

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

IN THE HIGH COURT OF SOUTH AFRICA
(SOUTH GAUTENG) JOHANNESBURG

10

CASE NO: 29703/08

DATE: 2011-02-18

REPORTABLE

(IN THE ELECTRONIC REPORTS ONLY)

In the application for leave to appeal between

20

PREMIER OF GAUTENG

Applicant

and

**KHANYI, THEMBENI MARTHA obo
K, P S**

Respondent

J U D G M E N T

WILLIS, J:

[1] Immediately after I had delivered judgment in this matter, counsel for the defendant applied for leave to appeal.

[2] I accept that the judgment which I have delivered relates, essentially, to a factual finding. Nevertheless, there lurk, in the background of this case, important issues of policy and also a great deal of emotion. After all, one would have a heart of stone not to have been moved by the unfortunate consequences that arose from the mother having been admitted to hospital on 2 December 1999.

10

[3] These emotions could have clouded my judgment. I believe this would have occurred, even if I had reserved. I may have erred in drawing inferences that may not permissibly be drawn.

[4] The case is clearly one of considerable importance to the parties. This is indeed a case where it seems to me only fair and right that another court, in the calm, measured and relaxed atmosphere of an appeal hearing, should reflect on the judgment that I have given. Accordingly, I am persuaded that leave to appeal should be granted.

20

[5] Counsel for both sides have agreed that if leave to appeal were to be granted, the appropriate forum would be the Supreme Court of Appeal. I am hesitant to refer the matter to the Supreme Court of Appeal primarily because the case seems to be concerned with a purely factual inquiry. I am aware that the Supreme Court of Appeal has, from time to

time, become intensely irritated by the fact that that it should have been burdened with having to consider relatively simple factual issues.

[6] Nevertheless, as I have already indicated, there is a lot of background noise in this particular case. The case is concerned with the question of inferences which may be drawn. This touches upon questions of policy. Despite the apparent simplicity of the case, I am persuaded that the appropriate forum to hear the matter is indeed the Supreme Court of Appeal.

10

[7] Accordingly the following order is made:

1. Leave is granted to appeal against the judgment and order which I gave in this matter on 18 February 2011.
2. The appeal is directed to the Supreme Court of Appeal.
3. The costs in the application for leave to appeal are costs in the appeal.

20

N.P. WILLIS
JUDGE OF THE HIGH COURT

Counsel for the Plaintiff:	Advocate AP <i>Bruwer</i>
Attorneys for the Plaintiff:	Austin Jordaan Inc
Counsel for the Defendant:	Advocate V <i>Soni</i> SC, (with him Advocate D <i>Joubert</i>)
Attorneys for the Defendant:	The State Attorney
Date of hearing:	18 February 2011
Date of judgment:	18 February 2011

30