

Editorial note: Certain information has been redacted from this judgment in compliance with the law.



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

**CASE NUMBER.: 950/2012**

In the matter between:

**NKULULEKO NATHANIEL MANZIYA**

Plaintiff

And

**MEMBER OF THE EXECUTIVE COUNCIL,**

**DEPARTMENT OF HEALTH, EASTERN CAPE**

First Defendant

**MEDICAL SUPERINTENDENT, SETTLERS**

**HOSPITAL, MAKHANDA**

Second Defendant

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**JUDGMENT**

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**Beshe J**

**Introduction**

[1] Plaintiff's left leg was amputated above the knee on the 4 November 2009 at Uitenhage Provincial Hospital. Alleging that this was as a result being mistreated by defendants' employees both at the Settlers Hospital, Makhanda and at Provincial Hospital, Kariega formerly Uitenhage, by breaching their duty

or care, plaintiff is now suing the defendants. This is on the basis that they are liable for damages he suffered as a result of his leg being amputated.

### **The Parties**

[2] Plaintiff is an adult male residing at [...] Street, KwaNobuhle, Kariega. First defendant is the Member of the Executive Council for the Department of Health, Eastern Cape. Second defendant is the Medical Superintendent of Settlers Hospital, Makhanda, formerly known as Grahamstown.

### **Pleadings**

[3] Plaintiff pleaded that he visited Settlers Hospital on 19 October 2009 and Provincial Hospital on 27 October 2009 where he entered into an agreement with employees of the defendants who undertook to provide him with medical care in respect of an injury he had sustained to his left leg. And that in providing him with such medical care, they will do so with such professional skill, care and diligence as can be reasonably expected of a hospital and its medical and nursing personnel. Further that it was within the knowledge of the parties in concluding these agreements that in the event of defendants' employees breaching this agreement, plaintiff will suffer damages. In the alternative, plaintiff pleaded that the defendants, by accepting the plaintiff as a patient at either Settlers Hospital or Uitenhage Provincial Hospital, defendants and or their employees were under a duty of care to provide him with the requisite medical care with such professional skill, care and diligence as can be reasonably expected of a hospital and its medical and nursing personnel. After sketching the history relating to his visits to both Settlers and Uitenhage Provincial Hospitals, plaintiff pleads that the defendants breached their agreements with him alternatively their duty of care in the following manner: \_

In respect of Settlers Hospital, on 19 October 2009 he was prematurely discharged. He was not admitted overnight for observation of circulation in his lower leg. Failed to observe that there was significant swelling of his lower leg at the time of his admission and treatment. Failure to apply a split plaster of paris to his leg, despite the swelling and instead applied a circular plaster. Failure to advise him of the necessity to return to Settlers Hospital the following day or soon thereafter for a circulation check of his leg and to communicate the importance of the said check as well as the clinical signs to be on the lookout for signalling impaired circulation being present. Failure to ensure that a qualified medical practitioner applied the plaster of paris to plaintiff's leg. Failure to consider whether the application of a circular plaster may result in serious medical complications such as acute compartment syndrome and to take steps to prevent same.

[4] In respect of Uitenhage Provincial Hospital, plaintiff pleaded inter alia that they did not pay attention to the fact that he presented with circular plaster of paris since 19 October 2009, complaining of bleeding, swelling and suffered from septimea to his leg. Failed to categorise his condition as a serious medical condition. Take cognisance of the fact that there were clear signs of tissue changes as well as reduced blood flow to his leg. Failed to recognise that sloughing with associated cellulitis of his leg was present and timeously responding to that. Failed to perform an urgent fasciotomy procedure on him timeously after his admission in order to prevent amputation on his leg. By failing to perform an urgent debridement procedure on him timeously after admission in order to prevent his leg being amputated. And only did so on the 30 October 2009 after he had developed advanced necrosis of his lower leg which resulted in the amputation of his leg. As a result of which he has suffered pain, suffering, shock as well as permanent disfigurement and loss of amenities of life. Has incurred medical expenses and will incur future medical expenses.

He has suffered past loss of income and will in future suffer further loss of income.

