



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

**CASE NO: 2024-113106**

**DELETE WHICHEVER IS NOT APPLICABLE**

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED.
- (4) Date: 20 April 2026

Signature: \_

In the matter between:

**DR TENDEUKAI CHAGWIZA**

Applicant

And

**ADVOCATE T CHETTY N.O.**

First Respondent

[In her capacity as the Chairperson of the Disciplinary  
Committee constituted to conduct an inquiry into the  
Conduct of the Applicant]

**MR GERSHON MOSIANE**

Second Respondent

[In his capacity as Proforma Complainant in the  
Inquiry into the conduct of the Applicant]

**CHAIRPERSON: MEDICAL AND DENTAL**

Third Respondent

**PROFESSIONS BOARD**

**THE HEALTH PROFESSIONS COUNCIL OF  
SOUTH AFRICA (“HPCSA”)**

Fourth Respondent

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## **JUDGMENT**

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**NYATHI J**

### **A. Introduction**

[1] This is a reconsideration under Uniform Rule 6(12)(c) of an urgent order granted by my sister Potterill J on 27 November 2024 (“the urgent order”). The urgent order condoned non-compliance with the rules, stayed the Professional Conduct Inquiry into the Applicant’s conduct, and restrained the Respondents from making any finding or imposing any sanction pending the finalisation of a review application under the same case number.

- [2] The Respondents invoked Rule 6(12)(c) on 5 December 2024 to have the urgent order reconsidered. They contend that (a) the matter was not urgent (indeed, urgency was self-created), (b) insufficient time was afforded before the urgent hearing contrary to the Gauteng Practice Manual, and (c) the Applicant failed to establish a *prima facie* right to interim relief. The Applicant opposes, contending *inter alia* that the Respondents' absence was not *bona fide*, that urgency was established, and that he enjoys a *prima facie* right given the legality and constitutional challenges forming the crux of the pending review.

## **B. The Factual Matrix (briefly)**

- [3] A Professional Conduct Committee convened virtually on 26 September 2024. The Applicant sought a postponement on the basis of an intended review; this was refused (save that the pro forma complainant was directed to furnish further particulars). The matter was postponed to 26–27 November 2024. On 27 November 2024 a further postponement was refused; the Applicant and his representatives withdrew and approached this Court on an urgent basis. Service of the urgent application occurred at approximately 14h11 for a 15h00 hearing (stood down to 15h30); an order issued at about 15h55 in the Respondents' absence.
- [4] The review application raises, among others, challenges to the 2023 amendments to the Regulations under the Health Professions Act 56 of 1974

(“the Act”), including the introduction of a “Preliminary Appeals Committee” (Reg 4A), the removal of a respondent’s right to further particulars (substituted Reg 7), and the designation of video-conferencing as the default mode for inquiries.

### **C. Issues**

[5] The issues for determination are:

5.1. Whether the Respondents have laid a proper basis for reconsideration under Rule 6(12)(c), having regard to their absence when the urgent order was granted.

5.2. Whether the urgent order ought to be discharged because the matter was not urgent, or because the Applicant’s non-compliance with the Practice Manual vitiated the proceedings.

5.3. Whether, applying the **Setlogelo** test as adapted post-Constitution, the Applicant established the requisites for an interim interdict *pendente lite*.

### **D. The Rule 6(12)(c) Standard**

[6] Rule 6(12)(c) exists to redress imbalances and potential injustice arising from an urgent order granted in the absence of an affected party. It confers a wide discretion to the Court. The absence of the aggrieved party has been termed the ‘underlying pivot’ to which the exercise of the power under the subrule is

coupled<sup>1</sup>, but an applicant for reconsideration must still place before the Court a candid, complete account of its absence and demonstrate that reconsideration is warranted in the interests of justice.

[7] Here, the Respondents' account of their absence is terse. They say the application was served at 14h12; they attempted to secure appearance by an attorney who arrived after the order had already been granted. The Applicant, however, puts up unrefuted facts that an attorney (Ms Moduka) had communicated with his legal team before 15h13, that the matter was stood down to 15h30 to afford more time, and that still no notice to oppose or engagement followed. The deponent for the Respondents omits material detail as to instructions, timing, and steps taken between 14h11 and 15h55. On these papers, the Respondents have not furnished a full and frank account of their absence.

[8] Nonetheless, Rule 6(12)(c) is sufficiently elastic to permit this Court to reconsider the urgent order even where the explanation is less than optimal, provided it is in the interests of justice to do so. Given the public regulatory context and the continued stay of disciplinary proceedings, I elect to reconsider the order on the merits.

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<sup>1</sup> *ISDN Solutions (Pty) Ltd v CSDN Solutions CC* 1996 (4) SA 484 (W) at 486H; *Kirpal v Peters* (Unreported, GP case no 32823/2021 dated 23 June 2022) at paragraph [11].

