

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

REPUBLIC OF SOUTH AFRICA



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

CASE NO:55763/2020

**DOH: 28 August – 05 September &
06 October 2023**

- 1. REPORTABLE: **NO**/YES
- 2. OF INTEREST TO OTHER JUDGES: **NO**/YES
- 3. REVISED.

.....**18 MARCH 2024**
SIGNATURE DATE

In the matter of:

S[...] **N[...]** **P[...]**

Plaintiff

Obo A[...] **S[...]**

AND

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

Defendant

**JUDGMENT
VARIATION OF JUDGMENT IN TERMS OF RULE 42 (1) (b)**

Bam J

1. This is a variation of the order granted by this court on 14 March 2024 to correct a patent error or omission. In her draft order, the plaintiff prays for the reasonable qualifying, preparation and reservation fees in respect of Professor Lotz (on the basis that he was exceed on 23 August 2023, Dr Lombard and Dr Weitz (who both testified at the trial)¹.

2. The court in its final order made an error and omitted to grant the said costs.

3. In terms of Rule 42 (1) (b) of the Uniform Rules of Court:

‘(1) The court may, in addition to any other powers it may have, mero motu or upon the application of any party affected, rescind or vary:

(a) An order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;

(b) an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission;

(c) an order or judgment granted as the result of a mistake common to the parties.

(2) Any party desiring any relief under this rule shall make application therefor upon notice to all parties whose interests may be affected by any variation sought.

(3) The court shall not make any order rescinding or varying any order or judgment unless satisfied that all parties whose interests may be affected have notice of the order

¹ Caselines V2:36 with reference to Caselines 04:2 paragraph 2.2.

proposed.

4. Accordingly, this court hereby varies its order as follows:

By adding the following paragraph, after paragraph 41.2:

41.3: The defendant shall pay the reasonable qualifying costs of preparation and reservation fees in respect of Professor Lotz (on the basis that he was exceeded on 23 August 2023, Dr Lombard and Dr Weitz (who both testified at the trial).

5. In the event and unless any party whose interests may be affected raises an objection stating their reason/s within FIVE (5) days from date of signature of this variation, the order shall be so amended. The whole order shall after the variation read:

Order

40. The question of liability is hereby separated from the quantum of the plaintiff's damages.

41. The Plaintiff's case is upheld.

41.1 The defendant must pay the plaintiff's proved or agreed damages.

41.2 The defendant must pay the plaintiff's costs, including the costs occasioned by the employment of two counsel, on a scale as between attorney and client.

41.3 The defendant shall pay the reasonable qualifying costs of preparation and reservation fees in respect of Professor Lotz (on the basis that he was excused on 23 August 2023), Dr Lombard and Dr Weitz (who both testified at the trial).

NN BAM

JUDGE OF THE HIGH COURT, PRETORIA

Date of Hearing: 28 August – 05 September &

06 October 2023

Date of Judgment: 12 March 2024

Date judgment varied: 18 March 2024

Appearances:

For Plaintiff: **Adv JF Mullins SC with Adv LA East**

Instructed by Paul du Plessis and Associates

c/o KMG & Associates

Rietondale, Pretoria

For the Defendant: **Adv M Botma and Adv MH Mhambi**

Instructed by: State Attorney, Pretoria