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**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, JOHANNESBURG**

**CASE NO: 2018/4531
NOT REPORTABLE
NOT OF INTEREST TO OTHER JUDGES
REVISED**

In the matter between:

M M obo L

Plaintiff

N M

And

MEC FOR HEALTH, GAUTENG

Defendant

Neutral citation: *M M obo L N M v MEC for Health, Gauteng* (Case No. 2018/4531) [2023] ZAGPJHC 464 (12 May 2023)

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 15 May 2023.

JUDGMENT

CARRIM AJ:

Introduction

[1] In this matter, the plaintiff, in her representative capacity as the biological mother and natural guardian of the minor child L N M, issued summons against the defendant for damages arising from the alleged negligence of the nursing and medical staff at the Tambo Memorial Hospital (“hospital”).

[2] The matter was certified trial ready on 8 August 2022, when an order was made that the issue of merits be separated from the quantum of the plaintiff's claims.¹

[3] After several attempts to settle the matter, the parties came before me on 9 May 2023, on an agreed stated case in terms of Uniform Rule 33. I was required to decide only the issue of merits, in particular the question of negligence on the part of the employees of the defendant.

Agreed Case

[4] The agreed facts are as follows:

- 4.1. The minor child L had been admitted to the hospital on 14 June 2017, as an inpatient for investigation of the cause and treatment of seizures after having suffered a seizure at home.
- 4.2. The admission diagnosis of 14 June 2017 was seizures.
- 4.3. The plaintiff stayed with the minor child but left the hospital the following morning, on 15 June 2017, to go home for a bath and to clean up.
- 4.4. The plaintiff left the child in the care of the nursing staff when she went home.
- 4.5. At the time of admission to hospital, the minor child had no injuries. She suffered burns on 15 June 2027, at approximately 07h07.

¹ Section 010-3 of CaseLines.

- 4.6. Upon the plaintiff's return to the hospital later that morning, she found her child with bandages to treat a burn to her left leg.
- 4.7. The plaintiff was informed by the hospital staff her child was burned by a wall-mounted heater, which the child came into contact with while she was attempting to leave the ward.
- 4.8. The minor child was treated for her burn wounds until she was discharged on 23 June 2017.

[5] The plaintiff and the defendant have appointed the same expert in determination of the merits, Dr Nosispho K Maponya a paediatrician, the report for the plaintiff can be found at 004-4 and for the defendant at 007-1.

[6] The parties agreed that these reports should be admitted into evidence.

Dr Maponya's report(s)

[7] In her report Dr Maponya records the following:

- 7.1. *"L achieved her gross motor, fine motor, speech and social development within normal limits.*
- 7.2. *At 3 years started to have seizures was admitted at Tambo Memorial Hospital Paediatric ward for investigation of the cause and treatment of seizures.*
- 7.3. *On admission M left L with the nurses (M went home to bath), on arrival she found her baby with bandage, was told that L has burns on the left leg.*
- 7.4. *They told her L was burnt by the wall mounted heater in the ward as she was trying to jump out of the window from the ward.*

- 7.5. *L was locked/left alone in the ward, she started crying looking for her mother and tried to jump out of the window because the doors were locked.*
- 7.6. *L was seen and treated by the plastic surgeon and the wound dressing were changed regularly during the 2 weeks hospital stay. She continued with wound dressing for 3 months post discharge (wound healed).*
- 7.7. *Hospital management was informed about the incident.*
- 7.8. *Attended physiotherapy sessions from admission date for contractures and scar management.*
- 7.9. *Never had seizures post discharge.”*

[8] In her report for the plaintiff, Dr Maponya concludes that L's burn wound and keloids formation is as a result of negligent medical staff at Tambo Memorial Hospital.² She recommends that L be referred to a plastic and reconstruction surgeon to manage and reconstruct the scar and keloid formations. She also recommends that the family be referred to a psychologist to manage the post traumatic disorder that occurred after the burn incident.

[9] In her report for the defendant, Dr Maponya makes the same concluding remarks namely that L's burn wounds and its complications are as a result of negligent medical staff. She makes the same recommendations for referral to a plastic and reconstruction surgeon and a psychologist. In addition, she recommends that L be referred to an occupational therapist and physiotherapist to maximise the gross motor skills of her lower limbs.³

² Section 004-9 of CaseLines.

