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

NOT REPORTABLE

Case no: 912/2021

In the matter between:

N[...] V[...] o.b.o.

K[...] M[...] V[...]

Plaintiff

and

MEMBER OF THE EXECUTIVE COUNCIL

responsible for **HEALTH: EASTERN CAPE PROVINCE**

Defendant

JUDGMENT

Govindjee J

[1] This matter proceeded only in respect of quantum, the defendant having previously been held liable for 100% of the plaintiff's proven damages arising from

the injuries sustained by the minor child during her birth at Mthatha General Hospital on 7 June 2019.

[2] By agreement, and in terms of Uniform Rule 33(4), certain issues were separated for determination in this trial. They are: the minor child's life expectancy; general damages; loss of earnings; accommodation and transport needs; and the appointment of caregivers and a case manager. The remaining heads of damages, and any ancillary issues not falling within the separated issues, stand over for later determination. The plaintiff proposed, in her draft order, that payment be made in three instalments, and the order reflects that proposal.

[3] During the course of the trial, substantial agreement was reached in relation to most of the separated issues. To the extent necessary, the resultant findings and awards will be reflected in the order, including such contingency adjustments as may be appropriate. I do not intend to burden this judgment with detailed reasons in respect of those aspects. Should reasons be required, they may be requested. The parties accept Dr Campbell's opinion that the minor child has an expected survival age of approximately 27,5 years. The awards below proceed on that basis. I am satisfied, based in particular on Dr Campbell's evidence regarding the child's awareness, responsiveness and ability to experience comfort and discomfort, that the child qualifies for an award of general damages.

[4] The only issue requiring detailed consideration concerns the plaintiff's claim for caregiver costs. The defendant contends that the plaintiff's claim under this head should be reduced or disallowed because caregiving services will be provided through arrangements concluded by the Department. Whether that contention is sustainable on the evidence and the applicable legal principles is the issue to which I now turn.

[5] The defendant relied on the evidence of Ms Xuma, the Deputy Director responsible for therapeutic and medical support services in the Eastern Cape Department of Health, in support of its contention. She testified regarding a 'Letter of Award' concluded between the Department and Mount Frere Paralegal Advice Centre for the provision of caregiving services for children with disabilities, including

cerebral palsy, in the OR Tambo and Alfred Nzo districts for a period of 36 months. The letter was signed at the end of October 2025.

[6] The award letter was subject to conclusion of a Service Level Agreement detailing the formal, comprehensive agreement between the Department and the supplier for the provision of the goods and / or services. The award letter provides that 'either party may terminate the Service Agreement by providing to the other party with 30 calendar days prior written notification'. The caregiving services in terms of the award letter were at the rate of R33,35 per hour, irrespective of day or night work or work on weekends or public holidays.

[7] Ms Xuma conceded that it had been an oversight not to provide the Service Level Agreement to the plaintiff during the course of the proceedings, so that the plaintiff was unable to ascertain her rights in terms of the agreement. The bid proposal documentation, detailing the Department's decision to outsource and the specification required for the tender, had also not been shared. She testified that she had submitted the request for the bid to supply chain as the programme manager and end user. She was part of the team that had been appointed by the Head of Department to draw up the specification for the tender and would be involved with the execution of the contract as the manager responsible for rehabilitation services. Whereas the award letter was applicable in the OR Tambo and Alfred Nzo districts, the Department had previously contracted with service providers in other districts. At the end of the contract period, Ms Xuma explained that she would have to follow the supply chain process for the development of a new contract. In the event that the process was delayed due to a challenge of the tender award, an extension of the current contract would be possible, alternatively permission to deviate from the usual procurement process could be requested. Deviations had already been utilised to provide caregiving services to children with cerebral palsy in two cases.

[8] As for the quality of the services to be provided, Ms Xuma explained that the Department relied on the money claimed by plaintiffs for the training of service providers to ensure that a proper service was provided. Department case managers would also be used to train caregivers to ensure that services were provided at the required level. The Department relied on the various health professionals in its

employ to ensure that appropriate training was provided to caregivers for purposes of complying with a court order. Services would be provided free of charge to the plaintiff.

