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**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**Case Number: 29740/21**

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED: NO

Date: 30/04/2025

SIGNATURE:

In the matter between:

I[...] M[...]

**FIRST PLAINTIFF**

I[...] M[...] N.O

**SECOND PLAINTIFF**

And

**MEMBERS OF THE EXECUTIVE COUNCIL  
(MEC) FOR HEALTH AND SOCIAL DEVELOPMENT**

**DEFENDANT**

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**JUDGMENT**

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## *INTRODUCTION*

[1] The first plaintiff instituted an action against the defendant in which the first plaintiff sues in her personal as well as her representative capacity as the biological mother of the minor child E.N (the minor child) born on 9 September 2019 at the Edenvale Hospital (the hospital) following her admission on 8 September 2019 at Masakhane Clinic (the clinic). The hospital and the clinic are under the auspices of the defendant.

[2] The first plaintiff's claim is for damages arising out of the alleged breach of a legal duty and negligence of the medical staff at both Masakhane Clinic and Edenvale Hospital during her labour process.

[3] The issue of liability and causation have been separated from the issue of quantum. The trial proceeded only in respect of the merits.

## *BACKGROUND*

[4] It is alleged by the first plaintiff that as a result of the breach of a legal duty<sup>1</sup> which the defendant owes to the plaintiffs and the negligence of the medical staff who attended the first plaintiff during her pregnancy, labour and birth of the minor child particularly on 8 and 9 September 2019, she suffered a neurological and uretic complication and the minor child suffered brain damage.

[5] Both parties prepared and signed a stated case in terms of rule 33 of the Uniform Rules of Court regarding the issue of liability/merits of the plaintiffs' claim<sup>2</sup>. The stated case mentions among other things common cause facts, facts in dispute as per the pleadings, the plaintiffs' case, the defendant's case and defence, main issues between the parties, the indication of the availability of both expert reports of

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<sup>1</sup> Constitution of the Republic of South Africa, 1996, s27.

<sup>2</sup> Caselines section S1.

the plaintiffs and defendant<sup>3</sup>. Paediatrician Dr Lambard<sup>4</sup>, The defendant experts<sup>5</sup>, Nursing Expert Dr N Molefe<sup>6</sup>, Paediatrician Dr Debie Pearce.<sup>7</sup>

[6] The first plaintiff and Dr Songabau, the obstetrician and gynaecologist, gave oral testimony. The plaintiffs' expert and defendant expert prepared and signed the joint minutes<sup>8</sup>. The first plaintiff as well as an expert obstetrician, Dr Songabau were called to testify. The defendant did not call any witnesses.

[7] Facts that are common cause as per the pleadings

7.1. The identity of the Plaintiff.

7.2. The identity, description and address of the Defendant.

7.3. The first plaintiff was subsequently transferred from Masakhane Clinic to Edenvale Hospital on 9 September 2019.

7.4. The minor child was delivered by C-section upon arrival at the Edenvale Hospital on 9 September 2019.

7.5. At all material times the Masakhane Clinic and the Edenvale Hospital were public health establishments as defined in the National Health Act 61 of 2003, particularly to the extent that the Act specifies so.

7.6. At all material times the Clinic and Hospital and their staff members fell under the control and management of the Defendant.

7.7. The Defendant had a legal duty to the First Plaintiff and the minor child.

7.8. The First Plaintiff's right to be granted access to healthcare services is in terms of Section 27(1)(a) of the Constitution of the Republic of South Africa, as long as the Hospital facilities, resources and budget permit to this extent.

[8] Facts that are in dispute as per the pleadings

8.1 The fact that the Pretoria High Court has jurisdiction to entertain the matter, particularly regarding the First Plaintiff's status and *locus standi*.

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<sup>3</sup> Caselines plaintiff experts' obstetrician and gynaecologist Dr Songabau Case lines pg. 0156-0164.

<sup>4</sup> Caselines pg. 0182-0192 and 0200-0209.

<sup>5</sup> Caselines Dr Nkosi K3-K6.

<sup>6</sup> Caselines K9-K18.

<sup>7</sup> Caselines K22-K60.

<sup>8</sup> Caselines L4.

