SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and SAFLII Policy

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE NO: 5831/2019

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

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

(3) REVISED.

DATE: 2026/03/09

SIGNATURE:

In the matter between:

T[...] C[...] M[...] **First Plaintiff**

ADV. KGAOGELO LETSWALO N.O
(obo D[...] R[...] S[...]) **Second Plaintiff**

and

MEMBER OF THE EXECUTIVE COUNCIL FOR HEALTH
(LIMPOPO PROVINCIAL GOVERNMENT) **Defendant**

JUDGMENT

BURNETT, AJ

INTRODUCTION

[1] This is an action for damages based on medical negligence.

[2] The First Plaintiff instituted action against the Defendant in her personal capacity as well as on behalf of her minor child, a boy born on 1 May 2018. On 30 November 2023 a curator *ad litem* was appointed for the minor child, which curator was substituted as the Second Plaintiff. To the extent that this court refers to the minor child in the judgment, the child will be referred to simply as "the baby" or "the child".

[3] The parties have agreed to the separation of liability and quantum, and the court has endorsed that agreement. The matter accordingly proceeded in respect of the liability only.

COMMON CAUSE FACTS

[4] The following are the common cause facts between the parties: -

[4.1] The child was born on 1 May 2018 following the First Plaintiff's attendance at the Tshidimbeni and Tshaulu clinics as well as the Donald Fraser Hospital for the First Plaintiff's antenatal care and admission on 30 April 2018 for the delivery of the child.

[4.2] The Tshidimbeni and Tshaulu clinics as well as the Donald Fraser Hospital falls under the control and management of the Defendant.

[4.3] The child weighed 5.2kg at birth and had foetal macrosomia (meaning he was a larger than average baby).

[4.4] The child was born with shoulder dystocia after a traumatic vaginal delivery. He suffered pain and disability related to the shoulder dystocia and the Erb's Palsy that he developed but underwent the necessary surgery before he was discharged home after his birth.

[4.5] The Plaintiff experienced a difficult vaginal delivery during which she suffered a fourth-degree perineal tear with a complete injury to the external sphincter and a partial injury to the internal sphincter, a pelvic facture with a dislocated symphysis, and a right hip pressure sore.

[4.6] The Plaintiff was under the antenatal and birth care of the Defendant's employees at the Tshidimbeni and Tshaulu clinics from 29 November 2017 until the child was born on 1 May 2018.

[4.7] Her first antenatal visit was at 16-weeks gestation and thereafter she also attended at 20, 26; 30; 34; and 37 weeks gestation.

[4.8] At the first antenatal visit, the Plaintiff weighed 81kg, her height was 165 cm, and her BMI (body mass index) was 29.

[4.9] At the visits on 27 December 2017 at 20 weeks, and 5 February 2-18 at 26 weeks gestation, her urine was not tested for protein and glucose since the urine dipstix were out of stock.

[4.10] At her fourth antenatal check up at 30 weeks gestation at the Tshawulu clinic on 5 March 2018.

[4.10.1] It was recorded that the Plaintiff's weight was 86kg.

[4.10.2] Her urine test showed glucose ++.

[4.10.3] The result of her HGT (Hemo Glucose Test) was 16.4mmo/L.

[4.10.4] The Plaintiff was referred to the Donald Fraser Hospital for further investigation and management for her elevated blood sugar.

[4.11] On 5 March 2018 the Plaintiff was admitted to the Donald Fraser Hospital and the following inter alia was recorded: -

[4.11.1] Her weight was 85kg and her height was 1.63m.

[4.11.2] Her blood sugar was 16.5mmol/L.

[4.11.3] On palpitation the SFH (symphysis fundal height) was 34cm.

[4.12] On 6 March 2018: -

[4.12.1] The Plaintiff was diagnosed with diabetes mellitus at 30 weeks gestation.

[4.12.2] The SFH was recorded at 34 weeks.

[4.12.3] Her HGT was 12.9mm01/L.

[4.13] On 7 March 2018 it was noted by the hospital that: -

[4.13.1] The Plaintiff had gestational diabetes mellitus ("GDM"), controlled.

[4.13.2] The HGT was 8.5mmol/L.

[4.13.3] She was discharged with treatment to take home.

[4.13.4] She was to come back to the high-risk clinic on 4 April 2018.

[4.14] On 4 April 2018 at 34 weeks gestation: -

[4.14.1] The Plaintiff attended the clinic.

