

**IN THE HIGH COURT OF SOUTH AFRICA  
(BOPHUTHATSWANA PROVINCIAL DIVISION)**

**CASE NO.: CA706/05**

In the matter between:

**SANNIE BALISENG DUBA**

**PLAINTIFF**

**And**

**MEC DEPARTMENT OF HEALTH**

**NORTH WEST PROVINCE**

**DEFENDANT**

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**JUDGMENT**

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**TLHAPI AJ**

[1] The plaintiff instituted action against the defendant for delictual damages suffered when she was hospitalised at the Jubilee Community Hospital in Temba. She was assisted by her husband when she entered into a contingency fee agreement (“the agreement”) with her attorneys, Rorich Wolmarantz & Luderitz Inc. After the matter was settled with the defendants the attorney approached the court for an order in compliance with section 4 of the Contingency Fees Act 66 of 1997 (“the Act”).

[2] On 21 November 2005 Mr Ferreira, on behalf of the plaintiff appeared before Leeuw J who made the following order:

- “(a) The matter be and is hereby postponed to the 28<sup>th</sup> day of November 2005, in order to allow attorney Louis Meintjies to amplify paragraph 16 of his affidavit prepared in terms of section 4 of Act 66/1997.
- (b) The attorney be and is hereby ordered to outline in detail the estimate of fees and disbursement of R600,000.00 and the amount he alleges to have explained to his client and his fees and those of the experts and counsel.”

A supplementary affidavit was filed, dated 21 November 2005 and on 28 November 2005 Mr Ferreira now appeared before me and made further representations.

[3] In terms of the settlement agreement with the defendant, which was explained to the plaintiff, as confirmed in her confirmatory affidavit, she is entitled to the following:

Capital	1,300,000.00
Plus Interest	<u>158,470.53</u>
Sub Total	1,458,470.53
Plus Costs (estimate)	<u>382,546.37</u> (party and party costs)
Total	1,841,016.90

[4] The calculation of the estimated R600,000.00 is set out in paragraphs 5, 6,10 and 11. Mr Meintjies explains that the

party and party fees are estimated at R125,577.89 and that in terms of the rules of court he is entitled to 25% surcharge on this amount to arrive at his attorney and own client fees. The agreement allows for a further entitlement of 100% on this amount plus VAT.

Estimated party and party fees	125,577.89
Plus 25% surcharge in terms of the rule	<u>31,394.47</u>
Sub Total	156,972.36
Plus 100%	<u>156,972.36</u>
Sub Total	313,944.72
Plus VAT	<u>43,952.26</u>
Total	357,896.98

- [5] In paragraph 15 of the main affidavit Mr Meintjies states that he explained to the plaintiff the provisions of the Act and that he was allowed a success fee which should not exceed 25% of the total amount of the settlement amount. This is calculated as follows:

Capital	R1,300,000.00
Plus Interest	<u>158,470.53</u>
Sub Total	1,458,470.53
Multiplied by 25%	364,617.63

This amount exceeds that which is claimed in the preceding paragraph. It is further explained that according to the agreement counsel may, but is not obliged to, charge twice

his fees per brief. According to counsel's statement of account, attached to the supplementary affidavit, his fee amounts to R259, 920.00.

Having read Mr Meintjies' affidavit, and as more fully explained by Mr Ferreira, I do not understand paragraph 16 of the founding affidavit to mean that the attorney would be entitled to R357,896.98 plus R364,617.63 but that the estimated R600,000.00 is made up from R357,896.98 plus R259,920.00 (counsel's fee).

- [6] The Plaintiff will therefore be entitled to an estimated amount calculated as follows:

Claim/Settlement	R 1,841,016.90
Less	<u>357,896.98</u>
Sub Total	1,483,119.92
Less	<u>259,920.00</u>
Total due to Plaintiff	1,223 199.92

- [7] The fees of the correspondent attorney and expert witnesses have not been included in the party and party bill attached to the supplementary affidavit. Mr Ferreira explained that these will be included in the final party and party bill of costs, which costs are going to be paid to the plaintiff and which costs are provided for in the settlement amount stated in paragraph 7 above and also in the settlement agreement.

[8] I understand Mr Meintjies' explanation to mean that Plaintiff will receive the estimated R1,223,199.92 or even more than this amount after the party and party and attorney and own client bill of costs have been finalized.

[9] I am therefore satisfied that the Contingency Fees Act has been complied with and in terms of section 4(3) thereof, this agreement is made an order of court.

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V V TLHAPI  
ACTING JUDGE OF THE HIGH COURT

Appearances:

For the Plaintiff	:	Mr Ferreira (SC)
For the Defendant	:	No Appearance

Attorneys for the Plaintiff	:	John Van Onselen
Attorneys for the Defendant	:	State Attorney

Date of Hearing	:	28 November 2005
Date of Judgment	:	15 December 2005