

SOUTH AFRICA / JUDGMENT

Abrahams and Others v Health Professions Council of South Africa and Others (A216/2024) [2025] ZAGPPHC 666 (1 July 2025) [2025] ZAGPPHC 666

COURT

North Gauteng High Court, Pretoria

BEFORE

Mudau, Davis

CASE / FILE NUMBER

A216/2024

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

Case

Number: A216/2024

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHERS JUDGES: NO

(3)

REVISED: YES

DATE

1 JULY 2025

SIGNATURE

In

the matter between:

TARRYN
ABRAHAMS
First Appellant
AJAY
BEERBAL
Second Appellant
NICOLETTE
ENGELBRECHT
Third Appellant
THULISILE
MOLOI
Fourth Appellant
OKUHLE
NXUSANI
Fifth Appellant
ANTHONY
PIERDICA
Sixth Appellant
and
HEALTH
PROFESSIONS
COUNCIL
OF SOUTH AFRICA
First Respondent
THE
CHAIRPERSON OF THE
AD
HOC APPEALCOMMITTEE OF
THE
HEALTH PROFESSIONS
COUNCIL
OF SOUTH AFRICA: ADV JN MOGOTSI
Second Respondent

Summary:

Section 20 of the Health Professions Act 56 of 1974
— appeal against the
decision of the HPCSA Disciplinary Appeals Committee —
rule 22 of the Ethical Rules of Conduct for
Practitioners Registered Under the Health Professions Act read
together with the Scope
Regulations published in terms of section 33
of the Health Professions Act — the
appellants neither transgressed the HPCSA's Business Policy nor did
they allow themselves to be exploited — conviction
of the appellants is unsustainable — The
decision of the Disciplinary Appeals Committee set aside

JUDGMENT

MUDAU, ADJP:

Introduction

- [1] This is an appeal pursuant to section 20 of the Health Professions Act 56 of 1974 (the Health Professions Act) against the decision of a Disciplinary Appeals Committee of the first respondent, the Health Professions Council of South Africa (HPCSA). Section 20 of the Health Professions Act allows any person who is aggrieved by any decision of the HPCSA, the Professional Board or a Disciplinary Appeals Committee, to appeal to the appropriate Division of the High Court against such decision.
- [2] The Disciplinary Appeals Committee had concluded that the appellants were unfairly treated by their employer, Netcare Hospitals Proprietary Limited (Netcare), for not performing their clinical duties for three months in an instance where there was imminent monetary benefit in favour of Netcare, which conduct allegedly fell within the provisions of rule 22 of the Ethical Rules of Conduct for Practitioners Registered Under the Health Professions Act of South Africa, 1974 (the Ethical Rules)[1]. The findings of unethical conduct by the Professional Conduct Committee were confirmed on appeal but the sanctions imposed were reduced.
- [3] The appeal is ultimately against the orders handed down by the Disciplinary Appeals Committee. In the event that the findings of guilty are confirmed, the appellants contend that the Disciplinary Appeals Committee's substituted

sanctions were unreasonable, and that a caution or reprimand would have been appropriate. The appeal is also aimed at the decision of the Disciplinary Appeals Committee in failing to set aside the decisions by the Professional

Conduct Committee in refusing the recusal application. In argument before us, the recusal argument was not seriously pursued. In any event, in case the appellants are successful on the merits, the aspect of recusal is rendered academic. Furthermore, whether the Disciplinary Appeals Committee dealt with the recusal applications or not is of no consequence, as they never had any jurisdiction to do so. An appeal against their decision relating to the recusal is of no avail[2].

Background facts

- [4] The background facts are largely common cause and therefore undisputed. At all relevant times the appellants were registered with the HPCSA as medical technologists. They were previously employed by Lancet Laboratories (Lancet). The appellants took up employment with Netcare after resigning from

Lancet. This was after Netcare had advertised positions for regional laboratory managers and medical technologists. Employment agreements were entered into between Netcare and the appellants. The sixth appellant, Mr. Pierdica, commenced employment on 1 April 2020, while others started on 1 October 2020.

