



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 2026-046187

DATE: 07 APRIL 2026

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED.

Date: **07 April 2026**

Signature: _____

In the matter between:

DR MARECHELLE VOLSCHENK

Applicant

And

SOUTH AFRICAN NATIONAL DEFENCE FORCE

First Respondent

**THE MINISTER OF DEFENCE AND MILITARY
VETERANS**

Second Respondent

HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA

Third Respondent

JUDGMENT

NYATHI, J:

Introduction

1. This is an urgent application concerning the implementation of a statutory community service placement for the 2026 annual cycle. The applicant, a qualified dentist, seeks relief arising from the refusal or deferral by the First and Second Respondents to finalise and implement her placement on the basis of her pregnancy and anticipated maternity leave.
2. The application raises three principal issues. First, whether the matter is urgent. Second, whether the respondents were legally entitled, after a lawful placement, to defer the applicant's appointment on pregnancy grounds. Third, whether such deferral is unlawful, irrational, and discriminatory.

Common Cause Facts

3. The material facts are largely common cause.
4. The applicant is registered with the Health Professions Council of South Africa as a dentist in the category "Public Service Community Service" with effect from 1 January 2026.
5. During 2025 she applied, through the statutory Internship and Community Service Placement process, for placement in the 2026 annual cycle. She disclosed her pregnancy during that process and provided the required medical confirmation.

6. On 31 October 2025, the National Department of Health allocated the applicant to GP SAMHS Thaba Tshwane DTF, with a commencement date of 1 January 2026.
7. The allocation letter recorded that the applicant's application had been finalised and forwarded to the relevant department for appointment processing and finalisation in accordance with applicable legislation and regulations. It further recorded that the allocation did not itself constitute an offer of employment and that the department reserved the right to migrate the applicant to another facility where her services were most required.
8. On 14 January 2026, the Second Respondent informed the applicant that her appointment would be delayed because, due to her pregnancy and anticipated maternity leave, she would only be able to render services for a limited period before going on leave.
9. In the answering papers, the respondents maintained that the appointment was not declined but deferred, that the post remained vacant, and that the applicant would be appointed later in 2026 alternatively in 2027.

Urgency

10. The respondents contended that the matter lacks urgency or that any urgency is self-created, pointing to the applicant's knowledge of her pregnancy and the delay between January and the launching of proceedings in March.
11. Urgency must, however, be assessed in light of the nature of the right asserted and the prejudice alleged. The applicant's community service year is a mandatory statutory prerequisite for independent practice as a

dentist. It forms part of a once-off annual placement cycle that cannot simply be replicated at a later stage without consequence.

12. The prejudice alleged is not confined to remuneration. The deferral interferes with the applicant's progression into professional practice and delays completion of a compulsory statutory requirement. On the respondents' version, the applicant might only be appointed later in 2026 or even 2027. Substantial redress in due course is accordingly not available.

13. The founding affidavit explains that initial forbearance was exercised in a *bona fide* attempt to obtain an administrative resolution and avoid unnecessary litigation. That conduct does not render the urgency self-created. (See *Nelson Mandela Metropolitan Municipality v Greyvenouw CC* (3263/02) [2003] ZAECHC 5; 2004 (2) SA 81 (SE) (21 February 2003).

14. In these circumstances, I am satisfied that the matter is urgent and that it is appropriate to entertain it on that basis.

The Statutory and Regulatory Framework

15. Section 24A (1) of the Health Professions Act 56 of 1974 provides that a person registering for the first time in a listed category must perform remunerated community service for a period of one year and, upon completion, is entitled to practise the profession.

16. Dentists fall within the categories prescribed by the regulations made under section 24A. The regulations further provide that:

- the conditions of service applicable to the public service apply to persons performing community service;
- community service is performed at an approved health facility as determined through the placement process; and
- where a period of community service is interrupted, the periods served, when added together, must amount to not less than one calendar year, including approved periods of leave, provided that the service is completed within a maximum of two years.

17. The Department of Health Community Service Policy expressly provides for interruption of community service, including approved leave. It further stipulates that community service officers are entitled to four consecutive calendar months' paid maternity leave and that community service should not be extended by the number of approved maternity leave days taken.

Effect of the Placement Decision

18. It is correct, as the respondents emphasised, that the allocation letter itself did not constitute an offer of employment. That proposition is not in dispute.

19. However, the letter did more than merely express an intention. It recorded that the applicant had been allocated through the statutory placement process; that her application had been finalised; and that the matter had been forwarded to the relevant department for appointment processing and finalisation in line with the governing legislation and regulations.

