



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2021/45096

1. Reportable: No
2. Of interest to other judges: No
3. Revised

20 January 2025

BUSAMED HEALTHCARE (PTY) LTD

GATEWAY PRIVATE HOSPITAL (PTY) LTD

BUSAMED (PTY) LTD

and

First Applicant

Second Applicant

Third Applicant

MAZARS CORPORATE FINANCE (PTY) LTD

First Respondent

TROPICAL PARADISE TRADING 165 (PTY) LTD

Second Respondent

VERAISON (PTY) LTD

Third Respondent

AMORICARE (PTY) LTD

Fourth Respondent

SIMPHIWE DOUGLAS DINGAAN

Fifth Respondent

EDITH NOMAKHOSI SKWEYIYA

Sixth Respondent

RAJINDRALILLY HOUSTON

Seventh Respondent

JUDGMENT – LEAVE TO APPEAL

WRIGHT J

1. The applicants, to whom I shall refer as Busamed, seek leave to appeal my order of 21 November 2024. Busamed's main application had been withdrawn some time before the hearing on 21 November 2024. In the order, I postponed the counter-application of Tropical and Veraison sine die, reserved costs, allowed all three participating sides to file further affidavits and ordered that the parties approach the Deputy Judge President to request that he allocate the case as a special motion.
2. The order of 21 November 2024 was entirely interlocutory.
3. Mazars abides my decision in this application for leave to appeal.
4. On 16 December 2024 I handed down reasons under Rule 49(1)(c) for my order of 21 November 2024. This judgment is to be read with those reasons.

5. So as not to require the reader to read two documents my reasons of 16 December 2024 are set out below:

- " 1. On 21 November 2024 I started hearing the above opposed application in open court. I shall refer to the above cited three applicants in the main application as Busamed. I shall refer to the above cited first respondent in the main application as Mazars. I shall refer to the above cited second and third respondents in the main application as Veraison.*
- 2. The main application had been withdrawn by Busamed some time previously. Busamed did not tender costs in its notice of withdrawal. The costs of the withdrawn application are sought by Veraison.*
- 3. The main issue before me was the counter-application brought by Veraison. Busamed and Mazars oppose this counter-application.*
- 4. The hotly contested litigation goes back many years and in many forums. In short, Veraison wants Mazars to value a hospital management agreement and Veraison wants Busamed to pay the amount determined by Mazars.*
- 5. To reduce the other litigation to its bare bones, an arbitrator, Mr Van Der Nest SC made an award some years ago. The High Court in Pretoria, per Nkosi AJ made the award an order of court. This court, per Keightley J ordered certain relief in favour of Veraison relating to enforcing Mr Van Der Nest's award and the Nkosi AJ award. In particular, Mazars was ordered by Keightley J to produce a valuation.*
- 6. Mazars say that they can't produce a proper valuation as Busamed and Veraison are at each others' throats and are not giving Mazars sufficient information. Mazars says that, only to comply with the Keightley J order, they produced a valuation of sorts, with incomplete information. Veraison says that the Mazars' valuation is unhelpful. Veraison says that Busamed is just delaying the evil day when it will have to pay.*

7. *Busamed says that the agreement terminated on a specific date some years ago. Versaison says that the agreement persists and is evergreen.*
8. *If Busamed is wrong on termination date, at least two sets of questions arise. First, can an evergreen agreement be valued and if so does there not have to be a cut off date? If there needs to be a cut off date, then what date is to be used in the present case? Second, the life of the agreement may depend, at least partially, on factors like the existence of or the end date or dates of a certain lease or leases. Similar considerations may apply to who held what shares in what companies or close corporations and when.*
9. *Veraison has not sought to hold Busamed, or Mazars, in contempt of the Nkosi AJ order or the Keightley J order. Rather, Veraison seeks in its counter-application that a road map be given by the court to Mazars for determining the value.*
10. *One of the prayers sought by Veraison is that the agreement be valued "until at least a date after the Arbitration Award on which it was agreed, or ordered, that the [agreement] had been terminated or cancelled. " I queried Mr Whitcutt SC for Veraison on the vague formulation of this prayer and other prayers. He acknowledged difficulty.*
11. *It became clear during debate with counsel for Busamed, Versaison and Mazars that the gist of the real point had not been canvassed fully in the affidavits or the heads of argument.*
12. *As Mr Tsatsawane SC for Busamed said "This is the very first time that this issue is receiving the attention of the court, because this is the central case in this whole dispute. The dispute has always been up until what date do you do the valuation ? " Sound recording 2024-11-21_10.59.40.140 at 00:01:16 to 00:01:42 and onwards.*
13. *Later, Mr Tsatsawane said, " This is the very first time that this case is having this kind of analysis. " Sound recording 24-11-21_11.59.33.515 at 00:00:57.*

