

SIBISI NO v MAITIN 2014 (6) SA 533 (SCA) A

SUMMARY

- Maitin, an obstetrician, delivered Sibisi's daughter, Yandiswa, and in the course of delivery the nerves in Yandiswa's right shoulder were injured.
- This resulted in paralysis of her right arm.
- Sibisi sued Maitin in delict for damages, alleging that negligent conduct on his part had caused the injury.
- The high court dismissed the action, but granted leave to appeal to the Supreme Court of Appeal.
- There, Sibisi contested the high court's findings on negligence.
- She also argued that the common law on informed consent should be developed.
- On this approach a doctor would have a duty to inform a patient of a risk inherent in a procedure if a reasonable patient, or the particular patient, would probably attach significance to it.
- (Consent, if so informed, would constitute a ground of justification excluding wrongfulness.)
- *Held* though, that it was unnecessary to determine the test for informed consent because negligence had not been established, and accordingly there was no need to consider wrongfulness or grounds excluding wrongfulness.
- The appeal was consequently dismissed.