

SOUTH AFRICA / JUDGMENT

Kommal v Health Professions Council of South Africa (60785/2020) [2024] ZAGPPHC 175 (26 February 2024) [2024] ZAGPPHC 175

COURT

North Gauteng High Court, Pretoria

BEFORE

Mbongwe

CASE / FILE NUMBER

60785/2020

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NO: 60785/2020

REPORTABLE:

OF

INTEREST TO OTHER
JUDGES:REVISED.
In

the matter between:

TERENCE
OMDUTT KOMMAL
Applicant
And
HEALTH
PROFESSIONS COUNCIL OF SOUTH AFRICA
Respondent

JUDGMENT

MBONGWE J:

INTRODUCTION

- [1] This is an application in terms of Rule 30A following an application for the review and setting aside of both the decision of the respondent's Preliminary Committee to bring charges of professional misconduct against the applicant as well as the charges themselves as set out in the charge sheet. The application is opposed by the respondent.

THE PARTIES

- [2] The applicant is an adult male medical practitioner who is facing charges of professional misconduct constituting transgressions of the rules of the respondent. The charges have been brought in terms of the provisions of Regulation 8 of the Regulations Relating to the Conduct Inquiries into Alleged Unprofessional Conduct under the Health Professions Council Act 1974 published under Government Notice R102 in Government Gazette 31859 of 6 February 2009 (the 'Inquiry Regulations').
- [3] The respondent is the Health Professions Council of South Africa, a statutory body created in terms of the Health Professions Act 56 of 1974 to regulate and exercise control over the education, training, registration and practicing of health professions registered under the Health Professions Act, 56 of 1974 as amended.

BACKGROUND INFORMATION

- [4] Following the receipt of a complaint of misconduct committed by the applicant on 17 and 18 February 2020, the respondent instituted disciplinary charges against the applicant in terms of the aforementioned regulations at a scheduled meeting held on 09 June 2020. At this meeting the applicant raised points in limine regarding the constitution of the Professional Conduct Committee and also a concern that there were documents still outstanding from the complainant. The applicant further sought to challenge the Professional Conduct Committee's jurisdiction to adjudicate on the matter as the conduct forming the subject of the complaint, the applicant contended, did not involve the applicant's professional activities.
- [5] The committee upheld the points raised by the applicant, particularly in relation to the constitution of the committee and adjourned the proceedings for the issues to be attended to before the meeting could reconvene for the hearing.
- [6] Unexpectedly just over five months later, on 18 November 2020, the applicant filed a review application seeking that the decision of the respondent's Preliminary Committee to charge him be reviewed and set aside together with the charges brought against him.

- [7] The records of the proceedings of the respondent's Preliminary Committee which considers complaints and decide on the appropriate charges, if needs be, were requested by the applicant in terms of rule 53(1) and duly filed by the respondent in two tranches on 20 April 2021 and 15 September 2021. This notwithstanding, the applicant has to date not added, amended or supplemented his founding

affidavit as envisioned in rule 53(4).

THE CHARGES

- [8] For a better understanding of the lis between the parties, it is necessary to state the charges brought against the applicant and resulting in the decision sought to be reviewed and set aside. In a nutshell, the applicant has been charged for improperly causing his complainant patient(s) to sign and give powers of attorney in favour of a third party in relation to the complainants' claims against the Road Accident Fund. Copies of the relevant Powers of Attorney have been annexed to the charge sheets and the relevant witnesses lined up to testify.

APPLICANT'S RULE 30A

- [9] The applicant launched an interlocutory application in terms of rule 30A "for an order to obtain the full record of the proceedings in the current review proceedings." [1] It is important to have regard of the contents of para 7, above, in this regard and the respondent's averment that it has provided the applicant with all the records in its possession in its response to the applicant's rule 53(1) notice.
- [10] The respondent has since filed an answering affidavit to the applicant's founding affidavit and has had to set the matter down in light of the applicant's apparent failure to file a replying affidavit and to set the matter down.

ANALYSIS

AND THE LAW

- [11] It is important to be alive to the vision underpinning the review of an impugned decision. In the first instance the decision concerned must be harmful and purportedly bring finality to the matter concerned and, therefore, unjust and in conflict with the provisions of PAJA. None of these basic core considerations had emerged in the disciplinary procedure that was about to commence against the

applicant. A review can be sought only where the process in respect of which it is sought has been completed. [2]

- [12] The decision concerned and challenged herein can neither be said to be just or unjust. At the stage it got challenged in these proceedings, it could at best be described as a facilitation of a process to resolve a dispute or complaint, on the one hand, and to discipline the applicant, if found guilty, to protect the integrity of the medical profession, on the other

hand. Save for the facilitation aspect, none of the other aspects had unfolded and the decision, therefore, did not mark any finality for it to be reviewable. This application, consequently, fails, in my view, to meet the requirements for entertainment by the court in terms of PAJA.

CONDONATION

- [13] The provisions of PAJA require that the review of a decision be sought within 180 days from the date it is made. A failure to act timeously places an obligation on the party affected by the decision to seek condonation setting out in detail the cause and circumstances of the delay.[3]
- [14] The applicant has failed to explain the delay and seek the indulgence of this court in an application for condonation for the late filing of the replying affidavit. In fact, the applicant as domus litis failed to file a replication and to set the matter down for hearing, thus delaying the entire process. The applicant should not be allowed to disregard the time limits prescribed in the provisions of PAJA with impunity.[4] There is therefore, for all intents and purposes, no proper application for review.

CONCLUSION

- [15] Considering the charges against the applicant, the case he has to meet, and the nature of the evidence necessary for the determination of this matter, I am of the view that all the necessary documentation has been secured for the matter to be proceeded with to finality without prejudice to any of the parties. The unspecified documents sought by the applicant will in any event not impact on the disciplinary proceedings.
- [16] The necessity of a determination of the matter before the disciplinary organ or Professional Conduct Committee of the respondent, warrants nothing less than a remittal of this matter for continuation of the pending process to ensure the prevalence of justice without undue delay.

COSTS

- [17] I can find no reason to deviate from the normal principle that costs follow the outcome in the proceedings.

ORDER

- [18] Consequent to the findings and conclusion in this judgment, the following order is made:

1. The applicant's rule 30A application is dismissed.
2. Applicant to pay the costs on an attorney and client scale.

MPN MBONGWE

JUDGE OF THE HIGH COURT

This judgment was prepared by Judge Mbongwe. It is handed down electronically by circulation to the parties or their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 26 February 2024.

HEARD ON: 15 August 2023 DECIDED ON: 26 February 2024 Appearances: For the Applicant: Adv M Snyman SC Instructed by: Mohamed Seedat Attorneys For the Respondent: Adv G Rautenbach SC Instructed by: Mkhonto Ngwenya Incorporated

- [1] Para 1 of Applicant's Rule 30A Heads of Argument
- [2] Koyabe and others v Minister of Home Affairs and others 2010 (4) SA 327 (CC)
- [3] Koyabe and others v Minister of Home Affairs and others 2010 (4) SA 327 (CC)
- [4] Grootboom v National Prosecution Authority & Another (CCT 08/13) [2013] ZACC 37; 2014 (2) SA 68 (CC); 2014 (1) BCLR 65 (CC);
- [2014] 1 BLLR 1 (CC); (2014) 35 ILJ 121 (CC) (21 October 2013)

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Prepared on 11 October 2026 · Esheria