Can the State be held liable for a 5-year-old child injured whilst playing in a jungle gym at pre-school?

BACKGROUND

On 12 August 2008, in a pre-school named Bredasdorp, at Babbel and Krabbel Pre-Primary School, a then 5-year-old minor child, whom the Court describes as JE (to prevent her identity), was playing on a jungle gym (wooden swing structure) during the schools' break time. The top structure of the jungle gym broke down and collapsed on top of the minor child. As a result of this, the minor child suffered a brain injury that resulted in her living with cerebral palsy for the duration of her lifetime. Being the minor child's father, the Applicant sued the Minister for damages arising from the said incident on behalf of the minor child.

LEGAL QUESTIONS

The central question for determination was whether the Minister owed a legal duty to children in centres for care to take reasonable steps to ensure the safety of equipment.

Another pertinent question before the Court was whether the Minister was liable for damages suffered by the minor child.

CONSTITUTIONAL COURT

The Constitutional Court held that the Minister was not primarily tasked with maintaining and operating children's homes, places of care, and places of safety and shelters – his role was rather to regulate these facilities. It held that the legislative framework that the Applicant seeks to rely on did not place a legal obligation on the Minister and the Department to ensure the safety of the playground equipment for the safety of children at children's centres. The Court noted that the alleged duty, if it were to be imposed on the Minister, would create an unrealistic and impractical obligation on the Minister to ensure the safety of

children in thousands of places of care, children’s homes, and places across the country, which in essence is impractical to implement.

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