[5] The chronology of events pertaining to plaintiff's visit to the two hospitals was pleaded to have been the following:

He was admitted to Settlers Hospital at ± 11h25 on 19 October 2009 for treatment of an injury to his left leg, to wit a slightly displaced lateral malleolus fracture. He was examined by Doctor Megafu who ordered a radiographic examination of his leg and administered a voltaren injection. At 12h40 Doctor Megafu examined the radiograph taken of his injury and ordered a male nursing assistant to apply a plaster of paris cast to his lower leg. He was thereafter discharged from Settlers Hospital without being advised to return thereto the following day for a circulation check. On 27 October 2009 he was admitted to Uitenhage Provincial Hospital complaining of pain in his left lower leg, whereupon the plaster cast to his leg was removed, where amongst other things diminished blood flow to his lower leg was evidenced by a dark discolouration of his leg. After being radiographed, his leg was immobilized with a non-circumstantial cast. At 10h30 on 28 October 2009 cellulites and sloughing of his leg with blue discolouration was noted. Radiographic examination revealed a lateral malleolus fracture with mild displacement without callies formation or evidence of union. On 30 October 2009 a debridement of his leg was performed. Puss was observed draining from his leg. On 4 November 2009 an above the knee amputation was performed on his leg. He was discharged on the 11 November 2009.

[6] In their plea the defendants raised three special pleas:

The first one being that plaintiff's amendment of his particulars of claim to include allegations relating to negligence by Uitenhage personnel after his

admission there, as being irregular in that it did not comply with Rule 28. However, the said irregularity was condoned by the defendants with effect from the date of the purported amendment (29 April 2019). Defendants plead that in terms of Section 12 read with 10 and 11 of the Prescription Act,<sup>1</sup> the plaintiff's claim in respect of the alleged negligence relating to Uitenhage Provincial Hospital prescribed within three years from November 2009 the date on which the negligence is alleged to have occurred. As this claim amounted to an entirely new cause of action which was not pleaded before. In defendants' second plea, a point was taken that the plaintiff did not serve the written notice as required by Legal Proceedings against Certain Organs of State Act<sup>2</sup> on the defendant. Defendants' third special plea relate to a complaint that the amended plaintiff's particulars of claim in regard to his admission in Uitenhage Provincial Hospital, a new claim, incorporated the second defendant thereby constituting an impermissible misjoinder of second defendant.

[7] In his replication to defendants' special plea, plaintiff denied that the alleged negligent mistreatment at the Uitenhage Hospital relates to an entirely new cause of action. As it arises from the same incident as pleaded by the plaintiff in his original particulars of claim. Both hospitals fall under the authority and control of first defendant. Plaintiff's claim has not been extinguished by prescription against the defendants. Alternatively, so the replication goes, plaintiff pleads that he only became aware of the alleged negligent treatment at the Uitenhage Hospital upon receiving the medico-legal report of Doctor P. A. Olivier dated 5 July 2017 and therefore his claim has not prescribed. Regarding the defendants' second plea, it was pleaded that the notices issued on 21 January 2010 to first and second defendants contained particulars of persons responsible for the negligent treatment of the plaintiff as

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<sup>1</sup> Act 68 of 1969.

<sup>2</sup> Act 40 of 2002.

being medical practitioners and or medical personnel who treated the plaintiff at Settlers Hospital and or Uitenhage Provincial Hospital. In reply to defendants' third special plea, plaintiff pleaded that no damages are claimed against the second defendant in so far as it relates to plaintiff's treatment at the Uitenhage Provincial Hospital.

[8] In my view, defendants' special pleas are somewhat related and can be dealt with as one. Had the claim been instituted or had the Uitenhage Provincial Hospital been cited as a defendant the special pleas or one of them would have merit. The Uitenhage Provincial Hospital has not been joined as a party. I am inclined to agree with the plaintiff that allegations or evidence regarding plaintiff's treatment at Uitenhage is causally linked to the treatment he received in Settlers Hospital. That although negligence is alleged against the medical staff at the Uitenhage Hospital, whether such is found to exist will not make a difference or is academic. The Member of the Executive Council for Department of Health Eastern Cape is responsible for both hospitals and therefore vicariously liable for the negligent actions of its employees. I am not persuaded that the amendment to include allegations about what occurred at Uitenhage Provincial Hospital constitute a new cause of action. Had there been a claim against the Uitenhage Provincial Hospital, or a claim been instituted against it, it could in those circumstances be said that this was a new and different cause of action. Even if it were to be a new cause of action, I am not persuaded that the plaintiff would be nonsuited to claim against the Uitenhage Provincial Hospital by virtue of the fact that his claim would have become prescribed by effluxion of time. It appears to be common cause that the details about the alleged negligence by medical staff at Uitenhage Provincial Hospital only came to the fore upon receipt of Dr Olivier's report during 2019. In the said report Dr Olivier opined that plaintiff received substandard medical care at both Settlers Hospital and Uitenhage Provincial Hospital. The latter hospital

