

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2025-136126

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
18 JUNE 2026	

[REDACTED]

In the matter between:

SHIAM FAYKER

Applicant

AND

MONTGOMERY THAPELO MOTSHUDI

First Respondent

**THE HEALTH PROFESSIONS COUNCIL
OF SOUTH AFRICA**

Second Respondent

This Judgment is handed down electronically by circulation to the Applicant's Legal Representatives and the Respondents by email, publication on Case Lines as well as Saflii. The date for the handing down is deemed to be 18 June 2026.

Summary: declaratory relief — Test for granting of — Two legs — Applicant to prove interest in existing, future or contingent right or obligation — Court then to decide whether case appropriate for exercise of its discretion to grant declaratory relief applied for — Superior Courts Act 10 of 2013, s 21(1)(c) - application granted.

JUDGMENT

MUDAU, J:

Introduction

- [1] The applicant, Dr Shiam Fayker, is a radiologist. She seeks a declaratory order and ancillary relief against the first respondent, Dr Montgomery Motshudi, also a radiologist. The dispute arises from a complaint that the first respondent lodged with the second respondent, the Health Professions Council of South Africa ('HPCSA'), against ten radiologists associated with Bergman Ross and Partners Inc. ('BRPI'). The applicant is one of those ten.
- [2] Her complaint is simple: the first respondent included her in his HPCSA complaint only because he erroneously believed she was a director of BRPI. She has never been a director. The first respondent, despite being informed of the error and despite his own attorney's letter admitting that her inclusion was "solely" because she was a director, refuses to withdraw the complaint or to notify the HPCSA of his mistake. The applicant now seeks this court's intervention to correct that error before she is put to the expense and disruption of a full disciplinary inquiry.
- [3] The first respondent opposes the application on multiple grounds. He denies that the complaint was based solely on her directorship; he contends that the relief sought is incompetent and that the court should not interfere with the HPCSA's processes; he raises non-joinder of BRPI; and he argues that the application is not urgent and is an abuse of process.
- [4] For the reasons that follow, I conclude that the applicant is entitled to the declaratory relief she seeks and to an order compelling the first respondent to withdraw the complaint. The application is properly before this court as a semi-urgent matter, and the first respondent's opposition lacks substance.

Background facts

- [5] The first respondent is engaged in acrimonious shareholder litigation with BRPI (case no: 036875/2022 and 001371/2025). That dispute concerns the ownership and control of a radiology practice at Netcare Pinehaven Hospital. The applicant is not a party to that litigation. She is an employee of BRPI, but she has no shareholding and no personal interest in the commercial dispute.
- [6] On 26 June 2024, the first respondent, through KNB Consulting (a firm owned by a former executive officer of the HPCSA, Adv Boyce Mackeson Mkhize), sought a policy determination from the HPCSA regarding BRPI's alleged undesirable business practices. On 15 July 2024, the HPCSA advised him to lodge "a formal complaint against the directors of BRP Inc."
- [7] On 10 November 2024, the first respondent lodged a complaint ("the initial complaint") with the HPCSA. The complaint alleged that BRPI had engaged in theft, fraud, and fronting in violation of the Broad-Based Black Economic Empowerment Act. It attached a schedule (Schedule 1) listing ten individual radiologists, including the applicant, as the "professionals against whom this complaint is lodged." The body of the complaint did not identify any specific misconduct by the applicant. It did not allege that she had personally received fees for services not rendered, nor did it attribute any wrongful act to her.
- [8] On 30 December 2024, the first respondent delivered a lengthy "supplementary complaint." That document runs to many pages with 59 annexures. It does not mention the applicant by name. It does not identify any act or omission on her part. It focuses entirely on the conduct of BRPI as a corporate entity.
- [9] On 27 June 2025, the first respondent's attorneys, MVMT Attorneys, wrote to the applicant's attorneys, Brian Kahn Inc. ("BKI"). That letter was a response to a demand from BKI that the first respondent explain the basis for including the applicant. The letter included the following unequivocal statement (paragraph 10):

“It is further noted that our client has no personal relationship with Dr Fayker and has never interacted with her directly. **Her inclusion in the complaint flows solely from her representation as a director of BRP Inc. during the relevant period.**”
(emphasis added)

[10] On 21 July 2025, BKI responded, pointing out that the applicant was never a director of BRPI, as confirmed by a CIPC search (annexure SF7). They demanded that the first respondent withdraw the complaint against the applicant and notify the HPCSA that he had been mistaken. The first respondent, through MVMT, refused on 10 August 2025.

