



## CONSTITUTIONAL COURT OF SOUTH AFRICA

**Dudley Lee v Minister of Correctional Services**

**Case CCT 20/12**

**Date of Hearing: 28 August 2012**  
**Date of Judgment: 11 December 2012**

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### MEDIA SUMMARY

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

Today the Constitutional Court delivered a judgment upholding an appeal against a decision of the Supreme Court of Appeal (SCA), which overturned the decision of the Western Cape High Court (High Court) in an action for delictual damages.

The applicant, Mr Lee, was detained at Pollsmoor Maximum Security Prison from 1999 to 2004. The respondent is the Minister for Correctional Services (Minister) and the Treatment Action Campaign, Wits Justice Project and Center for Applied Legal Studies, were admitted as amici curiae.

Mr Lee contracted tuberculosis (TB) while in prison. He sued the Minister for damages on the basis that the poor prison health management resulted in his becoming infected. The High Court upheld the claim on the basis that the prison authorities had failed to take reasonable steps to prevent Mr Lee from contracting TB.

On appeal, the SCA found that, while the prison authorities were negligent in their failure to maintain reasonably adequate systems to manage the disease, the Minister was not liable. It found that Mr Lee had not proved that the presence of reasonable, precautionary measures would have completely eliminated his risk of contracting TB.

In the Constitutional Court, the majority held that the SCA, in applying the test for factual causation adopted rigid deductive logic which necessitated the conclusion that because Mr Lee did not know the exact source of his infection, his claim had to fail. It held that our law has always recognised that the test for factual causation should not be applied inflexibly as was done by the SCA. The majority held further that on the approach adopted by the SCA it is unlikely that any inmate will ever be able to overcome the hurdle of causation and further that no effective alternate remedy will be available to a person in the position of the applicant.

The majority noted that there is a legal duty on the responsible authorities to provide adequate health care services as part of the constitutional right of all prisoners to conditions of detention that are consistent with human dignity. In upholding Mr Lee's claim, the majority held that there is a probable chain of causation between the negligent omissions by the responsible authorities and Mr Lee's infection with TB.

The minority held that it is not possible to conclude, on the existing test at common law, that the negligence of the prison authorities more probably than not caused Mr Lee to contract TB. This is because of the unique characteristics of TB. The minority found that Mr Lee could not show that in the specific case of his own infection, reasonable measures would probably have saved him from contracting TB. It agrees with the SCA that Mr Lee could not satisfy the existing test for causation. It found however, the resultant injustice in cases such as this, where the disease by its very nature defies the but-for inquiry, required the Court to develop the common law. The minority concluded that it would not be possible, on the available evidence, for the Court to consider properly and justly all the avenues of possible development, and their implications for the parties' respective cases. The minority judgment would therefore have remitted the matter to the trial court, for it to consider the manner in which the common law ought to be developed.