



C v. Minister of Correctional Services

1996 (4) SA 292 (T)

Country: South Africa

Region: Africa

Year: 1996

Court: High Court

Health Topics: Health information, HIV/AIDS, Infectious diseases, Informed consent, Prisons

Human Rights: Right of access to information, Right to privacy

Facts

While a prisoner in custody of the defendant, the plaintiff was informed by the prison nurse in the presence of other prisoners that he was to undergo a blood test for HIV and that he had the right to refuse such test. This information was repeated to the plaintiff in a closed consulting room, but in the presence of another prisoner.

Several months prior to the testing of the plaintiff, the Department of Correctional Services had adopted an informed-consent policy for HIV testing which required pre-test counseling (informing the prisoner about the meaning of an HIV infection, methods of transmission, the requirement for informed consent, the social, psychological and legal implications of the test, etc.) and that the prisoner be granted time to consider such issues prior to consenting to the test. The informed-consent policy also required post-test counseling in the event of an HIV+ result. The prison nurse who took the blood sample from the plaintiff was unaware of these norms.

The plaintiff tested positive for HIV and instituted an action for damages on the grounds of alleged wrongful invasion of his privacy, arguing that the defendant did not follow proper protocol in obtaining his informed consent.

Decision and Reasoning

The Court found that the prison nurse did not apply the appropriate norms for obtaining informed consent.Â Noting that the plaintiff was not informed about the object of the test and his right to refuse in private, nor was he given pre-testing counseling or time to consider the information he was given, the Court held that deviation from the accepted norm of informed consent was material and wrongful.

However, considering that the prisoner did de facto consent and that he received post-test counseling the Court held that the plaintiff was entitled to minimal damages.

Decision Excerpts

â€œThe norm was laid down by the department and, as a prisoner, the plaintiff was entitled to the right of informed consent as determined by the department which controlled his incarceration in prison It was not granted to him and it is obvious to what extent the consent obtained fell short of the informed consent laid down by the department itself.â€•Â Page 3.