

IN THE HIGH COURT OF SOUTH AFRICA



GAUTENG DIVISION, PRETORIA

Case No:012911/2025

<u>DELETE WHICHEVER IS NOT APPLICABLE</u>	
(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED: <u>No</u>
<u>5/5/25</u> DATE	 SIGNATURE

In the matter between:

NOMSA NGOBENI

APPLICANT

and

UNIVERSITY OF PRETORIA

1ST RESPONDENT

PROFESSOR C DE JAGER

2ND RESPONDENT

JUDGMENT

FRANCIS-SUBBIAH, J:

[1] The Applicant brings an urgent application, Part A, for an interim order to direct the Respondents to register her as a final year student for the MPhD Prosthodontics Master's degree pending the final relief in part B. Further the application seeks that the applicant be provided with access to the facilities at the main campus of the University of Pretoria. Part B of the application is a judicial review seeking final relief that will be determined in the normal course of proceedings and will be adjudicated later.

[2] A case of urgency arose when the applicant was excluded from continuing studies for the 2025 academic year. An appeal process was followed culminating in the Senate Review Committee for Research Postgraduate Education communicating a letter to the applicant's legal representative on 31 March 2025. The Senate Review Committee upheld the decision by the Health Sciences Faculty to exclude the applicant from studies for the 2025 academic year. This communication had the effect that the internal review proceedings were concluded and the doors for a review proceeding before the court may proceed.

[3] In addition the applicant received a letter of termination as Registrar on 8 April 2025. Her employment as Registrar and enrollment on the Master's program is intrinsically linked. As a result, she consulted with her legal team to reinstate the urgent application sought in January 2025. Internal remedies for review of the faculty's decision were offered by the University and for this reason the applicant removed the initial urgent application to allow for the internal remedies to be exhausted.

[4] The urgent application was re-issued on 11 April 2025. The applicant submits that she will be severely prejudiced if this application was brought in the ordinary roll, because she will not receive substantial redress as the 2025 academic year is currently under way and immediate relief is required. I am satisfied as a result, that a case for urgency has been made out.

[5] For an administrative decision to be reviewed, the Promotion of Administrative Justice Act 2 of 2000 (PAJA) holds that there must be a record of the administrative decision. Without such a record, the court cannot review a decision. Although the review is anticipated in Part B of the relief claimed. On an urgent basis, the court is permitted to determine the interim relief sought on the available evidence presented to court, without the benefit of a full record.

[6] The applicant's version is briefly summarized. She was afforded a contract in April 2021 to be admitted to the MCHD program. She duly accepted and signed the

contract. However, during the first seven months she could only enroll in one module, namely oral biology, as the academic year had already commenced. The module required her to prepare and present presentations bi-weekly. Dr Nel gave her an opportunity to continue with coursework. As a result, all other prosthodontic seminars were halted. The seminar topic was too broad and required extensive preparation and therefore the time slots for her presentations were substituted by a senior Registrar.

[7] In February 2022, she was given a new contract. She was therefore overwhelmed as she was expected to complete the requirements of a one-year course within three months. In addition, she had to hold two seminars, propose a research problem and complete the pre-clinical quota. This was further exacerbated by the fact that she was pregnant, contracted COVID twice during her pregnancy, and was quarantined while on bed rest. In the first six months, she managed to present one seminar on Occlusion after the topic was modified by Dr Mmutlana.

[8] During her pregnancy she completed the pre-clinical quota and mostly felt frustrated as she was not supported in the prosthodontics department. Doctor Fortuin mostly assisted with the MDC cases. (Max-fac pro and perio-pro-ortho). He took accountability for all treatment plans discussed with him and took the responsibility of being her supervisor. This did not happen in the interactions with other supervisors.

[9] In the 2023 academic year, she repeated Endodontics exam and passed it. She attended periodontics and was expected to present two case presentations in periodontics, 2 seminars in oral medicine, and a reflection for a surgery case observed.

It is unclear from the documents whether these interventions were completed. She did state precisely that her first draft of her protocol registered for TNM course was completed.

