



## **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** 10 December 2020

**STATUS** Immediate

### ***MEC for Health, Western Cape v Coboza* (Case no 1087/2019) [2020] ZASCA 165 (10 December 2020)**

*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.*

Today the Supreme Court of Appeal (the SCA) dismissed the appeal of the appellant, the Member of the Executive Council for Health, Western Cape, against the decision of the Western Cape Division of the High Court, Cape Town (the high court).

During May or June 1998, the respondent, Mr Mpumelelo Sidwell Coboza, underwent a surgical procedure at Somerset Hospital where a spinal anaesthetic was administered. Subsequent to this procedure, the respondent experienced pain in the area where the spinal anaesthetic had been administered and found it difficult to walk. On various occasions thereafter the respondent underwent treatment and procedures at provincial hospitals in the Western Cape in respect of these symptoms, however, his condition continued to deteriorate until November 2005 when he was in an irreversible paraplegic condition. In July 2016 the respondent instituted an action in the high court against the appellant for damages based on the negligence of the medical staff employed by the appellant at specified provincial hospitals. In a special plea, the appellant contended that the respondent's claim had prescribed. The special plea was determined separately; it was dismissed, but the high court granted leave to appeal to this court.

The SCA held that prescription begins to run when the debt in question is due. Section 12(3) of the Prescription Act 68 of 1969 provides that '[a] debt shall not be deemed to be due until the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises: Provided that a creditor shall be deemed to have such knowledge if he could have acquired it by exercising reasonable care.' In the present matter, the SCA held that only the requirement of knowledge of 'the facts from which the debt arises' needed to be considered. It noted that legal conclusions, such as the invalidity of a contract or that the delictual elements of negligence or wrongfulness had been established, were not facts. Neither was the evidence necessary to prove the essential facts. It held that once the facts from which a debt arose (primary facts) have been determined, the enquiry turns to the plaintiff's knowledge of the primary facts.

The SCA held that in order to determine the issue, regard ought to be had to the alleged factual causes of the respondent's paralysis, which were indispensable primary facts that had to be gleaned from the respondent's particulars of claim. The SCA held that it was quite clear that the respondent alleged in

his particulars of claim that the failure to timeously administer the appropriate treatment subsequent to the surgery of May/June 1998, had caused his condition. Even if the particulars of claim could be read generously to include the May/June 1998 spinal anaesthetic as a cause of his paraplegic condition, they clearly alleged much more. However, the particulars of claim did not specify the 'appropriate treatment' nor when it should timeously have been administered. The appellant could have acquired this particularity under various provisions of the Uniform Rules of Court, but did not. The consequence was that prescription had been raised in the air, without reference to the relevant primary facts upon which the respondent's claim was founded. Because these facts were not pleaded, it could obviously not be determined when the respondent knew the primary facts or should reasonably have known them. In the result the determination of the plea of prescription was an exercise in futility. In the circumstances, the appeal was dismissed with costs.