

11/12/2009
NOT REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT)
PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE	
Case No:	16020/08
(1) REPORTABLE: YES/NO.	
(2) OF INTEREST TO OTHER JUDGES: YES/NO.	
(3) REVISED.	
DATE	SIGNATURE

In the matter between:

U'KWAZI SCHOOL OF NURSING (PROPRIETARY) LTD Applicant

and

THE CHAIRMAN OF THE SOUTH AFRICAN Respondent
NURSING COUNCIL IN HIS/HER REPRESENTATIVE

JUDGMENT

LEGODI J

1. In this matter, the court had already given an order on the 4 August 2009 in the following terms:
 - 1.1 that the resolution of the respondent contained in a letter dated the 3 October 2007 relating to the refusal to allow the applicant to have more intake of learners is reviewed and set aside,
 - 1.2 that the matter is remitted to the respondent for reconsideration within 60 days from date hereto,

1.3 the respondent to pay the costs of the application.

2. When the order was made it was indicated that reasons for the order will be given on request. The respondents have since requested reasons for the order that was made on the 4 August 2009. I now proceed to give reasons.

3. The applicant had initially sought relief as follows:

- "1. That the resolution of the SOUTH AFRICAN NURSING COUNCIL contained in its letter dated 3 October 2007 be reviewed, corrected and/or set aside;
2. That the said resolution be corrected to provide that the Applicant is allowed a second intake the 40 learners per year for its nursing auxiliary program in terms of regulation 2176 at the Potchefstroom sub-campus, alternatively that the said resolution refusing an increase in the numbers of learners and intake per year be set aside and remitted to the SOUTH AFRICAN NURSING COUNCIL for reconsideration and/or correction, within 60 days of the date of the order and;
3. That the Respondent be ordered to provide reasons for the resolution of the SOUTH AFRICAN NURSING COUNCIL of 16 July 2007 as set out in its letter of 3 October 2007 for refusing APPLICANT'S application for an increase in increase in the number of learners and intakes per year for its nursing auxiliary program in terms of regulation 2176 at the Potchefstroom sub-campus within 30 days of the date of this order.

4. *Directing that the costs of this application be paid by the Respondent*

5. *Further and/or alternative relief.*

4. Just to give a brief background, the National Department of Education in a letter dated the 6 December 2007 authorised the applicant to offer its Further Education Training qualifications without registration until its application for registration was finalised. That is, the applicant was allowed to continue to offer Further Education Training, until finalisation of its application for registration.
5. By the time the applicant was given the authorisation by the Department of Education, the Respondent had already in a letter dated the 3 June 2003, conveyed its approval of enrolment of nursing auxiliary pupils, of 3 intakes per year by 30 pupils for each intake.
6. Not long after the letter of the 3 June 2003, the applicant as early as the 18 June 2003, applied for establishment of sub-campus at Potchefstroom in the North West Province for the training of nursing assistants.
7. Subsequent to the application referred to above, on the 6 April 2006 the respondent addressed a letter to the applicant in terms of which the applicant was informed that the application for the establishment of a sub-campus at Potchefstroom was approved. Further in paragraph 1.4 of the letter it was stated as follows:

"1.4 The school has two options to choose from:

-option one- One (01) intake per annum of forty (40) learners per intake.

-option two- Two (2) intake per annum of Twenty (20) learners per intake

8. It is this decision as indicated in paragraph 1.4 of the letter of the 6 April 2006 that the applicant complained about. On the 28 August 2006, the applicant applied for the approval of additional clinical facilities and it also applied for the approval of 2 intakes per year of 40 learners each.
9. On the 30 October 2007, the Respondent addressed a letter to the applicant in terms of which the respondent refused to approve number of learners from one intake of 40 learners per year to two intakes of 40 learners each per year. It is this decision that prompted the applicant to launch the present application.
10. The applicant's cause of action can be summarised as follows:
 - 10.1 that the decision materially and adversely affects the rights and legitimate expectations of the applicant,
 - 10.2 that the resolution could not reasonably have been taken having regard to the information that was available to the respondent and its previous approvals in respect of the clinical facilities and the applicant's application for additional clinical facilities that at the time served before the respondent and was approved by the respondent,
 - 10.3 that the decision should be presumed to have been taken without reasons as the respondent is said to have failed to give reasons for its decision,

II. The respondent filed answering/opposing affidavit. In it, reasons for the decision are given as follows:

II.1 that the clinical facilities provided by the applicant were not sufficient for placement of 90 learners per year, as the learners would not be able to gain pre-requisite nursing experience,

II.2 that the clinical facilities listed by the applicant being Potchefstroom Hospital, Anneron Clinic and Thunas Hodgson Old Age Home, could only accommodate a total of 40 learners per annum and the applicant therefore had to find more clinical facilities to accommodate the learners for their practical tutoring to justify an intake of 90 learners per annum,

II.3 that the respondent is an institution and a public body that is of such a standard and quality that the public is protected and that the quality of nursing remains of a high standard and therefore the respondent has a responsibility to ensure quality training in all the fields of nursing, that nurses gain extensive and versatile experience, and that they meet the pre-requisite training requirement.

