

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE No: 7480/2020

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO THE JUDGES: YES/NO
(3)	REVISED. YES
PILLAY J	
SIGNATURE	DATE 6/03/2020

In the matter between:

COCA COLA BEVERAGES SOUTH AFRICA (PTY) LTD APPLICANT

V

DASWA KHUTHADZO WITNESS RESPONDENT

Delivered : 06 March 2026

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand down of the judgment is deemed to be 06 March 2026 at 11:30 am.

Date heard : 16 February 2026

Coram : Pillay J

JUDGMENT

PILLAY J:

INTRODUCTION:

- [1] The parties are before this Court with an interlocutory application wherein the applicant sought an order of Court directing the respondent to provide it with the signed consent form in order to allow it, to access the respondent's medical records which are in the possession of the Health Care Professionals, who have attended to the respondent following his injury on 2 April 2020, which was the subject of his claim.
- [2] The application is opposed by the respondent on various grounds.

BRIEF BACKGROUND:

- [3] The respondent being the Plaintiff in the main proceedings had instituted Summons for injuries sustained, whilst on duty at the applicant's premises, on the date of the incident. In the main proceedings the respondent had indicated that he had been to various medical practitioners who treated him for the injuries he sustained. The respondent sought to claim damages for past and future medical expenses, and general damages flowing from the injuries sustained. It was based on these claims that the applicant sought the involvement of the Court, to order the respondent to provide the applicant with the relevant medical records, on which the respondent relied, in respect of his claim.
- [4] The applicant took various steps to investigate the merits of the claim, including contacting Life Health Solutions and requesting them to provide the

medical records, in respect of the respondent's treatment concerning the injuries that he sustained. The hospital replied that it needed consent from the respondent or alternatively to be subpoenaed duces tecum.

[5] On 10 May 2024, the applicant addressed a letter to the respondent requesting his signed consent form, for his medical records to be accessed from the various medical professionals and hospitals, who had managed his care, following his alleged injury. The copy of the letter was attached to the application.

[6] On 21 May 2024, the respondent replied and refused to make his signed consent available to the applicant. His letter refusing the request was attached to the application and in brief the respondent noted as follows;

"Note that it is unclear what is the basis for your clients request, as the only documents which the plaintiff intends to use during the trial had already been discovered and produced."

[7] The applicant alleged that based on the above, the respondent failed to appreciate the right that the applicant had to investigate the merits of his claim, in order to prepare its defence, and that it was not for the respondent to direct which documents the applicant must rely upon, to prepare for the defence of the respondent's claim.

[8] The applicant sent a further letter on 30 May 2024, to the respondent setting out in detail its request for access to the respondent's medical records and

attached the consent form, for his signature, the letter was attached to the application.

- [9] The respondent replied on 5 June 2024 and persisted with his refusal. His letter of refusal was attached to the application as well. In response, the applicant advised the respondent that it would exercise its rights in order to ensure that it was not unduly prejudiced the e-mail was also attached to the application.
- [10] The applicant indicated that the refusal to allow the applicant access to the respondent's medical records which were central to the respondent's claim for bodily injuries and prejudiced the applicant in that the applicant was unable to investigate the merits of the respondent's claim.
- [11] According to the Applicant, the medical records were relevant to get advice from its medical experts on the merits of the claim and whether to persist with its defence or to settle the matter. The applicant could only make an informed decision, once it had been allowed, access to the medical records belonging to the respondent. The refusal was prejudicial to the applicant's preparation of its defence, and it had the potential to cause the applicant to persist with the defence, when it should not or alternatively settle the claim on unfavourable grounds. The applicant sought that the application be granted as prayed for in the notice of motion and that Costs be awarded to the

applicant including costs to Council on scale C due to the complexity of the matter.

- [12] The respondent indicated that the application was fatally defective, unwarranted, baseless and constituted no more than an abuse of the Court's process. It was delaying tactics by the applicant, simply because it was filed despite the binding pre-trial minutes, having been signed by both parties, moreover the complete bundle of the record of proceedings, seeking the judicial pre-trial date, was already filed in Court.
- [13] The respondent indicated that it was inconceivably wrong, ill -advised and completely untenable, for the applicant to expect this Court to grant an order to compel the respondent to sign a consent form, against the respondent's own will, in order to access the respondent's confidential medical record, at this late stage of the proceedings.
- [14] It was submitted that this conduct by the applicant constituted a mere litigation stratagem and Stalingrad tactics that sought to frustrate the respondent, to derail expeditious resolution of the legal dispute, and the entire process provided for in terms of the Uniform Rules of Court.
- [15] The respondent maintained that the parties had signed a pre-trial minute on 20 May 2024 which bound the parties to the proceedings, as contained in the record of the pre-trial minute. The applicant could not be permitted to deviate

from that binding pre-trial minute and there were no exceptional circumstances, shown why the applicant should deviate from the binding pre-trial minute.