[9] During cross-examination, Ms Xuma acknowledged that the Department did not itself provide caregiving services, which had resulted in the appointment of an independent service provider through outsourcing. While the Department of Health did not provide such services, NGOs registered under the Department of Social Development did so and, in terms of a memorandum of understanding, government departments were able to work together. A tender process could take one to two months to complete.

[10] While Ms Xuma acknowledged that no other relevant documents had been discovered pertaining to the present litigation, she maintained that an agreement had been entered into with the service provider and that a care plan would detail the obligations of the service provider in respect of the child. Training of the service provider would be 'part of the journey' and would commence prior to the provision of the services, including information pertaining to reporting and monitoring. The expected ability of the service provider to deliver the expected services from the outset was based on what had been stated in the tender specification. Ms Xuma testified that the names of the workers submitted, coupled with their qualifications, would satisfy the Department that the service could be provided, bearing in mind the need for on-the-job training. Her evidence, in response to the plaintiff's lament regarding the lack of available detail as to the specifications of the tender and whether the appointed service provider could comply, was to rely on the awarding of the tender and approval by the Head of Department, which, she said, meant that all the requirements specified in the contract were met.

[11] Ms Xuma acknowledged that the service provider was able to give 30 days' notice at any time in order to extricate themselves from the contract. In such instances, the Department would rely on its deviation process to provide urgent assistance, alternatively other service providers providing such services could be requested to do so in the district concerned, while the process for appointment of a new service provider was ongoing.

[12] Ms Xuma also testified that the programme was supported by provincial treasury and the premier's office with the aid of an annual ringfenced budget. While this had been ongoing for some five years, she was unable to confirm that the programme would continue in years to come. The intention at this stage was to ensure that the required services would be ongoing, possibly also with the assistance of the Department of Social Development. The Department's view was that it would provide the necessary services to the plaintiff based on its mandate. In the event of a dispute as to the quality of services between the Department and the service provider, it was expected that the project manager would intervene and that processes such as mediation could follow.

[13] Before considering the merits of the defendant's contentions, it is necessary to identify the issue requiring determination. Although the amended plea traverses broader terrain, the defendant ultimately confined its case to one founded on the common-law principle of mitigation of damages. Counsel expressly disavowed any reliance upon the development of the common law during argument. Rather than rely upon the broader public-healthcare remedy considered in other litigation, the defendant relied on *Ngubane*, as endorsed by the Constitutional Court in *DZ*, in support of a defence centred on mitigation of damages. The defendant's contention accordingly falls to be determined on that basis.

[14] That approach is also consistent with the manner in which the trial was separated. The parties did not leave the question of caregivers and case management for later determination. On the contrary, the order separating issues for trial expressly included the appointment of caregivers and a case manager, while postponing the remaining heads of damages and ancillary issues. The caregiver issue was therefore placed before this Court for determination. The issue having been so separated, the defendant elected to answer that claim as one of mitigation under the existing common law.

[15] A court determines the dispute the parties ultimately choose to litigate. It is neither necessary nor appropriate to decide issues that have been expressly abandoned, disavowed or which no longer arise for decision. As Makgoka JA

recently observed, the SCA and Constitutional Court have repeatedly cautioned against addressing abstract issues not necessary for the proper disposal of a case.¹ The SCA has also confirmed that the enquiry is framed within Aquilian principles, so that the ambit of the existing common law must first be determined before any question of its development can arise.²

[16] In all the circumstances and particularly given the defendant's own characterisation of its defence, the broader questions concerning the development of the common law, or the remedies associated with the so-called public-healthcare defence, do not require determination in this matter. The enquiry is the narrower one focused on mitigation: whether, on the evidence, the defendant has established that the plaintiff's claim for future caregiver costs should be reduced or disallowed because an available and appropriate source of caregiving will avoid or reduce the plaintiff's patrimonial loss. Accordingly, nothing in this judgment should be understood as expressing any view on questions that would have arisen had the defendant persisted in a defence centred on the development of the common law.

