

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
(NORTH GAUTENG, PRETORIA)

5/9/14

CASE NO: 14080/2007

(1)	REPORTABLE: <del>YES</del> / NO
(2)	OF INTEREST TO OTHER JUDGES: <del>YES</del> / NO
(3)	REVISED.
	4/9/2014
	DATE
	<i>L. Webster</i>
	SIGNATURE

In the matter between:

**PUKI REBECCA SARAH KADI**

**PLAINTIFF**

And

**ROAD ACCIDENT FUND**

**FIRST DEFENDANT**

**EXECUTIVE COUNCIL FOR THE DEPARTMENT OF  
HEALTH, NORTH WEST PROVINCE**

**SECOND DEFENDANT**

**DR SLK MAPEKA**

**THIRD DEFENDANT**

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**JUDGMENT**

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**WEBSTER J**

The plaintiff in this matter, Ms Puki Rebecca Sarah Kadi, instituted a claim arising from the death of her minor son on 16 May 2004. The deceased sustained injuries as a result of a motor vehicle accident. A claim was instituted against the Road Accident Fund, the first defendant, in the amount of R25 000 for special damages in terms of the Road Accident Fund Act 56 of 1996. This claim has been

settled by the first defendant. It is alleged by the plaintiff that the conduct of the second and third defendants caused the death of the deceased. A special plea was raised by the second and third defendants but was dismissed before this court on 27 July 2010. It was ordered that the matter proceed on the next available trial date on both quantum and merits.

The plaintiff's claim against the second and third defendants is set out as follows:

- |       |  |            |
|-------|--|------------|
| (i)   | Future medical psychiatric and psychological treatment | R50 000    |
| (ii)  | General damages  | R500 000   |
| (iii) | Loss of earnings/earning capacity                      | R1 316 666 |

**Total**

**R1 866 666**

A pre-trial conference was held on 2 November 2011 and the only points *in limine* are (i) that there is a causal link between the negligent and unlawful conduct by the second and third defendants and the damages suffered by the plaintiff; and (ii) the quantum of the plaintiff's claim in the event that a causal link does exist.

The defendants did not appear in court when this matter was called. An attorney, Mr Ndunyana, attached to the Office of the State Attorney Mafikeng appeared in court after the plaintiff commenced with her testimony. He stated that he does not have a right of appearance in the High Court.

The plaintiff, Puki Rebecca Sarah Kadi, testified that she was a professional nurse from 1974 until December, 2004. She got promoted to a managerial position in 1998 at Makwasie Hills Primary Health Care where she co-ordinated Pulmonary Tuberculosis. On 16 May 2004, she was called to the Nic Bodenstein Hospital in Wolmaransstad at about 05:45 AM by a friend. She arrived at the hospital's casualty consulting rooms and found Dr Mapeka and the radiographer, Sarah Honting, where her son was lying on a stretcher with a neck rest. She observed that the right side of his forehead was swollen and his right eye had a blue discolouration below the swelling. On enquiring from the doctor whether her son was unconscious the Doctor replied "...leave the child alone he will soon sober up because I have put up a dextrose drip...". He was presumed to be drunk.

She requested Dr Mapeka to transfer her son to the Wilmed Park Hospital in Klerksdorp. The request was denied as the doctor was of the opinion that the child will soon sober up. The deceased was transferred to a ward. On the way to the ward, she observed an injury to his upper right arm which was not treated in the casualty consulting room. He was subsequently wheeled back to casualties. The doctor ordered the nurses on duty to treat him but he was left unattended by the staff on duty as it was close to the end of their shift. He was ultimately treated by Mr Mafoleko, a male nurse, and thereafter wheeled back to the ward where he was lifted onto a ward bed.