having failed to perform a fasciotomy which would have averted amputation of plaintiff's leg. There is however evidence that at that stage as a result of the compartmental syndrome, plaintiff's leg could not have been saved. It is trite that a debt does not become due until the creditor acquires knowledge of the identity of the debtor and the facts from which the debt arises.<sup>3</sup> Before sight of Dr Olivier's report, the plaintiff was not aware of the facts giving rise to the alleged negligence by Uitenhage Provincial Hospital; staff. This was not disputed by the defendants. For these reasons and based on my conclusion regarding the dispute between the parties, defendants' special pleas are dismissed.

### **Plea-over**

[9] Defendants admitted plaintiff's allegations regarding his admission at the two hospitals on the specific dates as well as the injury in respect of which he required medical attention. The duty owed to the plaintiff by first defendant's employees as alleged by plaintiff. It is denied that second defendant is correctly cited as defendant in these proceedings. Treatment administered to the plaintiff at Settlers Hospital is admitted. Defendant denies that plaintiff was not advised to return to Settlers Hospital the following day or immediately should he experience pain in his lower leg. Defendants pleaded that the deterioration of plaintiff's condition, the amputation of his lower leg and any damages he may have suffered as a result thereof is attributable solely to his negligence having been negligent in one or more of the following aspects:

By failing to return to Settlers Hospital for a check-up immediately or at all on experiencing pain in his lower leg.

By making excessive use of his leg.

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<sup>3</sup> Section 12(3) of the Prescription Act 68 of 1969.

By failing to take reasonable steps to care for his injured leg and ensuring that the injury to and condition of his left leg did not deteriorate and by failing to take the prescribed medication.

Defendants pleaded that plaintiff was discharged from Settlers Hospital in accordance with normal and accepted procedure. Deny that it was necessary to admit him overnight. Further that even though swelling in plaintiff's leg was evidence it was not necessary to split the plaster cast. Furthermore, that when plaintiff presented at the Uitenhage Provincial Hospital, he had full-blown compartment syndrome with necrotic muscles and a compression and fasciotomy would have served no purpose. Defendants admitted that plaintiff developed compartment syndrome and ischaemia of his lower leg, sloughing of skin and infection, and ultimately had to undergo an above knee amputation of his left leg. Breach of the duty of care by its employees is denied by the defendants.

### **Evidence**

[10] Plaintiff, his wife, and Doctor P. A. Olivier who is an orthopaedic surgeon testified in support of plaintiff's claim. Mrs Fezeka Angeline Manziya was the first witness to testify in support of plaintiff's case. Her evidence revealed the following:

During October 2019 she was in Makhanda with the plaintiff for purposes of attending her mother's funeral. On Friday the 18<sup>th</sup> being the day preceding the day of the funeral, plaintiff got injured on his ankle which became swollen. The following day being the 19<sup>th</sup>, her brother-in-law drove her together with the plaintiff to Settlers Hospital in Makhanda for medical attention. In view of the fact that plaintiff was walking with difficulty, a security guard brought him a wheelchair. Once inside the hospital they were attended by a female employee



who took the plaintiff to the X-ray department where his leg was X-rayed or had a radiograph examination done on his leg. The official who took them to the X-ray room and had the report spoke to a male nurse who thereafter applied a plaster of paris cast on plaintiff's leg in Mrs Manziya's presence. The male nurse provided the plaintiff with crutches which he used to walk albeit with difficulty. They followed the male nurse to a room where there was a doctor. The male nurse reported to the doctor that he had applied the plaster of paris cast on the plaintiff's leg. At the time, the doctor was some 4 to 5 metres from them attending to a baby who was crying. He looked at them and gave the male nurse a thumbs up sign from where he was. Thereafter, the male nurse told them to leave. She signalled at the security guard to bring the plaintiff a wheelchair, which he did. She thereupon asked the security guard when the plaster of paris would be removed as they were not from Makhanda. The security guard said they should wait whilst he enquires from the doctor. He came back and reported that they could have it removed at any clinic. And off they went after that. It also transpired that the plaintiff was provided with pain tablets at the Settlers Hospital which plaintiff took once they were at his wife's parental home. All this took place on a Sunday. It was only on the following Thursday that her brother-in-law drove them to Kariega where their home is situated. Back home plaintiff started to feel more pain in his leg. He could not be taken to hospital because ambulances could not access the informal settlement at which they were staying because it was raining. It was only on the day following their arrival home that ambulance, after struggling to get plaintiff's place, took him to Uitenhage Provincial Hospital. At that stage the pain was getting worse. On arrival at the hospital the plaster on plaintiff's leg was removed resulting in blood and water oozing out of his ankle. The doctors questioned plaintiff as to why he delayed coming to hospital. Plaintiff was then admitted to hospital. She went home and would visit him on daily basis. It became common cause that

