THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 084/2025

In the matter between:

GANES ANIL RAMDHIN **APPELLANT**

and

RONDEBOSCH MEDICAL CENTRE (PTY) LTD **RESPONDENT**

Neutral citation: *Ramdhin v Rondebosch Medical Centre (Pty) Ltd* (084/2025) [2026] ZASCA 93 (29 June 2026)

Coram: MOCUMIE, SCHIPPERS, HUGHES and KOEN JJA and ZILWA AJA

Heard: 19 May 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for hand-down of the judgment is deemed to be 11h00 on 29 June 2026.

Summary: Contract – for admission privileges to hospital – medical practitioner found guilty of unprofessional conduct and suspended from practice – effect of s 44 of the Health Professions Act 56 of 1974 – whether admission privileges terminated – registration and qualification to practise a term of the contract implied by law – practitioner not entitled to interdict.

ORDER

On appeal from: Western Cape Division of the High Court, Cape Town (Manca AJ, sitting as a court of first instance):

The appeal is dismissed with costs.

JUDGMENT

Koen JA (Mocumie, Schippers and Hughes JJA and Zilwa AJA concurring)

Introduction

[1] This is an appeal from a decision of the Western Cape Division of the High Court, Cape Town (the high court), which dismissed an application by the appellant, Dr Ganes Anil Ramdhin (Dr Ramdhin), a medical practitioner, for certain relief against the respondent, Rondebosch Medical Centre (Pty) Ltd (RMC). Dr Ramdhin sought an interdict to enforce a contract in terms of which he was granted admission privileges as an obstetrician and gynaecologist at RMC. The interdict was to operate pending the determination of various claims for declaratory relief, sought in the second part of the application, including an order that the termination of Dr Ramdhin's admission privileges was invalid. The appeal is with the leave of the high court.

Background

Admission privileges

[2] Medical practitioners do not automatically enjoy rights to have their patients admitted to hospitals of their choice. These rights, known as admission privileges, must be obtained contractually from a hospital. In return for granting admission

privileges to a medical practitioner, the hospital benefits financially from the admission of the practitioner's patients and their use of its facilities.

[3] There is a process for obtaining admission privileges. The process may vary between hospitals. Generally, the process begins with an application to the hospital accompanied by supporting documents, such as proof of qualifications, proof of registration with the Health Professions Council of South Africa (the HPCSA), and references. Thereafter, the application is reviewed to verify the practitioner's qualifications, training, and professional experience, followed by a possible interview to assess the practitioner's suitability for admission privileges. The process includes: reviewing case histories; evaluating the practitioner's professional conduct and reputation; approval of the application by the hospital's medical advisory committee or an equivalent committee; and a recommendation regarding the application to the hospital.

[4] Admission privileges are typically granted through a written agreement that sets out the terms and conditions under which the practitioner may admit and treat patients at the hospital. The privileges are usually subject to periodic renewal and re-evaluation to ensure that the medical practitioner continues to meet the hospital's standards and maintains the required professional qualifications.

The provisions of the Health Professions Act

[5] The Health Professions Act 56 of 1974 (the Act) requires all medical practitioners to be registered with the HPCSA. Upon meeting the requirements of the Act, the Registrar of the HPCSA issues a registration certificate to the practitioner, authorising practice in the health profession for which registration was applied. Section 39 of the Act provides that no person shall perform acts pertaining to any health profession unless registered under the Act. A contravention of this prohibition constitutes a criminal offence.

[6] A medical practitioner found guilty of unprofessional conduct by the HPCSA may, inter alia, be suspended from practice. In that event, s 19A(3) provides that, as of the date of issue of the notice of suspension by the Registrar and receipt thereof by the practitioner, any registration certificate issued in terms of the Act is deemed to be suspended. The practitioner must immediately cease to practise within the health profession in respect of which they are registered and to perform any act that they are entitled to perform, until the suspension of their registration is lifted.

