



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: 25 March 2011
Status: Immediate

**THE PREMIER OF THE WESTERN CAPE PROVINCE
DR K DU PLESSIS**

**FIRST APPELLANT
SECOND APPELLANT**

v

JOHANNES HENDRIK LOOTS NO

RESPONDENT

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

1. On 25 March 2011 the SCA dismissed the appeal of the Premier of the Western Cape against the judgment of the Cape High Court in favour of the respondent, Mr J H Loots.
2. The matter has its origin in a claim for damages arising from an unsuccessful sterilisation on Mrs Erasmus which was due to the negligence of the operating surgeon. The failed sterilisation resulted in a pregnancy which in turn led to a birth process that went terribly wrong and which left the patient, Mrs Erasmus, brain damaged, mentally disabled, virtually blind and unable to walk or talk.
3. The operation was performed by a surgeon employed by the Department of Health in the Western Cape for which the Premier takes legal responsibility. Mr Loots instituted the action for damages in his capacity as curator *ad litem* for Mrs Erasmus. He was appointed in that capacity because Mrs Erasmus was unable, because of her mental disability, to manage her own affairs.
4. The main defence raised on appeal was in essence that the causal link between the unsuccessful operation and the harm suffered by Mrs Erasmus was too remote to justify the imposition of liability on the doctor and his employer, the Premier.
5. In support of this defence it was argued on behalf of the Premier that Mrs Erasmus could have avoided the pregnancy that eventually gave rise to her damages, by undergoing an abortion which was offered to her by the hospital free of charge.

6. With regard to this argument the court essentially held that since Mrs Erasmus' refusal of an abortion was based on her religious and moral beliefs, the refusal could not be found to be unreasonable. In consequence, the legal position is that the refusal cannot be regarded as an interruption of the causal connection between the negligently performed operation and the harm that Mrs Erasmus eventually suffered.
7. A further argument raised on behalf of the Premier as to why she should not be held liable for the harm suffered by Mrs Erasmus, was that even if the sterilisation operation had been performed without negligence, it was not a failsafe operation. According to the medical evidence the risk of pregnancy would remain. If Mrs Erasmus became pregnant under these circumstances, neither the surgeon nor the Premier would have been liable for the consequences. Accordingly, so the argument went, it is unreasonable and unfair to hold them liable for consequences which might have occurred in any event. But the SCA held that there are two answers to this argument. First, the fact that Mrs Erasmus was not sterilised obviously resulted in a marked increase in the risk of pregnancy. Second, that it hardly lies in the mouth of a defendant whose wrongful conduct caused a particular harm, to argue that the harm would in any event have resulted from other causes. If it were otherwise, the defendant who negligently caused a motor vehicle accident could argue that accidents happen every day.
8. The final argument on behalf of the Premier and the surgeon was that the complications suffered by Mrs Erasmus during the birth process were unforeseen and rare. Though recognising that this was so, the Supreme Court of Appeal agreed with the High Court that demands of fairness and reasonableness dictated that the doctor and his employer should be held liable for the harm that Mrs Erasmus suffered.