

SOUTH AFRICA / JUDGMENT

IPA Foundation (NPC) v South African Pharmacy Council (Leave to Appeal) (7452/2022) [2023] ZAGPPHC 1154 (18 September 2023) [2023] ZAGPPHC 1154

COURT

North Gauteng High Court, Pretoria

BEFORE

E van der Schyff

CASE / FILE NUMBER

7452/2022

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF

SOUTH AFRICA

GAUTENG DIVISION,

PRETORIA

CASE NO: 7452/2022

(1)

REPORTABLE: YES/NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED: NO

Date: 18

September 2023

E van der Schyff

In

the matter between:

THE
IPA FOUNDATION (NPC)
APPLICANT
and
SOUTH
AFRICAN PHARMACY COUNCIL
RESPONDENT

JUDGMENT

Van der Schyff J

Introduction

- [1] The Superior Courts Act 10 of 2013, provides for leave to appeal to be given only in two circumstances.[1] The first is where the judge concerned is of the opinion that an appeal would have a reasonable prospect of success. The second is that there are some compelling reasons why the appeal should be heard.
- [2] I am not of the view that, on the grounds of appeal raised by the applicant, the appeal would have a reasonable prospect of success. Comprehensive reasons were provided for the order granted in the written judgment handed down, and I do not propose to rehash those.
- [3] The subject matter of the review application, is, however, of great importance. Not only as far as it is necessary to obtain finality on the issue of broadening access to PEP, PREP, and first-line ART and TPT, but as far as it relates to the South African Pharmacy Council's authority to utilise 'pharmacist-initiated-treatment' and 'primary drug care therapy' as a vehicle to enable adequately trained pharmacists to provide specialised services, like PIMART, previously rendered by medical practitioners. It essentially boils down to the question of whether the administrator who took the decision was authorised to do so by the empowering provision.
- [4] The issue that moved me to grant leave to appeal is an issue of law and involves the interpretation of different statutes. It is thus appropriate to grant leave to appeal to the Supreme Court of Appeal.

ORDER

In the result, the following order is granted:

1. Leave to appeal is granted to the Supreme Court of Appeal.
2. Costs are costs in the appeal.

Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email.

For the applicant: Adv. J.C. Uys SC Instructed by: BRAND POTGIETER INCORPORATED For the respondent: Adv. B. Leech SC With: Adv. S.L. Mohapi Instructed by: WERKMANS ATTORNEYS
Date of the hearing: 13 September 2023 Date of judgment: 18 September 2023

[1] S 17.

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