[11] On 30 May 2025, the HPCSA issued a ruling imposing a penalty of R30,000 on the applicant. She rejected the penalty, which triggered a full disciplinary inquiry. On 5 August 2025, the HPCSA notified the applicant’s former attorneys that the inquiry would be held on 15 December 2025. This was the first time the applicant learned of the hearing date. She launched the present application on 12 August 2025, in the ordinary course, reserving the right to convert it to semi-urgency if opposed.

[12] On 3 November 2025, the HPCSA informed BKI that the 15 December 2025 hearing would not proceed; the inquiry has been postponed to an unspecified date in February 2026. The HPCSA is yet to hold that enquiry. That postponement does not render the matter moot; the applicant still faces a disciplinary inquiry on a complaint that, on the first respondent’s own admission, was based on a factual error.

The relief sought

[13] The applicant seeks:

- (a) A declaratory order that the only basis upon which the first respondent included her in the complaint was that she was at the material time a director of BRPI.
- (b) A further declaratory order that she was at no time a director of BRPI.

- (c) An order compelling the first respondent to notify the HPCSA in writing that he does not want to pursue the complaint against her any further and that he withdraws the complaint against her.

Preliminary issue: Semi-urgency

- [14] The first respondent contends that the application is not urgent and that the attempt to convert it to semi-urgency is an abuse of process. He points out that the applicant knew of the complaint from December 2024 yet waited eight months before launching the application.
- [15] Rule 6(12) of the Uniform Rules of Court permits a court to dispense with the ordinary time periods and hear a matter on an urgent basis where the applicant shows that substantial injustice would otherwise result. The test is not mechanical; the court has discretion, to be exercised with due regard to the need for expeditious resolution of disputes that cannot await the normal course.
- [16] In my view, the applicant has adequately explained the delay. Until 5 August 2025, she did not know when, or if, the HPCSA would hold an inquiry. The HPCSA had been unresponsive to her correspondence. The 15 December 2025 date was notified only three days before the founding affidavit was finalised. The applicant then acted promptly; she launched the application on 12 August 2025, and when the first respondent made clear his opposition, she moved to convert it to semi-urgency on 22 September 2025.
- [17] The fact that the HPCSA has now postponed the inquiry to February 2026 reduces the temporal urgency but does not render the matter moot. The applicant still faces the prospect of a full disciplinary inquiry on a complaint that – on the first respondent’s own attorney’s admission – was based on a factual error. She is entitled to have that issue resolved before she is put to the cost and disruption of a hearing. To compel her to wait until after the inquiry (and then perhaps seek review) would be to force her to endure precisely the prejudice she seeks to avoid. That would be a substantial injustice.

[18] I therefore grant the application for semi-urgency. The court will dispense with the ordinary time periods and hear the matter on the shortened timeline proposed by the applicant.

The merits: Declaratory relief

[19] Section 21(1)(c) of the Superior Courts Act 10 of 2013 provides that a court may, at the instance of any interested party, inquire into any existing, future or contingent right or obligation and make a declaration of rights, even if no consequential relief is claimed. The court has wide discretion to be exercised judicially¹, but it will not make an academic or hypothetical declaration. There must be a tangible advantage to the applicant.²

[20] The applicant has demonstrated a tangible advantage. If the declaratory order is granted, the HPCSA will be informed that the only basis for the complaint against her was a factual error (her alleged directorship). That will enable the HPCSA to consider, in the exercise of its own discretion, whether to proceed with the inquiry against her. The applicant avoids being forced to participate in a lengthy and costly inquiry that, on the first respondent's own case, should never have included her.

[21] The first respondent argues that the complaint was not based "solely" on her directorship. He now says that she was included because she was "associated with" BRPI or because her name appeared on letterheads. That version is contradicted by the clear, unambiguous words of his own attorney's letter of 27 June 2025. That letter was not a casual remark; it was a formal legal letter responding to a demand. It stated in plain terms that her inclusion "flows solely from her representation as a director". No other basis was advanced. Neither the first respondent nor his attorney has offered any explanation for this contradiction.

