



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
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Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Beukes v Smith (211/2018) [2019] ZASCA 48 (01 April 2019)

Today the Supreme Court of Appeal (SCA) handed down a unanimous judgment dismissing an appeal against the judgment of the Gauteng Division of the High Court, Pretoria. The issue in the matter was whether the respondent, Dr Samuel Smith, a surgeon who performed a laparoscopic hernia repair on the appellant, Mrs Rabia Beukes is liable for damages for alleged failure to provide Ms Beukes with sufficient information so as to enable her to give informed consent for that surgery. Mrs Beukes consulted with Dr Smith on 21 February 2012 at the Life Anncron Hospital, complaining of abdominal pain and distention. She had previously received treatment at the Victoria Hospital in Mahikeng where a diagnosis of two hernias and an ovarian cyst was made. She was then referred to Dr Smith for further treatment.

Dr Smith admitted the appellant on 21 February 2012 and, two days thereafter, on 23 February 2012 he proceeded to do a laparoscopic hernia repair on her. She was discharged from Anncron Hospital a few days thereafter. Complications occurred, resulting in Mrs Beukes being readmitted to the hospital. She was experiencing an acute abdominal pain. An emergency re-look surgery showed that her colon had been perforated. Dr Smith performed three more surgical procedures as further treatment of the perforation and attendant complications. Mrs Beukes remained in hospital for a month, until April 2012. After discharge she received further treatment from another surgeon until she healed.

In 2014 Mrs Beukes instituted proceedings for damages against Dr Smith and the Life Anncron Hospital, alleging that the laparoscopy had caused a further hernia at the site of the surgery; that her abdomen had been disfigured; and that she was experiencing chronic lower back pain. She

claimed that this resulted from the negligence of Dr Smith and the medical staff at the hospital when performing the laparoscopy. She also alleged that Dr Smith failed to inform her that the hernia could also be repaired with open surgery instead of a laparoscopy. Such information, she alleged would have assisted her in making a choice between the two operations that would have reduced the chances of her sustaining bowel injury during the hernia repair. According to Dr Smith, prior to the performing the laparoscopy, on 22 February 2012, he explained to Mrs Beukes the procedure in laparoscopy and laparotomy, together with the attendant material risks in both. His advice, however, was that laparoscopic surgery was preferable for her, mainly because of her weight. Mrs Beukes then consented to the laparoscopy orally on 22 February 2012, and on the following day, she signed a written confirmation of her oral consent.

In dismissing Mrs Beukes' claim, the high court found that Mrs Beukes was not a reliable witness and it accepted the doctor's version that he had explained the different surgical procedures to her and that informed consent was obtained.

The Supreme Court of Appeal, per Dambuzza J, held that there was no proper basis to overturn the factual findings by the trial court. The court found that the medical records supported the doctor's version rather than the version tendered by Mrs Beukes.

The court highlighted the responsibility on medical practitioners to provide sufficient information to patients on contemplated medical treatment and to warn patients of material risks or benefits attendant therein. However, in this case, the consent that Mrs Beukes gave for the laparoscopy is consistent with what a reasonable person would have opted for immediately prior to the surgery, having been provided with the information alluded to by Dr Smith. The evidence of the two specialist surgeons called as expert witnesses was that there had been no negligence in the performance of the laparoscopy and the post-operation management. And the consent given by Mrs Beukes was consistent with what a reasonable patient would have opted for, particularly given the level of trust that she had in Dr Smith. The court found that sufficient information had been provided to Mrs Beukes. The appeal was dismissed with costs.