



## THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

### MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**From:** The Registrar, Supreme Court of Appeal

**Date:** 30 March 2023

**Status:** Immediate

***The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal***

*The Member of the Executive Council for Health, Eastern Cape Province v Y N obo E N (Case no 056/2021) [2023] ZASCA 32 (30 March 2023)*

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The Supreme Court of Appeal (SCA) today dismissed an application for condonation for the late filing of a record of appeal, with costs.

The plaintiff (Y N) had instituted an action for damages against the MEC for Health, Eastern Cape (the MEC) arising from injuries suffered by her minor child during birth at Sipepetu Hospital in the Eastern Cape. The child was born on 1 January 2010. She was diagnosed as suffering from spastic non-ambulatory cerebral palsy.

On 30 October 2018, the Eastern Cape Division of the High Court, Mthatha (the trial court) held the MEC liable for the negligent conduct of medical personal at the Sipepetu Hospital. Leave to appeal against the judgment of the trial court was granted by the SCA. Thereafter an appeal was prosecuted before a full court of the Eastern Cape Division of the High Court, Mthatha (the full court). The full court dismissed the appeal on 23 July 2020. Special leave to appeal to the SCA was granted on 16 October 2020.

The MEC failed to file the record of appeal which was due on 21 April 2021. The record was filed on 29 June 2022, fourteen months after the expiry of the initial period of three months allowed for the filing of the record. The appeal had therefore lapsed.

The SCA found that the explanation provided for the failure to comply with the rules and to file the record within the prescribed period, amounted to no explanation. It found that the non-compliance was gross and that there had been a flagrant disregard of the rules of the Court. The SCA reaffirmed the principle that in circumstances where the non-compliance with the rules was flagrant and no reasonable explanation was provided, condonation might be refused irrespective of the prospects of success. It held that this was such a case. It noted that the record that had been filed, omitted the evidence of two vital witnesses. No agreement had been reached to exclude this evidence and no explanation was provided for its omission. The record was therefore incomplete.

It dismissed the application for condonation with costs and ordered the MEC to pay the plaintiff's costs of appeal.

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