

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

CASE NUMBER.: 950/2012

In the matter between:

NKULULEKO NATHANIEL MANZIYA

Plaintiff/Respondent

And

**MEMBER OF THE EXECUTIVE COUNCIL,
DEPARTMENT OF HEALTH, EASTERN CAPE**

First Defendant/Applicant

**MEDICAL SUPERINTENDENT, SETTLERS
HOSPITAL, MAKHANDA**

Second Defendant/Applicant

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

Beshe J

[1] On 4 November 2009 plaintiff's left leg was amputated above the knee at the Kariega Provincial Hospital. He instituted an action for damages against the defendants on the basis that the amputation occurred as a result of negligence on the part of first defendant's employees' negligence at both Settlers Hospital, Makhandanda and Kariega Provincial Hospital. At the conclusion of the trial, I entered judgment in plaintiff's favour and found that the defendants were liable for such damages as plaintiff may prove that flow from the amputation of his leg. I also dismissed defendants' special plea.

[2] The defendants are seeking leave to appeal against the said judgment.

[3] Defendants' special pleas inter alia raised the point that plaintiff amended his particulars of claim to include allegations relating to negligence by Kariega Provincial Hospital personnel. This was irregular as it did not comply with Rule 28. Secondly, that plaintiff's claim in respect of the alleged negligence at Kariega Provincial Hospital had prescribed as it amounts to a new cause of action.

[4] I dismissed the special pleas on the basis inter alia that there was no claim against Kariega Provincial Hospital even though medical negligence is alleged against the hospital's staff.

[5] Regarding the merits, it is submitted that I misdirected myself by accepting plaintiff's evidence in support of his case. On the basis that there were contradictions between the plaintiff's evidence and that of his wife. Further, that there were internal contradictions in their respective testimonies, and this called for the rejection of their evidence. Especially when viewed in conjunction with defendants' evidence, so it was argued. Defendants further take issue with the fact that I found that not much weight could be attached to Dr Megafu's statement because it was not subjected to cross-examination.

[6] In a nutshell, it was argued that there are reasonable prospects of another court finding that the plaintiff did not succeed in proving his claim on a balance of probabilities.

[7] Plaintiff, on the other hand, argued that the appeal did not enjoy reasonable prospects of success in that the court had correctly dismissed the special pleas. This on the basis that there was no allegation that there was an intervening act or that the actions / omissions of the personnel at Kariega Provincial Hospital introduced an intervening act. As far as the merits are concerned, that the court could not view the contradictions in plaintiff's evidence in isolation and they were therefore not such that they warranted plaintiff's evidence. The court's attention was also drawn to the trite principle that an appellate court will not readily interfere with a court's credibility

findings. This is however not an inflexible rule/principle. It is also trite that where the credibility finding is clearly wrong, the appellate court will interfere with such finding.¹

[8] That being the case, I am unable to find that the appeal will in these circumstances not enjoy reasonable prospects of success.

[9] Accordingly, the defendants are granted leave to appeal against the judgment and order I rendered on 28 November 2023 to the Full Bench of the Eastern Cape High Court. Costs to be costs in the appeal.

N G BESHE
JUDGE OF THE HIGH COURT

APPEARANCES

For the Plaintiff/Respondent : Adv: JD LE ROUX
Instructed by : F A SWANEPOEL ATTORNEYS
C/o DULLABH ATTORNEYS
5 Bertram Street
MAKHANDA
Ref: Mr NN Dullabh / Mr M Wolmarans
Tel.: 046 – 622 6611 / 9966

For the Defendants/ Applicant : Adv: Boswel
Instructed by : OFFICE OF THE STATE ATTORNEY
C/o WHITESIDES ATTORNEYS
53 African Street
MAKHANDA
Ref.: Mr. G Barrow/gdp/C09289
Tel.: 046 – 622 7117

¹ See R v Dlumayo and Another 1948 (2) SA 677 (A) at 706; Muster Estates (Pty) Ltd v Killimey Hills (Pty) Ltd 1979 (1) SA 621 at 623; Santam Bpk v Biddulp [2004] 2 All SA 23 (SCA) at 25 paragraph [5].

Date Heard : 21 February 2024

Date Reserved : 21 February 2024

Date Delivered : 9 July 2024

Judgment handed down electronically by circulation to the parties' legal representatives via email and release to SAFLII.

The date and time of handing down of the judgment is deemed to be 11h30 on the 9 July 2024.