



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### **Dirk Links v Member of the Executive Council for the Department of Health, Northern Cape Province**

**CCT 29/15**

**Date of hearing: 25 August 2015**

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### **MEDIA SUMMARY**

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

On Tuesday 25 August 2015 at 10h00 the Constitutional Court will hear an application for leave to appeal against a decision of the Full Bench of the Northern Cape High Court which held that the claim of Mr Dirk Links, the applicant, against the Member of the Executive Council for Health in the Northern Cape Province (MEC), the respondent, had prescribed. Mr Links' claim was based on alleged medical negligence on the part of the employees at Kimberley Hospital.

On 26 June 2006 Mr Links dislocated his left thumb and was attended to at the Kimberley Hospital, where a Plaster of Paris cast was placed on his left hand and forearm. He returned to the hospital after four days, complaining of severe pain and discomfort in his left arm and hand. He was given pain medication and asked to return for observation five days later. He returned on 4 July 2006 as he was still experiencing unbearable pain from his swollen left hand and forearm. The wound was X-rayed and Mr Links was diagnosed with sepsis of the left thumb.

On 5 July 2006, Mr Links underwent an operation in which his left thumb was amputated. He alleges that he was informed neither of the decision to amputate nor of the actual amputation. He stayed in hospital until the end of August 2006. During that time he underwent two further operations. Mr Links claims that he noticed that his left forearm had shrivelled up and lost all function towards the end of September 2006.

In November 2006 Mr Links approached private attorneys and shortly thereafter he instructed the Legal Aid Board to institute action against the Department of Health for

damages arising out of the amputation of his thumb. It was only on 12 May 2009, however, that Mr Links served a notice on the MEC signalling his intention to institute proceedings. Summons was served on 6 August 2009. Mr Links argued that he suffered loss as a result of the MEC's employees negligently treating his injured thumb. The respondent raised two special pleas of prescription: one in terms of the Prescription Act 68 of 1969 and the other in terms of the Institution of Legal Proceedings and Certain Organs of State Act 40 of 2002, as Mr Links had failed to serve the notice within the prescribed period of six months. The first special plea was that prescription had started running from 26 June 2006, when Mr Links was first treated, and his claim therefore prescribed on 26 June 2009.

The issue before the High Court was whether Mr Links' claim, taken as a debt due by the MEC, had prescribed. This required determining when the debt became due. The High Court held that the debt became due on 26 June 2006 and thus Mr Links should have instituted legal proceedings within three years of that date. It held that since he only did so after the expiration of that period, his claim had prescribed. An appeal to a Full Bench of the High Court was dismissed for similar reasons.

Before this Court Mr Links contends that he did not know the extent of his injuries until 6 August 2006 and thus prescription began to run some time after that date. He further argues that the common law of prescription should be developed so as to give the courts the power to grant condonation in appropriate cases. The MEC contends that on 26 June 2006 Mr Links knew the minimum facts required for him to institute legal proceedings and his failure to do so within three years resulted in his claim becoming prescribed.