[17] Both parties accept that that enquiry is governed principally by *Ngubane*, as explained by the Constitutional Court in *DZ* and applied by the SCA in *Mashinini*.³ It is accordingly necessary to canvass those authorities in some detail. *Ngubane* holds that the customary basis on which a claim for future medical expenses is determined is to make use of private medical services and hospital facilities so that a plaintiff who has suffered personal injuries may, in the normal course, as a result of enquiries and exercising a right of selection, receive skilled medical attention and, where necessary, be admitted to a well-run and properly equipped hospital.⁴ That evidence will ordinarily discharge the plaintiff's onus of proving the cost of such expenses unless, having regard to all the evidence, including evidence adduced in support of an alternative and cheaper source of services, the plaintiff has failed to prove on a

¹ *FirstRand Ltd and Another v National Bank of Abu Dhabi PJSC (Pty) Limited* [2026] ZASCA 98 paras 45–46, especially para 46.

² *Mashinini v The Member of the Executive Council for Health and Social Development, Gauteng Provincial Government* [2023] ZASCA 53 (*Mashinini*) para 12.

³ *Ngubane v South African Transport Services* 1991 (1) SA 756 (A) (*Ngubane*); *Mashinini* above n 2.

⁴ *Ngubane* above n 3 at 783H–785E; Also see *MEC for Health and Social Development, Gauteng v DZ obo WZ* [2017] ZACC 37 (*DZ*) paras 18–21 and 35.

preponderance of probabilities that the services envisaged are reasonable and hence that the amounts claimed are not excessive.

[18] As a starting point, it must be noted that the occupational therapists engaged by both parties agree that the child will require lifelong care by caregivers who have undergone recognised caregiver training, hold a first-aid certificate and preferably a driver's licence and who will assume various responsibilities. This includes personal care, administration of any medication, carrying out home exercise and stimulation programmes prescribed by rehabilitation specialists, preparing the child's food and feeding her, ensuring sufficient food and fluid intake and accompanying the child on outings and appointments.

[19] Ms Caga, the occupational therapist called on behalf of the plaintiff, explained why the child required round-the-clock caregiving support, relieving the child's mother, to improve the child's quality of life and to prevent complications associated with cerebral palsy. Considering the applicable legislation and the maximum permissible hours of work, three full-time caregivers working on rotation were proposed, with a relief caregiver covering the remaining hours required per week.

[20] Ms Caga adopted the average of two organisations, Payscale and Indeed, in arriving at an average monthly salary of a caregiver in South Africa of approximately R7000 per month, at an average hourly rate of approximately R41. Her evidence was that it was difficult to secure caregivers from an agency in small towns or in locations far from East London and that such services were much more expensive. The amounts she proposed were based on her own experience and what was currently paid in respect of children where she offered case management services and was responsible for sourcing caregivers. Her testimony was cogent and unshaken during cross-examination. She explained why she disagreed with the approach adopted by the occupational therapist engaged by the defendant. During cross-examination she emphasised that the child required all day care by sufficiently qualified persons trained in working with children with cerebral palsy, who should be continuously trained. She also testified, based on her work as a case manager in the area and her involvement in sourcing caregivers, that she had never come across state-appointed service providers in that part of the country. She emphasised that an

appointed caregiver should be someone with experience in working with children with severe disability; someone trainable, willing and passionate to work with such children.

[21] On my assessment, the plaintiff, through the evidence of Ms Caga, discharged the onus of proving both the need for lifelong caregiver support and the reasonable cost of the expenses to be incurred in respect of caregivers.⁵ This constitutes *prima facie* proof that payment to the child of such cost would place her financially in the same position she would have been in had she not suffered the injuries that resulted in the claim. The onus of proving damages remains upon the plaintiff throughout. But, once the plaintiff has established the reasonable and necessary cost of the care, it is for the defendant to adduce a sufficient evidential basis (the ‘voldoende getuienisbasis’ referred to in *Ngubane*) for its contention that caregiving at the same, or an acceptably high, standard would be available to the child at no cost or for less than that claimed.⁶ *Ngubane* highlights, in addition, that the evidence ought to show that such services are likely to be available in the future.⁷ Significantly, even assuming comparability of standard, the defence may fail if the evidence falls short of showing that the alternative services are likely to be available over the relevant period.

