

Best interests above belief: Constitutional guidance for life-saving medical decisions involving children

Recent jurisprudence from the Western Cape High Court has provided important clarification on the legal and ethical obligations of healthcare practitioners when parental consent for life-saving treatment is withheld on religious or cultural grounds. The most recent decision in *Red Cross War Memorial Children's Hospital v MD and Another*,^[1] handed down in March 2026, offers authoritative guidance for clinicians, hospital administrators and ethics committees navigating disputes at the intersection of paediatric care, parental authority and constitutional rights.

At the centre of this case was a 6-year-old child admitted to hospital in a critical condition following meningococcal septicaemia. Despite intensive treatment, the child developed irreversible ischaemia and gangrene affecting both feet. The treating medical team concluded that urgent amputations were required to prevent death. The child's parents refused consent, citing religious and traditional beliefs, proposing alternative traditional healing methods. Faced with imminent risk to life, the hospital approached the High Court for authorisation to proceed with surgery under section 129 of the Children's Act 38 of 2005.^[2]

The legal reasoning adopted by the court rests squarely on section 28(2) of the South African Constitution,^[3] which provides that a child's best interests are of paramount importance in every matter concerning the child. The judgment underscores that this principle is not discretionary or symbolic, but decisive. Where parental decisions expose a child to serious harm or death, the state and, by extension, the courts, have both the authority and the obligation to intervene.

The Children's Act provides practical effect to this constitutional imperative. S129 establishes a framework for consent to medical treatment for children, recognising that while parents or guardians ordinarily consent on behalf of minors, this authority is not absolute. Where consent is unreasonably withheld, s129(6) permits hospital superintendents to authorise treatment, and s129(9) and (10) empower the High Court, as upper guardian of all minor children, to grant consent where necessary in the child's best interests. The court's reliance on these provisions confirms their centrality in resolving urgent clinical disputes.

Of particular significance is the court's treatment of religious freedom, and in this regard, it was found that the hospital took repeated steps to accommodate the parents' beliefs, including engagement with traditional healers and a senior family representative, permitting multiple in-hospital assessments. At least three such opportunities were provided. However, when it was asserted that traditional healing could only take place outside the hospital setting, the orthopaedic team assessed the child's fitness to travel and determined that transferring the child would pose an unacceptable clinical risk and was therefore unsafe (par 67 of the judgment).

While acknowledging the sincerity of the parents' beliefs and the constitutional protection afforded to religion and culture, the judgment is clear that these rights are subject to limitation under s36 of the Constitution. Where the exercise of religious belief threatens a child's right to life, dignity and access to healthcare, the limitation is justified. The court emphasised that constitutional tolerance does not extend to permitting avoidable death or serious harm to children. Furthermore, s129(10) of the Children's Act is clear in that no parent may withhold consent by reason only of religious or other beliefs,

unless that parent or guardian can show that there is a medically accepted alternative choice to the medical treatment or surgical operation concerned (author's emphasis).

From a clinical perspective, the judgment strongly affirms the role of expert medical evidence. The court placed substantial weight on uncontested testimony from the treating specialists, who demonstrated that amputation was medically necessary, time-sensitive and supported by established standards of care. The absence of any medically accepted alternative was central to the court's conclusion that parental refusal was unreasonable. For practitioners, this reinforces the importance of careful documentation, consensus among treating teams and evidence-based justification when consent disputes arise.

The decision also clarifies that parental authority must be understood primarily in terms of parental responsibility, rather than parental entitlement. Parents should act as fiduciaries whose decisions must advance the child's independent constitutional rights. This reasoning is consistent with earlier SA case law,^[4,5] but is articulated in the judgment with particular clarity and urgency in the medical context.

Importantly, the judgment provides reassurance to healthcare professionals who may be uncertain about legal repercussions when acting in the face of parental refusal. Where clinicians act in good faith, rely on sound medical evidence and pursue intervention solely to protect the child's welfare, the law offers robust support. Approaching the court is not a failure of engagement with families, but an ethically and legally appropriate step where delay would compromise a child's life.

For hospitals and healthcare institutions, the case highlights the need for clear internal protocols governing consent disputes, early involvement of medicolegal services and access to rapid legal remedies in urgent cases. Ethics committees play a crucial role in supporting clinicians, but this judgment makes plain that ethical deliberation must ultimately align with constitutional and statutory obligations to place the child's best interests first.

In reaffirming the importance of the child's best interests, *Red Cross War Memorial Children's Hospital v MD* makes an important contribution to SA medical law. It offers principled, practical guidance for clinicians confronted with some of the most ethically challenging decisions in healthcare. Above all, it reinforces a core constitutional message: in matters of life-saving medical care, the best interests of the child always come first.

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1. *Red Cross War Memorial Children's Hospital v M.D and Another (Reasons)*. (2026/049305) [2026] ZAWCHC 150 (27 March 2026).
2. South Africa. Children's Act No. 38 of 2005.
3. Constitution of the Republic of South Africa, 1996.
4. *Hay v B and Others* 2003 (3) SA 492 (WLD).
5. *Life Health Care Group (Pty) Ltd v JMS (As Parent and Guardian of the Infant Child MT)* [2014] ZAGPJHC 299.

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