## **E. Urgency and the Practice Manual**

[9] The Respondents argue that urgency was self-created and that less than two hours were afforded contrary to Chapter 13.24 of the Gauteng Practice Manual. The Applicant answers that the committee refused to hear his postponement, he had to exhaust internal remedies by first seeking relief before the committee, and the hearing was imminent; further, the Practice Manual contemplates “usually not less than 2 hours,” which permits judicial departure in cases of extreme urgency. On the day, the Court stood the matter down to allow appearance, yet none was made.

[10] Urgency is fact-specific. On these facts, the imminent continuation of the inquiry in the face of a pending review challenging the committee’s very jurisdiction, the committee’s refusal to hear a postponement application, and the potential for irreversible prejudice establish sufficient urgency. The limited departure from the “usually two hours” guide was within the urgent court’s discretion and, crucially, additional time was afforded. I therefore decline to set aside the urgent order on procedural grounds.

## **F. Interim Interdict: The *Setlogelo* Test (as adapted)**

[11] An interim interdict requires (i) a prima facie right, though open to some doubt; (ii) reasonable apprehension of irreparable harm; (iii) a balance of convenience

favouring the applicant; and (iv) absence of a suitable alternative remedy, applied through the prism of constitutional values (such as the Bill of Rights).

### **Prima facie right**

[12] The Applicant's review impugns Regulation 4A introducing a "Preliminary Appeals Committee," contending, in essence, that:

- 12.1 the Minister's regulation-making power under s 61 does not extend to creating a new appellate structure not authorised by the Act;
- 12.2 the structure is impermissibly vague as to powers, composition and procedure; and
- 12.3 it affords an appeal to a complainant but not to a respondent, implicating equality and dignity concerns.

[13] The Respondents say Regulation 4A is purely procedural, falls within s 61(1)(h) and (k), and does not affect substantive rights; they add that any alleged unfairness is ameliorated by the respondent's rights at the inquiry proper, including legal representation and the opportunity to contest the case.

[14] Without deciding the review, I am satisfied the Applicant has shown a *prima facie* right open to some doubt. The challenge is neither contrived nor speculative; it raises arguable questions of *vires*, legality and constitutional consistency about an appellate structure not expressly located in the empowering Act, as well as the asymmetry of appellate recourse between complainants and respondents. The additional complaints about the abolition of a formal right to request further particulars, and the default of virtual hearings, also present triable issues as to procedural fairness in disciplinary processes with potentially career-limiting consequences.

### **Irreparable harm**

[15] Subjecting the Applicant to an inquiry under a structure he contends lacks jurisdiction, with the possibility of adverse findings and sanction (including suspension), constitutes harm not readily remediable *post-factum* even if the review ultimately succeeds. The spectre of a nullity after career damage suffices to establish irreparable harm.



### **Balance of convenience**

[16] The Respondents caution that sustaining the stay risks emboldening other practitioners to secure delays, threatening “a pattern” and an institutional standstill. But the interim order is case-specific; no evidence of a systemic pattern is advanced. The prejudice to the Applicant—being compelled to undergo potentially unlawful proceedings—outweighs the administrative inconvenience to the Respondents of pausing a single inquiry pending an expeditious review. The balance of convenience favours maintaining the status *quo ante*.

### **Alternative remedy**

[17] The Respondents argue the Applicant can raise all complaints at the inquiry. That misses the force of a legality challenge directed at the very source of power. Where jurisdiction is impugned, insisting on participation may compound rather than cure the harm. No adequate alternative remedy is shown.

### **G. Conclusion**

[18] The Respondents have not shown that the urgent order should be set aside on reconsideration. The Applicant established the requisites for interim relief

*pendente lite*. The stay ensures that, should the review succeed, its outcome is not rendered hollow by completed disciplinary proceedings; should it fail, the inquiry may resume without lasting prejudice to the regulatory scheme.

## **H. Order**

[19] The following order is made:

19.1 The application for reconsideration under Rule 6(12)(c) is dismissed.

19.2 The urgent order of 27 November 2024 is confirmed, namely:

19.2.1 The Professional Conduct Inquiry into the Applicant's conduct is stayed; and

19.2.2 The Respondents are restrained from making any finding or imposing any sanction on the Applicant, pending the final determination of the review application under case number 2024/113106.

20.3. The review is to be enrolled on an expedited basis, with the parties to deliver the necessary record and heads of argument in

accordance with a timetable to be agreed within 10 days, failing which either party may approach the Deputy Judge President for directions.

20.4. Costs: The Respondents shall pay the costs of this reconsideration application, on a party and party scale B, jointly and severally, the one paying the others to be absolved, including the costs of two counsel where so employed.



J.S. NYATHI  
Judge of the High Court  
Gauteng Division, Pretoria

Date of hearing: 20 August 2025

Date of Judgment: 20 April 2026

On behalf of the Applicant: Adv. C.H. Van Bergen SC

With him: Adv. A Coetzee

Applicant's attorneys: MacRobert Attorneys, Pretoria

On behalf of the Respondent: Adv. J.G. Rautenbach SC

Respondent's attorneys: Yolanda Matwa Attorneys, 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 20 April 2026.