

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)**

CASE NUMBER: 34058/2015

DATE OF HEARING: 10 February 2023

DELETE WHICHEVER IS NOT APPLICABLE

REPORTABLE: /NO
OF INTEREST TO OTHER JUDGES:NO

DATESIGNATURE

In the matter between:

**NTOMBENHLE PATRICIA ZWANE OBO NTHANDO
(RESONDENT FOR LEAVE TO APPEAL)**

PLAINTFF

and

**MEMBER OF THE EXECUTIVE COUNCIL FOR HEALTH,
GAUTENG PROVINCE**

DEFENDANT

(APPLICANT FOR LEAVE TO APPEAL)

This judgment has been delivered by being uploaded to the caselines profile on at 10h00 and communicated to the parties by email.

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

Sutherland DJP

- [1] This is an application for leave to appeal against a judgment of the late Acting Judge Ria Bezuidenhout who presided over the trial. An application for leave to appeal was brought before her and heard, but before she could deliver her judgment, she passed away.
- [2] It is under those circumstances that the matter has been enrolled before me in order for me to deal with the application for leave to appeal.
- [3] The case was about whether or not there was medical negligence by medical staff which caused the impaired condition of a baby born on 8 August 2005. The Court a quo held that there was no negligence and dismissed the claim for damages.
- [4] The controversy relates, in the main, to a problem which is endemic to actions in relation to births in the Gauteng Province; ie missing hospital records. The proceedings took place many years after the birth itself and, as often experienced, critical documentation is missing and, of course, memories have faded. In this regard, the principal cause of unease from the point of view from the applicant for leave to appeal is the admission of the maternity register which was among the very few documents available in relation to what

took place at the time of birth. There is a debate about whether this was properly admitted but more particularly, there are contradictions between the maternity register and the discharge form and with the oral evidence of the mother. The court resolved these controversies about the entries in the maternity register and the commentary thereon by Professor Bolton, by giving preference to them over certain evidence given by the mother and the contents of the discharge form.

- [5] The common cause circumstances that gave rise to the condition of the baby was a stroke. The critical question for the trial was what caused the stroke. Was it the negligence of the medical staff or was it a result of some other circumstance?
- [6] There is a controversy about whether or not the mother was well prior to the birth and in particular, whether or not she had an infection, which would have been materially related to the condition of the placenta and self-evidently the nutrition of the foetus while in utero.
- [7] The circumstances of the matter are such that in my view, because of the controversy concerning the scope of the evidence which was taken into account and the possibility of a different point of view being taken in regard on how to treat the evidence, paltry as it might be, warrants leave being granted to the full court in order for the evidence to be re-examined.

[8] In the appeal whether or not there was improper admission of evidence and whether or not there was the appropriate weight given to different evidence in regard to certain contradictions can be properly explored.

[9] In my view, leave to the full court should be given and furthermore, the costs of this application should be made costs in the appeal.

[10] Accordingly, the order is as follows:

- (1) Leave to appeal is granted to the full court.
- (2) The costs of this application will be costs in the appeal.

Sutherland DJP

Heard: 10 February 2023
Judgment: 10 February 2023

The Applicant was represented by Adv M Sibuyi
Instructed by P.G Makondo Attorneys

The Respondents was represented by Adv N Makopo
Instructed by the State Attorney.