



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1)	REPORTABLE: [Y/N]
(2)	OF INTEREST TO OTHER JUDGES: [Y/N]
(3)	REVISED: [Y/N]
(4)	Signature:  Date: 27/06/2024

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NUMBER: 13788/22

In the matter between:

SOUTH AFRICAN MEDICAL ASSOCIATION N.P.C.

Applicant

and

SOUTH AFRICAN MEDICAL ASSOCIATION TRADE UNION

First Respondent

GERHARD VOSLOO N.O

Second Respondent

REGISTRAR OF LABOUR RELATIONS

Third Respondent

And in the counter application of:

SOUTH AFRICAN MEDICAL ASSOCIATION TRADE UNION

First Applicant

GERHARD VOSLOO N.O

Second Applicant

and

SOUTH AFRICAN MEDICAL ASSOCIATION N.P.C.

First Respondent

REGISTRAR OF LABOUR RELATIONS

Second Respondent

REGISTRAR OF TRADEMARKS

Third Respondent

JUDGMENT

ASL VAN WYK AJ

1. This is an application whereby the applicant in the main application, The South African Medical Association NPC ("SAMA") seeks final interdicts against the first respondent in the main application, The South African Medical Association Trade Union ("SAMATU") and the second respondent in the main application, Gerhard Vosloo N.O ("Vosloo"), based on the common law cause of action passing-off and on the statutory infringement of its registered

trademarks in terms of the Trade Marks Act 194 of 1993 (“the Trade Marks Act”), together with ancillary relief.

2. SAMATU, together with Vosloo, filed a counter application on the basis that SAMA’s trade mark registrations constitute entries wrongly made and/or remaining on the register as provided for in section 24(1) of the Trade Marks Act and that they are vulnerable to expungement based on section 27 of the Trade Marks Act.
3. SAMA is a non-profit voluntary professional association. Its member base consists of medical practitioners in the public and private sector. All medical doctors and students registered with the Health Professions Council of South Africa, qualify for SAMA membership. Initially, SAMA was named the Medical Association of South Africa and known by the acronym MASA. Its current name and acronym were adopted in 1998.
4. The need arose for SAMA to represent its members with the forums that the Labour Relations Act 66 of 1995 established and it secured registration as a trade union in 1996. At that stage, the trade union was not a separate legal entity from SAMA. SAMA changed the trade unions name to the South African Medical Association Trade Union during 2022, to reflect the name change of SAMA from MASA.
5. Internal disputes arose and the trade union was eventually separated from SAMA and an independent trade union, SAMATU, was established.

6. In addition to rendering typical trade union services, SAMATU also offers a wide range of other services in which a trade union would not ordinarily engage, such as continuing professional development, webinars on medical malpractice litigation and on various other topics.
7. SAMA is the registered proprietor, in South Africa, of the trade marks SAMA in class 42, and SAMA logo (depicted below) in classes 9, 16 and 42.



8. SAMA argued that SAMATU infringed its registered rights by using the name SOUTH AFRICAN MEDICAL ASSOCIATION TRADE UNION, the mark SAMATU and the SAMATU logo (depicted below), as contemplated by Section 34(1)(a) of the Trade Marks Act.



9. SAMA further argued that it has acquired a significant reputation and common law rights in its logo, its name and acronym as *indiciae* of its services and that

use of SAMATU'S logo and the acronym SAMATU, will lead to members of the public assuming that there is a connection between the parties, when in fact, there is not.

10. SAMATU has filed three applications for the trade mark SOUTH AFRICAN MEDICAL ASSOCIATION TRADE UNION, SAMA and its logo in class 25. These applications have made on the basis of honest concurrent use or other special circumstances as contemplated by section 14 of the Trade Marks Act. SAMATU argued that once these trade marks proceed to registration, it might have an absolute defence against trade mark infringement and passing-off proceedings¹.
11. It, however, falls solely within the jurisdiction of the Registrar of Trade Marks to assess whether or not SAMATU is entitled to the registration of such marks.
12. SAMATU argued that these proceedings should, accordingly, be stayed, pending the examination of its trade marks and the assessment as to whether or not they should be permitted registration.
13. The Constitution in the form of section 173 impliedly recognizes the court's power to order a stay of proceedings in the appropriate circumstances. Section 173 states:

"Inherent power.-The Constitutional Court, Supreme Court of Appeal and High Courts have the inherent power to protect and regulate their own process, and to develop the common law, taking into account the interests of justice."

¹ Turbek Trading CC v A &D Spitz Ltd and Another 2010 (2) ALL SA 284 (SCA).

14. A component of this power is the High Court's inherent jurisdiction to prevent an abuse of its process by staying proceedings in certain circumstances. This power should clearly be exercised in a circumscribed manner and only in exceptional circumstances². It should be exercised with great caution and in clear cases as the courts are open to all and will only be closed in exceptional circumstances³. Due regard must also be had to section 34 of the Constitution which provides for the right to access to the courts.
15. Proceedings will be stayed when they are frivolous or vexatious or when their continuance amounts to an injustice or a serious embarrassment to one or other of the parties and the case will be regarded as vexatious when the action is hopeless, or success thereon becomes impossible.
16. SAMATU argued that there exist exceptional circumstances that warrant a stay of the proceedings and that the stay will be in the interest of justice, in that the outcome of the applications before the Registrar of Trade Marks will impact both parties' rights in the main application(s).
17. It is not an essential pre-requisite for a court to find that the relevant proceedings are vexatious before it may grant a stay thereof, the demands of equity are the decisive factor.

² *Western Assurance Co v Caldwell's Trustee* 1918 AD 262 at 274; *Premier of Eastern Cape & Another v Dlawa and Others* 2013(3)SA 182 (ECM).

³ *Fisheries Development Corporation of SA Limited v Jorgensen & Another; Fisheries Development Corporation of SA Limited v AWJ Investments ((PTY) Limited & Others* 1979 (3) SA 1331 (W) at 1338

18. In my view, it would be non sensical for SAMATU to be interdicted at this stage to use its trade marks, only for it to obtain registration at a later stage and be permitted to use the exact same marks. Considering the history between the parties and principles of equity, I agree that SAMATU has, accordingly, demonstrated that exceptional circumstances exist that warrant a stay of the proceedings and that it will be in the interest of justice to do so.

19. In the circumstances the following order is made:

19.1 The application proceedings instituted by the applicant and First and Second Respondent in the main application(s), are stayed pending the registration or rejection of the trade mark applications filed by SAMATU in terms of section 14 of the Trade Marks Act, by the Registrar of Trade Marks.

19.2 No order as to costs.




ASL VAN WYK

ACTING JUDGE OF THE HIGH COURT

Date of hearing: 22 MAY 2023

Date of judgment: 27 JUNE 2024

APPEARANCES:

On behalf of applicant: Adv O Salmon SC

Instructed by: McRobert Inc.

On behalf of first and second respondents: Adv R Michau SC

Instructed by: Serfontein Viljoen & Swart Attorneys