THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 11 October 2023

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Mucavele and Another v MEC for Health, Mpumalanga Province (889/2022) [2023] ZASCA 129 (11 October 2023)

Today the Supreme Court of Appeal (SCA) upheld the appeal by the appellants and set the order of the Mpumalanga Division of the High Court, Mbombela (the high court) aside. The appellants were Ms Mucavele (the first appellant) and her attorneys, VZLR Incorporated, (the appellants). The respondent was The Member of the Executive Committee for Health, Mpumalanga Province (the MEC). She did not oppose the appeal and abided the decision of the Court.

The appeal follows a settlement of a claim for negligence instituted by the first appellant against the MEC. She had approached Mr Joubert, a director at VZLR Incorporated, in a representative capacity as the mother of her minor child to institute the claim. The minor child was diagnosed with spastic quadriplegic cerebral palsy, detected at the time of delivery at Tonga Hospital on 17 February 2011. The proceedings commenced on 17 November 2016. VZLR Incorporated instructed approximately 24 experts to investigate the cause and whether the MEC was negligent and could be held liable. In August 2020, the first appellant and the MEC (the parties) settled the question of liability on a '50:50% discounting of liability basis'.

The quantum of damages stood over for determination at a later stage, was finally enrolled for trial on 22 November 2021. On 10 November 2021, the MEC made an offer in settlement of the dispute. The first appellant accepted the offer in the amount of R 7 184 950. 00, which was to be placed in a trust to be created for the benefit of the minor child. The parties wished to make the settlement agreement an order of court and Mr Joubert incorporated its terms in a draft court order approved by the MEC on 11 November 2021.

The high court declined to make the settlement an order of court on the grounds that the first appellant and VZLR Incorporated concluded an illegal contingency fee arrangement. Further, that VZLR Incorporated did not follow the procedure prescribed by the practice directives in seeking to make the

agreement an order of the court. The high court also questioned the basis of the settlement and called for an explanation for the MEC. Thereafter, it substituted the draft order incorporating the settlement by: (a) directing that the payment of the capital of the settlement be made to a firm of attorneys to be identified by the Legal Practice Council (the LPC), thus unknown to the first appellant and not of her choice; and ordering that (b) all the legal representatives, Mr Joubert and VZLR Incorporated, be referred to the LPC for investigation.

The SCA found it unnecessary to enter the dispute about the classification of the fee arrangement. The distinct feature of the appeal was that despite its earlier misgivings, ultimately, the high court had no difficulty with the basis for settlement or the quantum agreed upon. It nevertheless granted orders in circumstances where there was no issue between the first appellant and VZLR Incorporated, in circumstance where the first appellant and the respondent agreed. The high court also granted orders against VZLR Incorporated at a time when it was not a party to the proceedings.

The SCA held that it was for the parties to define the issues between them. While a court may *mero motu* raise a question of law if it emerges fully from the evidence and is necessary for a decision in the case, this was not the case in the present appeal. The legality of the contingency fee arrangement was not such a question.

Confirming the Court's decisions in the *Road Accident Fund v Taylor and other matters* (*Taylor*) and in *Road Accident Fund v MKM obo KM and Another*; *Road Accident Fund v NM obo CM and Another,* the SCA held that the settlement had the effect of bringing an end to the *lis.* Furthermore, an invalid or unlawful contingency fee agreement would not necessarily invalidate the settlement agreement. The high court failed to consider whether the contingency fee agreement was severable from the rest of the settlement agreement.

In the result, the SCA upheld the appeal and set the high court's order aside and reinstated the terms of the settlement as between the first appellant and the MEC.

--------oOo--------