Factual

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

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Itokolle-Clinix Private Hospital (Pty) Ltd v MNT obo DORM (863/2024) [2025] ZASCA 153 (16 October 2025)

Today, the Supreme Court of Appeal (SCA) dismissed, with costs, an appeal against the judgment of the North West Division of the High Court, Mahikeng (the high court). The matter concerned a claim for medical negligence arising from the birth of a child who suffered cerebral palsy due to a hypoxic ischaemic brain injury sustained during labour. The respondent, acting on behalf of her child, sued both the hospital and the attending obstetrician, Dr Kofi Ofori (Dr Ofori), alleging that their negligent management of her labour caused the injury. The high court held both the hospital and Dr Ofori jointly and severally liable for the damages. The hospital appealed, admitted that the midwives and attending nursing personnel were negligent, but challenged both the finding on causation and the costs order.

The SCA accepted that the hospital's nursing and midwifery staff had failed to adequately monitor the foetus and the mother during labour, particularly after the administration of labour-inducing drugs such as prostin and syntocinon. Expert evidence established that the foetus had suffered prolonged and intermittent hypoxia over several hours, which went undetected due to, inter alia, the failure to perform proper cardiotocography (CTG) monitoring and recording of foetal heart rate variations. The SCA endorsed the high court's finding that this ongoing negligence resulted in a failure to timeously become aware of and report on the foetus' condition throughout the labour process so that the necessary action could be taken to avoid irreversible injury to the foetal brain. The final administration of syntocinon, without proper monitoring, being 'the last straw that broke the camel's back'. It was therefore concluded that the hospital's negligence was a factual and legal cause of the brain injury, rejecting the argument that Dr Ofori's conduct alone caused the harm.

In its reasoning on causation, the SCA reaffirmed the 'but-for' test, holding that the injury would probably not have occurred had the nurses and midwives performed proper monitoring and informed the doctor of foetal distress in time. This Court found that the hospital's argument that negligence in monitoring was mere 'negligence in the air' was unfounded, as the evidence demonstrated a clear causal connection between inadequate monitoring and the resulting harm.

The SCA upheld the high court's decision to award attorney-and-own-client costs to the respondent following her Calderbank offer, which had proposed a settlement on 85 per cent liability. The hospital had rejected this offer and instead made counter-offers of 20 per cent and later 50 per cent. The SCA found that the hospital had acted unreasonably in rejecting the offer, especially given that expert joint minutes available before trial made its risk apparent. The high court's reconsideration of costs was held to have

been a proper exercise of its discretion, aimed at indemnifying the plaintiff against unnecessary expenses incurred due to the hospital's unreasonable litigation stance.

As a result, the SCA dismissed the appeal with costs, confirming that the hospital remained jointly and severally liable with Dr Ofori for all proven or agreed damages. The judgment underscores key principles in medical negligence law – particularly the duty of hospital staff to diligently monitor foetal wellbeing during augmented labour, the importance of causation analysis based on practical common sense, and the consequences of rejecting reasonable offers made by plaintiffs in litigation.

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