



IN THE NORTH GAUTENG HIGH COURT, PRETORIA

(REPUBLIC OF SOUTH AFRICA)

CASE NO: 47614/08

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO OTHERS JUDGES: ~~YES~~/NO

(3) REVISED

12/6/2013

DATE

[Signature]

SIGNATURE

In the matter between:

G VERMEULEN

Plaintiff (Applicant)

and

MEDI-CLINIC LIMITED

Defendant(Respondent)

JUDGMENT

MOTHLE J:

- [1] On 29 October 2012 I delivered a judgment ("*the main judgment*") in which I ruled in favour of the plaintiff and awarded costs against the defendant. On 28 March 2013 I once again delivered a judgment ("*the cost judgment*") in an application brought by the plaintiff, for re-consideration of the cost order in the main judgment.

- [2] The plaintiff had instituted action in this Court for damages arising out of injuries he sustained during his stay at the defendant's hospital facility in Nelspruit. The plaintiff was admitted for treatment of malaria infection and in the process, developed bedsores which resulted in a gaping wound on the sacrum. The injury caused the collapse of his sciatic nerves which resulted in a loss of the use of his legs and him being confined to a wheelchair. This injury was attributed to the negligent conduct of the defendant's nurses.
- [3] The defendant denied any negligence on the part of the nurses and contended that the bedsores were as a result of the predisposed condition of the patient and the fact that due to the critical stage of his condition, he was supposed to remain in a stable condition, making the standard prescribed treatment for bedsores impossible.
- [4] In essence, the plaintiff on the one hand contended that he developed bedsores because the nurses failed to turn him regularly as prescribed by their internal treatment procedures and training. The defendant on the other hand contends that the plaintiff developed bedsores because it was too dangerous to turn him while in that critical condition. I found on the facts that the nurses were negligent. I ruled that the defendant was liable for damages including the costs of the proceedings.

- [5] Before me is an application by the defendant for leave to appeal the main judgment as well as an application by the plaintiff to cross- appeal the cost judgment. The defendant raises a number of grounds in support of its application which, in light of the decision I am about to make, I deem it unnecessary to deal with in detail.
- [6] It is indeed trite that in considering an application for leave to appeal, the question is whether there are reasonable prospects of success in the appeal, or put differently, whether there are reasonable prospects of another Court arriving at a different decision than the one arrived at, see ***Roman Catholic Church, Klerksdorp Diocese v Southern Life Association Ltd 1992 (2) SA 807 AD.***
- [7] I have listened carefully to the submissions by both counsels in regard to these applications. Both counsel referred me to extracts from the record which I found to be out of context of the entire evidence and were thus unhelpful. The record runs into volumes of documents which contain the oral and written evidence, most of it from experts, submitted during the trial. Extrapolating isolated statements from the record and presenting arguments on the basis thereof is woefully inadequate and tends to misrepresent the import of the expert opinions. It is apposite in this instance to refer to the Learned Judge's remarks in the matter of ***Allpay Consolidated Investments Holdings (Pty) Ltd and Others v The Chief Executive Officer of the South African Social Security***

Agency and Others, case number 678/2012, paragraph 21, delivered in the Supreme Court of Appeal on 27 March 2013, where he stated in paragraph 21 thus: *"I do not think it is helpful to extrapolate from selected statements made in cases decided in a different context"*. In that case, the Learned Judge was referring to statements extrapolated from case law. I am of the view that this remark also holds true in regard to isolated statements of evidence extracted from the trial record.

[8] It is indeed trite that leave to appeal in this instance should only be granted when:

8.1 there is a reasonable prospect of success;

8.2 the amount in dispute is not trifling; or

8.3 the matter is of substantial importance to one or both of
the parties concerned.

[8] I accept the plaintiff's submission that my decision is based on the facts and ordinarily the appeal Court would not interfere with my finding of credibility of witnesses unless on the record it appears that I was patently wrong. However, it seems to me that this matter is of substantial importance to the defendant, as it affects the conduct of its business in various other hospital facilities with potential to attract liability as in cases of this nature.

[9] For the reason stated above, I am persuaded that it will be in the interest of justice that I should grant leave to appeal. Both parties are *ad idem* that in the event I decide to grant leave to appeal, I should also allow the cross appeal on the issue of costs and that the appeals should be referred to the Supreme Court of Appeal.

[10] In the premises, I make the following order:

Leave to appeal the main judgment and orders and the cross appeal on the cost judgment and orders to the Supreme Court of Appeal is hereby granted. Costs are costs in the appeal.


S. P. Mothle

Judge of the High Court

PRETORIA.

Date of Judgment: 12/01/2015

For the Plaintiff: Adv. WP De Waal, SC
Adv. WL Munro
Instructed by: Adams and Adams Inc
Lynwood Bridge, 4 Daventry Street
Lynwood Manor, Pretoria

For the Respondent: Adv. R van Riet, SC
Instructed by: Fairbridges Attorneys
c/o MacRobert Inc
MacRobert Building, Cnr Justice Mahomed & Jan Shoba Street
Brooklyn, Pretoria