[22] In *MEC for Health and Social Development, Gauteng v DZ obo WZ*,⁸ the Constitutional Court reflected on *Ngubane*, and what it termed a ‘mitigation of damages’ defence, in the following terms:

‘[21] *Ngubane* is authority for allowing a defendant to produce evidence that medical services of the same or higher standard, at no or lesser cost than private medical care, will be available to a plaintiff in future. If that evidence is of a sufficiently cogent nature to disturb the presumption that private future healthcare is reasonable, the plaintiff will not succeed in the claim for the higher future medical expenses. This approach is in accordance with general principles in relation to the proving of damages...

⁵ *Ngubane* above n 3 at 784C and following. Also see *Mashinini* above n 2 para 24.

⁶ *Ngubane* above n 3 at 785C–D, the phrase being that of Jansen JA in *Erasmus v Davis* 1969 (2) SA 1 (A) at 11E–F. Also see *Mashinini* above n 2 paras 12 and 26.

⁷ *Ngubane* above n 3 at 785E–G.

⁸ *DZ* above n 4.

[22] This approach does not offend the “once and for all” rule. It is a “once and for all” factual assessment on the evidence adduced that, although the claimant will need medical care in future, it has not been proved on a balance of probabilities that this entails a loss in the sense that the claimant’s patrimony after the delict is less than it would have been had the delict never occurred. It is not the mere injury and its future consequences that justify an award of damages, but the actual diminution in the claimant’s patrimony...

[23] ... Only after assessing the evidence proffered on the adequacy of alternative future medical care can a court assess, “once and for all”, whether the damages claimed have been proven reasonable. If so, a lump-sum assessment must be made of the future loss.

[24] If not, it appears that at least four possibilities exist. The first is that no damages for future medical expenses should be awarded if the evidence shows that the claimant is likely not to suffer *any* loss in the future. The second is that, if the evidence establishes only a *lesser* loss, then that sum must be awarded as the monetary damages ... The first two possibilities fall comfortably within the current law of monetary compensation that must be paid “once and for all”. The latter two may not.

[26] ... Our law currently requires evidence to substantiate a defence that a claimant has suffered no damages, or less than is claimed, for reasonable future medical expenses. The Gauteng MEC chose not to present any evidence to show that DZ’s claim for future medical expenses was unreasonable. The plea therefore has to fail on the state of our existing law.⁹

[23] The application of these principles is illustrated by *Mashinini*. The plaintiff there claimed the monetary cost of future medical and surgical treatment required as a consequence of a negligently performed procedure at a provincial hospital. The MEC pleaded the public-healthcare defence, contending that the necessary treatment would be rendered at a designated state hospital and praying for an order to that effect in lieu of monetary compensation. The high court acceded to that contention. The SCA upheld the appeal and awarded the amount claimed.¹⁰

[24] The SCA held that the plaintiff had discharged the onus of proving not only that she would require treatment in future, but also the quantum of the reasonable

⁹ Ibid paras 21–26 (footnotes omitted).

¹⁰ *Mashinini* above n 2 paras 3–7 and 21.

cost of that treatment. That constituted prima facie proof that payment of the amount claimed would place her financially in the position she would have been in but for the delict. While the onus of proving damages remained upon the plaintiff, the MEC, having raised its defence, bore an evidential burden to rebut the prima facie case.¹¹

[25] The content of that burden is important. In *Mashinini*, no evidence had been presented to counter the plaintiff's evidence that the State hospitals, because of the manner in which they operated, were not capable of rendering the required services to a patient with the plaintiff's clinical complexity. Nor was any evidence presented of the cost to the plaintiff of such services, if they were available. There was therefore no evidence that medical services of the same, or an acceptably high, standard would be available at no cost or for less than that claimed. The defence accordingly failed.¹²

[26] The same principles apply to a claim for caregiver support. In *Mhlatshana v MEC for Health, Eastern Cape Province*,¹³ the remaining issue concerned whether the plaintiff was entitled to payment of the agreed actuarial amount for caregiver support upfront, or whether the defendant could provide the service, alternatively reimburse the plaintiff on proof of invoice. The defendant led evidence of a proposed departmental mechanism involving an external service provider, a ring-fenced medico-legal budget and a task team to monitor implementation.¹⁴

[27] That evidence was held to be insufficient. The proposed arrangement was described in broad terms, without the supporting documentation and operational detail necessary to assess whether it would work in practice. The court was unable to determine, with the necessary confidence, how the caregiver would be sourced, trained, supervised, managed and paid; whether the mechanism would exist in the relevant locality and whether it would endure over the period for which care was required. The evidence therefore failed to establish that caregiving services of the

¹¹ Ibid paras 24–26.