¹ *Cronje v Pelsler* 1967 (2) SA 589 (A) at 593.

² See *Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd* [2005] ZASCA 76; 2005 (6) SA 205 (SCA); *Pasiya and Others v Lithemba Gold Mining (Pty) Ltd and Others* 2024 (4) SA 118 (SCA).

[22] The answering affidavit contains only a bare denial; “These allegations are denied insofar as they are at variance with what is stated by me in this regard above.” That is insufficient. As the Supreme Court of Appeal held in *Wightman t/a JW Construction v Headfour (Pty)*³ at para [13]:

“A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There is no room for mere shadowy or elusive disputes of fact. A party who wishes to raise a dispute of fact must do so in a manner which, if the dispute is not resolved on the papers, will leave the court with no alternative but to order oral evidence.”⁴

[23] The first respondent has not engaged with the explicit terms of his own attorney’s letter. He has not explained why his attorney would have stated “solely” if that was not the truth. He has not suggested that the letter was written without his authority or that it contained a drafting error. In the face of such a clear admission, a bare denial does not create a genuine dispute of fact.

[24] I, therefore, find that the first respondent’s attorney’s letter of 27 June 2025 constitutes an admission that the applicant’s inclusion in the complaint was solely because he believed she was a director of BRPI. That belief was objectively false, as the CIPC records demonstrate. The applicant has never been a director of BRPI. The CIPC records are prima facie proof of the facts they record, and the first respondent has produced no evidence to the contrary. There is no genuine dispute on that point.

[25] The declaratory orders sought are accordingly competent and appropriate.

The order compelling withdrawal

[26] The applicant asks the court to compel the first respondent to notify the HPCSA that he withdraws the complaint against her. The first respondent objects,

³ [2008] ZASCA 6; [2008] 2 All SA 512 (SCA); 2008 (3) SA 371 (SCA).

⁴ *Wightman t/a JW Construction v Headfour (Pty)* op cit n2 para 13.

arguing that once a complaint is lodged, it falls within the exclusive jurisdiction of the HPCSA, and the court cannot interfere.

[27] That objection misstates the law. The court cannot dictate how the HPCSA conducts its proceedings, but it can direct a private litigant (the first respondent) to take steps that are within his power. The first respondent is free to withdraw his complaint at any time. The HPCSA has no rule that prevents a complainant from withdrawing. The relief sought does not compel the HPCSA to do anything; it merely compels the first respondent to communicate his withdrawal to the HPCSA.

[28] The HPCSA may indeed decide, even after withdrawal, that it has sufficient information to continue the inquiry on its own motion. That is a matter for the HPCSA. But the applicant is entitled to have the first respondent formally record that he no longer wishes to pursue the complaint against her. That will at least give the HPCSA a full picture and may well influence its decision. Moreover, the first respondent's refusal to withdraw, after learning of his error, is itself unreasonable and causes ongoing prejudice to the applicant. I am accordingly satisfied that the applicant has established, given the background facts in this matter, an interest in an 'existing, future or contingent right or obligation' pursuant to section 21 (1) (c) of the Superior Courts Act.

[29] I will therefore grant an order directing the first respondent to notify the HPCSA in writing that he withdraws the complaint against the applicant and that his inclusion of her was based on the erroneous belief that she was a director of BRPI.

Non-joinder of BRPI

[30] The first respondent argues that BRPI should have been joined because it has a direct and substantial interest in any declaration about its directorate and the alleged misrepresentation of the applicant as a director.

[31] This point is without merit. The relief sought does not determine any right or obligation of BRPI. It does not declare that BRPI misled anyone. It does not

invalidate any corporate record. It simply declares the factual basis of the first respondent's complaint – a fact that concerns the relationship between the first respondent and the applicant, not the legal relationship between the applicant and BRPI. The declaration that the applicant was never a director of BRPI is a finding of fact, not an order binding on BRPI. In any event, the applicant has since filed an affidavit from Jack Bregman on behalf of BRPI stating that BRPI has no objection to the relief sought. That removes any possible prejudice.

[32] The first respondent's reliance on the doctrine of non-joinder is therefore misplaced.⁵

Alternative remedies

[33] The first respondent contends that the applicant has alternative remedies: she can make representations to the HPCSA, request removal from the inquiry, or await a final decision and then review it. These are not adequate alternatives in the circumstances.