[10] During the second semester she was required to enroll for MPG 804. However, she was thereafter advised not to do pathology as the year ends in August. She submitted two seminar drafts to supervisors and presented one seminar. The department of Prosthodontics banned her from seeing patients without supervision. She complains that she was the only registrar who was expected to ask for permission to work in the postgraduate clinic. She was removed from overtime duties. Her consultant, Professor Sykes proposed that she would be charged if she worked outside of supervision pending a verbal warning. Whilst she observed that other fellow registrars would work overtime to accumulate and complete polycases.

[11] For the year 2024, she sat for the Oral Pathology exam on the 3rd of June 2024 and the oral examination on the 7th of June 2024. She was provided with the exam results on 15th of July 2024 when she was advised that she had failed the exam with an overall mark of 49%. A standard overall pass mark is 50%. She requested a perusal of her script. Dr Robinson met in person with her and discussed her results. He informed her that she had done well on MCQ and the oral exam but not so well on the written exam. However, he did not provide her with the exam script for her perusal. She submits that results between 40 to 49% qualify for a supplementary examination. There was no supplementary examination for that sitting and she was not offered one.

[12] The applicant was informed verbally that she should vacate her post at the Pretoria Oral and Dental Hospital with immediate effect and could not consult with patients. She was excluded from the program effective from the 31st of December 2024. She was informed that she could lodge an appeal before 6th January 2025, which she proceeded to do.

[13] She complains that other Registrars that came prior to her were relieved of their clinical academic duties while preparing for oral pathology. This nevertheless was not done in her case. Her duties were doubled as a junior Registrar. She was compelled to do her work and the work of seniors doing pathology. Professor Sykes and consultant Dr Mmutlana assured her that support will be extended to her. Unfortunately, she received no support. Being in the last year of study, she was not allowed to work without supervision. She submits that this was to ensure that she did not progress.

[14] The applicant argues that the Dean of the Faculty, Prof C De Jager did not individually consider or apply his mind to her appeal but merely rubber stamped the decision of the Head of Department. This having the effect that her individual circumstances were not considered. Despite engaging with the faculty on her exclusion, she was not afforded the required support and was excluded from the studies for the 2025 academic year. On the other hand, she observes that other students' contracts were extended even though they were behind schedule with seminars and clinical cases.

[15] The respondents contend that the basis for exclusion of the applicant from the 2025 academic year is her academic performance. They state that the applicant repeatedly failed core modules. Specifically, she failed oral Pathology twice and Radiology attendance module thrice. Accordingly, she fails to meet the University's regulations that mandate discontinuation of studies upon a second module failure.

[16] The well-established requirements for the granting of an interim interdict, as set out in **Setlogelo v Setlogelo** 1914 AD 221 remain:

- 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) the balance of convenience in favour of the granting of the interim interdict, and
- d) that there is no alternative or other satisfactory remedy available to the applicant.

Prima facie right

[17] In **National Treasury and Others v Opposition to Urban tolling Alliance and Others** 2012 (6) SA 223 (CC) (OUTA) at para 44, Moseneke DCJ directs as follows:

The common law annotation to the **Setlogelo** test is that courts grant temporary restraining orders against the exercise of statutory power only in exceptional cases and when a strong case for that relief has been made out. ...

Further at para 71, the Constitutional Court cautions that unless a compelling case has been made out for a temporary interdict, it should be done only in the clearest of cases.

[18] The applicant does not confirm in her application that she indeed failed the oral pathology module MPG 804 twice. No explanation has been offered for the failure of the module for the second time on 11th November 2024. She complains of being victimized by not being offered a supplementary exam for the same module that was written on 3rd June 2024. Further no explanation is proffered for the failure to successfully complete one seminar presentation in Radiology RAD 870, despite being given three opportunities to present the required seminar.

[19] For these reasons, a *prima facie* right to the relief claimed is not satisfactorily established. Given that, the applicant's failure to dispute the core factual basis for her exclusion as it was set out in the answering affidavit. She cannot establish a clear right required for the final relief effectively sought. The relief sought by the applicant is an extraordinary interim relief.