¹² Ibid paras 26–27.

¹³ *Mhlatshana v MEC for Health, Eastern Cape Province* [2024] ZAECHMHC 19.

¹⁴ Ibid para 12–16.

same or an acceptably high standard would be available at no cost or for less than that claimed.¹⁵

[28] The same evidential concern is reflected in later cases dealing with analogous public-healthcare contentions. In *BLM*,¹⁶ the defendant led evidence from numerous officials about services said to be available in the public sector. The difficulty was that the evidence did not compare the standard or quality of those services with the services available in the private sector. The court held that it could not take judicial cognisance of the standard of care to be provided, and that in matters of this nature expert testimony would ordinarily be required to enable that comparison.¹⁷ Similarly, in *PH obo SH v MEC for Health, KwaZulu-Natal*, albeit in the context of an application for leave to amend, assurances that named public facilities existed and could provide services were held to be too vague where there was no evidence of the quality of care and skill available, no proper rollout plan, and no confirmed budgetary basis.¹⁸

[29] These authorities do not impose a rigid checklist. They identify a standard of proof directed at two related enquiries. The first is whether the alternative source will provide caregiving of the same, or an acceptably high, standard. The second is whether that source will be available to the child, at no cost or at less than the cost claimed, for the period in respect of which the defendant seeks to displace or reduce the claim.¹⁹ Even assuming the alternative service to be comparable in standard, the defence may fail if the evidence falls short of showing that the service is likely to be available in future. The defendant's evidence must do more than express confidence in a future arrangement, even if that arrangement is said to be available at no cost to the plaintiff or at a lower hourly rate. It must establish, with sufficient precision, how the proposed service will operate, that it will provide care of the requisite standard, and why the Court may properly conclude on the probabilities, on a once-and-for-all

¹⁵ Ibid paras 25–28.

¹⁶ *BLM obo KM v MEC for the Department of Health and Social Development, Gauteng Provincial Government* [2025] ZAGPJHC 1350.

¹⁷ Ibid paras 48.1–48.5 and 65–68.

¹⁸ *PH obo SH v MEC for Health for the Province of KwaZulu-Natal* [2020] ZAKZDHC 38; 2021 (1) SA 530 (KZD) para 24. Also see *NPD and Another v MEC for Health, Eastern Cape* [2025] ZAECBHC 26 paras 69–70.

¹⁹ *Ngubane* above n 3 at 785E–G.

basis, that it will be available to the child for the relevant period. It is against that standard that Ms Xuma's evidence must be assessed.

[30] Ms Xuma's evidence established that the Department has taken steps to procure caregiving services for children with disabilities, including children with cerebral palsy, through district-based service providers. The service provider appointed for the OR Tambo and Alfred Nzo districts was Mount Frere Paralegal Advice Centre. I accept that the award letter contemplates caregiving services for a period of 36 months, and that the Department does not intend to charge the plaintiff, or the child, for those services. I also accept that Ms Xuma gave her evidence in good faith and that the Department presently intends to continue making such services available. While those facts are relevant, they do not answer the applicable enquiry.²⁰

[31] The first difficulty is the absence of the documents that would have enabled the Court to assess the content and enforceability of the proposed arrangement. The award letter itself records that it is subject to the conclusion of a Service Level Agreement. Ms Xuma accepted that the Service Level Agreement existed and that it was an important document. It was, however, not discovered or produced. The bid proposal and specifications, which would have assisted the Court to understand what the service provider was required to offer in order to secure the appointment, were also not produced. No care plan was placed before the Court. On Ms Xuma's own evidence, that plan would have to be developed with reference to the court order and the child's individual needs, and would inform what the caregivers were expected to do at home. The result is that the Court is left with an award letter, but not the contractual and operational details of the arrangement. The award letter does not detail, with sufficient precision, the content of the service provider's obligations, the standard its caregivers must meet, or the mechanisms by which performance will be secured. It also does not show what recourse the plaintiff or the child would have if the care proved inadequate or if the arrangement failed.