[4.14.2] The height of the uterine fundus was recorded as 40cm.

[4.15] On 25 April 2018 at 37 weeks gestation: -

[4.15.1] The Plaintiff attended the clinic.

[4.15.2] The height of the fundus was recorded as 39cm.

[4.15.3] The Plaintiff was informed that she requires a caesarean section ("CS") because her baby was too big for vaginal delivery.

[4.16] The Plaintiff attended the hospital and was admitted on 30 April 2018 for the assessment, monitoring and management of her labour process and for the birth of the child.

[4.16.1] The nursing staff or a doctor discussed the option of a caesarean section with the Plaintiff when she was admitted or at any time thereafter.

[4.17] The observation chart revealed that on 30 April 2018: -

[4.17.1] At 12h00 the contractions were very mild with a frequency of two every ten minutes and on examination the cervix was 3cm dilated.

[4.17.2] At 15h40 the contractions were mild with a frequency of one every ten minutes.

[4.17.3] At 19h10 the contractions were still mild.

[4.17.4] The height of the uterine fundus was not measured and recorded at any above times.

[4.17.5] At none of the above times were any noted made regarding the Plaintiff's blood glucose levels and/or the estimated size or weight of the foetus.

[4.18] The labour initial assessment record reveals that 22h45 on 30 April 2018: -

[4.18.1] On abdominal examination the Plaintiff was 39 weeks pregnant. [4.18.2] Palpation and the SFH were not recorded.

[4.18.3] The estimate foetal weight ("EFW") was not recorded.

[4.18.4] The cervix was 4cm dilated.

[4.18.5] There are no antenatal problems and no risk factors identified.

[4.19] At approximately 05h30 on 1 May 2018 the Plaintiff was fully dilated.

[4.20] At approximately 05h55 the midwives delivered the child by difficult vertex delivery with no doctor present.

[4.21] The child's weight was recorded as 5020 grams (5,2kg) after the delivery and 5042 grams (4.42kg) at discharge.

[4.22] The child has an Apgar score of 7/10 and 10/10 at I minutes and 5 minutes respectfully.

[4.23] Should dystocia was noted as a problem during labour.

[4.24] The Plaintiff and the child were transferred to the ward after delivery with a plan to be discharged on 2 May 2018.

[4.25] On 2 May 2018 the records note that the Plaintiff was kept in the ward on bedrest and binding was applied.

[4.26] On 10 May 2018 the records note that the Plaintiff's buttocks were injured by the linen used to bind her.

[4.27] On 14 May 2018 the doctor noted that the Plaintiff suffered a third/fourth degree perineal tear during delivery.

[4.28] On 17 May 2018, fourteen days post-delivery, it was noted that: -

[4.28.1] The Plaintiff was still passing stool via the vagina.

[4.28.2] The Plaintiff developed a right hip pressure sore that was not septic.

[4.28.3] A catheter was *in situ* with stools noted in the perineum.

[4.28.4] The Plaintiff was transferred to Polokwane Hospital.

[4.29] On 23 May 2018, twenty days post-delivery, the Plaintiff was taken to theatre for a recto vaginal fistulectomy and repair of a third-degree perineal tear under general anesthesia.

[4.30] The discharge notes from the Polokwane hospital on 31 May 2018 reveal: -

[4.31] The Plaintiff was treated for a fractured public symphysis (open book) post a normal vaginal delivery with a dislocated public symphysis.

[4.32] The Plaintiff sustained a fourth-degree perineal tear.

[5] It is common cause that the Defendant owned a duty of care to the First Plaintiff and the child, and further that the Defendant's staff members were acting in the course and scope of their employment with the Defendant when they administered health care to the First Plaintiff and the child as set out above.

ISSUES IN DISPUTE

[6] The Defendant denies that its employees were negligent in the administration of their care, and further if found that the employees were negligent, there was no casual nexus between the negligence that occurred and the injuries (and the accompanying damage) that were sustained by the First Plaintiff and the child. For the First Plaintiff, the injury was *inter alia* a fourth-degree perineal tear (with accompanying urinary injury) and the open book pelvic fracture, and for the child it was shoulder dystocia and Erb's Palsy. The injuries themselves are not in dispute.

EVIDENCE

[7] The First Plaintiff gave evidence in support of her and the child's claim and called two expert witnesses, namely Dr. Ndjapa Ndamkou and Dr. Paul Swart. The Defendant called one factual witness, namely Dr. Baloyi.

