THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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N K obo U K v MEC for Health, Eastern Cape (805/2024) [2026] ZASCA 105 (4 August 2026)

Today, the Supreme Court of Appeal (SCA), by a majority, dismissed an appeal against the judgment of the Eastern Cape Division of the High Court, Bisho (the full court), with costs, including those of two counsel.

The appeal arose from a medical negligence claim instituted by the appellant, Ms N K, in her personal capacity and on behalf of her minor child, U K, against the Member of the Executive Council for the Department of Health, Eastern Cape (the MEC). U K sustained a severe hypoxic-ischaemic brain injury and developed cerebral palsy following his birth at Dora Nginza Provincial Hospital (the hospital).

Ms N K was admitted to the hospital after experiencing abdominal cramps. Labour was induced over several days. According to her evidence, she underwent repeated vaginal examinations, received inadequate monitoring and assistance during labour, and was subjected to unsuccessful vacuum extraction attempts and the application of fundal pressure. Much of her medical record was subsequently found to be missing.

Ms N K alleged that the hospital staff had negligently managed her labour and delivery and that their conduct caused or contributed to U K's brain injury. The MEC denied that the injury was caused by the hospital staff. She contended that it resulted from placental insufficiency

associated with severe acute chorioamnionitis, an inflammatory condition that had developed before the commencement of labour and was asymptomatic and undetectable.

The trial court approached the matter on the assumption that the hospital staff had been negligent but dismissed the claim because Ms N K had not established that the negligence caused U K's brain injury. The full court dismissed her appeal, holding that the probable cause of the injury was a hypoxic event that occurred before labour as a result of chorioamnionitis. Ms N K thereafter appealed to the SCA with special leave.

The central issue before the SCA was whether, notwithstanding the substandard care provided by the hospital staff, their negligence was proved on a balance of probabilities to have caused U K's brain injury.

In a minority judgment, Mocumie JA, with Chili AJA concurring, would have upheld the appeal. The minority accepted that chorioamnionitis might have existed before labour but considered that the prolonged induction and labour, inadequate monitoring, repeated vaginal examinations, failed vacuum extraction and fundal pressure probably caused or materially contributed to the injury.

The minority emphasised Ms N K's unchallenged evidence concerning the treatment she received, the MEC's failure to call any of the treating medical staff, and the loss of the hospital records. It considered an adverse inference against the MEC to be justified and concluded that Ms N K had established both negligence and causation on a balance of probabilities.

The majority judgment, Kathree-Setiloane JA, with Coppin JA and Basson AJA concurring, held that causation had not been established. It found that the objective medical evidence, particularly the placental histology report and the umbilical-cord blood-gas analysis, supported the conclusion that the injury occurred before the onset of labour. The histology report recorded severe acute chorioamnionitis accompanied by maternal and foetal inflammatory responses, vasculitis and funisitis.

The majority accepted the evidence of the MEC's experts that these findings demonstrated that the placental inflammation predated labour, impaired blood flow and oxygen delivery to the foetus, and caused the hypoxic-ischaemic injury. The condition was asymptomatic and could not have been detected through ordinary clinical observation or cardiotocographic monitoring.

The majority held that the MEC's expert evidence was logically reasoned and grounded in the available objective medical records and relevant scientific literature. By contrast, Ms N K's experts had not adequately addressed the significance of the vasculitis, funisitis and foetal inflammatory response recorded in the histology report.

In the result, the appeal was dismissed with costs, including the costs of two counsel. The majority concluded that, although the monitoring and treatment provided by the hospital staff had been substandard, Ms N K had not proved that this negligence was the most probable cause of U K's injury. The full court had therefore not erred in dismissing the claim.

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