plaintiff's leg was ultimately amputated above the knee. She testified that at Settlers Hospital they were not told how to care for plaintiff's injured leg. During cross-examination it emerged that plaintiff's ankle was heavily swollen even on the Saturday preceding his visit to the hospital. He was also in a lot of pain. The nurse who attended to them at Settlers Hospital spoke to her and not plaintiff. She was present in the room where the male nurse applied the plaster cast on the plaintiff. That she forgot to mention that plaintiff was provided with pain tablets at the hospital. Adding that the tablets were brought by the security guard after he had gone inside to enquire as to when the plaster of paris will be removed. Denied plaintiff was given an injection. Denied plaintiff was examined by a doctor or informed how to care for his leg. She testified that if hospital record indicates otherwise as suggested, they will have been falsified, so would the doctor and nurse's statement.

[11] In his evidence plaintiff confirmed attending at the Settlers Hospital on 19 October 2019 after injuring his leg two days before that when he collided with a tent peg and fell. At the stage when he visited Settlers Hospital his leg was sore and swollen. They proceeded to the hospital reception from where they were taken to the X-ray department by a nurse without being examined. A radiograph of his leg was taken. The nurse examined the report and informed him that they were going to apply a plaster cast on his leg. He was informed that he had sustained a fracture. A plaster cast was then applied to his leg by a male nurse, after which he was provided with two wooden crutches and informed to go and get medication from the dispensary. He was given same by a nurse and told to go home. The male nurse told him to go home and did not explain anything about the condition and care of his leg. He also suggested that the nursing staff spoke to his wife. Once again, the security guard came to their rescue as he could not use the crutches properly by bringing him a wheelchair. Back at his wife's home the pain grew, and his wife gave him the pain tablets

they got from hospital. The following day the pain grew worse. They remained in Makhanda for a week before they returned home to Kariega. Back in Kariega, the pain continued to intensify. He was taken to Uitenhage Provincial Hospital by an ambulance where his leg had to ultimately be amputated.

[12] During cross-examination, plaintiff suggested that no one examined his leg nor the radiography report. The male nurse merely applied plaster of paris on his leg. He also stated that he collected the pain tablets from the hospital pharmacy that he was told that the plaster of paris will be removed after 10 days. When he told the hospital staff that he was from Kariega he was told the plaster of paris could be removed anywhere. Regarding his assertion that no one examined his leg at Settlers Hospital, his attention was drawn to his particulars of claim where at paragraphs 5.2-5.3 it is pleaded that he was examined by Dr Megafu who ordered a radiographic examination of the plaintiff. That he further administered a voltaren injection. Furthermore, that he examined the radiograph taken of plaintiff's injury and ordered a male nursing assistant to apply a plaster of paris cast to the plaintiff's left lower leg. It was put to him that even though his leg was painful after his visit to Settlers Hospital, he took a deliberate decision not to go back to Settlers Hospital. He stated that he wanted to be treated where he was working and residing, at Kariega. It was during cross-examination that plaintiff would retort that he did not recall some of the things that happened at Settlers Hospital because he was in pain. He cannot recall if he was told he could go to any clinic for a circulation check. Whether he was told to come back the following day for a circulation check, adding that he did not have any document to remind him of the said instruction. The same pattern was followed by the plaintiff during questioning by court. He did not recall seeing the doctor. He does not recall seeing the doctor give a thumbs up sign or at all on that day.

