

PARTICULARS OF CLAIM

1.

The first plaintiff is Crystal Alexis Osler, a minor school girl born on 27 January 1986, residing at 32 Margaret Mason Avenue, Durban North, KwaZulu-Natal.

2.

The second plaintiff is Henry William Osler NO, an adult male businessman residing at 32 Margaret Mason Avenue, Durban North, KwaZulu-Natal.

3.

The third plaintiff is Rosemary Anne Osler, an adult female housewife born on the 31st of January 1948 and residing at 32 Margaret Mason Avenue, Durban North, KwaZulu-Natal.

4.

The fourth plaintiff is Doctors for Life International, a company duly incorporated in terms of section 21 of the Company's Act, of 1973, with its principle place of business and registered address at 8 Msenga Road, Kloof, KwaZulu-Natal.

5.

The first defendant is the Rose Clinic, a clinic specialising in the termination of pregnancies and related matters, with its principle place of business within the

jurisdiction of this Honourable Court, at 40 Commercial Road, Durban, KwaZulu-Natal. The full and further particulars of the first defendant are to the plaintiffs unknown.

6.

The second defendant is Vikash Nundlall, an adult male medical practitioner, the proprietor of the first defendant, alternatively, at all material times the doctor in charge of the first defendant, at 40 Commercial Road, Durban, KwaZulu-Natal. His full and further particulars are to the plaintiff unknown.

7,

The third defendant is Sister Pillay, an adult female Nursing Sister and midwife, working at the first defendant, at 40 Commercial Road, Durban, KwaZulu-Natal. Her full and further particulars are to the plaintiffs unknown.

8.

The fourth defendant is Caley Maddams, an adult female Principal, of Danville Park Girls High School at 21 Middlebrook Avenue, Durban North, KwaZulu-Natal. Her full and further particulars are to the plaintiffs unknown.

9.

The fifth defendant is Lynne Campbell, an adult female, a guidance counsellor/teacher at Danville Park Girls High School of 21 Middlebrook Avenue, Durban North, KwaZulu-Natal.

10.

The sixth defendant is the Governing Body of Danville Park Girls' High School of 21 Middlebrook Avenue, Durban North, KwaZulu-Natal.

11.

The seventh defendant is the MEC, Province of KwaZulu-Natal, Department of Education and Culture, care of the State Attorney, Sangro House, Smith Street, Durban.

12.

For the purposes of these proceedings, the first plaintiff is duly assisted by the second plaintiff who also additionally acts as the duly appointed executor of the estate of Storme Osler, a boy born on 1 March 2004 to the first plaintiff and who died four hours and forty minutes after birth on 1 March 2004.

13.

At all material times, the fourth, fifth, sixth and seventh defendants acted in *loco parentis* of the first plaintiff.

14.

At all material times the fourth and fifth defendants operated within the course and scope of their employment with the sixth and seventh defendant.

15.

At all material times, the second and third defendants acted in their private capacities as professionals in their own right and within the course and scope of their employment with the first defendant, alternatively, the third defendant acted in the course and scope of her employment with the second defendant.

16.

THE FACTS

- 16.1 On or about 11 February 2003 and at Danville Park Girls High School. The first plaintiff informed the fifth defendant that she was pregnant.
- 16.2 The fifth defendant thereafter duly informed the fourth defendant, but neither the fourth or fifth defendant informed the second an/or third plaintiffs.
- 16.3 The fifth defendant subsequently contacted the third defendant and arranged for and offered to pay for the first plaintiff to undergo an abortion at the first defendant's clinic in Durban, on or about Saturday the 13th of February 2004.
- 16.4 The agreed price for the said termination of pregnancy was R600.00.
- 16.5 The fourth and fifth defendants in aiding and abetting the said abortion knew, alternatively should have known that the first plaintiff came from a family that embraced a belief system that is opposed to the termination of a pregnancy, on religious moral and ethical grounds.

- 16.6 The fourth and fifth defendants encouraged the first plaintiff to seek a termination of pregnancy when they knew or should have known that she was twenty-eight weeks pregnant, alternatively, in excess of twenty weeks pregnant, and that an abortion was therefore unlawful.
- 16.7 The fourth and fifth defendants removed the first plaintiff from the school premises during school hours for an activity other than an official school activity, without first obtaining the implied or expressed consent of the second and third plaintiff.
- 16.8 The fourth and fifth defendant breached directive number 116 of 2000 of the seventh defendant.
- 16.9 The fourth and fifth defendant unduly pressured and placed the first plaintiff under duress, to pursue the termination of her pregnancy, thereby placing the interests of Danville Park High School above those of the first plaintiff.
- 16.9 The fifth defendant informed the first plaintiff that after she had obtained the drug Misoprostil from the first defendant and had not yet taken it, that the fifth defendant would only give further support to the first defendant if she took the pills.
- 16.11 On or about 28 February 2004 and at the premises of the first defendant, the first plaintiff paid the first defendant the sum of R600.00 in order to perform a termination of pregnancy and was given eight Misoprostil tablets by the third defendant, despite the fact that the third defendant knew, alternatively should have known, that the first plaintiff's pregnancy exceeded twenty weeks.

