1) SA 530 (KZD) (31 August 2020)**  
[2020] ZAKZDHC 38

COURT  
Kwazulu-Natal High Court, Durban

BEFORE  
Mngadi

CASE / FILE NUMBER  
11198/2016

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##### IN

THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL

LOCAL DIVISION, DURBAN

CASE

NO. 11198/2016

In

the matter between:

P  
H (obo S  
H) PLAINTIFF  
and  
MEC  
FOR HEALTH FOR THE PROVINCE OF  
KWAZULU-NATAL DEFENDANT  
ORDER  
(a) In respect of the application in

terms of Uniform rule  
34A, it is ordered that:

1.  
The defendant, in terms of Uniform rule 34A, is to pay the plaintiff an interim payment of R1529766.51 within thirty (30) days from the date of this order by depositing the payment into the trust account of the plaintiffs attorneys, namely: Friedman & Associates, Nedbank Account [...], branch code 130526. Failing the above, the said amount shall bear interest at the prescribed legal rate from the date the payment falls due until the date on which the payment is made.
2.  
The defendant is ordered to pay the costs of this application, such costs to include the costs of two counsel where so employed.  
(b) In respect of the application in

terms of Uniform rule  
28(4), it is ordered that:

1. The application for leave to amend the plea is refused.
2. The defendant is ordered to pay the costs of this application, such costs to include the costs of two counsel where so employed.

## JUDGMENT

Delivered on:

MNGADI J:

- [1] There are two applications for determination. The plaintiff in the first application applies for an interim payment in terms of Uniform rule 34A. The defendant opposes the plaintiffs application. In the second application, the defendant applies in terms of Uniform rule 28(4) for leave to amend the plea by invoking the defence commonly referred to as 'the public healthcare defence'. The plaintiff opposes the second application. The applications relate to a matter which is the subject of existing litigation between the plaintiff and the defendant, and the applications are interrelated to a certain extent. With the consent of the parties, the applications were heard together and this judgment deals with both applications.
- [2] The plaintiff is Pretty-Girl Hlongwane, an adult female who is the mother and natural guardian of Sa boy born on 14 July 2013. The defendant is the Member of the Executive Council for Health in the province of KwaZulu-Natal, who is responsible for the administration of healthcare services in the province.
- [3] On 14 July 2013 S was born in a hospital under the administration of the defendant. During birth, because of the delayed and an incorrect mode of delivery, hypoxic ischaemic damage was caused to S's brain, resulting in cerebral palsy, which left S severely mentally retarded

and physically handicapped. On 31 October 2016 an action for delictual damages on behalf of S was instituted against the defendant. On 1 February 2017, the defendant delivered a plea, which constituted a bald denial. On 23 April 2018, the defendant conceded 100% liability for damages to be proved. On 26 March 2020, the defendant delivered a notice of her intention to raise a public healthcare defence to which the plaintiff objected. The defendant filed an application for leave to amend the plea. The plaintiff, anticipating a delay in the trial, launched an application for interim payment.

#### Application for interim payment

- [4] The trial on quantum was set down for hearing on 8 June 2020. It did not proceed because of the Covid-19 pandemic. The basis of the plaintiff's application for an interim payment is that considerable costs have been incurred for S's medical costs and related expenses. The delay would necessitate further costs to be incurred. The intended introduction of the public healthcare defence, if granted, would also result in further delays. The plaintiff claims R23 million in damages. The interim payment claimed is an amount of R2 898 366. The amount includes past medical expenses of R464 366.51 and immediate future medical expenses in the sum of R565 400, as well as R1,5 million for general damages and loss of earning capacity.
- [5] The amounts claimed for past medical expenses and immediate future medical expenses are no longer challenged by the defendant.

Therefore, it is not necessary to traverse the averments in the founding affidavit in support of those claims. In the founding

affidavit, the plaintiff avers that the defendant has tendered to pay R500 000 towards general damages, which offer the plaintiff accepts. The tender is confirmed in the heads of argument with a provider that it is with prejudice. In oral argument, the defendant's counsel submitted that the defendant tenders an inclusive amount of R1,5 million. In a letter dated 19 August 2020 it stated that

'Our client tenders R1.5 million as part payment in settlement of your client's claim in the action under the above case number.