8.2 On or about 8 September 2019 at around 17h00 the First Plaintiff attended the Masakhane Clinic at full term pregnancy with complaints of labour pains.

8.3 At about 22h00 the First Plaintiff's water broke and was informed by the nursing staff that she was far from delivery.

8.4 The first plaintiff was left unmonitored and unassisted until 08h00 on 9 September 2019 when she started to bleed.

8.5 At approximately 12h00 on 9 September 2019 the first plaintiff was transferred to a Hospital bed. At 15h00 an ambulance was called to transfer the first plaintiff to the Edenvale Hospital, at which time the minor child (then an unborn foetus) was in distress because of lack of oxygen.

8.6 The fact recorded in paragraph 8.1 above is no longer one of the issues in dispute between the parties. The issues are envisaged to be as discussed in paragraph 7, above.

#### *PLAINTIFF'S CASE*

[9] The first plaintiff testified that she attended Masakhane Clinic around 6 or 7 September 2019 complaining about labour pains. The nursing staff informed her that she was not in labour yet.

[10] She then attended the Masakhane Clinic again on 8 September 2019 at about 17h00 complaining of labour pains. She informed the nursing staff that she had contraction pains. The nurse checked her and told her that the baby was still too far. She was booked into a ward.

[11] Later that evening, at about 22h00 her water broke. She walked up to the nursing staff who were sitting in another room and informed them that her water broke. The nursing staff had a look at the water and told her that the water was clear. They vaginally examined her and again informed her that the baby was still too far. They instructed her to lie on the bed.

[12] She informed the nursing staff that the pain was unbearable and that the baby was coming. She further informed the nursing staff that a doctor at Edenvale

Hospital did a sonogram and informed her that the baby was too big for natural birth and that she had to have a caesarean section done to deliver the baby and that the report was on her file. The nursing staff did not attend to anything that she informed them of and only instructed her to go back to her bed.

[13] She had begged them for the caesarean section whereupon they asked if she had money for the caesarean section to which she answered in the negative. They again instructed her to go back to her bed.

[14] The next morning the cleaning staff entered the ward and informed her that she had to get out of the bed and sit on the chairs as no one is allowed to lay in the bed during the day. She was too sore to sit on the chair and proceeded to lay on the floor.

[15] On 9 September 2019 at about 8h00, the plaintiff started to bleed; she stood up and informed the nursing staff that she was bleeding. She also reported to the staff that she could no longer feel her baby's movements. The nursing staff did not do anything about that report.

[16] She was left unmonitored until about 12h00 when the nursing staff checked her and noticed that she was 8 cm dilated. They finally gave her a bed to lay in again.

[17] At about 14h00 the nursing staff who checked up on her informed her that she was ready to push. The first plaintiff was not sure though if at that time they could feel the baby's head. She again informed them of what the doctor at Edenvale Hospital said. The other nurse finally said that the baby was too big and that she would need assistance in her delivery.

[18] The ambulance arrived at about 15h00, transporting her to the Edenvale Hospital where she was, upon arrival, informed that an emergency caesarean section was required and that they had only 5 minutes to save her and the baby's lives.

[19] She was injected with anaesthesia in her spine, dressed for theatre and they prepared the equipment.

[20] After the caesarean section was performed, she did not hear the baby cry. The medical staff eventually showed her the baby's bottom half and placed her in a ward. The nurse, upon request, informed her that the baby was admitted to the Intensive Care Unit. The nurse informed her that she would be able to go see her baby the following day.

[21] On 10 September, she tried to get out of the bed to go see her baby. When she stood up, she fell. She could not feel both her legs, and she went numb.

[22] The nurse tried to assist her; she tried moving her feet but was unable to do so. The doctor was called. The doctor hit her knee with an object and also pricked her feet with a needle. Still, she was unable to feel any of it. She was then informed that something was wrong with her veins and her kidneys. She was treated with injections and pills for the pain.

[23] After about four days, on 13 September 2019, she was transferred to Charlotte Maxeke Hospital. Before the transfer to Charlotte Maxeke Hospital, she requested to see her baby. She was transported in a wheelchair to go to see her baby. She found the baby in an incubator with two tubes attached to her. The nurse, upon her request, explained that the one tube was an oxygen tube and the other a feeding tube.

