



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ / NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO.

(3) REVISED. ✓

DATE

7/5/2019.

SIGNATURE

Case Number: 29967/15

In the matter between:

HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA

Applicant

and

DR WOUTER BASSON

Respondent

JUDGMENT (APPLICATION FOR LEAVE TO APPEAL)

POTTERILL J

- [1] The test whether to grant an application for leave to appeal is to be found in section 17 of the Superior Courts Act 10 of 2013:

“(1) Leave to appeal may only be given where the Judges or Judges concerned are of the opinion that –

(a)(i) the appeal would have a reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration; ...”

In medias res principle

- [2] I am satisfied that on this ground of appeal there is no reasonable prospect of success simply because the Supreme Court of Appeal in ***Basson v Hugo and Others* 2018 (3) SA 46 (SCA)** unequivocally found that due to the averred bias, the refusal of the recusal application must be decided. Without repeating all the findings it was *inter alia* based thereon that the tribunal to which Basson could appeal after finalisation of the matter had no jurisdiction to entertain an appeal based on bias and the subsequent refusal of recusal application. In essence, the internal remedy would be ineffective and the immediate judicial consideration of the recusal application was necessary.

Other compelling reasons why the appeal should be heard

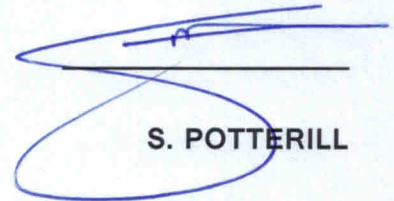
- [3] It was argued that this judgment has left the Health Professions Council of South Africa ("the HPCSA") in an extremely difficult position, because all committee members would belong to SAMA and my judgment would therefore effectively render it close to impossible to compile a committee for a disciplinary hearing. This submission is totally unfounded. This matter was based on the fact that as a member of SAMA there was a petition from SAMA expressing a definite view about which sanction Basson should receive. Under those circumstances the committee had to disclose that despite being members of SAMA they did not associate themselves with the petition. The mere membership of SAMA is not a disqualification. It was not put before me that as a rule SAMA files petitions in support of sanctions; in fact that is doubtful. However, should it occur in future, by simply stating that the committee members was not swayed by the petition or that they distanced themselves from the petition, the presumption that presiding officers are unbiased would always favour the committee and they would be able to fulfil their duties. There is accordingly no prospects of success on this ground of appeal.

The prospects of success

- [4] I am satisfied that the fact that Hugo did not disclose that he was a member of SAMA and did not distance himself from the petition, which SAMA signed, and the conduct of the committee pertaining to sentence did establish that a reasonable, objective and

informed person would on these facts reasonably apprehend that the committee would not bring an impartial mind to the sanctioning procedures.

- [5] The application for leave to appeal is dismissed with costs, including the costs consequent upon the employment of two counsel.



S. POTTERILL

JUDGE OF THE HIGH COURT

CASE NO: 29967/15

HEARD ON: 3 May 2019

FOR THE APPLICANT: ADV. S. JOUBERT SC

INSTRUCTED BY: Malatji Kanyane Inc.

FOR THE RESPONDENT: ADV. J.G. CILLIERS SC

ADV. M.M.W. VAN ZYL SC

INSTRUCTED BY: Geyser & Coetzee Attorneys

DATE OF JUDGMENT: 7 May 2019