



CONSTITUTIONAL COURT OF SOUTH AFRICA

Danie Van der Walt v The State

CCT 180/19

Date of judgment: 21 July 2020

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On 21 July 2020 at 10h00 the Constitutional Court handed down judgment in an application for leave to appeal a judgment and order of the High Court of South Africa, Mpumalanga Division (functioning as Gauteng Division, Pretoria, Mbombela Circuit). The High Court dismissed an appeal against a judgment and order on conviction and sentence handed down by the eMalahleni (Witbank) Regional Court.

In 2016 the applicant, Dr Danie Van der Walt, an obstetrician and gynaecologist, was convicted by the Regional Court of culpable homicide, on the basis that he acted negligently in the care of his patient, the late Ms Pamela Noni Daweti, after she had given birth, and that this negligence caused her death. The High Court upheld the conviction and sentence, and the Supreme Court of Appeal refused special leave to appeal.

Dr Van der Walt then approached the Constitutional Court, seeking leave to appeal against his conviction and sentence. Regarding conviction, he contended that the Regional Court violated his right to a fair trial, and particularly his right to adduce and challenge evidence. First, he argued that the Regional Magistrate had decided the admissibility of various pieces of evidence for the first time in the judgment on conviction. The decision not to admit some of this evidence meant that even evidence elicited through cross-examination on this rejected evidence was equally not admitted. Dr Van der Walt stated that this meant that, when he elected not to testify, he did so without knowing the full ambit of the case against him. Second, in addition to relying on an expert witness, the Regional Magistrate conducted her own research and, in reaching her decision, relied on medical textbooks not referred to in testimony. Third, Dr van der Walt argued that he had been convicted of culpable homicide without evidence of causation. On sentence, Dr van der Walt argued that a

doctor convicted of culpable homicide arising from professional negligence should not be treated like, for example, a negligent driver convicted of culpable homicide, since doctors play the special role of providing access to health care.

On the first point, the State responded that the Regional Magistrate's findings on admission of evidence appear to have been correct. Additionally, on appeal to it the High Court held that, even if the evidence elicited through cross-examination that Dr Van der Walt was complaining about were taken into account, the State had proved its case beyond a reasonable doubt. On the second point, the State submitted that the medical literature referred to did not introduce any new information, but merely supported the expert witness's testimony. In any event, the Regional Magistrate had not actually relied on the literature. Even if the medical literature had not been considered at all, this would not have made a difference to Dr Van der Walt's case, since the expert testimony it supported had not been disputed. On the third point, the State argued that the expert evidence was sufficient in establishing causation. Finally, in relation to sentence, the State submitted that the trial court had exercised its discretion properly, and that there was no basis for upsetting the sentence.

In a unanimous judgment penned by Madlanga J (Mogoeng CJ, Froneman J, Jafta J, Khampepe J, Majiedt J, Mathopo AJ, Mhlantla J, Theron J, Tshiqi J and Victor AJ concurring), the Constitutional Court granted leave to appeal and upheld the appeal. The Court held that the pronouncement on admissibility for the first time at the stage of the judgment on conviction, and reliance on medical literature not proved in testimony, are sufficiently serious as to implicate the right to a fair trial – particularly the right to adduce and challenge evidence. The Constitutional Court's jurisdiction was thus engaged on these issues. However, the issue of causation did not engage the Court's jurisdiction, as Dr Van der Walt had done no more than to contest the application of settled principles on causation. The application for leave to appeal against sentence also did not engage the Court's jurisdiction, as there was no constitutional issue raised. The notion that doctors must receive special penal treatment lest section 12(1) of the Constitution be infringed was found to be without merit.

Considering the right to a fair trial, the Constitutional Court held that the question was whether, in substance, the Regional Magistrate had committed irregularities or deviated from the rules of procedure aimed at a fair trial and if so, whether they were of the kind to render the trial unfair.

On the issue of admissibility, the Court held that the Regional Magistrate had been required to rule on admissibility before the State closed its case, so that Dr Van der Walt could appreciate the full evidentiary ambit he faced. Dr Van der Walt had been ambushed by the late pronouncement on the admissibility of the exhibits. And the argument that a timeous ruling would have made no difference was held to be misconceived. The Court thus concluded that the late admission of exhibits constituted an irregularity of a nature that vitiated the fairness of the trial in a constitutionally impermissible manner.

On the issue of medical literature, the Court confirmed the principle that an expert witness may rely on information in a textbook only if, by reason of her or his own training, she or he confirms the correctness of the statements in the book, and that the book has been written by a person of established repute in that field. The Court held that these requirements had not been met, as the literature considered had not been confirmed by an expert at all. Additionally, the Regional

Magistrate had indeed relied on the literature insofar as she had rejected opinions of the expert witness that were not supported by the medical literature. Again, the argument that the literature had made “no difference” to the decision on guilt were held to be misguided. The relevant question was found to be whether Dr Van der Walt had had the opportunity to challenge the textbook evidence. Since he had not, his right to challenge evidence had been violated.

The Constitutional Court thus set aside Dr Van der Walt’s conviction and, by extension, his sentence. Since the conviction had not been set aside on the merits, the Court referred the matter to the Director of Public Prosecutions, Mpumalanga, to decide whether Dr Van der Walt should be recharged, and if so, ordered that a retrial be before a different Regional Magistrate.