[24] She was booked a bed at Charlotte Maxeke. She stayed there for three days and could not recall on which date she was operated and received a DJ/JJ (double J) stent and a catheter.

[25] She was informed that she was given the relevant stent to open a vein that closed during the caesarean section. She could not walk for a period of at least five months thereafter, whereafter she started limping.

[26] She was discharged the day after the stent was inserted. Upon her discharge, she immediately returned to Edenvale Hospital to see her baby. The nurses informed her that the baby could not be discharged at that time as the baby could not breathe on her own and she was still dependent on the feeding tube.

[27] The doctor spoke to her, explaining to her that the baby had some damage, due to prolonged labour and the fact that she did not receive enough oxygen. The baby was discharged the following Saturday.

[28] She experienced quite a few complications after the caesarean section, including:

- a) Numbness of her legs, she was unable to walk for five months;
- b) In cold weather she experiences pain and cramps where the stent was inserted; and
- c) She cannot hold her urine for a while; she has to relieve herself immediately.

[29] Her child, EN, is now five years old. She is unable to walk or stand, she cannot eat and she is in diapers. She only recently started sitting on her own but cannot sit for a long time, at least no longer than five minutes.

[30] EN is receiving physiotherapy at Edenvale Hospital but the doctor informed her that EN is not progressing at all. EN will be dependent for the rest of her life.

[31] The first plaintiff confirmed under cross examination, that while the nurses at Masakhane Clinic attended to her they also attended to other patients despite other staff members being available to attend to the other patients. At Edenvale Hospital she was immediately attended to and was rushed to the theatre.

The plaintiffs' second witness Dr Songabau:

[32] Dr Songabau gave a short description of his background and qualifications, including his extensive experience in disability and impairment assessment.

[33] He based his opinion on his consultation with the first plaintiff and the medical records. However, he was not provided with the intrapartum records and/or neonatal records. He had the records of Edenvale Hospital, Charlotte Maxeke Hospital and the MRI scan of the baby.

[34] Dr Songabau explained cerebral palsy as a condition where a baby and/or a person is severely disabled and unable to do anything for themselves.

[35] When he consulted with the first plaintiff, she complained about hemiparesis and a right drop foot.

[36] He was informed that she had regular check-ups at Riverpark Clinic at Alexandra Township. The first plaintiff also had blood tests whereby all was normal. Her initial foetal sonar at Riverpark Clinic appeared to be twins, seeing that they initially heard two heart beats; however, a subsequent visit to Edenvale Hospital confirmed that the first plaintiff was only expecting one big baby. The labour progress has since been checked.

[37] He explained that when a woman is regarded to be in labour, the following occurs:

- a) Changes to the cervix;
- b) a rupture of the membrane; and/or
- c) regular contractions.

[38] According to him, upon the first plaintiff's arrival at the clinic, she already appeared to have two of the three signs of labour, namely dilated cervix and labour pains.

[39] The Foetal Heart Rate (FHR) had to be checked on a regular basis, and the normal rate should be between 110 and 160 beats per minute.

[40] According to the first plaintiff's statement, the chain of events and what the clinic staff told the first plaintiff, the baby was normal at the time of arrival at the clinic.

[41] The fact that the first plaintiff's water broke at 22h00 and the fluid was clear, confirms that the baby was not in distress at that point.

[42] The nursing staff failed to check up on her again before 22h00, while she was complaining of pain the whole time. It was already five hours later, since her admission, when she was checked for the first time after 22h00. The guidelines determined that at this stage of the labour, when the cervix was 3 cm or less dilated, she had to be monitored every four hours. The Foetal Heart Rate also had to be checked every two hours. There is no record that this had been done.

[43] The patient was left alone, and this treatment is substandard.

[44] He testified that in terms of the maternity guidelines the intervention and/or monitoring at this stage of labour - latent phase - includes monitoring:

- a) Blood pressure and pulse rate four hourly;
- b) Temperature four hourly;
- c) Uterine contractions two hourly;
- d) Foetal Heart Rate two hourly;
- e) Vaginal examination four hourly; and
- f) Any changes in condition warrant more frequent observation.