The payment is not made in terms of Uniform Rule 34A but as part settlement.'It is clear that the defendant offers R1,5 million as interim payment, but reserves the right to dispute the reasonableness of the expenditure constituting the total amount and without in any way compromising the pursuit of the public healthcare defence at the trial on quantum. Therefore, R500 000 as advance payment towards general damages, made without prejudice, is the amount to be added to the past and immediate future medical expenses.

- [6] In the answering affidavit, the defendant denied liability for medical and related expenses. She stated that the expenses of a medical nature were available in the public healthcare sector at no cost to the plaintiff and that the other items were non-medical

expenses. Further, the defendant referred to the fact that she intended to rely on the public healthcare defence. The effect thereof

is that medical services including medical supplies of a standard equivalent to or higher than that in the private healthcare sector

were available for use by the plaintiff. As stated above, this stance, correctly so in my view, was not persisted with. In my view,

it is telling that no decision has been made on the so-called public healthcare defence, and the plaintiff is utilising a mechanism

provided for by law. It cannot be argued that such mechanism ought to be suspended pending a decision on the public healthcare defence. The plaintiff is claiming past medical expenses and immediate future medical expenses for the child. It is important that the child continues to receive the necessary medical attention.

[7] The defendant states that the amount of R1,5 million claimed for general damages and loss of earnings does not fall within the ambit of Uniform rule 34A. The plaintiff states that the court has an inherent jurisdiction to direct the defendant to make an interim payment. In the circumstances of this case, general damages awarded in similar cases are in the region of R1,8 million and R2 million. The loss of earning capacity has been actuarially determined at R784

861. The court is the upper guardian of children with an obligation to act in the best interest of the child. In my view, even if the court has an inherent jurisdiction to order the payment of an interim payment outside the strict provisions of Uniform rule 34A, no basis has been established to exercise such inherent jurisdiction. The plaintiff, under medical expenses has included items which are disputably non-medical items. Previously the plaintiff applied for and was granted interim payments, and Uniform rule 34A remains available to the plaintiff should it be needed. The plaintiff might be of the view that it will be easy to prove quantum but the fact of the matter is that the trial on quantum is still to be held and this court cannot make a decision on issues which are the subject matter before the trial court. Uniform rule 34A relates only to medical expenses and loss of income. It does not provide for general damages or loss of earning capacity. See *Karpakis v Mutual & Federal Insurance Co Ltd* 1991 (3) SA 489 (0) at 495G; *Fair v SA Eagle Insurance Co Ltd* 1995 (4) SA 96 (E) at 1008-C.

[8] The plaintiff has on the balance of probabilities proved the claim for interim payment for past medical expenses in the amount of R464 366.51, and immediate future medical expenses of R565 400. In addition, an amount of R500 000 is added as advance payment for other damages to be proved. The plaintiff is entitled to the costs of the application on party and party scale, including costs of two counsel where so employed.

Application for leave to amend

[9] The defendant intends to amend the plea in the following respects:

- (a) The amount of damages payable with regard to a claim for future loss of earnings or reduction in earning capacity, is payable by way of periodic payments at the time that the minor child would probably, but for the injury, have earned the income in question.
- (b) The defendant denies that the plaintiff and her minor child will suffer damages in the amounts alleged or at all, since the medical services and supplies in question are available from the public healthcare sector at no cost or at a lesser cost than a standard equivalent to that provided in the private healthcare sector or at an acceptably high standard. In the event the court finds that a particular service is not available in the public healthcare, the defendant tenders to secure the medical service or supply or to reimburse the plaintiff.
- [10] The defendant then pleads that, to the extent that its proposed plea is inconsistent with the common law rules that a delictual claim must sound in money and the 'once and for all rule' which entails that the payment of damages must be in a lump sum, the defendant seeks the development of the common law. She contends that the common law rules impact on the constitutional obligations of the defendant to provide access for everyone to healthcare services, and it conflicts with the constitutional duty to manage and utilise public funds in an efficient, economic and effective manner. The proposed development will promote the spirit, purport and objects of the Bill of Rights and it will be in the interest of justice. If the development of the common law constitutes a limitation of any right, the limitation is consistent with sections 8(3)(b) and 36 of the Constitution or the development will be done in accordance with section 39(2) of the Constitution, or the will be in the interest of justice in terms of section 173 of the Constitution.
- [11] The defendant, lastly, states that if monetary damages for future medical expenses are awarded in a lump sum, that they be paid in periodic payment over the lifetime of the child, they be paid to a trust supervised by the court, the defendant be allowed to recover from the trust the full cost of any healthcare services obtained from the public healthcare sector, that any money remaining in the trust upon the death of the child be paid back to the defendant, and to grant the trustees the right to apply to supplement the funds in the trust for future medical care. The common law rules, she contends, results in the defendant paying for services that might not be incurred, and results in 25% of the lump sum in terms of the Contingency Fees Act 66 of 1997 being paid to the legal representatives of the plaintiff as fees.
- [12] In the affidavit in support of the application for leave to amend, Mr Stuart Clive Chambers, a director of legal services in the provincial department of health, states as follows. The public healthcare defence in essence provides that if the MEC for Health of any particular province is able to provide the care that is required by the minor child who has been diagnosed with cerebral palsy at a public institution, at the level equivalent or better to that available in the private sector, then the court may order the MEC to do so rather than being ordered to compensate the plaintiff monetarily for such damages. Chambers states that the factual matrix to establish the department's capacity is under investigation. He has been assured by their senior officials, including the various director generals that the KZN Department of

Health has the infrastructure to provide the required services. The defendant intends to lead evidence during the hearing of the matter to establish the amendment. The defendant will give evidence at the trial regarding the nature of therapies available in the public healthcare sector, where such therapies can be obtained, how such therapies are offered, the standards of public healthcare sector versus the private healthcare and so forth. The public healthcare sector already provides care for the vast majority of patients suffering from cerebral palsy in South Africa. King Edward VIII

Hospital in eThekweni is a tertiary level hospital which has the clinical expertise to provide treatment to cerebral palsy patients at the highest level. There is a network of hospitals and facilities which complement the King Edward VIII Hospital. These are the KwaZulu-Natal Children's Hospital with clinical expertise in respect of assessment and treatment of children with cerebral palsy, the Phoenix Assessment and Therapy Centre, which provides, inter alia, nursing and medical services, occupational therapy, physiotherapy, psychology, speech therapy and audiology; the Mahatma Gandhi Memorial Hospital and the Orthotic Department at Wentworth hospital.

[13] Mr Chambers states that the defendant's department has paid substantial claims of a similar nature as follows:

- (a) R102 626 616 in the 2014/15 financial year;
- (b) R 73 752 135 in the 2015/16 financial year;
- (c) R241926630 in the 2016/17 financial year;
- (d) R463 055 733 in the 2017/18 financial year; and
- (e) R422 142 269 in the 2018/19 financial year.

The department intends to lead evidence to show the effect that these claims have on the public healthcare system in the province. The pressure of these claims on the public healthcare system in the province impacts upon the right of other residents of the province to receive adequate health care. The claims render the defendant unable to provide adequate healthcare to the residents of the province. The proposed amendment seeks to create a dispensation that allows the defendant to provide appropriate and reasonable compensation and redress to the minor child, whilst simultaneously ensuring that the resources of the department are not drained to the extent that the department is unable to meaningfully and substantially fulfil its constitutional obligation to make healthcare services available to everyone.

[14] The plaintiff contends that the defendant is engaged in a ploy to delay the settlement of the claim. The plaintiff enquired a number of times whether the defendant intended to raise the public healthcare defence, but the defendant did not respond. Shortly before the trial date, a notice of intention to amend the plea was delivered. It is contended that the defendant is not bona fide. In a number of similar pending matters, the defendant raised the public healthcare defence, resulting in the delay in these matters.

[15] The plaintiff contends that the proposed amendment raises a novel issue which should be the subject of legislation. A bill with provisions similar to the terms of the so- called public healthcare defence was initiated in parliament and was later

abandoned. The defendant, states the plaintiff, is under pressure from Treasury to reduce the payouts made annually to cerebral palsy sufferers. Although the Constitutional Court ruled that a public healthcare defence in a particular format may be raised if grounded on stated evidence, the defendant has no factual basis for the public healthcare defence in the terms proposed in the amendment. The plaintiff contends that the proposed amendment has no prospect of succeeding and the that leave to amend the plea should be refused.

