



## THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

### MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**FROM** The Registrar, Supreme Court of Appeal  
**DATE** # March 2016  
**STATUS** Immediate

***Botha NO v The Governing Body of the Eljada Institute & another (20530/14)  
[2016] ZASCA XXX (XX March 2016)***

***Please note that the media summary is for the benefit of the media and does not form part of the judgment.***

This morning the Supreme Court of Appeal (SCA) dismissed an application for leave to appeal against a decision in the Western Cape Division of the High Court, Eastern Circuit Local Division, George in which it was held that the process adopted by by the Governing Body for the Eljada Institute in coming to its decision to terminate its services for a mentally ill patient, did not violate the *audi alteram partem* principle. The high court had dismissed the application to have this decision set aside and to have the patient readmitted into the Institute.

The patient was thirty years old at the time. She had contracted meningitis at birth and, as a result, had the mental capacity of a three year old child. Her behaviour had become increasingly aggressive and dangerous to staff, the other occupants of the

Institute and herself. The institute came to the conclusion that it did not have the resources to cope with her situation.

The appellant contended that the proceedings were disciplinary in nature and that patient should have been given a fair hearing. The appellant argued that the Institute should have invited representations on her behalf at every step of the process leading to the decision to terminate its services.

The SCA accepted, as did the parties, that the decision was reviewable in terms of the common law and proceeded to decide the matter on that basis. It found that the decision to terminate its services was not disciplinary in nature but based on other legitimate grounds provided for in the agreement of care between the Institute and the parents of the patient.

The SCA took into account the fact the Institute had proved that there was consistent and continuous consultation not only with the parents of the patient but also their attorney. It was further noted that the institute adopted the resolution as a measure of last resort and had granted the parents of the patient opportunities to seek alternative care.

The SCA found that if one took an overall conspectus of all the facts in the matter, there could be no question that the Institute had acted fairly. In this regard it agreed with the reasoning of the high court. The SCA dismissed the application for leave to appeal as it found that there were no reasonable prospects of success.