[45] These guidelines are the basic rules and/or regulations taught and should be known to all health institutions.

[46] At some point the patient complained about bleeding. Bleeding can be a problem, especially when the patient bleeds excessively. The bleeding, according to the first plaintiff's statement, occurred at 08h00. They did not examine her from 22h00 until 08h00 the following day. This was inconsistent with the maternity guidelines as set out above. According to the first plaintiff she was not checked at 08h00 when she complained about bleeding.

[47] The moment she started bleeding and when she informed the nursing staff that she was unable to feel her baby, immediate intervention was required. This was not done in this case.

[48] The patient remained unmonitored for approximately 15 hours, which is to all accounts, substandard.

[49] There is no record of when the patient crossed over to the active phase of labour and same would have been available had the nursing staff attended to the monitoring as prescribed in the maternity guidelines.

[50] Where labour goes on for more than eight hours, it is regarded as prolonged labour. The health care professionals are required to check on the patient. It is important that the patient does not fall under fatigue. The patient should be provided with a drip with fluids and her blood pressure should be checked. The first plaintiff was not provided with a drip and was not monitored for 15 hours. There is no way to determine when the baby became distress. The first plaintiff was exhausted, she had complained about the labour pains whilst at the clinic and she could not sleep the whole night due to the pains she experienced.

[51] Since the first plaintiff had entered the active phase of labour, she was supposed to be monitored hourly:

- a) Urine should be tested two hourly;
- b) Temperature four hourly;
- c) Heart rate hourly;
- d) Blood pressure hourly;
- e) Foetal heart rate every half an hour;
- f) Colour and odour of the liquid since the membrane ruptured, two hourly;
- g) Frequency and strength of urine contractions hourly;
- h) Cervical dilations two hourly; and
- i) Caput and parietal moulding two hourly

[52] The treatment rendered to the first plaintiff was substandard. What should have happened at 12h00, when she was 8cm dilated, she should have been monitored more regularly in accordance with the maternity guidelines. There are no proper medical records to confirm whether the baby's head was descending, if caput or moulding (overlapping of bones in the head) took place.

[53] It was his professional opinion that the first plaintiff arrived at the health facility in a good condition and that the baby was not in distress at the time of her admission at the clinic. She developed various issues and was eventually transferred to Edenvale Hospital the next day at around 15h30. At the time of the baby's birth, she did not cry, mother had reflexes; the baby had seizures and was also not able to suck.

[54] It is his opinion that the baby was normal and that the complications and impairment of the child was caused by the prolonged labour. The baby suffered from a lack of oxygen and birth asphyxia.

[55] The first plaintiff was unable to walk after the prolonged labour and the caesarean section. He opined that the reason for her neurological complications was brought by the child pressing against her nerve and her veins before she was finally relieved of the pressure. The other theory was that the numbness in her legs was caused by the spinal anaesthesia. This though is not his field of expertise hence he referred the first plaintiff to a neurologist for assessment.

[56] His opinion was that the above damage could however have been avoided by proper monitoring and earlier labour.

[57] The first plaintiff had complications after the prolonged labour and caesarean section and was eventually transferred to Charlotte Maxeke Hospital, where the JJ stent was inserted. The stent was to alleviate any pressure from the kidneys and for the first plaintiff to recover from the complications.

[58] Masakhane Clinic did not provide any medical records of the first plaintiff's stay and treatment in the clinic. The records provided were that of her baby born in 2016.

[59] The Edenvale Hospital records record that the delivery of the baby was difficult, but no notes from the doctor reflected why it was difficult or what happened that made it difficult. The Apgar score is reflected on the records as being 7. These results are questionable as stated by both himself and the Defendant's expert, Dr Nkosi. The circumstances would corroborate the fact that there was something wrong with the baby, by considering the following:

- a) The baby was born "flat" or "no life";
- b) No reflexes;
- c) Morphism;
- d) Arterial blood gas was not normal;
- e) The baby swallowed miconidia; and
- f) Baby had hypoxia

[60] The baby was saved by the emergency caesarean section, but the damage was already done.

[61] The MRI scan of the baby shows watershed and oxygen asphyxia. This is a clear indication that the baby was in distress caused by the prolonged labour.