[13] The next witness to testify in support of plaintiff's claim was Dr Peter Andrea Olivier, an orthopaedic surgeon who testified virtually. He took the court through his report compiled or prepared almost 10 years after the incident. He had assessed the plaintiff two years before preparing the report. In his report, Dr Olivier stated that from the history gathered from plaintiff and clinical notes at his disposal, plaintiff was evaluated by Dr Megafu. Presented with severe swelling on the ankle. Given an injection and referred for radiographs which were later studied by Dr Megafu who ordered a male nursing assistant to apply a circular cast on his leg. Circulation appearing to have been adequate. He notes that the plaster cast was applied by a male nursing assistant and not by a doctor. The latter further did not supervise the application of the plaster, nor examined the patient after the cast was applied. He also notes from the clinical notes at his disposal that the plaintiff developed an acute compartmental syndrome. He opined that the compartmental syndrome was a result of a circular cast that was too tight. He further opined that despite the presence of danger signs the personnel, I would presume, at Uitenhage Provincial Hospital, failed to perform an urgent fasciotomy. He further explains that circular cast is only applicable when there is no significant swelling, a back slab would have been more prudent than a circular cast as it would allow for the swelling. Regarding the alleged negligence/breach of duty of care, Dr Olivier opined that the plaintiff received substandard medical care at both hospitals inter alia for the following reasons:

It was wrong to apply circular cast in the presence of swelling, making acute compartmental syndrome a probability rather than a possibility. It would have been prudent to admit the plaintiff after a back slab was applied so that circulation checks could be done. The attending doctor should have supervised the application of the plaster cast and verify that there was adequate circulation after the cast had been applied. The doctor should have informed the plaintiff of

the possibility of acute compartment syndrome developing and alerted him to the so-called “red flag symptoms”. He is of the opinion that the treatment at Uitenhage Hospital was inadequate. Amputation would have been averted by early surgical intervention of performing a fasciotomy. Plaintiff would not have developed gangrene as he did. Further that the plaintiff should have been admitted and only discharged once the swelling had subsided as the hospital records show that plaintiff has a severe swelling of the ankle.

[14] Plaintiff’s case having been closed, defendants opened their case by calling Professor Gert Jacobus Vlok whose credentials as an expert witness were not challenged. He too, like Dr Olivier is an Orthopaedic Surgeon. As would appear also from his joint minute with Dr Olivier, there are aspects where they do not agree. I will mostly touch on those aspects. Dr Vlok examined the plaintiff, it would seem on the 25 January 2013 after which he compiled a report on 1 February 2013 as well as on addendum thereto on 8 May 2019. Both experts agree that compartmental syndrome is characterised by swelling and crescendo-type pain. Further that plaintiff had developed full blown compartment syndrome which led to the amputation which was performed at the Uitenhage Hospital. According to Dr Vlok, as opposed to Dr Olivier, a well-padded circular cast was sufficient if the patient was followed up the following day, but he never returned to hospital in spite of the increasing pain he suffered. Two expert witnesses differ as to whether it was necessary mandatory for the plaintiff to have been admitted for his circulation to be checked. Professor Vlok opined that it was not mandatory in view of the fact that plaintiff was told to come back the following day for circulation check and also in view of the fact that he was brought to hospital by private transport so he would have had no problems presenting at the hospital the following day. Both doctors are sceptical about the above knee amputation as opposed to a below knee but seem to defer to the doctors who conducted the amputation as to why this was necessary.

They also alluded to the delay in performing the amputation although they seem to agree that by the time plaintiff presented at the Uitenhage Hospital, he already had developed a full blown necrotic compartmental syndrome with amputation being inevitable.

[15] At the commencement of the trial, and by agreement between the parties, statements made by the following persons were handed in and admitted as evidence:

(i) Dr Magafu who was attached to the Settlers Hospital at the time of the incident. Dr Megafu could not be located as he was reported to have gone back to his country of origin, Nigeria. However, following the institution of these proceedings, the Department of Health, Eastern Cape provided those representing the defendants with a copy of a statement that was deposed to by Dr Megafu in relation to plaintiff's claim dated 23 April 2010.

(ii) Male nurse Ngubo is confirmed to have passed on. He too had deposed to a statement in relation to plaintiff's claim on 21 October 2010.

(iii) Nursing sister Mbangi who is reported to have moved to the Western Cape. However, several attempts to get hold of her came to nought. She too deposed to a statement in relation to plaintiff's claim which is dated the 21 April 2010.

Regard was had to the statements by those representing the defendants at the time of the consultation with the three officials which were held during May 2012 prior to the preparation of the plea. The statements were admitted in terms of Section 3(1)(c) of Law of Evidence Act 45 of 1988. The statements in respect of which copies were provided to defendants' legal representatives where reports submitted by the officials concerned to the Department of Health, Eastern Cape, concerning plaintiff's claim. Hospital records were also placed before me regarding plaintiff's treatment.