²⁰ Compare *AQ obo IQ v MEC for Health, Eastern Cape* [2025] ZAECHC 30 paras 35–40. The matter concerned the undertaking-to-pay remedy and the development of the common law but contains a useful evidential point: even where evidence of ring-fenced funding was accepted as compelling from a financial-management perspective, the defence failed, in part, because the practical details of implementation, continuity and enforcement remained uncertain.

[32] This goes to the substance of the defence given that the defendant asks the Court to reduce or disallow a proved monetary claim because an alternative service will be available. That assessment cannot be made on the strength of an award letter alone. Ms Xuma's assurance that the tender had been awarded and approved by the Head of Department does not prove the content of the requirements imposed on the service provider, or that those requirements correspond with the standard of care established by the occupational therapy evidence.

[33] The second difficulty concerns the standard of the proposed service. The parties' occupational therapists agreed that the caregivers should have recognised caregiver training, a first-aid certificate and preferably a driver's licence, and should assume a wide range of responsibilities in the child's daily care. Ms Caga's evidence went further in explaining why the caregivers must be persons with experience in caring for children with severe disability, and why their training must be child-specific and ongoing. Ms Xuma did not provide evidence from the appointed service provider. No caregiver who would render the service was identified and no qualifications of proposed caregivers were placed before the Court. There was also no evidence led that the service provider has experience in caring for children with severe cerebral palsy. The defendant also led no evidence that the caregivers to be provided hold, or will be required to hold, the first-aid certification the occupational therapists agreed upon.

[34] While I accept that training can be provided after appointment, this does not establish that services of the same, or an acceptably high, standard will be available. The defendant's case requires proof that the proposed service will meet the standard required by the child's condition. Evidence that training will form part of the 'journey', or that departmental case managers and therapists may assist in future, remains too general to discharge that burden. It is the case that the services would be provided at no cost to the plaintiff or the child, and at an hourly rate lower than that on which the claim is based. But that addresses only the cost component of the enquiry and does not prove that the care to be delivered through that arrangement will be of the standard established by the plaintiff's evidence.

[35] The third difficulty concerns future availability. The award relied upon is for 36 months, whereas the child's need for care is lifelong, bearing in mind her reduced life expectancy. In addition, the arrangement may be terminated by either party on 30 days' notice. Ms Xuma's evidence was that the Department would seek to procure a further contract before the expiry of the existing appointment, and that extensions, deviations or alternative providers could be considered if procurement difficulties arose. The point is not that the Department was required to produce a single contract covering the child's lifetime. It is that the evidence had to provide a sufficient basis for concluding, on the probabilities, that the proposed service would remain available for the period in respect of which the defendant seeks to displace or reduce the claim. The evidence does not provide that basis.

[36] The same difficulty arises from the evidence concerning funding. Ms Xuma testified that the programme was supported by Provincial Treasury and the Office of the Premier, with an annual ring-fenced budget, and that this had been ongoing for some years. I accept that this evidence explains her confidence that the programme would continue. But she also accepted that she could not know what would happen in future. An annual allocation, however sincerely relied upon at present, is not proof of an enforceable or sufficiently certain long-term arrangement. The evidence remains dependent on future budgetary decisions, future procurement or deviation processes, and the continued participation and capacity of an independent service provider.

[37] The fourth difficulty concerns local and practical implementation. Ms Caga, who works as a case manager and sources caregivers in the area, testified that she had never come across state-appointed service providers providing such caregiver services in that part of the country. Furthermore, Ms Xuma accepted in cross-examination that the appointed service provider had not yet provided caregiving services to the Department under this arrangement. While I do not consider this to be decisive on its own, it underscores the absence of an operational track record in respect of the very service relied upon to displace the plaintiff's claim, and makes it still more difficult to infer from a 36-month appointment that comparable care is likely to remain available for the period over which care is required.