The position of Dr Ramdhin

[7] Dr Ramdhin qualified as a specialist obstetrician and gynaecologist and was issued with a registration certificate by the HPCSA. He enjoyed admission privileges in terms of an agreement concluded with RMC from October 2019 (the 2019 agreement). At the time, RMC was represented by Dr Nisar Moosa (Dr Moosa), then its sole shareholder. The admission privileges at RMC were obtained informally and did not require a written application. Apart from the basic terms relating to the grant of admission privileges set out above, Dr Ramdhin's founding affidavit is silent on any further terms and conditions of the 2019 agreement.

[8] Dr Ramdhin exercised the privileges until he was found guilty of unprofessional conduct and suspended from practice by the HPCSA in June 2023. He pleaded guilty to two charges of unprofessional conduct concerning two patients whom he had treated in August and May 2020. These charges included performing procedures without adequate pre-operative work-up; performing a futile operation on a patient; and failing to provide the patient with adequate post-operative care. He was suspended from the register of practitioners for three years, with two years suspended for a further three-year period on condition that he is not found guilty of similar unprofessional conduct during the period of suspension, and

that he practises under an HPCSA-approved supervisor to mentor him during that period.

[9] During Dr Rhamdhin's suspension and cessation of practice, the shareholder ownership and management structures of RMC changed. Dr Moosa no longer owned any shares in RMC, but remained as a director on the RMC Board.

[10] By 1 May 2024, RMC had established a Physicians Advisory Board (PAB), and a more formal policy (the policy) was implemented to regulate the process for conferring admission privileges on medical practitioners. The policy required, inter alia, that the medical practitioner: complete and submit a standard application form; possess a valid identity document and a formal qualification registered with the HPCSA; be in active status on the HPCSA practitioner register; and demonstrate competency and proficiency in their specialty or area of practice, as per peer-evaluation. The PAB and the hospital's management team would review an applicant's credentials and qualifications and recommend the appropriate level of privileges for the practitioner, having regard to their specialty, training, experience, and competency.

[11] The policy provides that RMC has the right to suspend, revoke, or modify admission privileges granted to health care practitioners in cases of non-compliance with hospital policies and standard operating procedures, ethical misconduct, substandard clinical performance, action taken against the practitioner by a governing body, or any other reason deemed appropriate by the PAB and hospital management. The PAB serves as an advisory body, and the final decision rests with the Board. Key factors to consider when deciding whether to grant admission privileges include the following: the need for the practitioner's services; the commercial viability of granting admission privileges to the practitioner; and the practitioner's professional development within RMC.

[12] Dr Ramdhin says that during his suspension, several of his colleagues, including Dr Moosa and a former hospital manager, Mr Moonsamy, asked him about his return to RMC. He also remained liable for the rent of his consulting rooms. He obviously could not return to RMC during the first year of his suspension. That period ended on 23 May 2024. But he believed he could return to RMC thereafter.

[13] On 31 May 2024, Dr Ramdhin received a letter from RMC's hospital manager advising that, given his suspension, the following conditions had to be met before he could admit patients to RMC again: his HPCSA suspension had to be officially lifted; he was required to submit proof of the upliftment of his suspension; and he had to apply for admission privileges (which application would be peer-group reviewed and considered, as set out above). If the PAB approved his application for admission privileges, the hospital management would meet with him to discuss theatre times and the admission process.

[14] Dr Ramdhin thereafter successfully applied to the HPCSA to have his suspension lifted, and his registration was reinstated. He was permitted by the HPCSA to resume practice as an obstetrician and gynaecologist from 3 June 2024. This was subject to the conditions relating to the remaining period of the suspension, including the requirement that he be supervised.

[15] In anticipation of the RMC board meeting to be held on 18 June 2024, Dr Moosa requested that the Board consider reinstating Dr Ramdhin's admission privileges. Although no written application for privileges had been submitted by Dr Ramdhin at that stage, the Board nevertheless considered Dr Moosa's request.

[16] The Board, in the exercise of its discretion, resolved not to grant admission privileges to Dr Ramdhin. The refusal was informed by the following: there was

neither a medical nor financial need for an additional obstetrician/gynaecologist; several other hospitals in close proximity could serve the area and its patients; there were allegations of unprofessional conduct against Dr Ramdhin that were widely reported in the media; he had been sanctioned by the HPCSA; permitting him to practise at RMC would cause RMC severe reputational harm; and RMC's professional insurance premiums were likely to increase by having a doctor 'of risk' practising there.