The witness undressed the deceased and discovered that he had wet himself. After removing his trousers she discovered that he had a fractured lower right limb. The doctor was summoned and the same Dr Mapeka arrived at about eight o'clock. The doctor established that it was not a fracture but torn ligaments. Dr Mapeka made arrangements for the deceased to be transferred to the Klerksdorp Hospital. He informed the witness that the ambulance will come at about ten o'clock to transport the deceased to the Klerksdorp Hospital.

In the meantime, the witness, with the assistance of the nurse used a small box to make a splint as there were no splints in the ward. During all this time the witness was by the deceased's side. He was frothing from the mouth and groaning with pain: nothing was done. Medication in the form of tablets was prescribed but the deceased was unconscious and unable to swallow. The witness requested a suction pipe to drain the saliva from the deceased's mouth but the pipe was torn and therefore no vacuum in the pipe to perform the suction. No observations were taken to check the level of consciousness of the deceased. At nine o'clock the first observations were being taken by a nurse. The apparatus that she was using showed that the battery was malfunctioning but the witness saw the nurse recording her observations on the observation chart.

The witness went to Sister Sisenye who was in charge of the ward as it was almost ten o'clock with no sign of an ambulance. She became increasingly worried as the deceased became less restless. The ambulance ultimately arrived at 11:45. The ambulance crew checked the vital signs of the deceased before departure. The ambulance staff informed the witness that the deceased was in a very serious state

and they should have been contacted earlier. Counsel for the plaintiff conceded that this is hearsay evidence.

The witness boarded the ambulance after the deceased was loaded and the ambulance staff immediately called for a backup ambulance and thereafter sped off. The deceased vomited and his condition rapidly worsened. They met the backup ambulance and the medical teams from both ambulances laboured in vain to resuscitate the deceased. A member of the ambulance staff informed the witness that the deceased had passed away and that they have to turn back to Nic Bodenstein Hospital. Dr Mapeka issued the death certificate after examining the deceased.

Ms Kadi testified that her son, the deceased, was 17 years old and in grade 12 at Boys High in Potchefstroom at the time when he passed away. She testified that the costs of the funeral amounted to approximately R45 000. She testified on emotional effects that the passing of the deceased had on her. She was emotionally paralysed and could not sleep. She became very depressed and was given one month's sick leave. She did not eat well and had nightmares. She ultimately consulted Dr Plough, a physician in Wolmaransstad because she felt that she could not go on. He prescribed antidepressants and consulted the witness on a weekly basis. She blamed herself for not being more assertive in pushing the doctor who attended to the deceased to make the right decision as she was trained that a bump to the head is a concussion and an injury to the head can lead to many things.

The witness testified that she went back to work after a month but could not go out to patients for about a week. She could not concentrate and was very irritable. Before the incident she was a very approachable person. She had lost her zest for her work. Her career demanded someone with ambition: she could feel her performance deteriorating. She took the prescribed medication from Dr Plough for a period of six months but then resigned as she could not do her best. The Provincial Coordinator tried to persuade the witness otherwise but her emotional state led her to resign in December, 2004.

She felt let down by the nursing staff at the hospital where the deceased was treated as she was nursing her own child in the ward. The ward sister was in the nurse's bay and only responded when she was called. The same applies to the

doctor. The witness felt betrayed as she always acted professionally to whomever as a nurse. She treated everybody according to the oath that she took after completing her training and she therefore expected the same treatment from the hospital staff.

She went on to testify that she became forgetful and felt that she betrayed her son. She did not receive psychotherapy as the doctor did not refer her to a psychiatrist. On the day that she went to collect the death certificate from the hospital Dr Mapeka told her "...that he is very sorry because he underestimated the condition of the child then...". She drew up a memorandum (at page 13 of the bundle of discovered documents) a month after the deceased passed away because she was concerned that other patients might be treated the same way as the deceased, she felt hurt and "...I needed justice to be done and I needed the person who did not do his duty to be brought to book as well...". She felt anger towards Dr Mapeka and "...that is why...[she]...wrote this memorandum for him to be disciplined as a professional...". To a question whether she blames anyone for the death of her son, the witness replied "...Yes, I still do. It is the negligence of the medical profession and the nursing staff...". She declared her willingness to undergo psychotherapy to assist her with this aspect.