[16] The plaintiff states that Mr Chambers, on behalf of the defendant in another matter, deposed to a replying affidavit and had stated that at present the defendant does not have the capacity to provide the services forming the basis of the public healthcare defence. It may be pointed out that the plaintiff deposed to the answering affidavit on 5 June 2020 with a view that the proposed amendment be refused for the trial to proceed. The plaintiff emphasised that the amendment is pursued in a ma/a fide manner to force the postponement of the trial and to cause further delays in the finalisation of the matter. The raising of the public healthcare defence at the last minute in all matters where minor children suffer from cerebral palsy due to hypoxic ischaemic injury at birth, where there is no evidence that the necessary infrastructure has been created, is a stratagem employed to frustrate the claims and to save on the budget. The plaintiff contends, referring to *Lebedina v Schechter and Haskell* 1931 WLD 247 at 255, that the defendant cannot seek to put up a defence for which it has no evidence at the time it is raised to support it.

[17] The defendant strenuously denies that she is ma/a fide in seeking to amend the plea. In the replying affidavit, Mr Chambers states that the Constitutional Court has left the door open for the public healthcare defence to be raised with a contention that the common law be developed. The large awards of damages, which are made in these cases, eat away from the same budget in terms of which the State is required to provide healthcare to other citizens, and undermines the State's ability to fulfil its constitutional obligations to progressively realise proper access to healthcare. He states that the State Liability Amendment Bill (816-2018, published in Government Gazette 41658 of 25 May 2018) remains alive in parliament.

[18] It is trite that pleading enables the litigant to present his/her case before court. The pleading is for the litigant. The court will not lightly deny a litigant the right to present his or her case in the manner he or she deems appropriate. The tendency is to allow the litigant to amend

the pleading except if the court is satisfied that the applicant is mala fide in his or her application. See *MacDuff & Company (in liquidation) v Johannesburg Consolidated Investment Company Limited* 1923 TPD 309; *Rishton v Rishton* 1912 TPD 718 at 720. Further, a proposed amendment that is bad in law, which will cause prejudice to the other party, and which cannot be compensated with order of costs, will not be allowed. See *Devonia Shipping Ltd v MV Luis (Yeoman Shipping Co. Ltd Intervening)* 1994 (2) SA 363 (C) at 369F-G.

[19] The plaintiff contends that the proposed amendment is an attempt to revive an issue that has been settled. The order made on 23 April 2018 by Jappie JP in this matter states as follows:

'The defendant is directed to pay to the Plaintiff, in her capacity as mother and natural guardian of Sfundu Phiwayinkosi Hlongwane, a boy born on 14 July 2013, 100% (one hundred percent) of the damages that she may prove that Sfundu Phiwayinkosi Hlongwane has suffered or will in future suffer '

This order is similar to the order which was the subject of the appeal in *Phakama Ngalonkulu v The Member of the Executive Council for Health of the Gauteng Division Government* (217/2019) [2019] ZASCA 66 (17 June 2020). The SCA held that such an order precluded a court from ordering that the defendant renders services and medical and related items, instead of paying the plaintiff an amount of money and the paying of such amount of money in future instalments. The defendant points out that the order in *Ngalonkulu*, which was the subject of the interpretation by the SCA, was made by Moshidi J on 24 April 2017. The Constitutional Court delivered its judgment in *MEG for Health and Social Development Gauteng v DZ obo WZ* [2017] ZACC 37; 2018 (1) SA 335 (CC) on 31 October 2017. Therefore, according to the defendant, when the order was made by Jappie JP the parties were aware that a public healthcare defence can be raised. Whereas in *Ngalonkulu*, before Moshidi J, that was not the case. The defendant contends that the context of the two orders differ and that their interpretation should accordingly differ. In my view, if before Jappie JP the defendant had in mind the raising of a public healthcare defence, one would have expected the defendant to reserve for herself the right to raise such a defence, and not wait until 2020 to apply for leave to incorporate the public healthcare defence in the plea. Further, in *Ngalonkulu* before Moshidi J, the defendant was already faced with an escalation of cerebral palsy claimants. The situation necessitating the raising of the public healthcare defence existed at that time, which is the context in which the order of Moshidi J was made. Therefore, the alleged differing context cannot be used to distinguish *Ngalonkulu*. The defendant further contends that *Ngalonkulu* is not binding authority in that it is case specific. In my view, there is no merit in the contention as *Ngalonkulu*, in my view, is on all fours with the issue before me.

