

## MICHAEL AND ANOTHER v LINKSFIELD PARK CLINIC (PTY) LTD AND ANOTHER 2001

### (3) SA 1188 (SCA)

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#### SUMMARY

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- The appellants, the parents of a 17-year-old boy who had suffered a cardiac arrest and lapsed into a coma during a surgical operation, had sued the first respondent, the owner of the clinic where the operation was performed, and the second respondent, the anaesthetist, in a Local Division.
- The Court found that negligence had not been established and dismissed the claim but granted leave to appeal to the Supreme Court of Appeal. That Court dismissed the appeal but noted, on the issue of costs, that the second respondent, in order to exonerate himself, had contrived a false and misleading operation report and knowingly had given false evidence at the trial.
- Although the trial Court refused to make a special costs order against the second respondent, the Supreme Court of Appeal was of the opinion that such an order was appropriate in view of second respondent's conduct. The Court accordingly invited the parties to file written submissions on the issue of costs. Having considered the submissions and arguments the Court.
- *Held*, that the reprehensibility of the second respondent's conduct undoubtedly demanded special costs orders.
- *Held*, further, that, although the second respondent's spurious defence and related enquiries had taken up roughly one-fifth of the trial, the reprehensibility of his conduct did not lie simply in the wasted time, but also in the fact that he had deliberately raised the defence well knowing that it was false and that the appellants had no other authoritative source of information as to what had led to the cardiac arrest.
- *Held*, further, that in the circumstances it was fair and reasonable to order the second respondent to pay one-fifth of the appellants' trial costs; that because the first respondent's legal representatives had had to remain in Court while the second respondent's spurious defence was explored, the second respondent should pay one-fifth of the first respondent's costs (which was simpler than having him pay the appellants what they owed the first respondent in that respect); that the costs payable to the appellants should be trial costs and not merely the costs relative to one-fifth of the time the case took in Court; that the costs should be paid on the scale as between attorney and own client; and that the second respondent should be deprived of one-fifth of the costs payable to him by the appellants.
- *Held*, further, as to the costs of appeal, that, given the length of the trial and the enormous costs it must have entailed, the appellants had achieved substantial monetary success. In view of the fact that the argument on the second respondent's credibility and his spurious defence had taken up one-

quarter of the hearing, the second respondent should pay one-quarter of the appellants' appeal costs and be deprived of one-quarter of his appeal costs.

- *Held*, further, that the second respondent should also be ordered to pay the costs in respect of the further submissions on costs, and that the judgment should be referred to the Health Professions Council for its consideration as to what steps should be taken against the second respondent in the light of the Court's findings regarding his dishonest conduct.