[38] Finally, it must be noted that the Department does not itself employ or provide the caregivers in question, and the entire arrangement depends on an independent service provider. While Ms Xuma expressed confidence that the Department would intervene if the plaintiff or a case manager was unhappy with the quality of services, and that mediation or contractual processes could follow, without the Service Level Agreement the Court lacks crucial information about how that intervention would operate in practice. In particular, the Court does not know what rights the plaintiff would have, what obligations the service provider owes, whether the Department can require the replacement of a caregiver or what happens if the provider refuses to comply or terminates the agreement. The possibility that the Department may intervene if difficulties arise does not establish that the plaintiff or the child would have effective recourse if the service proves inadequate or if the arrangement breaks down.

[39] Viewed cumulatively, these difficulties prevent the Court from treating the proposed outsourced arrangement as a reliable substitute for the plaintiff's quantified claim. I accept that the Department has taken steps to create a mechanism for providing caregiving services to children with disabilities and that such a programme, if properly established and proved, may in appropriate instances be relevant to the assessment of damages under *Ngubane* and *DZ*. The difficulty for the Department is that the evidence in this case does not establish with the required cogency that caregiving services of the same, or an acceptably high, standard will be available to this child, at no cost or for less than that claimed, for the period for which care is required. That conclusion rests on the evidence led at this trial and in respect of this head of damages alone.

[40] It follows that the defendant has not displaced the plaintiff's proof of the reasonable cost of the caregiving required by the child. The claim must therefore be calculated on the basis of Ms Caga's evidence and the plaintiff's actuarial calculation. The plaintiff's actuarial figure already reflects a 10 per cent contingency deduction, which I consider fair.

Order

[41] The following order is issued:

1. The defendant is ordered to pay the sum of R15 200 089,64 to the plaintiff, calculated as follows:

1.1	General damages for the minor child:	R2 100 000,00
1.2	Loss of earnings:	R2 382 646,00
1.3	Accommodation needs:	R1 453 989,64
1.4	Transportation needs:	R3 898 646,00
1.5	Case manager:	R 453 971,00
1.6	Caregiving:	R4 910 837,00

2. The payment will be made in three equal instalments: the first within 30 days of this order, the second within 60 days of this order, and the balance within 90 days of this order, to the trust account of the plaintiff's attorney of record, the particulars whereof are as follows:

Account name: ABN Attorneys
Bank: First National Bank
Account number: 6[...]
Account type: Cheque account

3. Any instalment not paid on its due date shall bear interest at the prescribed legal rate from the due date to date of payment.

4. The defendant shall pay the plaintiff's costs occasioned by the determination of the separated issues dealt with in this judgment, such costs to include:

4.1 The costs of the following plaintiff's expert witnesses in relation to those issues, such costs to include the costs of their reports and reasonable qualifying and reservation fees (if any):

4.1.1 Dr R Campbell

4.1.2 Dr X Sidloyi

4.1.3 Mr A Sakonda

4.1.4 Ms T Caga

4.1.5 Ms N Molefe

4.1.6 Dr NP Livi

4.1.7 Mr N Waisberg

- 4.2 The costs of travelling, accommodation, expenses and subsistence of plaintiff, plaintiff's representatives and plaintiff's expert witnesses (if any), to the extent reasonably incurred for consultation, preparation for and attendance at the hearing of those issues.
- 4.3 The costs of two counsel in relation to those issues, with the costs of senior counsel to be determined on scale C and those of junior counsel on scale B, including costs of accommodation, travelling and expenses incurred in respect of consultations with expert witnesses and the plaintiff and in preparation for trial.
- 4.4 Interest on the plaintiff's taxed or agreed costs at the prescribed statutory rate calculated from a date 14 (fourteen) days after agreement in respect thereof, or 14 (fourteen) days after the date of the taxing master's *allocatur*, to date of payment.
5. The remaining heads of damages, and any ancillary issues not disposed of in this judgment, stand over for later determination.

A GOVINDJEE
JUDGE OF THE HIGH COURT

Heard: 15, 17–18 June 2026

Delivered: 25 August 2026

Appearances:

For the Plaintiff: D T v R Du Plessis SC
Q Du Plessis

Instructed by: ABN Attorneys
East London

For the Defendant: AM Bodlani SC
A Mafu

Instructed by: The State Attorney
East London