- [16] The respondent indicated that the applicant was flouting the procedural steps, as contained in the pre-trial minute by seeking to compel the consent form from the respondent, which fell outside the parameters of the binding pre-trial minute. The respondent indicated that by signing the binding pre-trial minute, there was no provision made for the respondent to be compelled to sign a consent form, in order to give the applicant access to the respondent's confidential medical records.
- [17] Moreover, the applicant failed to approach the Court for consent to deviate from the terms of the pre-trial minute, prior to bringing this application. The respondent submitted that the applicant could not be permitted to investigate medical records outside or after discovery and production of documents had been finalized especially if that process would ultimately disrupt the pre-trial minutes.
- [18] The respondent brought to the attention of the Court the fact that the applicant had waited from the 4 October 2023 when the response from Life Health Solutions was received, to the 10 May 2024 some seven(7) months later to approach the respondent in order to request his letter of consent which was very peculiar and indicative of the applicant seeking to delay the proceedings.

- [19] The respondent indicated that the applicant was quite capable of filing its plea and discovery and attended the pre-trial processes without these said documents. The applicant was therefore capable of proceeding with the trial before the Court, because of the discovered documents by the respondent, which include the medical expert reports.
- [20] The respondent further highlighted that he would suffer serious prejudice because he would be forced to disclose confidential medical records against his own will and without his consent. This would also disrupt the timetable on the signed and binding pre-trial minutes which would unreasonably delay the matter from being finalized expeditiously whilst at the same time the respondent would incur further additional legal fees.
- [21] It was submitted by the respondent that this request for the Court to order the respondent to sign the consent form, was simply a fishing expedition sought by the applicant and that this was just to solicit the respondent's medical records from Life Health Solutions and other unknown Specialist Doctors who had treated the respondent. Further, it was not clear when this exercise would be finalized and as it was worded so widely the respondent was concerned about his right to privacy which would be infringed by this request.
- [22] The respondent was uncertain as to which doctors the applicant wanted information from, as same was not specified other than those in paragraph five of their application. The respondent maintained that he refused to provide

consent and that the application was extremely wide concerning the medical practitioners to be contacted in respect of the consent and therefore the application was destined for dismissal with costs on an attorney-client scale including the employment of one Counsel.

- [23] In reply, the applicant maintained that they were entitled to the medical records forming the subject of the respondents claim. The applicant maintained that the Court should grant the applicant access to these records so that the applicant would be advised by its experts as to the merits of the respondent's claim and the applicant could then make an informed decision on whether to concede liability and settle the matter or defend the claim. This was very important to assist the medical experts of the applicant, to properly adjudicate the matter before Court.
- [24] The applicant highlighted that the respondent clearly failed to appreciate the logic of the request, opting to be obstructive. Had the respondent been properly assisted by his legal representative, the applicant believed that there would have been no need to approach the Court to order the respondent to sign the relevant consent form.
- [25] The applicant noted that the confidentiality relied upon by the respondent made no sense, as the Respondent was prosecuting the personal injury claim and had made various allegations of a medical nature, directed against the applicant, who he alleged was responsible for the injury sustained.

Accordingly, the confidentiality sought and relied upon by the respondent, in respect of the subject matter, pertaining to his medical injuries was unmerited.

[26] The applicant noted that amidst the averment made by the respondent that he had provided the medical records on which his claim was based, this consisted of the expert reports in respect of an X-ray, a Bone Scan report as well as a Final Medical report. According to the applicant there was no evidence in respect of the medical doctors who treated the respondent and how the medical doctors planned to manage the treatment of the respondent going forward. The applicant indicated that the refusal to grant access to these medical records, relating to the nature and extent of the respondent's injuries which was relevant to this claim, had the effect that the matter could not be properly ventilated, and such would be prejudicial to the applicant in their preparation of their defence.

[27] Both Parties filed detailed written heads of argument wherein the applicant sought for the order as prayed for in the notice of motion and the respondent sought for the dismissal of the said application.

ANALYSIS OF THE LEGAL PRINCIPLES:

[28] Our Constitution provides that every South African has the right to privacy and that their communications medically not be infringed and disclosed to a third party without their consent. The privacy of a patient's communications or disclosures to medical practitioners must be respected and protected. If

the patient's confidence is not safeguarded he or she would not be inclined to disclose to the medical practitioner, what exactly was affecting them, which could impact the proper treatment needed as well as the consequence flowing from the incorrect information submitted. The National Health Act¹ and the Promotion of Access to Information Act² regulates the rights of patients and third parties to access medical records. There are special clauses relating to personal information which is under the control of the Medical Practitioner and the right to privacy concerning the contents of this communication. The Protection of Personal Information Act³ also prohibits the processing and collecting of personal information pertaining to a patient's medical condition.

- [29] The Court when considering the application was required to balance the right to the protection of the privileged medical information, offset against the right of access to such information. The Court was required to ensure that the rights that were being sought to be protected was not infringed, unless there was justification for such infringement. It was imperative that the information required was relevant to the matter at hand and was not ancillary to the claim and the dispute between the parties.