Ms Kadi testified that after her resignation she stayed home for about six months but her condition did not improve. She still had "...bouts of nightmares, anger, I became more kwaai...". She is currently supervising at a tuck-shop that was left to her by her late husband. She is still able to work but her productivity has been negatively impacted. She testified that she is prepared to go back to nursing if she is relieved of managerial duties. She confirmed that the documents contained in the bundle of discovered documents at pages 129 to 132 are her tax certificates and those at pages 133 to 135 are her salary slips. The witness testified that she is not able to interpret the financial statements from the business but that she went in on a Monday and Friday to do the ordering and she paid herself an amount R2 500 per month from 2005 to 2008. From 2009 this amount was increased by R500 per month which she did not take every month as the business performed poorly during some months.

The second witness, Professor Charl Vorster, a clinical psychologist testified that he has a Master's degree in clinical psychology as well as a doctorate and that he is registered with the Health Professional Council. He has approximately 35 years' experience as an academic, as well as a clinician. He testified that he was attached to the Department of Clinical Psychology of the University of Limpopo at the Medunsa Campus at the time of writing the report in this matter. During this attachment to the University of Limpopo he was exclusively training masters' and doctoral students in clinical psychology whilst running his private practice part-time. At the time he gave evidence he was attached part-time to the University of North West.

Professor Vorster consulted with the plaintiff approximately March/April 2010. He conducted a clinical interview with her and evaluated her by means of psychometric testing. He was assisted with the psychometric assessment by Ms Larissa Ernst-Terblance, also a clinical psychologist. A test determining cognitive functioning, personality functioning as well as emotional functioning was utilised.

He testified that "...In essence the finding was that she was severely traumatised by the experience she has had in the hospital regarding her son ... She was traumatised and also clinically depressed and at the time of the evaluations, that was basically still the clinical picture that she was depressed and in emotional turmoil and not coping adequately with the day-to-day demands of her life...". He testified further that the plaintiff did "...not function optimally, emotionally..." and that she "...could not cope with the demands of the environment ... became passive and withdrawn ... she was not motivated and capable of utilising her resources to face the demands of the environment. She had difficulty in concentrating and it was hypothesised that should she be utilised in her work capacity, that she would be working very slowly and very inadequately, making mistakes and not concentrating properly. It was hypothesised that she would benefit or that she could benefit from intensive long term psychotherapy, possibly over two years, weekly sessions of an hour each...".

Professor Vorster further testified that on the basis of probability her present condition is linked with the instant of the death of her son. He testified that "...there was a relationship between what she experienced, the dramatic impact and then the

subsequent clinical picture because it fits clinically..." and further that "...she really could not identify herself with her profession any longer and that coupled with the depression and the traumatic impact actually made it impossible for her to continue...". He testified that the plaintiff will have to undergo psychotherapy and that the recommended tariff is approximately R650 per hour. According to Professor Vorster the plaintiff would be able to go back to her profession after a successful period of treatment because "...the psychological barrier as it were would then have been removed...". He testified that it is highly unlikely for the plaintiff in her present situation to function and cope in her profession without any treatment.

The third witness, Professor Jacobus Pienaar testified that he holds a PHD in Industrial Psychology. At the time he testified he had consulted in more than 150 cases since 2003. He is an Associate Professor at the North West University's Department of Industrial Psychology. He is also a Research Director of a research unit and he does this kind of consultation work outside of the University. He has been doing private work since 2003.