[17] On 29 June 2024, Dr Moosa, in an email to RMC's Chief Operating Officer, Mr Morné Weideman, requested that the Board reconsider its decision. On 1 July 2024, Dr Ramdhin submitted a written application for admission privileges. On 3 July 2024, in a letter to RMC inquiring about progress, Dr Ramdhin stated that he had submitted the application to be considered for the continuation of his admission privileges, and not as a new practitioner, who would be required to apply or reapply for such privileges. He had not expressed such a qualification when he submitted the written application for admission privileges.

[18] On 9 July 2024, the PAB met to consider Dr Ramdhin's application for admission privileges. It declined to decide his application.

[19] On 11 July 2024, Dr Ramdhin's attorneys demanded that the privileges he enjoyed pursuant to the 2019 agreement, be reinstated immediately. RMC's attorneys, on 5 August 2024, replied that his admission privileges had terminated when the HPCSA suspended him from the list of registered medical practitioners in June 2023; that his reinstatement on the register did not revive his admission rights; and that the Board had resolved not to grant him admission privileges.

The high court application

[20] On 20 August 2024, Dr Ramdhin launched an urgent application seeking, in Part A thereof, that a rule *nisi* be issued calling upon RMC to show cause why an interim order should not issue 'interdicting and restraining [it] from implementing a decision to prevent [him] from exercising his contractual rights (known as "admission privileges") as an obstetrician and gynaecologist at the premises of the [RMC] pending the determination of the relief sought in Part B'. Part B sought declaratory relief: that the purported termination of Dr Ramdhin's contractual rights to admission privileges was invalid and of no force and effect; that he has legal standing to advance a case on behalf of his current and future patients; that the purported termination of his contractual rights (the decision) was administrative action which infringed on the constitutional rights of his patients, inter alia, to access healthcare; and that the decision be reviewed and set aside under the provisions of the Promotion of Administrative Justice Act 3 of 2000 (PAJA).

[21] Dr Ramdhin's principal argument was that the 2019 agreement was never lawfully terminated and that he retained a contractual right to exercise those privileges after his registration was suspended. This contention warrants a closer examination of the terms of the 2019 agreement.

[22] RMC's defence was that the 2019 agreement contained a term implied by law that Dr Ramdhin's privileges would terminate if he was no longer able to practise his profession. Accordingly, when he was suspended and his registration was deemed cancelled, the admission privileges terminated. Further, that RMC took no decision to terminate the privileges which would constitute 'administrative action' as envisaged in PAJA.

[23] The application came before the high court only with respect to interim relief. The high court however, decided that the admission privileges were terminated as a result of a term implied by law, which it viewed as an issue that had been fully argued. The effect of the term is that if Dr Ramdhin was suspended from practice, or if his registration was cancelled under the Act, his admission privileges would terminate. Concerning the alternative argument based on PAJA, the court held that no decision was taken to terminate the admission privileges; and that, if there was such a decision, it would not constitute administrative action and thus not be reviewable. It dismissed the application with costs.

A new point

[24] Shortly before this appeal was to be heard, Dr Ramdhin's counsel gave notice that he intended to argue a new point that the principles regarding temporary impossibility of performance found application on the facts of this case. The parties filed supplementary heads of argument and addressed the Court on this issue.

[25] The new point may be raised for the first time on appeal and decided, in the discretion of this Court: if it involves no unfairness to the other party; if the point is fully covered in the pleadings; if it does not raise new factual issues not fully explored in the court a quo; and if it does not rely on a factual foundation not laid in the court a quo.[1] This list is not exhaustive.

