



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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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 of the Gauteng Provincial Government v C B M (1482/2024) [2026] ZASCA 80 (28 May 2026)

Today, the Supreme Court of Appeal (SCA), handed down a judgment, in which it upheld in part an appeal against an order granted in the Gauteng Division of the High Court, Pretoria (the high court).

The high court had upheld the claim of Ms CBM (the respondent) and directed the Member of the Executive Council for Health of the Gauteng Province (the appellant) to pay 100 per cent of the respondent's proven or agreed damages. These damages were claimed in respect of a hysterectomy which was performed on the respondent during the course of a caesarean section. The respondent alleged that the need for the hysterectomy arose as a result of the negligence of the appellant's medical personnel. She also claimed damages as a result of an alleged failure to counsel and assist her subsequent to the hysterectomy.

The respondent's membranes ruptured on 23 April 2016. She attended a clinic and was referred to hospital. She alleged that there were delays in attending to her and that the caesarean section was only performed at 09h00 on 24 April 2016. During the procedure, she suffered severe post-partum haemorrhage (PPH), necessitating a total abdominal hysterectomy. She later awoke in the Intensive Care Unit (ICU) and was informed that her uterus had been removed. Her newborn baby was healthy and without complications.

The respondent instituted an action against the appellant on the basis that the medical treatment she received was substandard and caused the hysterectomy and further alleged that she had not been provided with counselling thereafter. Most of her medical records could not be located despite a diligent search and only limited records remained available.

The principal issue before the SCA was whether the respondent had established that the PPH and resultant hysterectomy were caused by negligence on the part of the appellant's

employees. The SCA also considered whether the absence of medical records justified an adverse inference against the appellant and whether the appellant's employees had failed to provide counselling and support.

The SCA held that the absence of the medical records should have been treated as a neutral factor and that the high court had erred in drawing an adverse inference against the appellant in that respect, particularly as a plausible explanation had been provided for the missing records. The Court explained that the *maxim res ipsa loquitur* forms part of inferential reasoning and that the removal of the respondent's uterus to save her life was not itself negligent. The Court held that the evidence confined the possible causes of the PPH to an alleged inordinate delay in treatment, a mistake during the operation, or a natural failure of the uterus, with infection excluded as a cause.

The respondent relied primarily on the evidence of Dr Pooe, who attributed the hysterectomy to prolonged labour with foetal distress. The SCA found her evidence unreliable and lacking proper foundation. By contrast, the evidence of Dr Manthata-Cruywagen was accepted as cogent, well-reasoned and consistent with the applicable Guidelines. The SCA concluded that the respondent had been monitored and managed in accordance with the Guidelines and that it had not been established that there was a culpable or inordinate delay resulting in the PPH and hysterectomy.

The Court nevertheless held that a mistake during the operation could only be attributed to an act or omission by the appellant's employees and observed that there was a very high probability against a hysterectomy becoming necessary in the ordinary course of a caesarean section, unless some culpable mistake had occurred. It also noted that the doctors who performed the operation were not called to testify. That was fatal to the appellant's defence to the claim for damages arising from the hysterectomy having become necessary.

In relation to counselling, the SCA found that arrangements had been made for the respondent to consult with relevant professionals, but that she discharged herself from hospital before the process could unfold. There was therefore no culpable omission on the part of the appellant to provide counselling.

The SCA accordingly upheld the appeal directing the appellant to pay the respondent's proven or agreed damages arising from the hysterectomy, but set aside the portion of the order awarding damages for the failure to provide support, counselling or information regarding the effects of the hysterectomy. The respondent was substantially successful on appeal and the appellant was ordered to pay the costs of appeal.

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