



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES /NO
(2) OF INTEREST TO OTHER JUDGES: YES /NO
(3) REVISED
DATE: 25 August 2025
SIGNATURE: 

Case No. 073747/2024

In the matter between:

SELLO, ABRAM DITONKANA

FIRST APPLICANT

SELLO, POTEKO

SECOND APPLICANT

And

SOUTH AFRICAN PHARMACY COUNCIL

RESPONDENT

Coram: Millar J

Heard on: 19 August 2025

Delivered: 25 August 2025 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 12H00 on 25 August 2025.

ORDER

It is Ordered:

- [1] The application is dismissed.
- [2] The applicants are ordered to pay the respondent's costs as between party and party which costs are to include the costs consequent upon the engagement of two counsel, one of whom is a senior. Such costs are to be on scale C.

JUDGMENT

MILLAR J

- [1] The applicants are pharmacists. The respondent is their professional controlling body. On 10 July 2024, the present application was launched. In it, the applicants seek orders:

- [1.1] Reviewing and setting aside the decision of the respondent to institute disciplinary proceedings against the applicants.
 - [1.2] That the disciplinary proceedings against the applicants are commenced in 2023 are irregular and must not proceed any further.
 - [1.3] For costs of the application.
- [2] On 19 May 2021, a monitoring inspection was conducted at Lakefield Pharmacy, the pharmacy of the applicants. This resulted in an A grading being granted to that pharmacy. Usually, such inspections are conducted and when a grading is awarded, it is valid for a period of 3 years from that date.
- [3] On 17 March 2022, a disciplinary inspection was conducted at the pharmacy. This was conducted by Mr. David Bayever of the respondent. It was prompted by complaints that had been received relating to what was said to be unprofessional conduct at the pharmacy. The purpose of the investigation was threefold:
- [3.1] Firstly, to *"investigate whether the pharmacy is conducted without a pharmacist"*.
 - [3.2] Secondly, *"to investigate whether the pharmacy is conducted by an unregistered and unqualified person."*
 - [3.3] Thirdly, to *"conduct a full monitoring inspection."*

- [4] Mr. Bayever prepared a report relating to his inspection and recorded that, *"Augustine P Sello phoned Abram Sello (his father) and after a lengthy discussion AP Sello told me that the instruction stands that I was to remove myself from the premises and not to continue with the inspection as instructed by the Responsible Pharmacist Abram Sello"*.
- [5] Following on Mr. Bayever's report, the Committee of Preliminary Investigation (CPI) of the respondent, met on 5 May 2022 to discuss the matter. A discussion of various charges was placed on the agenda, and it was resolved that the matter be held in abeyance until the next meeting of the CPI.
- [6] On 19 May 2022, a joint disciplinary inspection was conducted by Ms Karsten of the respondent and Ms Seabi of the South African Health Products Regulatory Authority (SAHPRA). In consequence of this joint inspection, the grading of the Lakefield Pharmacy was changed to C grade. A detailed report was prepared by Ms Karstens setting out her findings and this was submitted to the respondent.
- [7] On 25 May 2022, the registrar of the respondent, wrote to the applicants and detailed the nature of the complaints and findings arising out of the disciplinary inspection conducted by Ms Karsten and afforded them 21 days to respond in writing to the letter. No response was received within the 21 days.
- [8] On 20 July 2022, the CPI met and after having considered the complaints against the applicants, resolved that these be referred to a Committee of Formal Inquiry (CFI). It is this committee that conducts the disciplinary inquiries.
- [9] On 9 August 2022, the applicants' attorney addressed a letter to the respondent in which he indicated that he had been handed the respondent's letter of 25 May

2022 together with the annexures to it. In the letter, the attorney recorded that *"In respect of the contents of the inspection report as well as the memorandum by Ms Karsten, our client (sic) vehemently deny that the contents are factually correct. Had Mr. P Sello been invited to comment on the contents of the report shortly after Ms Karsten conducted the inspection, Mr. Sello would have given substantive comments which would have been recorded to demonstrate why the inspection report is not in order."* The letter went on to record that *"our client will defend any charges on the basis of the flawed report"*.

- [10] Almost 10 months later, the respondent replied to the applicants' attorney. In the reply, the applicants were informed that it was the respondent's intention to set the matter down for hearing. The applicants were informed that it was anticipated that the hearing would be towards the end of June. On 6 June 2023, notice to attend a formal inquiry before the CPI on 12 July 2023 was sent to the applicants. The notice set out 12 charges.
- [11] On 12 July 2023, the applicants attended the hearing. After the case for the respondent was closed, the hearing was postponed without a date. On 5 October 2023, notice was given for the continuation of the hearing on 28 November 2023. The hearing resumed and at that hearing, the applicants applied to stay the proceedings to afford them an opportunity to serve an application for review.
- [12] The application was granted conditionally on the basis that the review application be served within 1 week failing which the hearing would resume on 13 December 2023. A review application was subsequently served, and the hearing did not proceed on 13 December 2023. However, thereafter on 23 January 2024, the review application that had been delivered was withdrawn. Thereafter, on 10 July 2024 the present review application was launched.
- [13] The crux of the complaint by the applicants is that while initial disciplinary inspection of Mr. Bayever had apparently been precipitated by two complaints,

the applicants were not afforded an opportunity to answer those complaints or the report of Mr. Bayever. Similarly, they had not been afforded an opportunity to address the findings of Ms Karsten. Another cause of concern for the applicants was that at the hearing, only Ms Karsten had been called by the respondent and neither the two complainants nor Mr. Bayever.