[26] Dr Ramdhin's case was that the 2019 agreement had not terminated but continued despite his suspension by the HPCSA, and that, to the extent that his suspension constituted a breach of the contract, RMC had an election to cancel the contract within a reasonable period but had not done so. He did not plead that his suspension constituted a temporary supervening impossibility, that the contractual

[1] *Paddock Motors (Pty) Ltd v Igesund* 1976 (3) SA 16 (A) at 23D. See also *Quartermark Investments (Pty) Ltd v Mkhwanazi and Another* [2013] ZASCA 150; [2014] 1 All SA 22 (SCA); 2014 (3) SA 96 (SCA) para 20.

obligations were suspended by operation of contract law, rather than in terms of the Act, or that the requirements of temporary impossibility were satisfied.[2] The high court determined the matter on the pleaded issues. It did not consider temporary supervening impossibility of performance.

[27] The argument based on temporary supervening impossibility of performance seeks to replace the legal foundation of Dr Ramdhin's case. It would require a fact-sensitive inquiry and a value judgment, based on objective criteria, as to whether it is just and equitable that the contract, to the extent still possible, be upheld and the parties' respective obligations adjusted accordingly. In *Transnet Ltd t/a National Ports Authority v Owner of the MV Snow Crystal* (*MV Snow Crystal*),[3] this Court explained that in relation to impossibility of performance, in each case, it is necessary to consider the nature of the contract, the relationship of the parties, the circumstances of the case, and the nature of the impossibility invoked. This is necessary to determine whether the general rule that impossibility of performance due to *vis maior* (a superior force) or *casus fortuitous* (a chance occurrence) will excuse performance, ought to be applied in the particular circumstances of each case.

[28] Dr Ramdhin's approach is novel in that he not only seeks to rely on his own conduct, which made it impossible for him to comply with the 2019 agreement, to excuse his performance during his suspension, but also to preserve a right to admission privileges after the suspension. The onus is on him to establish any such right to specific performance.

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[2] *World Leisure Holidays (Pty) Ltd v Georges* 2002 (5) SA 531 (W) para 10.
[3] *Transnet Ltd t/a National Ports Authority v Owner of MV Snow Crystal (MV Snow Crystal)* [2008] ZASCA 27; 2008 (4) SA 111 (SCA); [2008] 3 All SA 255 (SCA) para 28.

[29] Temporary impossibility of performance cannot be determined in the abstract but requires a court to evaluate whether performance was objectively impossible, rather than merely impermissible or inconvenient; how the contract allocated the risk of interruption resulting from a professional suspension; whether the impediment was truly temporary in the contractual sense; and whether post-impediment performance would remain substantially the same as the performance contracted for. Because the case was never advanced as one of temporary impossibility, no evidence was directed to those issues; no findings were made by the high court; and RMC was never called upon to meet that case.[4] RMC's evidential and legal response would necessarily have been different had the issue of impossibility of performance been squarely raised. Furthermore, this Court is asked to make first-instance determinations, contrary to its appellate function.[5]

[30] Raising the issue of 'impossibility of performance' for the first time on appeal is prejudicial to RMC and impermissible. In any event, the principles of temporary impossibility do not arise on the facts of this matter. The impossibility was not due to an unforeseen act but from Dr Ramdhin's culpable and admitted professional misconduct. In *MV Snow Crystal*,[6] this Court held that the doctrine of 'impossibility', whether temporary or otherwise, will not avail a party seeking to rely on it if the impossibility is self-created.

Discussion

[31] The high court's order dismissing the application with costs applies to the entire application, the judgment is therefore final in form and effect, because if the term implied by law – that admission privileges can be enjoyed only by registered practitioners qualified to practise their profession – forms part of the 2019

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[4] *Molusi and Others v Voges N O and Others* [2016] ZACC 6; 2016 (3) SA 370 (CC) paras 27-28.
[5] *DB v CB* [2024] ZACC 9; 2024 (8) BCLR 1080 (CC); 2024 (5) SA 335 (CC) paras 31, 42, 50, 52-57, and 61.
[6] Footnote 3 above para 28.

agreement, then Dr Ramdhin's suspension from practice brought that agreement to an end. A further consequence is that he would not be entitled to the relief sought in Part B of the notice of motion. Counsel for Dr Ramdhin agreed that this is the legal position and that his client's only remedy lay in the appeal to this Court.