[34] The HPCSA has no procedure for pre-hearing removal of a party based on a complainant's error. The applicant has already written to the HPCSA (annexures SF10, SF11, SF14) and received no substantive response. The HPCSA's own conduct – its delays, its unresponsiveness, and its failure to update the applicant's address for service – hardly inspires confidence that a simple request for removal would be dealt with expeditiously or fairly.

[35] Moreover, the applicant is not challenging the HPCSA's decision. She is seeking to correct the factual predicate on which the complaint was based. That is precisely the kind of issue that declaratory relief is designed to resolve. To require her to wait for a final decision and then bring a review application would be to force her to incur the very costs and prejudice she seeks to avoid. That would not be a meaningful alternative remedy.

Abuse of process

⁵ See *Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 637 (A); *Kethel v Kethel's Estate* 1949 (3) SA 598 (A) at 610; *Watson NO v Ngonyama* 2021 (5) SA 559 (SCA) para 51.

[36] The first respondent accuses the applicant of launching this application as a tactical ruse to harass him in the context of the BRPI shareholder litigation. There is no evidence to support that serious allegation. The applicant is not a party to that litigation. She has no commercial interest in its outcome. Her concern is her professional reputation and the cost and disruption of a disciplinary inquiry. That is a legitimate concern, and she is entitled to seek judicial relief.

[37] The fact that the applicant has also instituted action proceedings for damages against the first respondent does not make this application an abuse. She is entitled to protect her rights by multiple legal avenues if they are genuinely available. The first respondent's characterisation of the application as "contrived" and "a stratagem" is speculative and unsupported.

Public interest considerations

[38] There is a broader public interest at stake. The HPCSA's disciplinary processes are essential to maintaining professional standards, but they must be conducted fairly and based on correct facts. A complainant who makes a material factual error that is later brought to his attention has a duty, both ethical and legal, to correct that error. To persist with a complaint on a false factual basis, after being informed of the truth, is itself arguably unprofessional conduct. The first respondent's refusal to withdraw or even to acknowledge his mistake undermines the integrity of the HPCSA's processes.

[39] The court should not be seen to condone such conduct. Granting the relief sought will send a clear message that complainants before professional bodies must act bona fide and cannot rely on false factual premises once those premises have been exposed.

Costs

[40] The first respondent has opposed the application on grounds that are, for the most part, without substance. His opposition forced the applicant to convert the matter to semi-urgency and to incur additional costs. However, the applicant did

delay somewhat before launching the application, and the first respondent was entitled to raise the non-joinder point (even if it ultimately fails). In all the circumstances, I consider it just that the first respondent pays the costs of the application, but not on a punitive scale. The costs shall be on the ordinary party-and-party scale, including the costs of counsel.


[41] I have considered the first respondent's request for costs on Scale C of Rule 67A. That scale is reserved for matters of exceptional complexity or importance. While this matter raises important issues, it is not so complex as to justify Scale C. Ordinary costs are sufficient.

Order

[42] Accordingly, I make the following order:

1. It is declared that:

- (a) The only basis upon which the first respondent included the applicant in the complaint lodged with the Health Professions Council of South Africa ("HPCSA") on 10 November 2024, as amplified on 30 December 2024, was that the first respondent believed the applicant to be a director of Bergman Ross and Partners Inc. ("BRPI").
- (b) The applicant was at no time a director of BRPI.
- (c) The first respondent is ordered, within five (5) days of service of this order, to notify the HPCSA in writing that:
- (d) He withdraws the complaint against the applicant.
- (e) His inclusion of the applicant in the complaint was based on the erroneous belief that she was a director of BRPI, and he has now been informed that she has never been a director.
- (f) The first respondent shall furnish a copy of this order together with his notification to the HPCSA.
- (g) The first respondent shall pay the costs of the application, on the party-and-party scale, such costs to include the costs of senior counsel on scale C.


MUDAU J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

APPEARANCES

For the Applicants: Adv BM Gilbert SC
Instructed by: Brian Kahn Inc

For the 1st Respondent: Adv G Benson
Instructed by MVMT Attorneys

For the 2nd Respondent: No opposition

Date of Hearing: 25 May 2026
Date of Judgment: 18 June 2026