The First Plaintiff

[8] The First Plaintiff gave evidence through a Venda interpreter. She testified that she was treated by the Tshidimbeni and Tshaulu clinics as well as the Donald Fraser Hospital and the dates on which she was treated.

[9] The First Plaintiff explained in broad terms what happened to her at these clinics and the hospital, minus any medical terminology. Having regard to her level of education, it would be unfair to expect her to be able to articulate the various medical procedures that she underwent. The appropriate medical experts have been appointed to give evidence on the medical procedures that the First Plaintiff underwent.

[10] She was able to confirm that her blood sugar and blood pressure levels were measured at the Donald Fraser Hospital and that she was advised that due to the size of her baby, she would have to undergo a caesarean section. She was also able to confirm, again in very broad terms, what her and the baby's injuries were.

[11] There was no reason to believe that the First Plaintiff was not truthful in the testimony that she gave and accordingly the court accepts it as such.

Dr. Ndamkou

[12] Dr. Ndamkou testified via Microsoft Teams from New Zealand.

[13] Dr. Ndamkou testified that he is a Specialist Gynaecologist and Obstetrician and that he had filed three reports in this matter. He stood by the content of his report. The Defendant did not oppose the fact that Dr. Ndamkou is an expert, and having regard the content of his curriculum vitae, the court accepts that Dr. Ndamkou is in fact an expert witness.

[14] Dr. Ndamkou largely confirmed what is contained in his expert report, a summary of which is contained on page 26 thereof states that: -

> *"From the available record, it appears that the Plaintiff attended antenatal care at Tshidimbeni Clinic, she was booked at 16 weeks and attended her antenatal care appropriately. She had gestational diabetes and was referred to the Donald Fraser Hospital for further management where she admitted for glucose then discharged to her local clinic to continue antenatal care. This was appropriate as the Plaintiff was a high-risk patient and should have been referred to high-risk obstetric care.*
>
> *The antenatal follow-up was standard because maternal weight gain, the symphysis fundal weight and the fetal weight assessment were not done according to the prescribed guidelines, which resulted in the inappropriate management and delivery planning.*
>
> *Following admission, the Plaintiff was poorly assessed, there was no physical examination and no estimated fetal weight documented, there were no scans performed and the Plaintiff was in labour as early as 28 April 2018. It appears that the labour was prolonger and the maternal and fetal monitoring, including the labour progress, was substandard. There is no evidence to suggest that the Plaintiff was examined by a doctor on admission, taking into consideration the Plaintiff's high-risk profile.*

The Plaintiff's labour complicated to shoulder dystocia with a delivery of a 5020-gram baby, during which the plaintiff suffered a third/fourth degree tear and an open book fracture which was missed; and the third/fourth degree tear was documented as a first-degree tear and then inappropriately repaired. The management of the third/fourth degree was substandard, complicating to recto-vagina fistula, requiring repair in Polokwane.

The baby had shoulder dystocia and was seen by a multidisciplinary team. The management of the Plaintiff during the antenatal period as well as the intrapartum period was substandard. The hospital staff failed to assess the maternal weight gain fetal growth and further failed to appropriately assess the Plaintiff at the time of admission resulting in the mother delivering a macrosomic baby vaginally.

Had the appropriate assessment performed including ultrasound during the intrapartum period to assess the fetal weight gain, the Plaintiff would have been offered a caesarean section as a preferred method of delivery rather than allowing the mother to deliver vaginally.

From an obstetric point of view and in this case, shoulder dystocia could have been prevented had proper assessment and evaluation of the Plaintiff been done and the third/fourth degree vaginal tear and the open book fracture could have been prevented.

The injuries sustained by the baby and his mother at the time of the delivery is attributable in this specific case to the substandard care provided by the hospital staff during the antenatal period as well as during the intrapartum period."

[15] Dr. Ndamkou also confirmed that the initial labour assessment form that was completed on 30 April 2018 (see paragraph 4.18 above) was incorrect. It was stated in that assessment that "there are no antenatal problems and no risk factors identified", when in fact there were. The medical staff ought to have recorded the First Plaintiff's palpation, the symphysis fundal height and the estimate foetal weight of the child, and if this was properly recorded, they ought to have realised that the First Plaintiff required a cesarean section. There still would have been enough time to arrange a cesarean section at that time, and the baby could have been delivered

safely and without harm to the First Plaintiff and the child, instead the staff induced the First Plaintiff's labour.