[32] For these reasons, it is unnecessary to consider the question whether the relief sought by Dr Rhamdin in Part A of the notice of motion is an interim or a final interdict. It is also unnecessary to consider the PAJA review. Dr Ramdhin's counsel rightly did not pursue this issue. Whether a medical practitioner enjoys admission privileges is a matter of private law: their termination does not constitute administrative action as contemplated in PAJA. Consequently, the only issue to be decided is whether the high court was correct in holding that the 2019 agreement came to an end upon Dr Ramdhin's suspension and disqualification from practice, because, as the court put it, '[a]dmission privileges can only be exercised by medical practitioners who are entitled to practise'.

[33] Dr Ramdhin did not identify the terms of the 2019 agreement on which he relies, save to contend that the admission privileges are a contractual right. Dr Ramdhin contends that the grant of admission privileges was indefinite; and that his inability to exercise them during his suspension merely constituted a temporary impossibility of compliance with his obligations under the agreement. Therefore, so it is contended, when the period of suspension expired, the exercise of admission privileges simply continued as before. Dr Ramdhin emphasised that his registration as a medical practitioner had merely been suspended and that this was different from a sanction of removal from the register.

[34] In this regard, Dr Ramdhin relied on s 44 of the Act. It provides:

'Every person who has been suspended or whose name has been removed from the register in terms of section 42 shall, if his or her profession is one which, under this Act, cannot be lawfully

practised by an unregistered person, be disqualified from practising his or her profession and his or her registration certificate shall be deemed to be cancelled until the period of suspension has expired or until his or her name has been restored to the register by the professional board.'

[35] It is settled that statutory construction is a unitary exercise of text, context and purpose; and that the starting point is the language of the provision. Regarding the construction of s 44 of the Act, counsel for Dr Ramdhin conceded that if his sanction had been removal from the register, his admission privileges would have come to an end, because he would no longer be a health professional. The supervening impossibility will mean that the performance of his contractual duties was not possible. By contrast, so it was submitted, where a practitioner is suspended, the Act prescribes the consequences for the practitioner while leaving his name on the register, which 'is a preservation of the status quo', with the only consequence being that for a period he cannot perform his contractual duties.

[36] However, this is incorrect and a misreading of s 44 of the Act, as counsel was driven to concede. In both cases of removal and suspension from the register, the practitioner is disqualified from practising his profession and consequently, performance of his contractual duties is not possible. The only difference is that in the case of suspension, the registration certificate is deemed to be cancelled until expiry of the period of suspension or until the practitioner's name has been restored to the register. In other words, a medical practitioner's qualification to practise his profession is a prerequisite for the grant and continued existence of admission privileges.

[37] This is not, as Dr Ramdhin contends, a simple case of a suspension and an automatic entitlement to resume practice after a year, as if nothing significant had happened in the interim. His suspension fundamentally altered the basis of the 2019 agreement. He was disqualified from practising medicine for a year. He was no

longer an independent, autonomous service provider and would not return as one, but rather as a strictly supervised medical practitioner, stripped of the independent clinical autonomy for which RMC had contracted. He was now subject to mandatory HPCSA-approved oversight, after a one-year operational vacuum, and exposed to a three-year period of heightened contractual risk and reputational prejudice. The underlying contractual substratum of the 2019 agreement thus disappeared. His suspension is not a brief, transient disruption, such as a temporary illness or a brief absence from office, but a structural prohibition on independent professional practice.

[38] The premise that Dr Ramdhin would provide autonomous, continued, uninterrupted independent professional services came to an end with his suspension. If it was contractually intended that Dr Ramdhin could continue with his admission privileges, notwithstanding the suspension, he should have pleaded and established such a term. RMC, as an innocent party, cannot be required to await speculative future compliance, or be compelled to accept a fundamentally different contractual regime, under the guise of temporary impossibility of performance.

