

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

Case No: 2014/34461

<u>DELETE WHICHEVER IS NOT APPLICABLE</u>	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
17 April 2023 DATE	 SIGNATURE

In the matter between:

PAIA GIRLY obo PAIA NANDIPHA

APPLICANT

and

MEMBERS OF THE EXECUTIVE COUNCIL FOR

HEALTH OF THE GAUTENG PROVINCIAL

GOVERNMENT

RESPONDENT

Neutral Citation: *Paia Girly obo Paia Nandipha v Member of the Executive Council for Health of the Gauteng Provincial Government* (Case No: 2014/34461) [2023] ZAGPJHC 341 (17 April 2023)

JUDGMENT

ENGELBRECHT, AJ

[1] This is an application to compel the respondent (the MEC) to comply with a directive issued by Wright J in June 2021, in consequence of a pre-trial conference held before him. The relevant paragraphs provide:

"8. The plaintiff's attorney has sent an e-copy of the report dated 1 June 2021 prepared by the plaintiff's actuary, Algorithm, including appendix 1 thereto to the defendant's attorney, who has received same.

9. The defendant's attorney will add columns to the right-hand side of the spreadsheet and in respect of every line item, indicate precisely what is agreed and what is in dispute and in particular the defendant will state whether a claimed item can or cannot be rendered by the defendant in lieu of payment, and if so at which specified hospital. The defendant will also indicate on the spreadsheet whether or not any contingency deduction needs to be made. The answers will exclude reference to the items set out below".

[2] The compelling application was opposed, and the matter was enrolled for hearing in the week commencing 10 April 2023. In the allocation of matters to be heard, I directed that argument would be heard on 14 April 2023 at 10h00. In the course of argument on the morning, it was brought to my attention that the MEC had filed a document purporting to be in compliance with the directive issued. The document was allegedly served on 10 April 2023 (although that was a public holiday), and it appears from CaseLines that the document was uploaded on 12 April 2023.

[3] Counsel for the MEC accepted that the document was not in the form of additional columns to the spreadsheet that had been provided, but asserted that the content of the document complied with the prescripts of Wright J's directive. He explained that spreadsheet was un-editable, which is why the approach in question was adopted.

[4] I have difficulty with the explanation that the document was not presented in spreadsheet form on the basis that the original spreadsheet could not be edited. Surely, if this were the difficulty, then a request could have been made for the document to be produced to the MEC in editable form. Be that as it may, the approach adopted evidences that there was indeed a practical solution to the problem, *i.e.* the creation of a document that was capable of containing all of the information that was supposed to be contained in the additional columns of the spreadsheet. Differently put, I would not come to the conclusion that there had been non-compliance with the directive merely because the information prescribed to be provided is not contained in a spreadsheet. That would put form over substance.

[5] The difficulty arises with the substance. Is the information that is provided in the document uploaded to CaseLines on 12 April 2023 sufficiently comprehensive to satisfy the requirements of Wright J's directive? Mr Dlamini SC, for the MEC, submitted that it was. Mr Brown on behalf of the applicant submitted that it was not. From the MEC's perspective it would be unnecessary and wasteful to require a detailed response to every line item when a global answer deals with the matter; however, from the applicant's perspective the complaint is that there is then room left for debate as to whether particular services can or cannot be provided.

[6] Having carefully considered the matter, I am of the view that the MEC ought to be compelled to provide the response in the form and at the level of detail as is required by the directive of my brother Wright J. The wording of the directive, interpreted and understood in its context, reveals the intention: it was to ensure that the MEC provided a detailed and very specific response. To allow the generalised response now provided by the MEC to stand as the response would be to undermine the clear intention of the directive that was given.

[7] I am mindful of the fact that a more detailed and specific response on the part of the MEC, in compliance with the directive of Wright J, will probably lead to a lessening of disputes and ultimately will result in the saving of court time that would otherwise be dedicated to resolving the disputes that will inevitably arise in the absence of great precision in the response.

[8] The MEC must bear the costs of the application, having been dilatory in provision of a response.

[9] In all of these circumstances, I make the following order:

9.1. The applicant's attorney is to e-mail to the attorney for the respondent appendix 1 to the report prepared by the applicant's actuary, in editable form, by no later than Wednesday, 19 April 2023;

9.2. The respondent shall make amendments to the editable spreadsheet in accordance with the requirements of the directive of Wright J of 4 June 2021,

and e-mail the amended document to the applicant by no later than Tuesday,
2 June 2023.

9.3. The respondent shall bear the costs of the compelling application.



MJ Engelbrecht

**ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG**

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 CaseLines. The date for hand-down is deemed to be on 17 April 2023.

Heard on : 14 April 2023

Delivered: 17 April 2023

Appearances:

For the Applicant:

Mr Brown

For the Respondent:

Dlamini SC with Mr Chabane