Irreparable harm suffered

[20] The question of what irreparable harm will the applicant suffer if the interim relief is not granted, and the ultimate relief is eventually granted. The applicant submits that she will suffer a loss of the 2025 academic year. It is not established how and why the loss of an academic year will result in irreparable harm. The applicant relies on the case of ***Fakude v University of Pretoria*** [2010] ZAGPPHC 178 for the relief claimed. However, the ***Fakude*** decision, although similar in certain aspects, differs fundamentally on the merits of the matter and a consideration of Mr Fakude's individual circumstances relating to how criminal allegations were dealt with. In the circumstances of the present applicant, academic performance is central to the question of granting of the interim relief.

[21] In the event a final review is found in favour of the applicant, compensation for the lost academic year can be awarded. Financial losses arising from an unlawful exclusion could be claimed as damages. The harm complained of fails to demonstrate irreparable harm as required for an interim relief.

Other satisfactory Remedy Available

[22] The applicant does have an alternative satisfactory remedy available. The review application contemplated in Part B will address the lawfulness of her exclusion from the 2025 academic year and possible redress.

Balance of Convenience

[23] In *Economic Freedom Fighters v Gordhan and Others* 2020 (6) SA 325 (CC), the court considered an attempt to secure what amounts to final relief through an urgent interim application to be procedurally improper and warranted refusal and at para 47 said the following:

'Turning to the present matter, it should be borne in mind that both applicants seek urgently to appeal an interim interdict, which is purely interlocutory in nature. An interim interdict is a temporary order that aims to protect the rights of an applicant, pending the outcome of a main application or action. It attempts to preserve or restore the status quo until a final decision relating to the rights of the parties can be made by the review court in the main application. As a result, it is not a final determination of the rights of the parties. It bears stressing that the grant of an interim interdict does not, and should not, affect the review court's decision when making its final decision and should not have an effect on the determination of the rights in the main application. The purpose of an interdict is to provide an applicant with adequate and effective temporary relief.'

[24] Respondents argue that an interim relief serves to protect rights against threatened future conduct pending final adjudication of a dispute, not to pre-empt that adjudication or grant the very relief that is the subject of the main dispute. The effect of the relief sought by the applicant is in substance and effect of a final nature. An interdict compelling re-registration, although it is framed as an interim order pending the Part B review, it would in reality grant the applicant the substantive final outcome she seeks at the final review. The interim order would permit the applicant to continue her studies in the 2025 academic year, potentially gaining academic credit that cannot practically be reversed, thereby rendering the Part B review negatory and pre-empting

a final determination on the lawfulness of her exclusion without the benefit of a full record.

[25] It is submitted that prematurely and irreversibly granting this interim relief would permit the applicant to participate in the 2025 academic year to acquire the knowledge and experiences sought without meeting certain requirements. The granting of the application does not preserve the status quo as it previously was, instead it alters it.

[26] In particular the precarious situation is that should the applicant's review application fail, reversing the practical consequences of this interim order cannot be reversed. This fundamentally alters the existing situation, the status quo, where the applicant in terms of the University's governance is excluded.

[27] The respondents argue that granting the interim order will have a significant prejudice to the University's academic integrity, the potential risk to patient safety in a clinical program, disruption to resources and compliance, and the undermining of institutional autonomy. As a result, the balance of convenience favours the respondents.

[28] For the reasons discussed above, the application for the urgent relief sought fails. The costs of this urgent application are made costs in the cause pending Part B of the review application.



R FRANCIS-SUBBIAH

JUDGE OF THE HIGH COURT OF
SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DATE HEARD:

23 APRIL 2025

DATE DELIVERED:

05 MAY 2025

APPEARANCES

For the Appellant: Adv SM Tshabalala

Instructed by: MSM & Associates Inc

For the Respondent: Adv EJJ Nel

Instructed by: Anton Bakker Incorporated

Delivered: This judgment is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading to Caselines. The date and time of hand-down is deemed to be 16H00 on 05 MAY 2025