20. The role of the relevant department at that stage is not an unfettered discretion to revisit and nullify the placement on grounds already known and considered during the statutory process. Its function is to give effect to the placement in accordance with the empowering framework.

21. The reservation of a right to “migrate” an applicant to another facility where services are most required authorises redeployment within the system. It does not confer a power to postpone commencement indefinitely or to displace an applicant into a future cycle on grounds not contemplated by the framework.

Pregnancy-Based Deferral

22. The respondents’ case is that appointing the applicant shortly before she gives birth and proceeds on maternity leave would not be prudent, both operationally and financially, and that she should therefore commence community service only once she is able to serve a continuous twelve-month period.

23. That contention finds no support in section 24A, in the regulations, or in the Department’s own policy. On the contrary, regulation 6 expressly contemplates interrupted service, including approved leave, provided the total service amounts to one calendar year within a maximum of two years.

24. The policy deals specifically with maternity leave. It recognises pregnancy and maternity leave as part of the statutory community service framework and expressly provides that approved maternity leave does not extend the community service period.

25. The respondents’ repeated reliance on the notion that the applicant would not serve an uninterrupted twelve-month period is therefore legally misplaced. The statutory and policy answer to that concern is interruption, not exclusion or postponement to a later cycle.

26. No provision has been identified in the legislation or policy that entitles the respondents to defer commencement of community service solely because pregnancy and maternity leave are anticipated.

Discrimination and Legality

27. On the respondents' own version, pregnancy is the operative reason for the deferral. The applicant was not rejected for lack of qualification, registration, clearance, or because the post had fallen away. She was deferred because she was pregnant and would take maternity leave.

28. Pregnancy is a listed ground of discrimination. Differentiation on that basis requires cogent legal justification.

29. Section 6(1) of the Employment Equity Act prohibits unfair discrimination on grounds including **pregnancy** and, for these purposes, an "employee" includes an applicant for employment. Employment policies and practices include appointments and the appointment process itself. [*my emphasis*]

30. Even if the matter is approached primarily as one of public-law legality rather than labour law, the principle remains that organs of state must exercise public power lawfully, rationally, and in accordance with the policy and purpose of the empowering statute.

31. Here, the respondents relied on a rule that does not exist in the legislation or policy. The deferral is inconsistent with the statutory framework that expressly accommodates interrupted service and maternity leave. It is therefore unlawful and irrational.

32. To the extent that pregnancy was treated as an operational disqualifier for commencement, the decision is also discriminatory and cannot be justified on the respondents' stated grounds of financial or administrative convenience.

Relief

33. The applicant seeks an order compelling the respondents to finalise and implement her appointment retrospectively from 1 January 2026.

34. The essential unlawfulness lies in the refusal to implement the placement and to permit commencement on pregnancy grounds. Effective relief must address that unlawfulness.

35. In the circumstances, it is appropriate to declare the pregnancy-based deferral unlawful and to direct the First and Second Respondents to finalise and implement the applicant's appointment in accordance with the statutory placement, subject only to lawful and non-discriminatory administrative requirements.

36. The issue of costs raises no exceptional considerations warranting a departure from the ordinary rule. Costs follow the cause.

Order

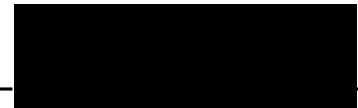
37. The following order is made:

- i. The application is heard as one of urgency and the usual forms and service are dispensed with insofar as time limits are concerned.

ii. The decision of the First and Second Respondents to defer the applicant's community service appointment on grounds of pregnancy and anticipated maternity leave is declared unlawful, irrational, and invalid.

iii. The First and Second Respondents are directed to finalise and implement the applicant's community service appointment in accordance with her lawful placement for the 2026 annual cycle, subject only to lawful, non-discriminatory administrative requirements.

iv. The respondents are ordered, jointly and severally, to pay the costs of the application.



JS NYATHI

Judge of the High Court

Gauteng Division, Pretoria

HEARD ON: 31 March 2026

JUDGMENT DATE: 07 April 2026

FOR THE APPLICANT: Adv PJ Greyling

INSTRUCTED BY: **Dreyer and Dreyer Attorneys,
Pretoria**

FOR THE DEFENDANTS: Adv M Ntiso

INSTRUCTED BY: **STATE ATTORNEY, PRETORIA**

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 07 April 2026.