



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO:9253/2017

(1)	REPORTABLE:
(2)	OF INTEREST TO OTHER JUDGES:
(3)	REVISED.
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DATE	SIGNATURE

In the matter between:

M[....], J[....] M[....].

First Applicant First Plaintiff

ADVOCATE H. KRIEL obo M[....]

Second Applicant/Second Plaintiff

M[....] M[....]

and

MEC FOR HEALTH – GAUTENG

Respondent

JUDGMENT

MBONGWE J:

INTRODUCTION

- [1] This application for leave to appeal has been brought by the First and the Second Applicant (First and Second Plaintiffs in the initial proceedings). The appeal is sought against the whole of the judgment of this court delivered on the 10 September 2021, dismissing the Applicants' claims.
- [2] I have read and considered the Applicants' grounds for leave to appeal and, as a result of the Applicant's counsel's referral, at the hearing of this application, to what he advised was a record of the hospital theatre showing that the theatre had been available for the performance of a caesarean section when it was found that there was foetal distress, I am of the view that It will accord with justice to grant leave to appeal. It has to be stated, however, that at the trial, a record showing the converse was referred to by the Respondent's counsel and there was no contestation from the Applicant's counsel. The impression was that the theatre had not been available until about 23h:15, that is, approximately 25 minutes after the baby had been born virginally.
- [3] I am of the view that the appeal ought to be heard as contemplated in section 18 of the Superior Courts Act.

ORDER

- [4] In the light of the afore-going, the following order is made:
1. Leave to appeal to the Full Court of this division is granted.
 2. Costs to be costs in the appeal.

M. MBONGWE J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA.

APPEARANCES

For the Applicants:	Adv G.J Strydom SC
Instructed by:	Edeling Van Niekerk Inc Clearview Office Park Block A, Wilhelmina Avenue, Constantia Kloof Roodepoort, Johannesburg.
For the Respondent:	Adv D.J Joubert SC with him Adv L Adams (Ms)
Instructed by:	The State Attorney 10 th Floor, North State Building 95 Albertina Sisulu Street Cnr Kruis Street Johannesburg.

DATE OF HEARING: 02 December 2021

**JUDGMENT ELECTRONICALLY TRANSMITTED TO THE PARTIES/ LEGAL
REPRESENTANTIVES ON 12 APRIL 2022.**