[62] When a patient enters the active phase of labour, birth is expected within two hours, anything surpassing that time, is regarded as prolonged labour. The labour in these circumstances was extremely prolonged, and very poor monitoring took place, which is all substandard. The fatal outcome could have been avoided if the patient had been properly monitored. The CPD and Meconium Aspiration Syndrome, the condition of the baby, could have been improved if the referral occurred earlier.

[63] Cerebral palsy could have been prevented with proper monitoring and if the patient was transferred sooner for the caesarean section.

[64] He was referred to the joint expert minutes with Dr Nkosi, confirming that Dr Nkosi agreed with all incidents reported.

[65] When confronted with Dr Nkosi's remarks that there is a shortage of facilities and personnel, he said that it might be, however, this does not provide anyone with an excuse to fail to provide proper care. All medical staff are bound by certain standards of service and legislation.

[66] He stated, under cross-examination, that the transfer of a patient from the clinic to the hospital takes about one hour.

[67] He stated that certain steps should have been taken, after the nurses realised that the baby was too big and while awaiting the arrival of the ambulance, such as providing the patient with a drip, oxygen and also letting her lay in a specific position on the bed, in order to prevent any further distress to the mother and her baby.

[68] He stated that the first plaintiff indicated that her labour pains and/or contractions started at 10h00 in the morning on 8 September 2019, however, a patient is only diagnosed with labour when she arrives at the facility and displays one of the three signs previously mentioned.

[69] He also mentioned that the first plaintiff attended the hospital the previous day already complaining about the pains.

[70] She should have been diagnosed as being in labour since she was 2cm dilated and her membrane ruptured at the clinic.

#### *ANALYSIS AND CONCLUSION*

[71] It is not possible to determine when the brain damage to the baby occurred, especially since the clinic failed to properly monitor the pregnancy, it is however clear that the baby was not in distress upon arrival at the hospital and during the night as the nursing staff informed the first plaintiff that all was fine with baby and the

fact that the water, when the membrane broke, was clear, was signs of a healthy pregnancy.

[72] The nursing staff checked again at 12h00. The patient was 8cm dilated and around this time, the baby was estimated to be in distress. There is no indication at what time the nurse finally realised that the baby was too big.

[73] The first plaintiff testified that there was no delay at Edenvale Hospital and that she was immediately attended to and taken to theatre. The joint minutes state that the caesarean section was delayed by two hours. It is clear from Dr Nkosi's report that the baby was delivered at around 17h00. The experts agreed that there was a delay since she arrived at the hospital at 15h30, but the baby was only delivered around 17h00. The first plaintiff might not have remembered that well, seeing that she has consulted with both experts the same way and more recently the court appearance.

[74] There are also quite a few steps to be taken and/or a routine before the delivery of the baby, she stated that she was immediately taken to the theatre, how long she was in the theatre was not disclosed by her.

[75] He confirms that his integrity cannot be questioned, as both he and Dr Nkosi agreed on the same and his report corroborates what the first plaintiff told him and also what is reflected in the medical records.

[76] It is alleged that the defendant breached the legal duty set out in Section 27 of the Constitution which reads as follows:

"Health care, food, water and social security.

- (1) Everyone has the right to have access to-
  - (a) health care services, including reproductive health care;
  - (b) sufficient food and water; and
  - (c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.

(3) No one may be refused emergency medical treatment."

[77] The Plaintiffs' case in the stated case and the evidence of the plaintiffs' expert prove their submission of the breach of legal duty by the defendant.

[78] With regard to the assessment of negligence, it has been authoritatively stated that the question of reasonableness and negligence is for the court to decide based on the evidence, versions and expert opinion presented.

[79] As a rule, this determination does not primarily involve consideration of credibility but the examination by the court of the opinion and the essential reasoning of the expert before reaching its own view on the issues raised.

[80] What is required in evaluating evidence is a determination of whether and to what extent the opinions advanced are reasonably justified as being founded on logical reasoning.<sup>9</sup>

[81] It was the expert's view that the minor child sustained brain damage from a lack of oxygen. The minor child will require extensive medical care for the remainder of her life, which costs the first plaintiff will incur until the minor child attains the age of majority.

