

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO: A13/2024

|     |                                            |
|-----|--------------------------------------------|
| (1) | <u>REPORTABLE: YES / NO</u>                |
| (2) | <u>OF INTEREST TO OTHER JUDGES: YES/NO</u> |
| (3) | <u>REVISED.</u>                            |
|     | <u>02/05/2025</u>                          |
|     | DATE                                       |
|     | <u>[REDACTED]</u>                          |
|     | SIGNATURE                                  |

In the matter between:

**WYNAND JOHANNES DERCKSEN**

Appellant

And

**HEALTH PROFESSION COUNCIL OF SOUTH AFRICA**

First Defendant

**Dr PARMANAND NARAN**

Second Defendant

**CORAM: MABESELE AND BAM JJ**

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**J U D G M E N T**

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**MABESELE J( BAM J, concurring)**

[1] This is an application for leave to appeal against the judgment dated, 8 August 2024, under case no: A13/2024. The parties argued both the issue of jurisdiction raised by counsel for the respondents, as a *point in limine*, and, the merits. The understanding being that the merits will not be considered should the *point in limine* be upheld. This issue of jurisdiction is raised for the first time at this hearing.

[2] The respondents argue that this court lacked jurisdiction to entertain this matter, in July 2024. Accordingly, this application for leave to appeal against the judgment dated, 8 August 2024, should not be entertained. The respondents rely on regulation 4A of the regulations of the Health Professions Act. This regulation came into effect from 23 June 2023. It provides as follows:

*“(1) A complainant who is aggrieved by the decision of the PCI may appeal to the appeals committee of the relevant professional board against such decision and must provide reasons for such appeal,*

*(2) Notice of appeal must be submitted within 30 days from the date on which such decision was made or from the date the complainant becomes aware of such decision.”*

[3] The first respondent considered the applicant's complaint against Dr Naran on 27 to 28 February 2023. The decision was communicated to the applicant on 22 March 2023 and the applicant was advised to approach the High Court,

in terms of Section 20 of the Health Professions Act, if aggrieved by the committee's decision. It is clear that regulation 4A, which cannot apply retrospectively, came into effect almost three months after the first respondent had communicated its decision to the applicant. Counsel for the second respondent argues that section 20 does not provide for an appeal from the decision of PCI. Section 20 reads as follows:

*'Any person who is aggrieved by any decision of the council, a professional board, or a disciplinary appeal committee, may appeal to the appropriate High Court against such decision'*

[4] Counsel for the second respondent misses a point, that the PCI is a committee that serves under the Health Professions Council of South Africa. Therefore, any decision taken by the PCI is deemed to have been taken by the council. It is for this reason that the council and not the PCI communicated the findings of the PCI to the applicant. Therefore, the applicant rightly approached the High Court on the advice of the first respondent. For all these reasons, this court had jurisdiction to entertain the applicant's matter in July 2024. Accordingly, this court is entitled to consider this application for leave to appeal against its judgment. In addition, it will be unfair to the applicant if this application is not considered. The reason is that, regulation 4A does not accommodate the applicant, if regard is had to the provisions of regulation 4A(2) in paragraph 2 of this judgment. Should this court not entertain this application, no institution will afford the applicant an opportunity to appeal to it, against the decision of the PCI.

[5] The applicant's main argument is that Dr Naran applied incorrect methods and procedures when he treated him, thereby aggravate his illness. This argument was addressed in the judgment. The applicant does not dispute that his complaint was considered by the PCI and decision communicated to him, with reasons. Regard should be had that the applicant neither medically trained nor does he possess any specialist qualification that qualifies him to make a submission of this nature. He has no prospects of success. Therefore, this application should be dismissed with costs.

[6] In the result, the following order is made.

6.1 The application is dismissed.

6.2 The applicant should pay costs of respondents on Scale B.

  

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**M.M MABESELE**  
(Judge of the High Court Gauteng Division,  
Pretoria)

Date of hearing :28 March 2025

Date of judgment : 2 May 2025

Appearances

On behalf of the appellant : In person

On behalf of the first respondent : Adv. J. Themane

Instructed by :Sithole & Mokomane Attorneys

On behalf of the first respondent : Adv. N. Marshall

Instructed by :Macrobert Attorneys