



## 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:** 24 October 2022

**STATUS:** Immediate

*Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.*

*Member of the Executive Council for Health, Eastern Cape v B M (213/2021) [2022] ZASCA 140 (24 October 2022)*

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The Supreme Court of Appeal (the SCA) today upheld an appeal against an order of the Eastern Cape Division of the High Court, Mthatha (the high court) making a proposed draft settlement order an order of court.

B M had instituted action against the MEC for Health, Eastern Cape (the MEC) for damages arising from injuries sustained by her minor child during birth at a public health facility in the Eastern Cape. In 2019, the MEC had conceded liability and a court order to that effect was issued. The matter thereafter proceeded to determine the quantum of damages due to B M in both her personal and representative capacities. Following a series of pre-trial conferences, the high court issued a rule nisi on 23 March 2020 calling upon the MEC to show cause on the return date why an order should not be issued in terms of a proposed settlement order.

The MEC filed affidavits opposing the granting of the order contending, in essence, that the agreements reached by the legal representatives were conditional upon instructions being furnished. The high court, on 30 June 2020, rejected this version. It found that the agreements struck by the legal representatives were firm and binding agreements concluded in the context of a court-directed settlement process. The agreements finally

disposed of the disputes relating to the quantum of damages due to B M. The high court therefore confirmed the rule nisi and issued an order as set out in the proposed draft.

In granting leave to appeal the SCA raised the question whether, in the light of the fact that the MEC's legal representatives did not have instructions to agree to the amounts included in the proposed draft order, it was within the power of the court to grant the rule nisi.

The SCA found that, in the light of the statement of fact that the MEC's legal representatives were not authorised to agree, it was not within the power of the court to issue the rule nisi. It was therefore not open to the high court to confirm the rule nisi on the return date.

The SCA nevertheless lamented the ongoing failure by the MEC in that province, to fully and properly engage with litigation matters such as the present case. It acknowledged the necessity for court intervention to address dilatory and recalcitrant conduct by a litigant. It found, however, that the intervention by the high court in this instance could not be sustained. The appeal was therefore upheld and the high court's order was set aside. It was replaced with an order discharging the rule nisi with no order as to costs.

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