[82] The defendant denied that there was any wrongful act or omission on the part of the defendant and further denied that there is delictual liability emanating from the alleged legal duty. The defendant denies negligence on the part of Masakhane Clinic and Edenvale Hospital medical staff. The defendant pleaded that it could not reasonably be expected to render any better service to the first plaintiff with the limited resources at the time of labour.

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<sup>9</sup> *Michael and Another v Links field Park Clinic Pty Ltd and Another* [2001] ZASCA 12; [2002] 1 All SA 384 (A) at para 36; *Medi-Clinic Ltd v Vermeulen* [2014] ZASCA 150; 2015 (1) SA 241 (SCA) at para 5, and *A.D obo K.L.O v MEC for Health for the Province of KwaZulu-Natal* [2019] ZAKZPHC 13 at para 10.

[83] The defendant pleaded that the delay in performing the caesarean section was caused by the fact that there was no available theatre at the time the first plaintiff was ready for caesarean section. And that a reasonable clinic and Hospital with the resources that Masakhane Clinic and Edenvale Hospital had, could not have done better. It therefore cannot be said, that there was negligence on the part of the Clinic and Hospital staff.

[84] A medical staff /practitioner is not expected to bring to bear upon the case entrusted to him the highest possible degree of professional skill, but he is bound to employ reasonable skill and care.<sup>10</sup>

[85] The standard of care which the defendant's medical staff were required to provide to the first plaintiff and her foetus/baby had to meet, inter alia the defendant's maternity care guidelines that were applicable at that time.

[86] The relevant maternity care guidelines that were applicable at the time of the plaintiff's delivery of the minor child are the guidelines for maternity care in South Africa 2007 (the guidelines).

[87] The Plaintiff gave direct evidence from her own memory of the facts during the intrapartum and subsequent stages of the minor child. The obstetrician and gynaecologist also testified as an expert in the manner in which the defendant failed to adhere to the guidelines.

[88] The court remains the ultimate arbiter of the issues in dispute <sup>11</sup>. Expert opinions are only relevant and admissible when by reason of the special knowledge and skill or experience of the experts, they are qualified to draw references and reach conclusions that may assist the court.<sup>12</sup>.

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<sup>10</sup> *Van Wyk v Lewis* 1924 AD 438 at 444, *A.D obo K.L.O v MEC for Health for the Province of KwaZulu-Natal* [2019] ZAKZPHC 13.

<sup>11</sup> *Michael and Another v Links field Park Clinic Pty Ltd and Another* [2001] ZASCA 12; [2002] 1 All SA 384 (A) at 34.

<sup>12</sup> *Gentiruco AG v Firestone SA (Pty) Ltd* 1972 (1) SA 589 (A) at 616F -617B.

[89] The defendant contends that the viva voce evidence presented by the first plaintiff and her obstetrician Dr MR Songabau exposed serious flaws and inconsistencies. The flaws and the inconsistencies mentioned by the defendant in the evidence of the plaintiff and her obstetrician are not material to an extent that the court can ignore the evidence of the expert in total.

[90] In *S v Mkohle*<sup>13</sup> the court held that contradictions do not lead to the rejection of witness evidence; they may simply be indicative of an error. Not every error made by a witness affects his credibility, in each case the trier of fact has to make an evaluation, taking into account such matters as the nature of the contradiction, their number and importance and their bearing on the other party of the witness evidence.

[91] In *S v Govender*<sup>14</sup> it was held that the fact that a witness is untruthful on one aspect does not mean that his or her evidence should be rejected on that basis alone.

[92] In *AM and Another v MEC for Health Western Cape*,<sup>15</sup> it was held that amongst other things, that an expert opinion represents his reasoned conclusion based on certain facts or data which are either common cause or established by his own evidence or that of some other competent witness.

[93] The failure by the medical staff of the defendant at Masakhane Clinic to conduct adequate monitoring of the plaintiffs and to administer a standard of care to the plaintiff was negligent and wrongful omission.

[94] In *Mitchell v Dixon*,<sup>16</sup> the court stated that a medical practitioner is not expected to bring to bear upon the case entrusted to him the highest possible degree of professional skill, but is bound to employ reasonable skill and care.

