

## REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO: 60785-2020

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
	<u>28/05/2026</u>
DATE	SIGNATURE

In the matter between:

**KOMMAL, TERENCE OMDUTT**

Applicant

and

**HEALTH PROFESSIONAL COUNCIL OF SOUTH AFRICA**

Respondent

**SUMMARY:**

The applicant sought to compel the HPCSA to produce further unspecified documents in disciplinary proceedings against him. The court found that the HPCSA had furnished all documents in its possession, including copies of the power of attorneys signed by the applicant's complainant patients pertaining to his alleged misconduct. The court

refused to order indeterminate disclosure. The court made the observations that the applicant's review application was defective for want of condonation but made no definitive ruling on the review. A procedurally flawed demand for immediate recusal of the presiding Judge was conveyed by correspondence following an enquiry from the applicant's attorneys on the status of the leave to appeal application that has been delayed by over a year. Applicant's counsel having been made aware of the demand for recusal and, upon taking instructions, proceeded with the leave to appeal application. Leave to appeal dismissed with punitive costs.

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## JUDGMENT

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**MBONGWE, J:**

### INTRODUCTION

- [1] This is an application for leave to appeal against the judgment of this court delivered on 26 February 2024, in which the applicant's Rule 30A application was dismissed with costs.
- [2] The applicant had sought to compel the respondent, the Health Professions Council of South Africa ("HPCSA"), to produce further documents said to be necessary for the disciplinary proceedings instituted against him. The respondent opposed the application, contending in the answering affidavit that all documents in its possession had already been furnished. This court held that it could not issue the order sought in the circumstances, and that the necessary documents, including copies of the signed Powers of Attorney forming the foundation of the complaints (and purportedly to be used in claims against the Road Accident Fund) were attached to the written complaints filed.

- [3] It is necessary to state that from the arguments by counsel for the applicant, the further unspecified documents sought pertain to the composition of the committee(s) that decided that disciplinary action be taken against the applicant and on the preferred appropriate charges, respectively. I found on this basis that the application is anchored on form at the expense of substance and concluded that no further unspecified disclosure could be compelled under Rule 30 A.<sup>1</sup>

## RECUSAL AND ALLEGED REPORTING

- [4] I pause to state that an email dated 10 February 2026 was addressed by the Judge's Secretary to the Applicant's attorneys enquiring about the status of the application for leave to appeal following a delay of more than a year since the hearing was postponed on 05 December 2024 as a result of the absence of the Applicant's legal representatives in court. The Applicant's attorneys responded by an email dated 27 February 2026 demanding that the Judge immediately recuse himself from the matter and advising that he had been reported to the Judicial Service Commission (JSC).
- [5] The demand for recusal was procedurally flawed. A recusal application must be properly placed before the court, supported by evidence and argument.<sup>2</sup> A demand for recusal does not automatically disqualify a Judge from presiding.<sup>3</sup>
- [6] In the course of the perusal of the papers, I observed that the applicant's review application was defective in form, having been filed well out of time and without an accompanying application for condonation.<sup>4</sup> This Court made no definitive

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<sup>1</sup> Rule 30A of the Uniform Rules of Court – see Herbstein & Van Winsen, *The Civil Practice of the High Courts of South Africa* (5ed) at 932.

<sup>2</sup> Proper procedure for recusal: *President of the Republic of South Africa v South African Rugby Football Union* 1999 (4) SA 147 (CC) at para 48.

<sup>3</sup> Reporting to the JSC does not itself disqualify a Judge: see SARFU (supra) and *S v Basson* 2007 (3) SA 582 (CC).

<sup>4</sup> Rule 53 review applications – condonation required for late filing: *Wolgroeiens Afslaaers (Pty) Ltd v Munisipaliteit van Kaapstad* 1978 (1) SA 13 (A).

ruling on the merits of the review, and the operative order was confined to the Rule 30A application.

- [7] At the hearing of the application for leave to appeal on 03 March 2026 when the matter was called, counsel for the Applicant was asked about the demand for the Judge's recusal. He expressed surprise and indicated that he had not been aware of the demand and reporting to the JSC. He asked to be permitted to obtain instructions. On his return, he advised that his instructions were to proceed with the application for leave to appeal, without addressing the issues of the recusal and reporting.

#### **LEAVE TO APPEAL**

- [8] The hearing of the application for leave to appeal accordingly proceeded. The applicant's grounds include the contention that the impugned judgment unwarrantedly dealt with the review application, and that the Court erred in finding that the documents furnished were sufficient for the disciplinary proceedings.
- [9] Counsel for the HPCSA contented, correctly so in my view that documentary evidence necessary in the disciplinary hearing is available and attached to the complaint and that the HPCSA was obliged to act thereon to protect its institutional integrity.
- [10] The principles governing leave to appeal are well-established: leave will be granted where there is a reasonable prospect that another court would come to
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a different conclusion, or where the matter raises an issue of public importance.<sup>5</sup>

[11] On the facts, I am satisfied that there is no reasonable prospect that another court would come to a different conclusion. The Rule 30A application was correctly dismissed, the review application as it stands is procedurally defective, and the recusal demand was irregular. The HPCSA was entitled to initiate disciplinary proceedings on the strength of complaints supported by documentary evidence. The applicant's attempt to compel unspecified disclosure was misconceived.

## CONCLUSION

[12] The conduct of the applicant's attorneys in delaying the prosecution of this application for over a year, the failure to explain their absence in court on the 5<sup>th</sup> December 2024 as well as the procedurally misplaced demand for immediate recusal constitute unprofessional conduct. It has to be stated that counsel for the applicant, Advocate Snyman SC indicated to the court that he had not been briefed to represent the applicant on the 5<sup>th</sup> December 2024. It will be amiss not to report this unprofessional conduct of the applicant's attorneys to the Legal Practice Council ("LPC").


## ORDER

[13] In line with the findings in this judgment, the following order is made:

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<sup>5</sup> Test for leave to appeal: *S v Smith* 2012 (1) SACR 567 (SCA) at para 7.

1. The application for leave to appeal is dismissed with costs on the attorney-and-client scale, including the costs of Senior Counsel on scale C.
2. It is directed that a copy of this judgment is served on the LPC.

  
**MPN MBONGWE**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, PRETORIA**

**APPEARANCES**

For the Applicant:	<b>ADV SNYMAN SC</b>
Instructed by:	Mohamed Seedat Attorneys
For the First Respondent:	<b>ADV MOJAPELO SC</b>
Instructed by:	Mkhonto & Ngwenya Attorneys Inc.
<b>Date of Hearing:</b>	<b>03 March 2026</b>
<b>Date of Judgement:</b>	<b>28 May 2026</b>

**THIS JUDGMENT WAS ELECTRONICALLY TRANSMITTED TO THE PARTIES' LEGAL REPRESENTATIVES AND UPLOADED ONTO CASELINE ON 28 MAY 2026.**