- [14] It was argued by the applicants that the failure to give them an opportunity to address the complaints before a decision had been taken by CPI to refer them to a formal disciplinary inquiry was an egregious subversion of their right to procedural fairness before their statutory regulator. In other words, they ought to have been given an opportunity to explain before being called upon to attend the disciplinary enquiry on 12 July 2023.
- [15] It is not in dispute that the disciplinary enquiry has not been concluded or that no finding has been against the applicants. Despite this, the applicants seek to review and set aside the decision of the CPI and consequently, if this order is granted, vitiate the pending proceedings.
- [16] It was argued on behalf of the applicants, that the present review application was not brought in terms of the Promotion of Administrative Justice Act¹ (PAJA) but that it had been brought in terms of the common law read together with Rule 53 of the Uniform Rules of Court. The argument in this regard as set out in the heads of argument and in Court, was at odds with what had been said by the applicants in their supplementary affidavit. I deal with this below.
- [17] The argument for the applicants was that their right to procedural fairness, guaranteed in section 33 of the Constitution² had been breached. This breach manifested in the failure of the respondent to afford them an opportunity to

¹ 3 of 2000.

² The applicants referred in this regard to *Fedsure Life Insurance and Others v Greater Johannesburg Transitional Council and Others* 1999 (1) SA 1998 (CC) at para [56].

address and interrogate each complaint or report as and when it was received. The failure to afford them the opportunity to do this was, so it was argued, an affront to their right to procedural fairness.

- [18] The respondent argued that the application is stillborn. The respondent advanced several arguments as to why this was so. Pertinently, the respondent argued that despite the *volte* face of the applicants in their heads of argument and in the argument before Court, the applicants had in fact brought their application in terms of PAJA.
- [19] In the applicants' supplementary founding affidavit, the applicants assert that "*The respondent's decision too (sic) institute disciplinary proceedings against Applicants constitutes administrative action by a juristic person performing a public function in terms of the Pharmacy Act 53 of 1974 and the relevant Regulations.*" This assertion was made under the heading "*Promotion of Administrative Justice Act 3 of 2000.*"
- [20] In their replying affidavit, the applicants assert that "*The applicants reference to the Provisions to the Promotion of Administrative Justice Act 3 of 2000 is contained in paragraph 15 of the supplementary affidavit which paragraphs are clear on the significance of the Act. The Provisions of the Act are relevant insofar as applicants (sic) a right to administrative action that is lawful, reasonable and procedurally fair.*"
- [21] It is common cause that the present application was brought outside of the 180-day period referred to in section 9(1) of PAJA and that there has been no application for condonation.

- [22] That PAJA is of application in the present case is my mind without question. In this regard in *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others*,³ the Constitutional Court held:

"In Pharmaceutical Manufacturers Association of SA and Another: In re Ex parte President of the Republic of South Africa and Others, the question of the relationship between the common-law grounds of review and the Constitution was considered by this Court. A unanimous Court held that under our new constitutional order the control of public power is always a constitutional matter. There are not two systems of law regulating administrative action – the common law and the Constitution – but only one system of law grounded in the Constitution. The Courts' power to review administrative action no longer flows directly from the common law but from PAJA and the Constitution itself. The grundnorm of administrative law is now to be found in the first place not in the doctrine of ultra vires nor, in the doctrine of parliamentary sovereignty, nor in the common law itself, but in the principles of our Constitution. The common law informs the provisions of PAJA and the Constitution, and derives its force from the latter. The extent to which the common law remains relevant to administrative review will have to be developed on a case by case basis as the Courts interpret and apply the provisions of PAJA and the Constitution." [My underlining]

- [23] In *Asla Construction (Pty) Ltd v Buffalo City Metropolitan Municipality*,⁴ it was held that before any decision could be made on the merits of a review, consideration had to be given to an application for condonation and for the extension of the time referred to in section 9 of PAJA.

³ 2004 (4) SA 490 (CC) at para [22].

⁴ 2017 (6) SA 360 (SCA) at paras [10] to [13]. See also *Opposition to Urban Tolling Alliance v South African National Roads Agency Ltd* [2013] 4 ALL SA 639 (SCA) at paras [41] and [43].

[24] In the present case, there is no application for condonation and for that reason, the merits of the review need not be considered. The failure to apply for condonation is fatal and for this reason the application must fail.

[25] Regarding costs, it was argued for the respondent that it was a necessary precaution for it to have briefed two counsel, one of which is a senior. It was argued that as a statutory regulator, the consequences of an adverse order against it would be serious and would impact its ability to carry out its statutory mandate. It was argued for this reason that if successful, costs should include the costs of two counsel on scale C. I am persuaded that the engagement of more than one counsel, one of whom was a senior was in the circumstances a reasonable precaution.

[26] In the circumstances, I make the following order:

[26.1] The application is dismissed.

[26.2] The applicants are ordered to pay the respondent's costs as between party and party which costs are to include the costs consequent upon the engagement of two counsel, one of whom is a senior. Such costs are to be on scale C.


A MILLAR
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON:

19 AUGUST 2025

JUDGMENT DELIVERED ON:

25 AUGUST 2025

COUNSEL FOR THE APPLICANTS:

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