

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Case No:- 185/14

In the matter between:

CHARLES OPPELT

Applicant

and

THE HEAD: HEALTH, DEPARTMENT OF HEALTH,

PROVINCIAL ADMINISTRATION: WESTERN CAPE

Respondent

**APPLICANT'S PRACTICE NOTE IN TERMS OF CONSTITUTIONAL COURT
PRACTICE DIRECTION, SECTION 5**

Name and number of the matter

1. As cited above.

Nature of the appeal

2. This is an application for leave appeal in respect of the whole judgment of his Lordship Judge Swain (Lewis, Bosielo, Tshiqi and Willis JJA concurring) of the Supreme Court of Appeal dated 25 September 2014. The Applicant appeals the judgment upholding the Respondent's appeal with costs.

The issues on appeal

3. The issues in this application for leave appeal are whether:

3.1. the Supreme Court of Appeal's evaluation of the medical/scientific opinion evidence in this case is contrary to established jurisprudence and has, as a consequence, led to a failure of justice.

3.2. the Supreme Court of Appeal erred:

3.2.1. By criticising the sample in Dr Newton's retrospective study of closed reduction treatment of patients at Conradie Hospital who suffered low velocity bilateral fracture dislocation spinal cord injuries between 1988 and 2001 as too small for any reliable inferences to be drawn therefrom, and thereby immersing itself impermissibly in an analysis of the statistical significance of and weight to be afforded to the data; and

3.2.2. By not applying the correct approach to opinion evidence based on scientific / medical data in our law.

3.3. This application involves constitutional principles, and in any event, are points of law of general public importance, and that it is in the interests of justice that leave to appeal be granted to this Court

Portion of the record necessary for the determination of the appeal

4. The following portions of the record are considered relevant:

4.1. Dr Newton's Evidence: Vol. 3 Pages 229 – 231, 289 – 290, 298 - 302 &
Vol. 4 Pages 345 - 349, 354, 356 – 359, 364, 367 - 369, 392 – 393, 402
- 406 and 413.

4.2. Prof. Noakes' Evidence: Vol. 6 Pages 567 – 568.

4.3. Dr Welsh's Evidence: Vol. 8 Pages 805, 810, 813 – 816, 818, 822 - 826,
833 - 837, 849 – 850.

4.4. Dr Rothmeyer's Evidence: Record Vol. 10 Pages 975 – 976 & 982.

4.5. Exhibits - Medical Bundle: Vol. 10 Pages 1007 – 1008.

4.6. Minute of Agreement on Ambulance Records: Vol. 13 Pages 1292 –
1293 & 1296.

4.7. Western Cape High Court Judgment: Vol. 14 Pages 1298 – 1350;

4.8. Supreme Court of Appeal Judgment: Vol. 15 Pages 1374 – 1385;

4.9. Applicant's Application for Leave to Appeal: Vol. 17 Pages 1587 – 1684
& Vol. 18 Pages 1685 – 1733.

Estimate of the duration of argument

5. Half a day.

W DUMINY SC

J A VAN DER MERWE