16.12 None of the defendants provided any counselling to the first plaintiff, alternatively did not inform the first plaintiff of the possible consequences of terminating her pregnancy as they were obliged to do.

17.

Acting as an aforesaid:

- 17.1 All the defendants acted unlawfully;
- 17.2 All the defendants are in breach of a duty of care that they owed the first plaintiff;
- 17.3 The first, second and third defendants acted in contravention of sections 2, 4, 5 (1) and (3), and 6 of the Choice of Termination of Pregnancy Act No. 92 of 1996 and Regulations 6,7 and 9 of the Act.
- 17.4 The fourth and fifth defendants acted in contravention of sections 2 and 5 (1) of the Choice on Termination of Pregnancy Act no. 92 of 1996;
- 17.5 The fourth and fifth defendants acted in contravention of directive no. 116 of 2000, as issued by the seventh defendant.

18.

- 1. The fourth plaintiff acts for and on behalf of its members and in terms of its Articles of Association and is concerned with protecting the sanctity of life from conception. It therefore has an interest in this matter.
- 2. The fourth plaintiff is duly authorised to launch this action.

3. The fourth plaintiff seeks that the unlawful activity of the first, second and third defendants' as set out in these particulars, is interdicted and restrained and that they cease offering abortions to the public until they have complied with the law.
4. The fourth plaintiff seeks a declaration that Storme Osler acquired the right to life in terms of Act108 of 1996 when he was born alive.

19.

As a consequence of the defendants' unlawful actions described above, the first plaintiff:

1. Suffered severe pain at the outset.
2. Suffered and continues to suffer trauma.
3. Suffered and continues to suffer from a post traumatic stress disorder.
4. Suffered and continues to suffer from depression.
5. Suffered and continues to suffer from anxiety and a sense of impending doom.
6. Suffered and continues to suffer from insomnia.
7. Has suffered an unnatural loss of weight and continues to so suffer.
8. Suffers from lack of concentration.
9. Suffered and continues to suffer from suicidal thoughts.
10. Suffered and continues to suffer from an obsessive compulsive disorder.
11. Has not been able to return to school in order to finalise her matriculation.

12. Is in continuous need of professional counselling.
13. Suffers the shame and stigma of having gone through a termination of pregnancy and the killing of her son.
14. Suffers a reduced chance of a future normal pregnancy.
15. Suffers and continues to suffer from feelings of guilt and shame.
16. Suffered from shock.
17. Had to undergo hospitalisation.
18. Suffered the loss of her son, Storm Osler.
19. Suffered and continues to suffer a loss of dignity.

20.

As a consequence of the defendants' unlawful actions as set out above, the third plaintiff:

1. Suffered shock and trauma.
2. Suffered and continues to suffer from guilt and shame.
3. Was deprived of a grandson.
4. Suffered and continues to suffer from a post traumatic stress disorder.

21.

As a result of the unlawful actions of the defendants as set out above the deceased estate of Storm Osler, alternatively the second plaintiff had to and in fact did pay funeral expenses reasonably incurred by the burial of Storm Osler in the sum of **R2 485.00**.

22.

As a result of the unlawful actions of the defendants as described above, the first plaintiff suffered damages in the sum of **R253 610.00** calculated as follows:

1. PAST MEDICAL EXPENSES

(a)	First defendants fee for the abortion	R600.00
(b)	Three consultations with a General Practitioner at R120.00 per consultation	R360.00
(c)	One consultation with a specialist Psychiatrist	R650.00
(d)	Addington Hospital expenses	R2000.00

TOTAL **R3610.00**

2. FUTURE MEDICAL EXPENSES:

Five consultations with a Specialist Psychiatrist at R650.00 per consultation	<u>R3250.00</u>
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3. GENERAL DAMAGES

General damages as set out in paragraph 19 above
in the sum of **R250 000.00.**

23.

As a result of the unlawful actions of the defendants, as described in these particulars, the third plaintiff suffered general damages on the grounds and for the reasons set out in paragraph 20 above in the sum of **R100 000.00**.

24.

Despite demand by the plaintiff's the defendants have failed to pay the amounts claimed, which amounts remain due owing and payable.

WHEREFORE the first plaintiff claims against the defendants jointly and severally, the one paying the other to be absolved:

1. R253 610.00
2. Costs
3. Interest according to law
4. Further and alternative relief.

WHEREFORE the second plaintiff claims against the defendants jointly and severally, the one paying the other to be absolved:

1. R2485.00
2. Costs
3. Interest according to law
4. Further and or alternative relief

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