14. *It occurred to me that perhaps, given the long history of the matter, coupled with the fact that none of affidavits or heads of argument dealt fully with what might be an important point in the case if not the pivotal point, justice would be served if all sides were given an opportunity to file further affidavits on the point. Sound recording 2024-11-21_11.53.33.375 at 00:02:22 and onwards.*
15. *It seemed that it would possibly not be in the interests of justice for the case to be decided otherwise than on facts established in evidence and after full argument on important issues from all sides.*
16. *I asked Mr Tsatsawane if he had any serious objection to further affidavits being filed. Not unreasonably, he submitted that his clients had been raising these points since 2019 and that Veraison should stand or fall by its affidavits as filed. Sound recording 24-11-21_11.56.33.437 at 00:00:05 to 00:00:50.*
17. *Mr Whitcutt was in favour of my suggestion.*
18. *On balance, having weighed Mr Tsatsawane's argument I concluded that the interests of justice required the filing of further affidavits.*
19. *The matter was discussed further in court and dates were agreed for the filing of further affidavits. I suggested that costs should be reserved and that the Deputy Judge President be asked to allocate the matter as a special motion to be heard over two days. It was wholly inappropriate for this case to be set down as one of a number of matters on the ordinary opposed motion roll.*
20. *I requested counsel to prepare a typed draft order and that they then approach me in chambers. They later did and I made the draft an order. By then, I was under the impression that all three sides were in agreement on all aspects of the order. In fairness to Mr Tsatsawane, he had earlier expressly argued against the filing of further affidavits.*
21. *On 12 December 2024, I received an email from my clerk, Ms Vukeya which contained an application by Busamed for leave to appeal my order of 21 November*

2024. I immediately went to the caselines file and saw that Busamed's attorney had filed a document under Rule 49(1)(c) asking me for reasons for my order. I do not know why this document had not been brought to my attention. This is an ongoing, intractable problem.

22. I called for the sound recording and then prepared this document.

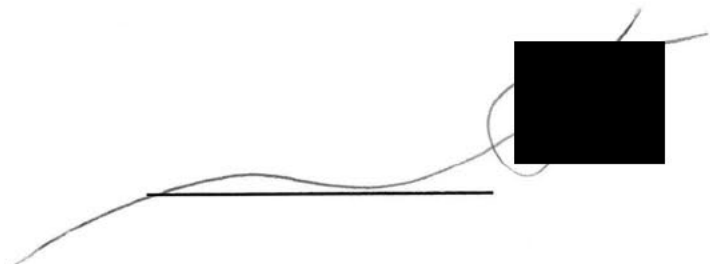
23. The application for leave to appeal will be heard as soon as is reasonably possible."

- 6. In particular, an important point, possibly decisive of the main application, had not been fully addressed in the affidavits or in the heads of argument. It would have been unwise to attempt to decide this point in the dark. The interests of justice favour an opportunity for all concerned to file further affidavits. Counsel for all sides concerned were given a full opportunity to say why I should not make the order I thereafter made.**
- 7. In due course, it follows that further heads of argument by all participating sides may be filed after the further affidavits have been filed.**
- 8. No party could be prejudiced by my order. On the contrary, the interests of justice called for the order.**
- 9. Busamed, as part of its opposition to the counter-application, takes the point that the counter-application is late and therefore can't be granted for that reason alone. Mr Tstatsawane SC, for Busamed argues that in making my order of 21 November 2024 I effectively decided that the lateness argument is bad and that the counter-application is properly before the court. This is not so. My order of 21 November 2024 decided nothing. The order has the effect only that the matter as a whole, including Busamed's point about lateness, can be decided in the light rather than in the dark.**
- 10. The applicants for leave to appeal have no reasonable prospect on appeal and there is no compelling reason to grant leave.**

11. On the question of costs in this application for leave to appeal, scale A suffices.

ORDER

- 1. The application for leave to appeal is dismissed with costs including those of two counsel where so employed and including those of senior counsel where so employed. Scale A applies.**



GC Wright

Judge of the High Court

Gauteng Division, Johannesburg

HEARD : 20 January 2025

DELIVERED : 20 January 2025

APPEARANCES :

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