



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: 17 April 2025

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

Oliver NO v MEC for Health: Western Cape Provincial Department of Health (886/2023) [2025]
ZASCA 45 (17 April 2025)

Today the Supreme Court of Appeal (SCA) upheld, with costs, an appeal against a decision of the Western Cape Division of the High Court, Cape Town (the high court).

The appeal follows an action initiated by Mrs. Olivier against the respondent, the Member of the Executive Council for Health, Western Cape, for damages arising from the alleged negligence of its medical staff during her treatment, which ultimately led to the amputation of her leg. After the close of pleadings, Mrs. Olivier amended her particulars of claim on 4 October 2017 by increasing the amount of her claim for special damages. Unfortunately, on 9 October 2017, she passed away before the deadline for the respondent to file an amended plea. She was substituted by the appellant, the Executor of her estate, and a dispute arose between the parties as to whether the amendments relating to special damages, and not general damages, interrupted *litis contestation*, resulting in her claim for general damages being rendered non-transferable to her estate. The high court ruled in favour of the respondent and also dismissed the appellant's request to develop the common law rule to allow transmissibility of her claim based on the facts of this case, as argued by the appellant in the alternative. The appeal was granted with the leave of the SCA.

The issues before the SCA were therefore firstly, whether the effect of the proposed amendments to the pleadings interrupted *litis contestation*. The second question for determination only arises in the event this Court finds that *litis contestation* had been interrupted rendering the appellant's claim for general damages non-transmissible, and is whether the common law principles governing the non-transmissibility of non-patrimonial damages after *litis contestatio* could be developed based on the facts of this case.

In finding that *litis contestation* had been interrupted, the SCA first looked at whether a claim for general damages and a claim for special damages constituted one indivisible cause of action, and confirmed its previous decisions that they are indivisible. The SCA further considered the materiality of the amendments and found that they were material as they had the effect of significantly redefining the issues in the pleadings, and thus, confirmed the high court's decision on this issue.

Regarding the development of the common rule issue, the SCA identified various shortcomings in the stated case presented to it and remitted the matter to the high court for the requirements related to the development of the common law rule to be adequately formulated and pleaded, for the comment notice to be complied with, and for the issue to be properly ventilated by the parties before it.