

AFROX HEALTHCARE BPK V STRYDOM 2002(6) SA 21 (SCA)

SUMMARY

- Is an exemption clause that indemnifies a hospital's nursing staff against liability for negligence valid and enforceable?
- The Afrox Healthcare relied on the admission document signed by Mr Strydom during admission to Afrox Healthcare's hospital that contained an exemption clause that absolved the hospital and/or its employees and/or agents from all liability and indemnified them from any claim instituted for damages or loss flowing directly or indirectly from any injury or any illness, except only with the exclusion of the intentional omission by the hospital, its employees or agents.
- It was contended on behalf of Mr Strydom that the exemption clause was a) contrary to the public interest, b) in conflict with the principles of good faith, and c) that the admission clerk had a legal duty to draw his attention to the relevant clause which was not done.
- The SCA rejected these submissions on behalf of Mr Strydom and ruled that the exemption clause was valid and enforceable.
- The SCA's reasons in brief are as follows:
 - Considerations such as good faith are the basis for the existence of legal rules *but they were not in themselves legal rules*. The Court did not operate on the basis of abstract ideas but established legal rules.
 - A person signing a written agreement without reading it did so at their own risk and is bound by the provisions contained therein as if they were aware of and had

expressly agreed thereto. There are however exemptions such as in the event of a legal duty to point out certain provisions of the contract.

- Mr Strydom's subjective expectations regarding what the agreement would contain played no role in the question of whether a legal duty rested upon the admission clerk to point out the content of the exclusionary clause to Mr Strydom. The SCA held that the admissions clerk had no legal duty to bring it to Mr Strydom's attention and Mr Strydom was bound to the clause as if he read it and expressly agreed to it.