[16] The salient features of Dr Megafu's statement are as follows:

Plaintiff presented with pain and swelling on the lower left leg. On consultation with him he gave a history of having slipped and falling and complained of pain and swelling. On examination, the ankle was found to be slightly swollen and tender with other associated symptoms. Not being certain of a definitive diagnosis, he ordered analgesia and a left ankle X-ray – anterior, posterior, and lateral views. He carried on attending to other patients until he was called a short while later by the nurse to view the X-rays which showed a simple fracture well aligned, of the distal end of the left fibula. He then instructed a male nurse Ngubo who had been regularly applying plaster of paris casts for more than 5 years without any adverse events, to apply a below knee plaster of paris on the left lower limb. He also told the plaintiff to come back the following day for a circulation check, which instruction he also recorded on the clinical notes. After educating the plaintiff about the signs to watch out for, as is routine in the emergency and accident unit he was discharged. Plaintiff did not present to him the following day. Hospital records indicate that he did not come to the hospital at any other time. Had he reported to the hospital the following day for a circulation check, the complication of the plaster of paris which resulted in compartmental syndrome would have been avoided.

[17] Hospital records kept at the Settlers Hospital, in particular the doctor's notes make reference to inter alia to:

- for a circulation check tomorrow.

[18] In his brief statement, nurse Ngubo states that he applied a below the knee plaster of paris as per Dr Megafu's instruction. After applying the plaster of paris, he explained to the plaintiff not to trample on the injured foot and to

come back the following day for a circulation check, but he never saw him again.

[19] Likewise, in her statement nurse Mbangi confirms what was stated by Dr Megafu and male nurse Ngubo in their statements, namely that after examining the plaintiff Dr Megafu ordered X-rays of his left ankle as well as analgesia in the form of voltaren. After the X-rays were taken, Dr Megafu examined same and ordered a below the knee plaster of paris to be applied. The plaster of paris having been applied, the plaintiff was told to come back the following day and discharged. She however does not say who told the plaintiff to come back the following day.

### **Discussion**

[20] The dispute in this matter was properly identified by plaintiff's counsel Mr Le Roux as being whether the defendants are liable for damages suffered by the plaintiff as a result of having lost his leg. As I indicated earlier in this judgment, the defendants deny that they were negligent in the treatment of the plaintiff alleging that he was the cause of his misfortune in that he failed to return to Settlers Hospital amongst other things. It is common cause that the plaintiff did not go back to Settlers Hospital on the following day. What remains in dispute is whether or not he was told to return the following day. In this regard, the parties proffered divergent versions. Plaintiff and his wife testified that they were not informed to come back the following day. In the statement deposed to by hospital medical and nursing staff members, particular Dr Megafu and nurse Ngubo state that they told him to come back the following day for a circulation check. The unfortunate consequence of the witnesses not being available to give viva voce evidence is that was not possible to get clarity on certain aspects in this regard such as: Did both Dr Megafu and nurse Ngubo inform the plaintiff, at what stage(s), in what language? Was it explained what a



circulation check entails? There is certainly no suggestion that he was informed why he needed to have a circulation check. And certainly, no suggestion that he was informed of the red flags to look out for and what they would be signalling including the seriousness thereof. There is no indication of this in their statements as well as the hospital records. The plaintiff and his witness may have contradicted each other's evidence in certain aspects but in so far as plaintiff having been told to come the following day, they stated that he was not told.

[21] Dr Olivier and Professor Vlok were not in agreement as suggested by the former that it was necessary to admit the plaintiff to monitor his circulation, they are however in agreement that there is a golden six-hour period after compartmental syndrome has set in as the time within which decompression should be done. Regarding whether it is necessary to admit the plaintiff, it appears from the evidence of the two experts that the extent of the swelling of plaintiff's leg would be one of the factors to consider in this regard. There is no clarity for the reason already stated of the extent plaintiff's swelling, as the degree of swelling recorded by the nurses differs from doctor's endorsement in this regard in the hospital records and the doctor's statement in response to the complaint about the alleged negligence. The two experts seem to also agree that the patient in the case such as this should be informed of the risk involved and danger should compartmental syndrome set in. Professor Vlok who has many years of experience not only an orthopaedic and spine surgeon but as a lecturer, testified that medical students were taught to convey the risks attaching to compartmental syndrome. He agreed that it was not documented that these risks were conveyed to the plaintiff anywhere. As indicated earlier, it is not defendants' case that plaintiff was warned about the "red flags" and risk involved in the event of compartmental syndrome developing. So, it is not a

case of there being divergent versions in this regard. Defendants' case is that he was told to come back the following day for a circulation check.

