

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No.: 1534/2013

In the matter between:

THE PUBLIC SERVANTS ASSOCIATION
OF SOUTH AFRICA

Applicant

and

MEC: DEPARTMENT OF HEALTH, FREE STATE
PROVINCE

Respondent

JUDGMENT: HANCKE, AJP

HEARD ON: 25 APRIL 2013

DELIVERED ON: 26 APRIL 2013

[1] This is an application for an order in the following terms:

- “(a) That this application be heard as a matter of urgency, dispensing with the necessity of the applicant having to adhere to the provisions of the Rules of the above honourable court, in so far the same relate to form, time periods and service, and condoning the applicant’s failure to strictly adhere thereto;
- (b) That a rule *nisi* be issued calling upon the respondent to provide reasons, if any, to this court, on or before 6 June 2013 at 9h30 or as soon thereafter as the matter may be heard as to why an order in the following terms should not be granted:

- (i) that the respondent be interdicted from the withdrawal of remunerative work outside the public service alternatively that the withdrawal dated 5 April 2013 be set aside, pending the final determination of a review application to be filed by the applicant within 30 days of this order;
 - (ii) that the respondent pays the costs of this application in the event of opposing the relief sought herein.
- (c) That the relief sought in paragraph (i) will serve as an interim interdict with immediate effect pending the finalisation of the review application to be filed by the applicant.”

[2] The applicant is applying for an interim interdict. It is therefore necessary for the applicant to establish the following:

- “(a) A *prima facie* right;
- (b) A well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted;
- (c) That the balance of convenience favours the granting of an interim interdict; and
- (d) That the applicant has no other satisfactory remedy.

In view of the discretionary nature of an interim interdict these requisites are not judged in isolation and they interact.”

LAWSA Volume II, par 403.

[3] The applicant is a trade union and the respondent the Member of the Executive Council under whose control the Free State Department of Health falls. Since 1999, medical practitioners in the employ of the Free State Department of Health were, subject to certain conditions, permitted to perform work outside or beyond their duties to their employer, for remuneration. On 5 April 2013 the respondent, summarily and, allegedly without consulting medical practitioners who would or might be affected by such decision, resolved to withdraw permission to practice outside of the scope of the employment “during official working hours”. The applicant then, and in response to such conduct launched this application wherein it seeks the aforementioned relief.

[4] Mr Wessels, on behalf of the respondent, submitted that it is applicant’s case that it is a trade union on the one hand but that the matter be determined was not a labour issue. Therefore the applicant does not itself have a direct and substantial interest in the subject matter and in the outcome of the present litigation and does not have *locus standi in judicio*. In this regard he relied on the decision of

National Union of Mine Workers v Free State

Consolidated Gold Mining 1989 (1) SA 409 (O).

- [5] He also criticised the authorisation by the General Manager of deponent Koortz to the founding affidavit of the applicant which reads as follows:

“I, **Danny-Boy Zamilé Adonis**, in my capacity as the **General Manager** of the **Public Servants Association** of South Africa (PSA) with its Head Quarters at PSA Head Office Building, 563 Belvedere Street, Arcadia, Pretoria hereby duly authorize **Charl Gerhardus Koorts** to dispose off (sic) any affidavit in the matter: **PSA obo members vs Free State Department of Health** on behalf of the PSA.

Signed at **PRETORIA** on this day 19th of April, 2013.

(signed)

DZ Adonis

GENERAL MANAGER”

I take it that the “dispose off” should actually read “depose to”.

[6] In reply to the respondent's notice in terms of Rule 6(5)(d)(iii) the applicant filed a reply in terms of Rule 7 and Rule 35 in which notice the applicant's statute (Constitution) dated 29 October 2010; the applicant's certificate of registration of Company dated 1 August 2008 and the applicant's certificate of registration as a trade union were filed.

[7] As far as *locus standi* is concerned it is important to note that the applicant was also registered as a section 21 company and that part of its registration entails business services. Section 4 of the applicant's constitution clearly spells out the applicant's objectives and caters for assistance to members in terms of *inter alia* the Companies Act. The statute of the applicant does not limit the applicant to labour related matters only. Although the authorisation of Adonis could have been better worded, the only reason why Mr Koortz was authorised to depose to an affidavit was clearly to launch the present application. Apart from Mr Koortz's own allegation that he was duly mandated to depose to this affidavit there is also the affidavit of Dr Marx, stating that "I also wish to confirm that the

applicant has been mandated to act on behalf of myself and other medical practitioners from Universitas Hospital.”

[8] In view of the foregoing I am satisfied that the applicant has established the necessary proof of *locus standi in judicio*.

[9] As far as the requirement of a *prima facie* right is concerned, it is the applicant’s case that the respondent unilaterally and arbitrarily decided to immediately stop the said medical services in the province and made it virtually impossible for medical practitioners to render such services. Reference is made to women receiving fertility treatment who cannot have their treatment stopped at any stage as they are in a cycle and they ovulate on a specific moment. Apparently there is a waiting list of up to 4 months for women patients with these sub-specialist conditions. Several other examples are mentioned. If the present system is to be terminated for example if it is being abused or impractical it can only be done over a period of time and after proper consultation and investigation.

[10] It is the applicant's case that the respondent made no attempt to consult any medical practitioner, employee or trade union and the decision came as a surprise to all role players. At no stage were any medical practitioners invited to make representations and a decision was taken arbitrary and apparently impulsively.

[11] As far as the balance of convenience is concerned, the present system has been in existence for 21 years and another 30 days as prayed for (in prayer 1(b)(i) in the Notice of Motion) will not prejudice the respondent.

[12] In view of the foregoing I am of the view that the applicant has made out a proper case for the relief claimed.

[13] Accordingly the following orders are issued:

13.1 An order is granted in terms of prayers a, b, and c of the Notice of Motion;

13.2 Costs of 25 April 2013 to be reserved to be determined on the return date.

S. P. B. HANCKE, AJP

On behalf of the applicant: Adv. P. M. Venter
Instructed by:
Lovius Block
BLOEMFONTEIN

On behalf of respondent: Adv. M. H. Wessels SC
Instructed by:
The State Attorney
BLOEMFONTEIN

/eb