[39] As a matter of law, where the essential nature of the obligations had changed to the point that the foundation of the contract has fallen away or been fundamentally altered, the original contract cannot merely ‘continue’. Dr Ramdhin did not contend before the high court that it was within the parties’ contemplation or reasonably foreseeable at the time of the conclusion of the 2019 agreement that he would be suspended or subject to a fundamentally altered professional regimen, that RMC had assumed the risk of a temporary impossibility of performance arising from any suspension he might suffer, or that there was a tacit assumption that such a risk should be imported into the contract.

[40] If Dr Ramdhin were to enjoy admission privileges again, the parties would need to enter into a new contract. Such a contract would have to be consistent with the policy that applied in May 2024.

[41] Contractual terms are express, implied, or tacit. The term 'implied' refers to terms implied by law, but at times, depending on the context, also to consensual terms silently implied between the parties (really tacit terms). Implied terms may derive from the common law, precedent, trade usage, custom, or statute and exist irrespective of the presence or absence of consensus between the parties, but are imposed by law on the contracting parties. Once recognized, an implied term applies to all contracts, if of general application, or to contracts of a specific class, unless explicitly excluded by the parties. An implied term may always be developed by a court in the exercise of its inherent power, having regard to the requirements of justice, reasonableness, fairness, and good faith.[7]

[42] The suspension cancelled the right conferred by registration. The cancellation remained in effect until the suspension was lifted. During that time, the registration is, as a matter of law, regarded as cancelled, not merely suspended.

[43] The provisions of the Act make it clear that upon suspension, a practitioner must immediately cease to practise until the suspension of registration is lifted. Because admission privileges may be exercised only by a practitioner entitled to practise, the right to practise is an essential term of the agreement conferring admission privileges and one of its naturalia. When admission privileges are deemed cancelled upon suspension, they fall away by operation of law and cannot be exercised. As a consequence, once Dr Ramdhin was no longer able to practise,

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[7] *Van Nieuwkerk v McCrae* 2007 (5) SA 21 (W) at 27A-C.

his admission privileges could not be exercised, and the 2019 agreement establishing those privileges was terminated.

[44] The legal fact that his entitlement to practise was suspended, even temporarily, does not mean that his admission privileges remained extant but were simply suspended until he was again entitled to practise. During the period of his suspension, RMC might have required the services of an obstetrician/gynaecologist and might have had to replace him with another practitioner.

[45] Dr Ramdhin has not established that the high court erred in finding that the 2019 agreement was subject to an implied term, following from the application of the provisions of the Act and as a conclusion of law, that the admission privileges terminated on his suspension. Having regard to the purpose for which admission privileges are granted in the professional relationship between Dr Ramdhin and RMC, those privileges terminated automatically when he was no longer permitted or registered to practise as a medical practitioner. No decision was required. Dr Ramdhin was required to reapply for such privileges after his reinstatement following the expiry of his suspension.

[46] The fact that Dr Ramdhin continued to rent his consulting rooms and was invoiced for the rental amounts is of no consequence. The landlord, Stone-fountain Properties (Pty) Ltd, is unrelated to RMC.

[47] Dr Ramdhin has not asserted that he held any right to admission privileges other than under the 2019 agreement. By 1 May 2024, a new policy and dispensation were in place. The letter of 31 May 2024 made it clear that he had to reapply for admission privileges. By submitting an application for admission privileges on 1 July 2024, he clearly accepted, despite his subsequent protestations

to the contrary, that he was required to apply because he no longer enjoyed admission privileges and had to be approved for any privileges *de novo* (afresh).

[48] In light of the above conclusion, it is unnecessary to consider the further requirements for an interim interdict. I simply note that the application papers also lack any allegations that admission privileges had been sought unsuccessfully at other hospitals and that Dr Ramdhin would not have available to him and his patients a satisfactory alternative remedy.

Order

[49] The following order is accordingly granted:

The appeal is dismissed with costs.

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P A KOEN

JUDGE OF APPEAL

Appearances

For the appellant:	S Kirk-Cohen SC
Instructed by:	Mcaciso Standsfield Inc., Cape Town
	Kramer Weihmann Inc., Bloemfontein
For the respondent:	M Adhikari
Instructed by:	Motsoeneng Bill Attorneys Inc., Sandton
	Honey Attorneys, Bloemfontein.