



## 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:** 9 March 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*

*Louw v Patel* (245/2021) [2023] ZASCA 22 (9 March 2023)

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Today, the Supreme Court of Appeal (SCA) dismissed an appeal against the judgment of the full court of the Gauteng Division of the High Court, Johannesburg (the high court), in terms of which the respondent, Dr A S Patel's, damages claim for medical negligence against the appellant, Dr F C Louw, was upheld. The appeal was dismissed with costs, including the costs of two counsel where so employed.

The facts of the matter were as follows. The appellant and the respondent were general medical practitioners practising in Standerton, Mpumalanga. The respondent instituted a claim for damages against, inter alia, the appellant, in which he contended that the appellant had breached his legal duty to attend to him with the skill and care of a reasonable doctor, in respect of treatment for a gunshot wound. The trial court dismissed the claim, having found that there was no causal link between the negligence and the harm suffered by the respondent, which resulted in his lower left leg being amputated. In upholding the appeal, the full court found that the appellant failed to transfer the respondent to definitive care with the necessary urgency, which led to the amputation of his lower left leg. It, accordingly, found that there existed a causal link between the negligence and the resultant harm.

In the SCA, in regard to negligence, consideration was given to the following three factors: the urgency with which the appellant attended to the respondent; the urgency with which the appellant arranged for the respondent's transfer, noting that the appellant admitted that he realised the urgency of the respondent's condition immediately upon examination; and, lastly, the appellant's omission to communicate with the receiving doctor. In dealing with factual causation, the relevant question was whether the conduct of the appellant in not timeously transferring the respondent to definitive care was proven to have caused or materially contributed to the amputation of his leg.

Masipa AJA (Molemela and Govern JJA concurring) (the majority judgment), found, in respect of negligence, that the evidence proved that although the appellant reasonably foresaw the need to urgently arrange the transfer of the respondent to a hospital with the facilities to treat a vascular injury and the possibility of harm ensuing in not doing so, he was derelict in his legal duty by omitting to do this. Such omission was tantamount to negligent conduct.

In respect of causation, the majority judgment found that had the appellant acted as a reasonable doctor in the circumstances, the respondent's blood flow to his lower left leg would have been restored within four to five hours. Consequently, the 'but-for' test in respect of factual causation was proven. On a balance of probabilities, the evidence was, therefore, that the negligence of the appellant was directly

linked to the respondent's leg being amputated. The majority judgment found further that the second enquiry of legal causation, which asked whether the factual link was strong enough and whether the harm was sufficiently connected to the conduct, was also satisfied.

Basson AJA (Dambuza JA dissenting) penned a dissenting judgment, which agreed with the majority judgment's reasoning and conclusion in respect of the issues pertaining to negligence, but parted ways with the conclusion thereof on the issue of causality.

The main point of divergence was the weight accorded in the majority judgment to the evidence of Dr Boffard, the respondent's expert witness, to reach the conclusion that the respondent's limb would have been saved if revascularisation had taken place within seven hours after injury. The dissenting judgment found that this conclusion was principally based on Prof Boffard's opinion, which did not account for factors relating to the nature and extent of the injury to the respondent's leg. Further, the acceptance of Dr Boffard's opinion over and above that of Dr Botes, the appellant's witness, also did not consider that Dr Botes was the attending specialist vascular surgeon and the only expert with first-hand knowledge of the extensive injuries sustained by the respondent.

Consequently, the dissenting judgment found that, as a matter of probability, the respondent's leg could not have been salvaged beyond a two to three-hour period calculated from the time the injury took place. Thus, Basson AJA (Dambuza JA dissenting) would have upheld the appeal, set aside the order of the full court and replaced it with an order dismissing the claim for damages with costs.

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