³ Section 007-4 of CaseLines.

The dispute

- [10] Notwithstanding the agreed stated facts set out above the defendant disputes that the hospital staff were negligent.
- [11] The plaintiff submitted that the defendant had not challenged Dr Maponya's findings and had not set out the basis upon which it had rejected her findings. Further, the hospital staff were clearly negligent. The nurse locked the ward, left the toddler who was already traumatised in the ward with hazardous material i.e. a wall heater that was left on, without supervision.
- [12] The defendant argued that the injuries (burn) sustained by the minor child was because she attempted to climb out of the window. Given that it was not foreseeable that the minor child would try to climb out of the window, such harm could not be foreseeable.
- [13] When asked why the defendant was still persisting with this argument, given that it was common cause that the ward had been locked, that the child had no other way of leaving, and that the child was left unsupervised with the wall heater on,⁴ Adv Maimele appearing on behalf of the defendant submitted that he could not take the matter any further.

Analysis

⁴ Section 016-4 of CaseLines.

[14] In *Kruger v Coetzee*⁵ the Appellate Division (as it was then) held that in an action for damages alleged to have been caused by the defendant's negligence, for the purposes of liability *culpa* only arises when three requirements are met if a *diligens paterfamilias* in the position of the defendant:

- 14.1. would have foreseen the reasonable possibility of his conduct injuring another in his person or his property;
- 14.2. would have taken reasonable steps to have guarded against such occurrence; and
- 14.3. the defendant failed to take such steps.

[15] The principles enunciated in *Kruger v Coetzee* have been applied in several cases. In *Mashongwa v Passenger Rail Agency of South Africa*⁶ the *Constitutional Court* at para [31] confirmed the approach developed by Holms JA in determining whether PRASA was negligent:

- 15.1. *"Would a reasonable person in PRASA's position have reasonably foreseen harm befalling Mr Mashongwa as a result of the absence of security guards or the open doors? If so, would she have taken reasonable steps to prevent harm to Mr Mashongwa? If she would, did PRASA take reasonable steps to avert the foreseeable harm that ultimately occurred?"*

[16] Turning to the facts of this case, it is common knowledge that young children when separated from their mothers are likely to become distressed. More so a

⁵ 1966 (2) SA 428 (A).

⁶ [2016] JOL 34753 (CC).

child in the place of L who had suffered the recent trauma of a seizure, who was now placed in unfamiliar and strange surroundings and whose mother had just left her. Children of such tender years in such circumstances are likely to start crying and looking for their mothers.

[17] In my view the medical staff at the hospital – who are purportedly trained to take care of patients generally and in the case of patients as young as L specifically – could reasonably have foreseen that the toddler would at some point start looking or crying for her mother. In such circumstances, it would be expected of a reasonable health service provider or nurse to ensure that the toddler was watched over or supervised and where needed, to soothe the child in the absence of the mother. The hospital staff failed to take such steps.

[18] I disagree with the defendant's submission that the harm caused to L was because she tried to climb out of the window. The child could have just as easily fallen against the wall heater and sustained burn wounds. Left unsupervised, she could have hurt herself in any other way.

[19] Accordingly, I find that the conduct of the hospital staff, employees of the defendant, was negligent and make the following order:

Order

1. The defendant is liable for 100% of the damages suffered by the plaintiff, in her representative capacity agreed and/ or proven as a result of burns of L N M on 15 June 2017.

2. The defendant shall pay the plaintiff's taxed or agreed High Court costs of suit as between party and party in respect of merits including:

- 2.1 the costs of counsel for preparation and appearance.

- 2.2 All reasonable costs, for obtaining medico -legal reports of **Dr NK Maponya**, including consultation, preparation, and participation in meetings in respect of the determination of the plaintiff's claim in her representative capacity on behalf of the minor child.

- 2.3 The costs shall be paid in accordance with the provisions of section 3(a)(i) of the State Liability Act 20 of 1957 as amendment.

3. The issue of quantum is postponed *sine die*.

Y CARRIM

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

Appearances

For the plaintiff:	Adv MO Mudimeli
Instructed by:	Nhlapo Moloto Associates Attorneys
For the defendant:	Adv M Maimela
Instructed by:	State Attorney Johannesburg
Date of hearing:	09 May 2023
Date of judgment:	15 May 2023