[16] Dr. Ndamkou testified that the shoulder dystocia suffered by the child directly emanated from the vaginal delivery. In respect of the First Plaintiff, the fourth-degree perianal tear and the open book pelvic ring fracture directly emanated from the vaginal delivery. The injuries would not have occurred had the First Plaintiff underwent a cesarean section.

[17] There was no reason to believe that Dr. Ndamkou was not truthful in his testimony; he came across as very knowledgeable and his evidence was very easy to follow. He was a credible witness and his evidence was accepted. Whilst the Defendant filed a Notice in terms of Rule 36 (a) and (b) for its own Specialist Gynaecologist and Obstetrician, it did not call this expert to give evidence at the trial to dispute Dr. Ndamkou's evidence.

Dr. Swart

[18] Dr. Swart testified in person. Dr. Swart testified that he is a Specialist Urogynaecologist and that he had filed a report on this matter. He stood by the content of his report. The Defendant did not oppose the fact that Dr. Swart is an expert, and having regards his qualifications, the court accepts that Dr. Swart is in fact an expert witness.

[19] Dr. Swart's evidence was very eloquent and easy to follow, as was his report. During his evidence, he was asked to read and then explain certain aspects of his report.

[20] Dr. Swart confirmed that the First Plaintiff sustained a fourth-degree perineal tear from the vaginal delivery of the child. The perineal tear that she sustained was the worst of the worst. Following the delivery of the child, the perineal tear was incorrectly diagnosed as being a grade one tear. He believed that treatment that the First Plaintiff received after the vaginal birth was inhumane. She was kept in the ward for two weeks in some sort of linen binder around her body, unable to move

and incontinent of stool and urine. He testified that a perineal tear must be repaired by the most senior doctor available in theatre under general anesthetic straight away, however it was done by a midwife in the labour ward. It took three weeks before she was properly diagnosed and sent to Polokwane Hospital for repair. The delay in repairing the injury exacerbated the injury and caused further harm.

[21] There is no criticism of the repair of the perineal tear that was eventually done at the Polokwane Hospital, however: -

> *"As far as the bladder injury is concerned, she was not so fortunate. The problem here though is that the induction of labour should never have been done. When she sustained the pelvic fracture of the sphincter was damaged and this is not something that can be repaired surgically. There are salvage measures that one might be able to use to improve the situation, but this decision can only be made after extensive special interventions such as cystoscopies, urodynamic studies and radiography examinations to exclude fistulae."*

[22] Dr. Swart also noted in his report that: -

> *"On gynecological examination the perineal wound has healed with significant scarring, and she reports that she is no longer incontinent of faeces but has no control over urine and leaks continuously. There is no urine in the vagina as one sees where a vesico-vaginal fistula is present. The skin of the perineum is inflamed since it is always wet with urine leaks. The reason for her urinary incontinence is the destruction of the sphincters of the bladder that keeps one dry."*

[23] In addition to the perianal tear, the First Plaintiff also fractured her pelvis due to the traumatic vaginal birth. Dr. Swart testified that the fourth-degree perianal tear (with accompanying urinary injury) and the open book pelvic ring fracture directly emanated from the vaginal delivery.

[24] There was no reason to believe that Dr. Swart was not truthful in his testimony; he came across as very knowledgeable and his evidence was very easy to follow. He

was a credible witness and his evidence was accepted. The Defendant did not call its own Specialist Urogynaecologist to give evidence to dispute the evidence that was led by Dr. Swart.

Dr. Baloyi

[25] Dr. Baloyi was called by the Defendant as a factual witness and who gave evidence in person.

[26] Dr. Baloyi is the head of Obstetrics and Gynecology at the Polokwane Provincial Hospital. He confirmed the injuries sustained by the First Plaintiff and that he repaired the fourth degree and that the open-book fracture of the pelvis was treated by an Orthopedic surgeon at the same hospital.

[27] There was no reason to believe that Dr. Baloyi was not truthful in his testimony. He was a credible witness and his evidence was accepted, however the fact that the First Plaintiff received treatment at the Polokwane Provincial Hospital for her injuries was not an issue in dispute. Dr. Baloyi did, however, confirm the fact that the First Plaintiff had suffered the injuries that were already common cause.

CONCLUSION

[28] The court is satisfied that from the evidence that was led, the staff at the Defendant's facilities were negligent in the medical care that they administered to the First Plaintiff and the child, and that the Defendant is vicariously liable for the actions of their employees.