[22] This becomes important in determining whether the plaintiff has proved his case on a balance of probabilities. Has he satisfied the court that on a balance or preponderance of probabilities that his version is true and accurate and therefore acceptable and that the version presented by the defendants is false or mistaken and therefore falls to be rejected.<sup>4</sup> In the oft quoted matter of *Stellenbosch Farmers' Winery Group Ltd and Another v Martell Et Cie SA and Others*,<sup>5</sup> it was stated that for a court to come to a conclusion on disputed facts it must make findings on (a) the credibility of various factual witnesses (b) their reliability, and (c) probabilities.

[23] Regarding credibility of Mr and Mrs Manziya, they no doubt contradicted each other on certain aspects. I got the impression that Mrs Manziya especially, wanted to paint a bleak picture of plaintiff's treatment at Settlers Hospital. Suggesting that he was not examined by it by nurses or Dr Megafu. They were only told by a security guard upon enquiring when the plaster case would be removed that they can go to any hospital. Plaintiff suggested that he could not recall if he was examined by the doctor or the male nurse prior to X-rays being taken. Yet plaintiff pleaded that he was examined by Dr Megafu. He could not recall whether he was ever in the same room as Dr Megafu after the plaster case was applied, yet his wife said there was such a stage where the doctor albeit from a distance gave the male nurse a thumbs-up sign about the plaster case. They contradicted each other as to how plaintiff received his medication to take home. According to the plaintiff, he was told that the plaster of paris could be removed at any hospital. As regards whether they were alerted to the dangers lurking following the application of circular cast to his ankle, there is not

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<sup>4</sup> *National Employers' General Insurance v Jagers* 1984 (4) 440 at 437 ECD.

<sup>5</sup> 2003 (1) SA 11 SCA at 14.

evidence that they were on the hospital records. The defendants merely aver that plaintiff was told to come back the following day for a circulation check. And somewhat belatedly upon being confronted with the alleged negligence Dr Megafu in his statement states:

‘After educating the patient on the signs to look out for as is routine in our accident and emergency unit, he was discharged on oral analgesia (Brufen 400mg po tas) for one week.’

As indicated earlier, this evidence could not be subjected to cross-examination and therefore not much weight can be placed thereon for the reasons stated earlier. It appears to have been meant for damage control.

Regarding the patient being told to come back the following day for a circulation check, he points to the fact that this is clearly indicated in the clinical notes. Nowhere do the clinical notes indicate that he was “educated” on the signs to watch out for. I am of the view that the balance of probabilities favours the plaintiff in this regard. Otherwise, what are the probabilities of the plaintiff having been made aware of the possible onset of compartmental syndrome and the symptoms/signs that herald same, neglecting to seek medical help for almost one week within which he was experiencing pain. The pain may have been of varying degrees, but he still experienced the pain which had gotten worse when he was in Uitenhage.

[24] For all the reasons stated hereinabove, it is my finding that the plaintiff has succeeded in showing on a balance of probabilities that the medical and nursing staff at Settlers Hospital acted negligently by not exercising the requisite duty of care in the course of treating him in particular by not alerting him to the possibility of compartmental syndrome and about the red flags to be on the lookout. And by so doing, failed to avert harm to the plaintiff resulting in

the amputation of his leg. They failed to communicate the importance of a circulation check. In my view in this regard, they were negligent and or failed in their duty of care and diligence towards the plaintiff. Perhaps not so much by failing to admit him overnight, or by not applying a split cast or by having the cast applied by a qualified medical practitioner. But certainly, by failing to convey the importance of a circular check and the tell-tale signs to be on the look out for.

[25] Accordingly:

Defendants' special pleas are dismissed with costs.

The defendants are liable to compensate the plaintiff for such damages as he may prove that flow from the amputation of his left leg, jointly and severally the one paying the other to be absolved.

Defendants are ordered to pay costs of suit jointly and severally the one paying the other to be absolved.

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**N G BESHE**  
**JUDGE OF THE HIGH COURT**

**APPEARANCES**

For the Plaintiff	:	Adv: JD LE ROUX
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