[20] In *DZ* the proposed amendment related to the contention by the MEC that she did not have to pay for future medical expenses in a lump sum. Instead, she undertook to furnish an undertaking to pay service providers directly within 30 days of presentation of a written quotation for medical expenses as and when they might arise. In *Ngubane v South African Transport Services* [1990] ZASCA 148; 1991 (1) SA 756 (A) the appellant claimed future medical expenses on the premise that he would be treated by private medical practitioners

and, when necessary, in a private hospital. The respondent contended, however, that these medical services could be provided at state or provincial hospitals, free of charge, or at no more than a nominal fee, and that it was therefore reasonable to expect the appellant to make use of these facilities. The SCA per Kumbleben JA at 784C- E held that:

'Though the onus of proving damages is correctly placed upon the plaintiff, this submission, which is really concerned with the duty to adduce evidence, is to my mind unsound. By making use of private medical services and hospital facilities, a plaintiff, who has suffered personal injuries, will in the normal course (as a result of enquiries and exercise a right of selection) receive skilled medical attention and, where the need arises, be admitted to a well-run and properly equipped hospital. To accord him such benefits, all would agree, is both reasonable and deserving. For this reason it is a legitimate - and as far as I am aware the customary - basis on which a claim for future medical expenses is determined.'

[21] The common law rules acknowledged to be in conflict with the proposed public healthcare defence are the following two rules. Firstly, compensation for the loss is to be made in monetary terms. Secondly, the plaintiff in one action flowing from one cause of action is required to claim all damages - both sustained and prospective, also known as the so-called 'once and for all rule', with the court required in turn to awards these damages in a lump sum. See OZ (supra) at 341I-342E and 343B-C.

[22] The defendant states that the primary motivation for the public healthcare defence is the impact on the budget of the provincial

department of health due to cerebral palsy claims. In my view, Mr Chambers correctly points out in the replying affidavit that it is the State's constitutional obligation to provide access to healthcare. However, State resources are allocated from national

level. There is no evidence from national government that its ability to provide access to public healthcare is under strain and the cause thereof are claims relating to cerebral palsy cases. In my view, it must be shown that the proposed development of the common law is necessary. There is no evidence indicating the reasons for the increase in cerebral palsy cases. In my view, the claims are as a result of the negligence of State employees in public healthcare facilities. There is no evidence why the increase in cerebral palsy cases is not addressed by improving the quality of care and skill in public healthcare facilities. If the States is under pressure to address the situation, the question is then why the legislation intended to address the situation is not being proceeded with. In my view, no necessity is shown for the proposed development of the common law in the terms contained in the proposed amendment of the plea.

[23] The so-called public healthcare defence in the proposed terms is very drastic. It affects the fundamentals of the law of delict.

Compensation is awarded for the wrongful negligent conduct causing the damage. The damage might be of such a nature that it is

irreparable but compensation is still paid. The injured party decides what to do with his or her compensation. It is fundamentally unheard of that the wrongdoer decides what he or she will do rather than paying the injured party monetary compensation.

[24] The defendant is very vague regarding the existence of public healthcare facilities which are as good as or better than private

healthcare facilities. Mr Chambers refers to a few facilities where the kind of medical treatment required for cerebral palsy cases

exist. There is nothing indicating the quality of care and skill available in those facilities. In fact, Mr Chambers suggests that

public healthcare facilities of the required standard will be established. In argument, the defendant's counsel submitted that

there was one Centre of Excellence in the Gauteng province. There is no proper rollout plan with time lines and with confirmation of budget allocation that can be considered. The claim appears to me to have no basis. The plaintiff contends that it is a ruse to delay payment of claims that may result in some claims eventually not being paid or paid at reduced amounts.

