



## Goliath v. The Member Of The Executive Council For Health In The Province Of The Eastern Cape

[2014] ZASCA 182

**Country:** South Africa

**Region:** Africa

**Year:** 2014

**Court:** The Supreme Court Of Appeal Of South Africa

**Health Topics:** Health care and health services, Hospitals, Medical malpractice, Medicines, Sexual and reproductive health

**Human Rights:** Right to bodily integrity, Right to health

### Facts

The plaintiff underwent a regular hysterectomy for fibroid uterus at Dora Nginza Hospital. A week later, she was readmitted as she was suffering from unbearable pain and wound abscess. The abscess burst, as operation was not conducted on the scheduled date. She was again admitted to the hospital as she complained of a hard swelling in her abdomen but was reassured by the medical staff that there was no requirement of any further treatment.

She went to another hospital and was admitted to the surgical ward as they determined that she had an abdominal distension and wound infection. The surgeons suspected the presence of a foreign body in the wound as the wound infection was not clearing up. Dr. Muller performed a laparotomy and a septic gauze swab was removed from the plaintiff's abdomen.

The High Court dismissed the plaintiff's claims, as the plaintiff was unable to establish the negligence of either the surgeons or the nurses. The plaintiff appealed to the Supreme Court of Appeal.

### Decision and Reasoning

The Supreme Court allowed the appeal. It stated that in this case as one of the swabs was overlooked at the conclusion of the hysterectomy surgery and remained in the plaintiff's abdomen, it constituted negligence. Dr. Muller, who performed the laparotomy also testified along with the plaintiff and stated that it is the swab that caused the infection and further complications. There was no evidence on part of the defendant to show that reasonable care had been taken during the surgery.

The Supreme Court ordered the defendant to pay R 250,000 to the plaintiff.

### Decision Excerpts

“The failure of a professional person to adhere to the general level of skill and diligence possessed and exercised at the same time by the members of the branch of the profession to which he or she belongs would normally constitute negligence (Van Wyk v Lewis 1924 AD 438 at 444). A surgeon is in no different a position to any other professional person (Lillicrap, Wassenaar and Partners v Pilkington Brothers (SA) (Pty) Ltd 1985 (1) SA 475 (A) at 488C.” (para 8)

“Medical negligence cases do sometimes involve questions of factual complexity and difficulty and may require the evaluation of technical and conflicting expert evidence. But the trial procedure, which is essentially the same as in other cases, is designed to deal with those and thus no special difficulty ought to be involved in determining them. In this case the matter must be approached on the basis that at the conclusion of the hysterectomy, one of the swabs was overlooked and remained in Ms Goliath's abdomen. For, in no other way could it have found its way into her body. The compensation demanded is in respect of an injury alleged to have been sustained by reason of the negligence on the part of the attending medical staff in the employ of the MEC.” (para 13)

“Thus at the close of Ms Goliath's case, after both she and Dr Muller had testified, there was sufficient evidence which gave rise to an inference of negligence on the part of one or more of the medical staff in the

employ of the MEC who attended on her. In that regard it is important to bear in mind that in a civil case it is not necessary for a plaintiff to prove that the inference that she asks the court to draw is the only reasonable inference, it suffices for her to convince the court that the inference that she advocates is the most readily apparent and acceptable inference from a number of possible inferences (AA Onderlinge Assuransie- Assosiasie Bpk v De Beer 1982 (2) SA 603 (A); see also Cooper & another NNO v Merchant Trade Finance Ltd 2000 (3) SA 1009 (SCA)). That being so, the MEC, in failing to adduce any evidence whatsoever, accordingly took the risk of a judgment being given against him.â€• (para 19)

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