



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: 29 May 2013
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.

Buthelezi v Ndaba (575/2012) [2013] ZASCA 72 (29 May 2013)

The Supreme Court of Appeal (SCA) handed down judgment today in an appeal from the KwaZulu-Natal High Court, Pietermaritzburg (High Court). The matter involved a specialist gynaecologist – the appellant – and his erstwhile patient – the respondent – on whom he performed a surgical operation known as a total abdominal hysterectomy. After the operation the patient suffered from urine incontinence. Subsequent examination by a urologist revealed the cause of the patient’s problem to lie in a fistula or hole in the patient’s bladder wall. Though it was common cause that the hole resulted from something that happened during the hysterectomy operation, the question was whether it was due to negligence on the part of the appellant. That was the only issue in both the High Court and on appeal.

In the High Court there was a difference of opinion between expert witnesses on this issue. The expert called on behalf of the patient expressed the view that the doctor was negligent while the expert on behalf of the doctor believed that he was not. The High Court accepted the opinion of the former and thus upheld the patient’s claim.

On appeal, Brand JA, noted that while the final determination of negligence is within the exclusive purview of the court, it is nevertheless informed by the opinions of experts; where there is a dispute between such opinions, the court is then called upon to analyse the cogency

of the underlying reasoning thereof. In undertaking such analysis, the SCA held that the opinion of the expert witness in favour of the patient's claim was reminiscent of the *res ipsa loquitur* (facts speak for themselves) maxim. It is trite law that this is not generally applicable in matters of medical negligence, due to the complexity of the human body and its reaction to surgical intervention. Consequently, the underlying reasoning of that expert witness' opinion did not withstand the scrutiny of the SCA.

Conversely, the opinion of the expert witness in favour of the appellant doctor's case – namely that such injuries may result from a hysterectomy operation despite reasonable care on the part of the surgeon – was well-supported throughout medical scholarship. Consequently, this Court held that the court a quo had erred in finding that negligence on the part of the appellant had been established. Hence the appeal was upheld with costs.