

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION,
PRETORIA

28/7/15

CASE NO: 2014/72029

(1)	REPORTABLE: YES <u>NO</u>
(2)	OF INTEREST TO OTHER JUDGES: YES <u>NO</u>
(3)	REVISED. <u> </u>
<u>27-7-15</u> DATE SIGNATURE	

In the matter between:

HENRY IFEANYI CHIAMONWU**APPLICANT**

and

**REGISTRAR OF THE UNIVERSITY OF LIMPOPO
(MEDUNSA CAMPUS)**

RESPONDENT

J U D G M E N T

WRIGHT J

1. The applicant is a doctor. He enrolled at the respondent university for a master's degree in family medicine. He passed the first part, a summative assessment. This application concerns how he did in the other requirement, his dissertation. He says his dissertation was wrongly assessed. The university says that he did not pass his dissertation.

2. The applicant asks the court to review and set aside a number of decisions allegedly taken by different officials at the university.
3. The dissertation was marked by:
 - 3.1 Dr Tumbo, the applicant's degree supervisor - 58% - outright pass.
 - 3.2 Prof Mash, external examiner - 51% - pass, subject to minor alterations and a plagiarism software check.
 - 3.3 Dr Couper, external examiner - 41% - fail, but with an invitation to the applicant to submit a revised dissertation.(Dr Couper indicated in a separate note that he would prefer not to have to re-examine the dissertation.)
 - 3.4 Dr Ross, external examiner - 48%, fail, but with an invitation to submit a revised dissertation. Dr Ross seems to suspect too much similarity with already published works. He relies on a 31% score under a software similarity test known as Turnitin.)
 - 3.5 Dr Ross, on the revised dissertation - 45% - outright fail. Dr Ross says that it is to be regretted that the applicant refused to submit an electronic version of his revised dissertation for similarity testing.)
4. Dr Tumbo, the applicant's degree supervisor and the deponent to the answering affidavit recommended the appointment of Dr Ross. The Senate then appointed Dr Ross.
5. Rule G 23.3.4 of the university's institutional rules enjoins the supervisor, in this case Dr Tumbo, to inform the registrar in writing whether:
 - (i) the candidate has passed
 - (ii) the candidate has been instructed to effect certain corrections or alterations
 - (iii) "*whether the two external examiners are in disagreement over the merits of the dissertation and whether a third external examiner is to be appointed whose decision shall be final.*"
 - (iv) "*Both external examiners have awarded a fail mark and whether the candidate therefore fails the dissertation.*" This rule, read on its own,

seems to imply that a candidate passes unless both external examiners fail him or her.

6. Rule G47.1 - “ *The final marks achieved for the dissertation is the average of the marks allocated by all assessors (internal and external.)* ”
7. Rule G47.2 – “ *if an assessor indicates in his/her examination report that he/she has to view the dissertation again after the corrections are effected, it may be done so once only.* ”
8. Rule G47.3 - “ *Where an external assessor awards a mark below 50% Senate may seek a second external opinion once only.* ”
9. Rule G47.4 - “ *In order to pass the degree, a minimum of 50% should be allocated by all assessors(internal and external).* ”
10. The applicant says, among many other things, that he was not given an opportunity to re-submit a revised dissertation to Prof Mash or to Dr Couper. This allegation is not denied by the respondent. In my view, the applicant has established a reviewable irregularity. His right under Rule G47.2 (read with Rule G23.3.4(iii)) was infringed. He should have been afforded an opportunity to correct his dissertation for re-submission to Prof Mash and Dr Couper. This finding makes it unnecessary for me to consider the applicant's other complaints. The fact that his dissertation was marked twice by Dr Ross does not detract from an infringement of his right at the earlier stage.
11. The applicant made a number of unsubstantiated allegations of bias and other improper conduct on the part of university officials. The tone of the application is altogether uncalled for. In my view, the parties should carry their own costs.

ORDER

1. The decisions taken by different officials of the University in the marking of the applicant's written dissertation are reviewed and set aside.
2. The applicant's written dissertation (being the hard copy version thereof as submitted on 17 April 2014) is to be re-marked afresh.

3. The parties shall pay their own costs.

A handwritten signature in black ink, appearing to be 'GC Wright J', written over a horizontal line.

**GC WRIGHT J
JUDGE OF THE HIGH COURT,
GAUTENG DIVISION,
PRETORIA**

On behalf of the Applicant:	Adv FJ Erasmus
Instructed by:	Couzyn Hertzog & Horak
	012 460 5090
On behalf of the Respondent:	Adv WW Geyser
Instructed by:	Dyson Attorneys
Date of Hearing:	27 July 2015
Date of Judgment:	28 July 2015

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(1)	REPORTABLE: YES <u>NO</u>
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30.7.15 DATE SIGNATURE	

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HENRY IFEANYI CHIAMONWU

APPLICANT

and

**REGISTRAR OF THE UNIVERSITY OF LIMPOPO
(MEDUNSA CAMPUS)**

RESPONDENT

J U D G M E N T – CORRECTION OF ORDER

WRIGHT J

1. On Thursday 30 July 2015 counsel for both parties approached me in chambers regarding the date of 17 April 2014 as referred to in paragraph 2 of my order of 27 July 2015. It is common cause between the parties that that date is incorrect and that the correct date is 31 December 2012. An e-copy submitted at about the same time should also be part of the marking process.

By agreement, and without prejudice to either sides' rights on appeal the following order is made.

ORDER

1. The order of Wright J of 27 July 2015 is set aside.
2. The decisions taken by different officials of the University in the marking of the applicant's written dissertation are reviewed and set aside.
3. The applicant's written dissertation (being the hard copy version thereof as submitted on 31 December 2012 as well as the e-copy thereof submitted on or about 31 December 2012) is to be re-marked afresh.
4. The parties shall pay their own costs.



**GC WRIGHT J
JUDGE OF THE HIGH COURT,
GAUTENG DIVISION,
PRETORIA**

On behalf of the Applicant:

Adv FJ Erasmus

Instructed by:

Couzyn Hertzog & Horak

012 460 5090

On behalf of the Respondent:

Adv WW Geyser

Instructed by:

Dyson Attorneys

Date of Hearing:

30 July 2015

Date of Judgment:

30 July 2015