¹ Act 61 of 2003 ("NHA")

² Act 2 of 2000 ("PAIA")

³ Act 4 of 2013 ("POPI")

- [30] The Applicant contended that it was relevant that the respondent provide consent to his medical records, for the purpose of being able to properly assess the medical circumstances, surrounding the respondent's claim, as well as being able to properly ventilate whether it was prudent to proceed with the trial, or to rather settle. These medical records related to events pleaded to by the respondent, in his Particulars of Claim and have bearing on the damages sought by the respondent, in respect of the injuries sustained by the respondent, whilst in the employ of the applicant.
- [31] The applicant indicated that amidst the fact that the respondent had attached investigation reports conducted by the various Health Care Professionals, there were no medical records attached to same and part of the respondents claim referred to future hospital, clinical, medical and related expenses to the amount of "R803 104,00" which did not assist in indicating the extent of the respondent's injuries, the management plan while under the care of those medical practitioners, the cost of such care and the cost of future care as planned by his doctors. It was for those reasons that the applicant needed to access the medical records of the respondent with specific reference to the claim, sought by the respondent.
- [32] The applicant attempted to obtain same from Life Health Solutions with no success and further the applicant was hampered by the respondent's refusal to consent to such records being made available. These medical records

were the basis of the respondent's claim as these medical practitioners were consulted flowing from the injury sustained by the respondent on 2 April 2020. It was because of the refusal by the respondent that the applicant had to approach the Court for assistance in obtaining the respondent's consent.

[33] The respondent relying on the pre-trial minutes as well as the documents that were submitted to the applicant maintained that there was no need for further medical documentation as the relevant documentation had already been submitted to the applicant and same were the only documents that the respondent intended to rely on during the trial. The main concern raised by the respondent was that the medical records were confidential and that the disclosure of same would be in breach of the provisions of Section 14 of the National Health Act which was illegal. The respondent was entitled to refuse consent and without same the medical practitioners were not permitted to provide the information to the applicant. The respondent argued that there must be justifiable reasons warranting the disclosure to be ordered by Court and that the applicant had not advanced plausible explanations or made out a case for same.

[34] The respondent highlighted the case of ***Tshabalala-Msimang and Another v Makhanya and Others***⁴ wherein the Court dealt explicitly with the issue of

⁴ See case: (18656/07) [2007] ZAGPHC 161; 2008 (6) SA 102 (W); 2008 (3) BCLR 338 (W); [2008] 1 All SA 509 (W) (30 August 2007)

unauthorised disclosure of the medical records of the patient, to a third party by a Medical Facility, without the consent of the patient. This Court aligns itself with the principles enunciated in that matter, however, that matter was distinguishable from the present case as the Court herein, was required to ventilate whether the respondent's refusal to consent to the request, sought by the applicant, of the relevant medical records was justified.

- [35] The respondent argued that the application was worded so widely as to possibly include all medical history of the respondent, including privileged information concerning other medical areas of the respondent's medical history, which was not relevant to and had no bearing on the matter before Court. This would be an in-road to the respondent's right to privacy and confidentiality. The respondent maintained that the important documentation was already disclosed and this application was sought to frustrate the respondent, and disrupt the expeditious resolution of the legal dispute and the entire process provided for in terms of the Uniform Rules of Court.
- [36] The respondent highlighted that the pre-trial minute as well as discovery in terms of Rule 35 of the Uniform Rules of Court were the appropriate stages for this request to be ventilated and as such this was a simple delaying tactic by the applicant, without permission first being sought from Court by the applicant, to deviate from the binding pre-trial minute and discovery process.

Further that the applicant filed its plea and could proceed to trial, without these documents and as such this application, must be refused by Court.

CONCLUSION:

- [37] In considering all the submissions made by the parties and weighing up and balancing the conflicting rights and obligations this Court found that the medical records were the founding documents flowing from this incident. They were relevant and had bearing on the treatment received and the attempts made to assist the respondent in his healing. This Court considered the merits of this Claim and found that the respondent's submissions and right to claim privilege in respect of the relevant medical records conflicted with fair trial proceedings, which is enshrined in our Constitution. These medical records were relevant and necessary to the applicant's defence and as such the refusal by the respondent to sign the consent form was unwarranted and prejudicial to the applicant.

RULING:

- [38] Having considered the application, the opposition and having regard to all the documents filed on record the applicant has made out a case and the application is granted as prayed.

COSTS:

- [39] There is no reason why Costs should not follow the successful party the applicant sought Costs on Scale C indicating that the matter was complex.

The respondent sought Costs if successful. Having considered the application this Court was not convinced that the matter was complex or difficult to warrant Costs on Scale C. The following was considered appropriate in the circumstances. Costs to the applicant including costs to Counsel on Scale B.

ORDER:

[40] The following order is made:

[40.1] The respondent is directed to furnish the applicant with his signed consent form to enable the applicant to access his medical records, pertaining to the injury sustained by the respondent on 2 April 2020, to prepare for its defence of the claim against it by the respondent.

[40.2] The respondent is ordered to pay the cost of this application including Counsel fees on scale B.




K.L. PILLAY J

JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE

APPEARANCES:

FOR THE APPLICANT : **Adv. L Mutkushe**
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FOR THE RESPONDENT : **Adv. Moropene**
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POLOKWANE HIGH COURT