[29] The court is also satisfied that from the evidence that was led, there was a causal nexus between the negligence of the hospital staff and the injuries (and accompanying damage) sustained by the First Plaintiff and the child.

[30] At the conclusion of the trial the legal representatives for both parties agreed on how the cost order should be framed, if the court found in favour of the First and Second Plaintiff. A draft order was handed to the court, which provisions have been incorporated in the order.

[31] The way in which the legal representatives conducted themselves during this trial must be applauded. The trial ran with ease without any difficulty, and the professionalism of the legal representatives was evident throughout.

ORDER

[32] I accordingly make the following order: -

[32.1] The Defendant is liable for 100% of the proven or agreed damages of the First Plaintiff and of the First Plaintiff's son, D[...] R[...] S[...] ("D[...]"), due to the injuries (and its sequelae) the First Plaintiff suffered during D[...]'s traumatic vaginal delivery on 1 May 2018, and the brachial plexus Erb's Palsy injury (and its sequelae) D[...] sustained.

[33.2] The Defendant shall pay the First and Second Plaintiff's taxed or agreed party and party costs of suit for the liability trial that commences on 16 February 2026, on the High Court scale, which costs include:

[33.2.1] The Plaintiff's costs of obtaining the medico-legal reports and addendum reports of the Plaintiff's experts listed below relating to the issue of liability, as well as the said experts' costs of the preparation of joint minutes: -

[33.2.1.1] Dr. Modisane, orthopedic surgeon, including the radiology report annexed to his report and which he relied upon.

[33.2.1.2] Dr. N Ndamkou, obstetrician and gynaecologist.

[33.2.1.3] Dr. Dibote, Paediatrician.

[33.2.1.4] Dr. P Swart, a urogynaecologist.

[33.2.1.5] Professor Muthelo, a nursing expert.

[33.2.2] The reasonable preparation/qualifying and reservation fees (if any) of the experts listed in paragraphs 33.2.1.1, 33.2.1.2 and 33.2.1.5 above, including the costs of consultations (if any) with the legal team.

[33.2.3] The reasonable preparation/qualifying and attendance fees of Dr. N Ndamkou and Dr. Swart for their evidence on 17 and 18 February 2026 respectively, including the costs of consultations with the legal team.

[33.3.4] The costs occasioned by the employment of counsel on the party and party Scale C, including the costs of the trial on 16, 17 and 18 February 2026.

[33.3.5] The costs of making up and distributing the various bundles as agreed upon in the pre-trial minutes.

[33.2.6] The reasonable costs and expenses of accommodation and of transporting the Plaintiff and D[...] in attending all medico-legal examinations and consultations by the Plaintiff's and the Defendant's experts, (where applicable), for purposes of preparing their reports for the trial relating to the issue of liability, subject to the discretion of the Taxing Master.

[33.3] The costs stipulated above shall be paid into the trust account of the Plaintiff's attorney, the details of which are: -

MWIM ATTORNEYS TRUST ACCOUNT
FIRST NATIONAL BANK
ACC. NR. 6[…]
REF: - M[...]/MN0002

[33.4] The following provisions shall apply regarding the determination of the Plaintiff's above-mentioned taxed legal costs: -

[33.4.1] The Plaintiff's attorney shall serve the notice of taxation on the Defendant's attorneys of record.

[33.4.2] The Plaintiff's attorney shall allow the Defendant 30 (thirty) calendar days to make payment of the taxed costs from the date of settlement of taxation thereof.

[33.4.3] Should payment not be made in accordance with paragraph 4.2 above, the Plaintiff shall be entitled to recover interest at the applicable legal rate of interest on the taxed or agreed costs calculated

as from 31 days from the date of affixing of the Taxing Master's allocatur or date of settlement of the issue of costs, to date of final payment.

[33.5] The issue of the determination of the quantum of the First and Second Plaintiff's is postponed sine die.

BURNETT, E J A
CTING JUDGE OF THE HIGH COURT,
POLOKWANE; LIMPOPO DIVISION

APPEARANCES

FOR THE 1st and 2nd PLAINTIFF: -	ADV. F PAUER
INSTRUCTED BY: -	MWIM ATTORNEYS
FOR THE DEFENDANT:-	ADV. E M MAHLANGU
INSTRUCTED BY:-	THE STATE ATTORNEY (POLOKWANE)
DATE OF HEARING: -	16, 17 and 18 FEBRUARY 2026
DATE OF JUDGMENT: -	9 MARCH 2026