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<sup>13</sup> [1989] ZASCA 98 at para 13; 1990 (1) SACR 95 (A) at 98E-G.

<sup>14</sup> [2006] ZASCA 180; [2007] 3 All SA 580 (SCA) at para 18.

<sup>15</sup> [2020] ZASCA 89; 2021 (3) SA 337 (SCA) at para 19.

<sup>16</sup> *Mitchell v Dixon* 1914 AD 519 at 525.

[95] In deciding what is reasonable, the court will have regard to 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.

[96] What is evident in this matter, as demonstrated by uncontested evidence, is that the medical staff of the defendant failed to take reasonable measures to prevent injury to the first and second plaintiff. The conduct of the medical staff of the defendant especially at the clinic was indicative of substandard care that was given to the first plaintiff during the crucial moments of labour.

[97] The negligence of the medical staff consists of, *inter alia*, failure to properly monitor the first plaintiff and the baby in accordance with the applicable guidelines. They failed to do the required monitoring for an extended period of time, something which a reasonable medical staff could not do. They did not take what the plaintiff told them that the baby was too big for vaginal birth and that she would need to be delivered by caesarean. They did not follow up on this information. A reasonable medical practitioner would consider this information and take steps to confirm or exclude any such possibility that the baby was too big for vaginal birth. The staff members left things to chance. Further, they did not examine the first plaintiff after she told them that she was bleeding and when she told them that she was no longer feeling the baby. They did not provide oxygen to the first plaintiff when they ought to have done so.

[98] The defendant failed to monitor the first plaintiff and the condition of the foetus properly during the labour, particularly during the active phase thereof. Upon arrival, the first plaintiff was already in labour and she ought to have been adequately monitored in terms of the guidelines until the delivery of the baby. The probabilities suggest that had there been proper monitoring the injury would have been avoided.

[99] Having clearly identified the urgent need for the baby to be delivered by caesarean section due to poor progress in labour, it took more than the prescribed hour for the procedure to be performed. When it was eventually performed and the necessity for the resuscitation of the foetus had become apparent, resuscitation fell far short of the required standard.

[100] I have carefully considered the whole evidence tendered and I am satisfied that on a balance of probabilities, the second plaintiff discharged the onus to prove her case.

[101] The defendant committed negligent conduct at the clinic and hospital where they were acting within the course and scope of their employment.

[102] Regarding the first plaintiff's claim for damages, I am not persuaded that she proved her case on a balance of probabilities. I agree with the defendant that no adequate evidence was led to sustain the first plaintiff's claim in her personal capacity.

[103] Consequently, I am of the view that the first plaintiff's claim in her personal capacity has not been sustained by any evidence and that it stands to be dismissed with no order to costs.

#### *COST AND ORDER*

[104] In the premises, the order I grant is as follows:

1. The first plaintiff's claim on behalf of the minor child (second plaintiff) is upheld;
2. The defendant is held liable for the proved damages sustained by the minor child.
3. The first plaintiff's claim in her personal capacity is dismissed with no order to costs.
4. The defendant is ordered to pay the plaintiff's cost of suit in respect of the determination of the merits of her claim in her representative capacity only, to date hereof as follows:

- 4.1. The costs of counsel on scale B;
- 4.2. The costs of consultation, travelling and subsistence of plaintiff experts and legal representative for purposes of consultation and trial;
- 4.3. The costs occasioned by all postponements of the trial;
- 4.4. The costs of reports, supplementary reports, qualifying expenses, joint minutes and reasonable day reservation fees in respect of the plaintiff's merits expert witnesses and
- 4.5. Interest on costs at the legal rate from a date 14 days after allocation to date of payment.

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**N MZUZU**  
**ACTING JUDGE OF THE HIGH COURT**  
**PRETORIA**

#### APPEARANCES

Heard on: 04 February 2025

Judgment delivered on: 30 April 2025

For the Plaintiffs: Adv JJN Swart

Instructed by: Burnett Attorneys

For the Defendant: Adv G Shakoane SC with Adv NA R C Ngoepe

Instructed by: The State Attorney