[25] The essence of the public healthcare defence, in my view, is to put the cerebral palsy claimants who suffered damages as a result of the negligence of the employees of the State in the same category as those that could not attribute their injuries to any negligence on the part of the employees of the State. It may result in the State not taking proper measures to avoid cerebral palsy injuries in its facilities. Further, it discriminates against those who access healthcare through public healthcare facilities.

[26] The proposed development of the common law may fall under section 39(2) of the Constitution which provides that '[w]hen interpreting

any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights' or under section 173 of the Constitution which stipulates that the Constitutional Court, the

Supreme Court of Appeal and the high courts have the inherent power to develop the common law, taking into account the interests of justice. In OZ the Constitutional Court readily realised that the proposed development of the common law to accommodate the public healthcare defence could not be done in terms of section 39(2) of the Constitution since it was not sought to develop common law to promote the spirit, purport and objects of the Bill of Rights. It is so that the defendant sought to placate the proposed development within the provisions of section 173 of the Constitution.

[27] The Constitution in section 173 sets no parameters within which the common law may be developed, except that it must be in the interest of justice to do so. However, it does not mean that there are no parameters. Section 2 of Constitution states that '[t]he Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the

obligations imposed by it must be fulfilled.' The court in OZ realised that the alleged deficiencies in the common law are not at odds with the Bill of Rights. However, in my view, it is not only that the rules of common law which will be impacted by the proposed development are not deficient but that those rules of the common law are in fact consistent with the Bill of Rights. Section 9(1) of the Constitution guarantees the right that '[e]veryone is equal before the law and has the right to equal protection and benefit of the law'. The State, in terms of section 9(3) may not unfairly discriminate directly or indirectly against anyone on, amongst other grounds, disability. Section 10 provides that '[e]veryone has inherent dignity and the right to have their dignity respected and protected'. Section 12(1) provides that '[e]veryone has the right to freedom and security of the person' which in terms of section 12(2) includes a 'right to bodily and psychological integrity'. Section 25 provides that no one may be deprived of property arbitrarily. In my view, property in relation to child cerebral palsy claimants, includes his or her vested rights in the damages. Cerebral palsy patients injured before the proposed

public healthcare defence becomes part of the common law (if it does) shall lose their vested rights, if it applies to them. The

Constitution as its foundational values in section 1 mentions:

'(a) Human dignity, the achievement of equality and the advancement of human rights and freedoms.

(b) Non-racialism and non-sexism. . . '.

[28] It appears to me, with respect, that the court in OZ did not sufficiently consider the impact of the fundamental aspects of the so-called public healthcare defence on the provisions of the Constitution. Maybe, it was not necessary to do so to arrive at a decision. I am in agreement with the SCA in Ngalonkulu that the route available to the State is to consider enacting suitable legislation. In my view, such legislation must comply with the provisions of section 36 of the Constitution. Section 36(1) provides that:

'The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. . . !'. In MSM obo KBM v MEG for Health, Gauteng 2020 (2) SA 567 GJ, it was held that on the strength of s 173 of the Constitution it is necessary in the wider interest of justice to develop the common law to permit courts, in cases like this, to make orders for compensation in kind as opposed to be restricted to making orders for monetary compensation for future medical expenses. In my view, developing common law in this manner entrenches inequality and discrimination, which is inimical to the Constitutional values and the Bill of Rights. I am, with respect, unable to agree with the decision.

[29] The defendant, in my view, has not shown that the proposed amendment to the plea is in accordance with the law. It follows that she may not be granted leave to amend her plea in the proposed terms.

[30] In the circumstances, I make the following orders.

1. The defendant, in terms of Uniform rule 34A, is to pay the plaintiff an interim payment of R1 529 766.51 within thirty (30) days from the date of this order by depositing the payment into the trust account of the plaintiffs attorneys, namely: Friedman & Associates, Nedbank Account 1359288759, branch code 130526. Failing the above, the said amount shall bear interest at the prescribed legal rate from the date the payment falls due until the date on which the payment is made.

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MNGADI J

#### APPEARANCES

Case Number: 11198/2016

For the Plaintiff: V.I Gajoo SC

Instructed by: Friedman & b Associates

Durban

For the defendant: Indhrasen Pillay SC

Instructed by: Norton Rose Fulbright South Africa Inc.

Matter heard on: 20 August 2020

#### Judgment

delivered on: 31 AUGUST 2020

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