[5] Dr. John Douglas, Chairperson of the National Pathology Group (NPG), filed a complaint and requested an investigation through NPG's attorneys on 16 September 2020. The NPG is made up of the three big private laboratories (Lancet, Ampath and Pathcare) in the country. The NPG's complaint claimed that registered medical laboratory personnel took employment with Netcare and continued working there despite Netcare not being a registered entity per the Health Professions Act. It was alleged that neither Netcare nor the personnel received permission to engage in such an employment relationship, violating accepted medical practice standards in South Africa. The nub of the complaint alleged contraventions of, inter alia; HPCSA's policy on business practices dated 26 October 2016; facilitating corporate ownership in private practice; permitting a fee-sharing arrangement with a corporate not registered under the Health Professions Act; and permitting a corporate entity to violate section 39(2) of the Health Professions Act.

[6] The appellants subsequently had their employment contracts transferred to a newly created practice, Dr. Eshile Nomlomo Inc. These employment transfer agreements were signed between Netcare, Dr. Eshile Nomlomo Inc., and the appellants during February 2021 (mostly on 5 February 2021), but same became effective retrospectively, with the practitioners being employed by Dr. Eshile Nomlomo Inc. from 1 February 2021.

[7] The nature of the complaints as described above were narrowed down by the HPCSA. Consequently, the following charge was levelled against the appellants:

“ THAT you are guilty of unprofessional conduct or conduct which, when regard is had to your profession, is unprofessional, in that during the period 2019 and 2020, as a registered medical technologist with the HPCSA in terms of section 17 of the Health Professions Act, 1974, you acted in a manner that is not in accordance with the norms and standards of your profession in that you engaged in an undesirable business practice or model by entering into a contract with a non-approved entity and in doing so you allowed yourself to be exploited in contravention of Ethical Rule 22 of the conduct of practitioners registered under the Health Professions Act, 1974 which prevents a practitioner from permitting herself to be exploited in any manner”.

[8] The core of the defence raised by appellants in their response was that they neither performed nor were asked to perform any clinical or professional work during the short period of their employment with Netcare. Therefore, they believed they did not contravene any policy on business practices. Netcare also addressed a letter on 9 February 2021, suggesting that the idea was to assist a black female-owned pathology entity as part of an enterprise strategy. Thus, the appellants were only employed to do some preparatory work.

- [9] After hearing evidence on 15 December 2022, the Professional Conduct Committee unanimously made the finding that the appellants were guilty as charged. As a sanction, the Professional Conduct Committee imposed a fine of R 20 000.00 to be paid over a period of four months in instalments of R5 000.00 per month by each appellant. The appellants thereafter appealed the finding of the Professional Conduct Committee to an Ad Hoc Appeal Committee appointed by the HPCSA. On 8 July 2024 the Appeal Committee confirmed the Professional Conduct Committee's decision to find the appellants guilty of unethical conduct. The Ad Hoc Appeal Committee, however upheld the appeal against sentence. The penalties were reduced to a fine of R10 000.00 for each of the appellants. These findings are the subject of the current appeal.

Issues on appeal

- [10] The appellants dispute that the employment contracts with a non-approved entity was precluded by the Policy Document. The appellants further dispute that their acceptance and the entering into the employment contracts with Netcare resulted in the appellants allowing themselves to be exploited within the meaning of "exploited" as alleged. Even though the appellants admitted that they were employed by Netcare, they contend that the fact that they did not do any work within the scope of the profession of medical technology did not as a result transgress paragraph 2.4 of the Policy Document.
- [11] They maintain that whilst they were employed with Netcare, they did not do any activities within the scope of their professional practice. In this regard, the appellants rely on the exception (the rider) in the specific portion of the paragraph in the Policy Document which reads as follows:
- "... save that any employment which falls beyond the Professional Practice is not required to lodge an application with the HPCSA".*
- [12] In this regard they were supported by a letter from Netcare, which apparently was not challenged, to the effect that the appellants performed nothing more than administrative work, which was preparatory work under the banner of Enterprise Development in the setting up of a pathology practice.
- [13] In this regard, section 2 of the Scope Regulations published in terms of section 33 of the Health Professions Act, the scope of the profession of medical technology is provided for as follows:

"2(1) Subject to the provisions of sub regulation (2), all acts performed during the analysis of human tissue, body fluid or excretion, where such analysis is carried out to enable a medical practitioner or did this to make a diagnosis or is acute medical or dental treatment from the results of such analysis, shall for the purposes of the act be deemed to be acts pertaining to the profession of medical technology.

