



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 4 March 2011

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

On 4 March 2011 the Supreme Court of Appeal handed down judgment in *Premier of the Province of KwaZulu-Natal v Kishore Sonny & another*, dismissing an appeal against a decision of the Pietermaritzburg High Court in terms of which the Premier of the Province of KwaZulu-Natal was held liable for the damages sustained by the respondents. Their claim was based on medical negligence. The damages they claimed were for the costs of maintaining a child suffering from Down's syndrome. They had contended the hospital had failed to inform them that the fetus the second respondent had been carrying might be afflicted with Down's syndrome. They contended that they had not been informed of the risks attendant upon the pregnancy and that the hospital staff had failed to conduct timeous conclusive chromosomal testing to enable a termination of pregnancy in terms of the choice of Termination of Pregnancy Act 92 of 1996.

The SCA upheld the high court's factual findings that the second respondent had not been informed of the risks attendant upon her pregnancy and that they had failed to conduct the chromosomal testing timeously when they could have done so. The SCA held the doctors ought to have involved the second respondent fully in her own treatment and the diagnosis of the condition of the fetus. It confirmed the finding of

the high court that the medical staff were negligent and the Premier of the Province of KwaZulu-Natal was liable for the damages proved to have been sustained. It held that there had been no contributory negligence on the part of the second respondent as she had followed the advice of a primary health clinic about whether she was required to undergo an immediate second fetal scan.

The SCA said the following about the duty of doctors and medical staff in public health facilities:

'In our country poverty and a lack of literacy abounds. Masses of our people attend public health facilities. Their lack of sophistication and the vulnerability that accompanies poverty are factors that cannot be ignored. They are entitled to be treated in the same way as patients who can afford private medical assistance. That means that they should be fully informed and should be as involved as possible in their own treatment. This does not require a drain on public resources. This case is not about the availability of material resources. It is about a doctor communicating adequately with a patient. What is required is a public health delivery system that recognises the dignity and rights of those who are compelled to use its facilities. It is that basic sensitivity that the Constitution demands.'

The Premier of the Province of KwaZulu-Natal was ordered to pay the costs of the appeal including the costs of two counsel.