He consulted with Ms Kadi on 14 May 2010. At this consultation he had the report of Professor Charl Vorster, a testimonial by Dr Plough, the plea of Dr Mapeka and the financial statements for the period 2004 to 2008 of Ms Kadi. He testified that "...there was probably an element of post-traumatic stress following the death of her son and the nature of the disorder is that you are reminded of the trauma by being re-exposed to similar situations or similar experiences, similar environment and I think very likely her reason to abandon this career was precisely because of this reliving of the trauma that she had suffered because of her working environment...". Should she have chosen a different career path she "...could have been appointed as something like an office administrator or something with secretarial duties...".

Two actuarial certificates compiled by Dr Robert Koch were handed in as EXHIBIT AAA and EXHIBIT BBB together with an affidavit confirming the correctness of the calculations.

The memorandum which was written by the plaintiff and which appears at page 20 of the bundle of Discovered Documents caused an inquiry to be held by the Health Professions Council of South Africa (HPCSA). Dr SLK Mapeka was charged in

terms of the Charge Sheet which appears at page 32 of the bundle of Discovered Documents. The Charge Sheet reads as follows:

*"THAT you are guilty of unprofessional conduct or conduct which, when regard is had to your profession, is unprofessional in that on or about 16 May 2004 you negligently mismanaged Tshediso Gladstone Kadi ("your patient") by-*

- 1) Displaying incompetence in delaying to transfer a severely injured patient to an appropriate medical facility even when requested by Mrs Kadi (mother of the patient),*
- 2) Making an incorrect diagnosis of attributing the patient's condition to drunkenness instead of the evident head injury,*
- 3) Failing to timeously diagnose the leg injury on your initial examination in casualty,*
- 4) Failing to give the patient proper medical care instead left him to sober up,*
- 5) Leaving an unstable unconscious patient to be "observed" by less qualified personnel namely ward sisters,*
- 6) Making an inappropriate referral to an orthopaedic surgeon instead of a neurosurgeon as the patient has sustained serious head injuries,*
- 7) Failing to timeously attend to the glasgow coma scale (GCS score),*
- 8) Inappropriately prescribing oral medication for an unconscious patient,*
- 9) Making incorrect assessment that there was "no apparent neurological deficit" on an unconscious patient,*
- 10) As a result of your gross negligence the patient died due to unnatural causes namely diffuse axonal injury as a consequence of "blunt force trauma head" later that day."*

He subsequently pleaded "...guilty to point 1 to 10 of the charge sheet..." as per his Plea appearing at page 62 of the same bundle.

It is clear from the outcome of the inquiry by the HPCSA that the death of the deceased was indeed a direct cause of the negligent and unlawful conduct of Dr Mapeka who treated the deceased at the Nic Bodenstein Hospital where he was



admitted after he sustained injuries in a motor vehicle accident. Nothing more needs to be said on the point of causation.

Mr De la Harpe, counsel for the plaintiff, referred to various matters with comparable facts regarding the plaintiff's claim for general damages. The most recent matter being *Kritzinger v Road Accident Fund 2009 JDR 0275 (ECP)*. In this matter three people died after being hit by a motor vehicle on a pavement. Two of the deceased were sisters and the third was a friend to one of the sisters. The parents of the two deceased sisters were informed of the accident by a friend to one of the deceased sisters. The parents rushed to the scene of the accident and discovered the bodies of their two daughters. An amount of R150 000 was awarded to the first plaintiff for general damages. The value of R150 000 awarded in 2009 was R166 000 in 2012 according to *The Quantum Yearbook* by Robert J Koch.

In deciding the amount for general damages to the plaintiff various factors should be borne in mind:

- "- She was present during the last hours of her son's life trying to do something about the maltreatment, by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants, administered to her son;*
- She is a qualified nurse who suffered a deep disillusionment and disappointment in the profession she spent her whole working life up to that date to serve;*
- She probably suffered from an acute distress disorder after her son's death;*
- She suffered and possibly still suffers from depression;*
- She is in the words of Professor Vorster 'overwhelmed and immobilised by significant unresolved emotional matters rendering her ineffective and floundering in the fact of the day to day demands of life;*
- She will need long term intensive psychotherapy (probably two years);*
- She was never adequately treated for the emotional impact she received which resulted in her suffering for the past more than 7 years;*
- Neither the doctor nor the North West Department of Health did anything to assist the plaintiff in her predicament".*

In the joint report of the plaintiff's and the defendant's experts, Professor Charl Vorster and Dr Linda M Eskell-Blokland it is stated that "...Mrs Kadi was significantly emotionally impacted by the death of her son in the circumstances as described in our reports..." and "...At this stage she is still in a state of emotional turmoil and not functioning optimally..." (See page 179 of the Bundle of Notices).

