

Supreme Court of Appeal of South Africa

MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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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

ER24 HOLDINGS v I SMITH NO & ANOTHER

1. The SCA today delivered judgment in a matter affecting part-time volunteers who receive on-the-job training without remuneration. The SCA held that in order to qualify for benefits as an employee under the Compensation for Occupational Injuries and Diseases Act (COIDA), a person has to be paid in cash or in kind; and payment in kind means the provision of something that has an objectively ascertainable value. The issue was determined in a case that arose when an unpaid volunteer, injured while helping, sued the emergency relief company ER24.

2. On 10 August 2003 Ms Romy Staracek was a passenger in a vehicle driven by Ms Natasha Swanepoel. The vehicle was involved in an accident caused by the negligence of Swanepoel and Staracek was seriously injured. At the time of the accident Swanepoel was acting in the course and scope of her employment as a shift leader with Emergency Room Company (Pty) Ltd, trading as ER24, which operates

an emergency service. Staracek was a volunteer worker undergoing vocational experience that was essential to enable her to qualify ultimately as a paramedic, and she and Swanepoel were on their way to an accident scene. Adv Irvin Smith was appointed as curator *ad litem* to Staracek. In that capacity he sued ER24 for damages in excess of R7 million allegedly suffered by Staracek in consequence of the accident.

3. ER24 argued that Staracek's claim could not be brought against it, but lay against the Compensation Commissioner because she was an employee as defined in COIDA and the damages claimed on her behalf were in respect of an occupational injury. ER24 argued that although she received no cash, it remunerated Staracek in kind because it allowed her to gain experience necessary for her to qualify as a paramedic. This argument was rejected. The court held that it is impossible to place a value on experience gained by a volunteer to determine contributions payable by an employer to the Compensation Fund or benefits payable to an employee under COIDA. The court held that because Staracek was not remunerated in cash or in kind, she was not an employee. COIDA was therefore not a bar to a claim against ER24 for the negligence of Swanepoel which caused Staracek's injuries. The decision of the Johannesburg High Court was upheld, and ER24's appeal dismissed.

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