- (2) The following acts, carried out during an analysis referred to in sub regulation (1), sample for the purposes of the act also be deemed to be acts pertaining to the profession of medical technology:
- (a) interpretation, consultation or advice regarding information obtained as a result of the acts referred to in sub regulation (1);
 - (b) quality control with regard to the acts referred to in sub regulation (1);
 - (c) teaching, training and research with regard to the acts referred to in sub regulation (1).
- (3) The following acts, carried out during an analysis referred to in sub regulation (1) shall for the purposes of the act be deemed not to be acts pertaining to the provision of medical technology:
- (a) the labelling, primary tube centrifuging at transporting of specimens or the transcribing of results already manually or mechanically recorded;
 - (b) the preparation of equipment, culture media and reagents;
 - (c) the staining of slides for microscopic examination.”

[14] In terms of the Policy Document:

“2.4 Employment of Practitioners: Generally, employment of practitioners by non-registered persons is not allowed, except for recognized

agencies like the Public Service, Universities for training/research, Mining companies/NPOs/NGOs with approval, and other registered

practitioners. Any other agent, institution, person may lodge an application with the HPCSA for the purpose of employment of a

practitioner registered with the HPCSA, save that any other employment which falls beyond the professional practice is not required to lodge an application with the HPCSA.”

[15] The HPCSA's case was that the appellants allowed themselves to be exploited by not practising their profession and by doing nothing

whilst in the employ of Netcare. However, the appellants reject the contention advanced by the respondent that, by entering into such employment contract as they did, the appellants allowed themselves to be exploited by Netcare, to their own detriment. Exploitation means: "the use of someone to your advantage (for one's own ends)"[3].

Analysis

- [16] In my view, the HPCSA's reasoning that the appellants: "were unfairly treated by Netcare which employed them for not performing their clinical duties for three months in an instance where there was imminent monetary benefit in favour of Netcare" does not accord with the ordinary meaning of "exploitation" regard being had to Ethical Rule 22. Neither is this finding supported by the common cause facts. A conclusion that any exploitation had occurred in this matter has no factual basis.
- [17] It is trite that courts must properly contextualise statutory provisions when ascribing meaning to the words used therein. Words should generally be given their ordinary grammatical meaning; our superior courts have long recognised that a contextual and purposive approach must be applied to statutory interpretation[4]. Accordingly, courts are obliged to have due regard to the context in which the words appear, even where "the words to be construed are clear and unambiguous".[5]
- [17] Against the above background, rule 22 of the Ethical Rules needs to be read together with the Scope Regulations published in terms of section 33 of the Health Professions Act referred in paragraph [12] above. Quite clearly, the mischief the Health Professions Act seeks to address is the conduct of any pathology services whilst in the employ of any unregistered entity.
- [18] The appellants neither transgressed the HPCSA's Business Policy nor did they allow themselves to be exploited and accordingly were not guilty of the of charges levelled against them. It follows accordingly that the conviction of the appellants is unsustainable and falls to be set aside with costs following the result.

Order

[19] In the results, I make the following order:

1. The appeal succeeds with costs.
2. The order of the Disciplinary Appeals Committee is set aside and replaced with the following order:

"The appellants are acquitted of all the charges".

MUDAU ADJP

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

I agree

DAVIS ADJP

GAUTENG DIVISION, PRETORIA

Date of Hearing: 22 April 2025

Date of Judgment: 1 July 2025

APPEARANCES:

For the Appellants: Adv A. Govender instructed by Werksmans Inc. For the Respondents: Adv T. Strydom SC instructed by Gildenhuys Malatji Inc.

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties /their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines and to Saflii. The date for hand-down is deemed to be the 1st July 2025.

- [1] Rule 22 of the Ethical Rules provides that a practitioner shall not permit himself or herself to be exploited in any manner.
- [2] See *Basson v Hugo* 2018(3) SA 46 (SCA).
- [3] Concise Oxford Dictionary Eighth Ed page 412.
- [4] *Road Traffic Management Corporation v Waymark (Pty) Limited* 2019 (5) SA 29 (CC) at para 29 citing *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) at para 18.
- [5] *Independent Institute of Education (Pty) Limited v Kwazulu-Natal Law Society and Others* 2020 (4) BCLR 495 (CC) at para 41.

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