Taken into account that the plaintiff was exposed to the unfortunate circumstances as described in this judgment for a prolonged period of six to seven hours, justifies an award of R150 000.

With regard to loss of earnings/earning capacity, Mr De la Harpe submitted that it was "...reasonable, if not essential, for...[the plaintiff's]... own well-being to resign from her work...". The plaintiff testified that she was a nurse for approximately 25 years at the time of the incident and that she could not function optimally after the death of her son. She further stated that she took an amount of R2 500 per month from 2005 to 2008 from the tuck shop that was left to her by her late husband. From 2009 the amount was increased by R500 to R3 000 per month.

Exhibit "AAA", a certificate of value which was compiled by Dr Robert J Koch, reflected the financial situation of the plaintiff without the possibility of being employed as an administration clerk or secretary. According to the report of Professor Pienaar the plaintiff could have been employed in such a position. The plaintiff is not a very young person as she was born in 1953. She was living in Makwasie which is a rural town and with the economic climate and the unemployment figures as they are the probability of her being employed is very slim if not highly improbable. The second scenario, should the plaintiff be fortunate enough in securing employment as an administration clerk or secretary is reflected in Exhibit "BBB" and was likewise compiled by Dr Koch.

The "adjusted control value" in Exhibit "AAA" is R4 317 504 and in Exhibit "BBB" it is reflected as R2 920 191. It was submitted on behalf of the plaintiff that the two figures should be added together and then halved. This brings the loss of earnings/earning capacity to R3 618 847.50 according to Dr Koch's calculations.

Mr De la Harpe argued that a contingency of between 10% and 20% (at the extreme utmost) should be applied. It is the court's considered view that it is very

conservative to apply a 10% contingency and therefore a 15% contingency is more appropriate in the circumstances.

**IT IS ACCORDINGLY ORDERED:**

- 1. THAT the second and third defendants jointly and severally, the one paying, the other to be absolved, pay to the plaintiff the amount of R3 076 020.37 in respect of loss of earnings/earning capacity suffered by the plaintiff together with interest at a rate of 15.5% per annum, from date due until date of payment;**
- 2. THAT the second and third defendants jointly and severally, the one paying, the other to be absolved, pay to the plaintiff the amount of R65 000 in respect of future psychological and psychiatric treatment in consequence of the death of her son;**
- 3. THAT the second and third defendants jointly and severally, the one paying, the other to be absolved, pay to the plaintiff the amount of R150 000 in respect of general damages suffered by the plaintiff together with interest at a rate of 15.5% per annum, from date due until date of payment;**
- 4. THAT the second and third defendants jointly and severally, the one paying, the other to be absolved, pay the plaintiff's costs or suit including the costs occasioned by the hearing of the special plea on 27 July 2010, such costs to include the costs of the expert witnesses as listed below:**
  - 4.1 Professor Saayman;**
  - 4.2 Professor Vorster;**
  - 4.3 Professor Pienaar;**
  - 4.4 Dr Blaauw;**
  - 4.5 Dr De Klerk; and**

**4.6 Dr Koch.**

*G. Webster*

**G. WEBSTER  
JUDGE IN THE HIGH COURT**

Date of hearing	:	30 January 2012, 1 February 2012
Counsel for the Plaintiff	:	Adv De la Harpe
Instructing Attorneys	:	Viviers Inc Attorneys