



REPUBLIC OF SOUTH AFRICA
THE HIGH COURT OF SOUTH AFRICA, GAUTENG DIVISION, PRETORIA

Case no: 65228/2012

1/6/2015

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED

In the matter between:

MEMBER OF THE EXECUTIVE COUNCIL FOR HEALTH

Applicant

(Defendant in the main action)

And

MOLEFE, PRUDENCE PATIENCE
(on behalf of Kagiso N Molefe)

Respondent

(Plaintiff in the main action)

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

AC BASSON, J

Introduction

- [1] This an application for leave to appeal against the whole judgment delivered by this Court on 2 March 2015.
- [2] With reference to the issues that the trial court had to decide it was submitted that the court erred in finding that the respondent (Ms Molefe) was on a bed in a lithotomy position when she gave birth. In this regard it was submitted that the medical experts were in agreement that a lithotomy position is reserved for complicated deliveries and that there was no reason as to why she would have been placed in such a position.
- [3] The court's conclusion that the perinatal stroke was caused by a deflection of the head of the baby and that the traumatic manner in which Ms Molefe had given birth caused the stretch injury which resulted in brain damage was also criticised by the applicant. In this regard reference was made to the expert evidence led by the applicant in the trial in support of the submission that the court should have found that the causes of Presumed Perinatal Ischaemic Stroke are rare and the causes unknown.
- [3] Before I briefly turn to the merits of the application a few comments about the test to be applied in applications for leave to appeal. This test is now regulated by section 17(1) of the Supreme Courts Act 10 of 2013 (hereinafter referred to as "the Act"):

"17 Leave to appeal

(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that-

(a) (i) the appeal would have a reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;

(b) the decision sought on appeal does not fall within the ambit of section 16 (2) (a); and

(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties."

[4] The test for leave to appeal is twofold: Firstly, is there is reasonable prospect of the appeal succeeding¹ and, secondly, is this a case of substantial importance not only to the parties, but also to the public at large?²

[5] I have considered the submissions made in support of the application for leave to appeal. I have also considered the evidence that was placed before the court. I do not intend to repeat the findings of this court as set out in my judgment. Suffice to point out that the fact cannot be ignored that the plaintiff was alone when she gave birth and that she is the only one who can give evidence about what had transpired during the birth process. Furthermore, Sister Sikhakane was an unreliable witness to such an extent that she did not hesitate to concoct her evidence to avoid a simple question about whether or not hospital beds could be adjusted.

[6] Lastly, although it was recognised by all the experts that the incidence of a stretch injury is rare, both Dr Edeling and Prof Jcklin stated that this was the most likely cause. Even the experts on behalf of the defendant readily conceded that they were not in a position to dispute the expert evidence tendered especially on behalf of Prof Jacklin who has extensive experience

¹ *Janit v Van den Heever NNO (No 2) 2001 (1) SA 1064 (W) at 1062F.*

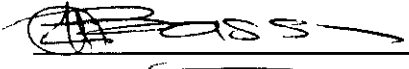
² *Westinghouse Brake and Equipment (Pty) Ltd v Bilger Engineering (Pty) Ltd 1986 (2) SA 555 (A) at 560I.*

in this field.

[7] I have again considered the evidence and considered whether the applicant has reasonable prospects. I am not persuaded that the applicant has reasonable prospects of success on appeal.

[8] In the event I make the following order:

The application for leave to appeal is dismissed with costs.


AC BASSON
JUDGE OF THE HIGH COURT

For Applicant: Adv N Dukada SC
Adv M Zulu
Instructed by the Office of the State Attorney

For Respondent: GW Austin of Gary Austin Jordaan Inc
c/o Geyser van Rooyen Attorneys