12. According to the respondent upon the application by the applicant for 90 learners intake, an investigation was conducted and the followings transpired:

12.1 in January 2005 and after having performed accreditation process it was resolved that a site visit be performed,

- 12.2 on the 20 September 2005, an accreditation assessment of Thomas Hodgesen Old Age is said to have been performed and found that it could only accommodate 6 placements of learners at a time,
- 12.3 at Annocron Clinic and Potchefstroom Hospital, only 34 placements could be accommodated bringing a total of 40 learners,
- 12.4 during July 2007, the respondent is said to have accredited further clinical facilities to ascertain if the applicant's request of an intake of 90 learners per year was justified,
- 12.5 at Groen Wilgers Old Age Home, Samuel Broadbent Old Age and Fochville, the Respondent is said to have found these facilities to provide further placement of 11 learners in total. In the respondent's opinion the approval of the further three clinical facilities did not mean an increase in the learners per year could be justified. It is said that the three further clinical facilities and 11 placements for learners allowed for the reasonable situation that there was more exposure for learners to the gain practical experience from these facilities. According to the respondent it provides a spread of clinical exposure that would improve the quality of experience of learners and not quantity of learners,
- 12.6 the applicant is said to have submitted additional plans for the learners which expected that the learners would spend equal hours in theory and practice. This according

to the respondent displayed that learners would be classroom based and that their exposure to clinical facilities would be minimal,

12.7 the number of clinical placement of learners in clinical facilities is said to have been 51 per annum and that the facilities available therefore still could not justify an intake of 90 learners per annum,

12.8 according to the respondent, the ration of theory and practical experience has to be reasonable and be in accordance with good practice. That is, normally the learners receive 70% practical experience and 30% theory. A learner has to attend a minimum of 1000 hours of clinical experience per annum.

13. The applicant in its replying affidavit saw the assertion as set out in 12.8 above as a misunderstanding of the applicant's clinical placement programme. That is, the programme was prepared on the basis that the learners alternate between theoretical training at the clinical facilities. The one intake is said to attend the theoretical training while the other receives practical training at the clinical facilities. The respondent is said to have erred in considering the application on the basis that the facilities for only 51 learners per annum. This is seen as a material and decisive error. I tend to agree and this had a bearing in having the decision challenged set aside and the matter be referred to the respondent for reconsideration.

14. The other point taken by the applicant was that, the respondent erred in considering the application as if it was for the approval of an intake of 90 learners per annum. According to the applicant, the

approval which was sought was two intake of 40 learners each, per annum. This is said to have been intended that the learners in the respective intakes would alternate between the clinical facilities and theoretical training. The respondent did not appear to have considered the application as intended by the applicant. It is also on this basis that I made the order as I did.

15. The decision by the respondent is also seen as having an unjustifiable result of the already approved clinical facilities being unutilised for approximately 50% of the academic year whilst the learners would be undergoing theoretical training, the converse of the physical facilities at the school premises being utilized for approximately 50% of the academic year also being true. This is an aspect which if it was proved to be true, could have a bearing on the decision making by the respondent. It is on this basis that the matter was remitted to the respondent for further consideration.
16. The finding of the respondent on the requirement of a ratio between theoretical and practical training of 30% to 70% is also criticised by the applicant as adding to the said misunderstanding by the respondent of the applicant's operation. According to the applicant, it provides for the practical clinical training of learners of 25 weeks of 40 hours per week for each of the two proposed intakes or 1000 hours in total at the time of its compilation prior to respondent's meeting of 16 July 2007 being approved by the respondent. In addition, its programme is said to provide for a further 101,5 hours of practical training in the applicant's simulation laboratory. The applicant's programme is therefore said to provide for a total of 1102,5 hours of clinical training which is in excess of the minimum requirements as prescribed. I also found this aspect could be verified by the respondent if it so wishes. Should it be proved to be

correct, then it would mean that the decision taken had to be reconsidered.

17. In conclusion, the order is still as indicated in paragraph 1 of this judgment.

M F LEGODI
JUDGE OF THE HIGH COURT

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