



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case number: 9940/2023

In the matter between:

LOUIS KATHAN

First Applicant

DR. LOUIS KATHAN INC

Second Applicant

and

LIFE HEALTHCARE HOLDINGS

First Respondent

GROUP (PTY) LTD

LIFE VINCENT PALLOTTI HOSPITAL (PTY) LTD

Second Respondent

Coram: Wille, J

Heard: 3 August 2026

Delivered: 16 September 2026

Summary:

The respondents seek leave to appeal against the orders granted in this matter. Regrettably, the respondents list indiscriminate, overlapping and randomly presented alleged errors in the judgment. This is without identifying with any precision any appealable grounds that may justify an appeal court's interference. This approach is most unhelpful. The application for leave to appeal discloses no appealable error of law or fact and has no reasonable prospects of success on appeal. Leave to appeal refused.

ORDER

1. The application for leave to appeal is refused.
 2. The first and second respondents are directed, jointly and severally, the one paying the other to be absolved, to pay the costs of the application for leave to appeal, including the costs of two counsel on Scale C.
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JUDGMENT

WILLE, J:

INTRODUCTION

[1] The first and second respondents (the 'hospital' respondents) seek leave to appeal against the orders I granted in this matter, regrettably listing indiscriminate, overlapping and randomly presented alleged errors in my judgment. This is without identifying with any precision any appealable grounds that may justify an appeal court's interference. This approach is most unhelpful.¹

¹ This approach is also legally impermissible.

[2] The hospital respondents also apply for condonation for non-compliance with this court's practice directives. The condonation application is unopposed, and I will grant condonation in the interests of justice. However, I must say something about the condonation application.²

CONDONATION

[3] I granted condonation in the related matter (which I will discuss shortly) for the reasons set out in my judgment (in the related matter) when I refused leave to appeal in that matter. In this matter, the hospital respondents have indulged in what can only be described, with regret, as an impressive exercise in judicial gymnastics.³

[4] I say this because a comparative perusal of the various affidavits filed in this matter to those filed in the related matter reveals a number of legal somersaults, forward flips, and impressive back flips. Thankfully, I do not have to deal with these issues again, as I am bound by my previous order granting condonation.⁴

THE “RELATED” MATTER

[5] In the related matter (which I presided over), the hospital respondents also terminated the applicants' practising privileges (the decision). The termination did not take effect immediately but was delayed by a few months.⁵

[6] The decision was made because the first applicant allegedly made certain homophobic, racist, and sexist remarks while at the hospital managed by the hospital respondents. The termination decision meant that seventeen (17) cancer patients (the 'patients') could no longer receive lifesaving medical treatment at facilities managed by the hospital respondents. The patients challenged the termination decision, alleging it was irrational and unlawful. This is what the related case concerned.⁶

[7] In summary, in the patients' case it was contended that the hospital respondents did not correctly apply their policies when terminating the applicants' practising privileges. The first

² I granted condonation in the related matter.

³ Their version shifted on many occasions.

⁴ In this case the hospital respondents' delay was not significant.

⁵ It was delayed until the end of December 2023.

⁶ Most of the factual issues were common cause, alternatively not materially engaged with.

applicant says this because they did not take corrective measures before terminating his practising privileges, including adopting a rehabilitation plan.⁷

[8] In response, the hospital respondents argued that adopting less restrictive measures was unnecessary and that one of their discrete policies permits termination as a matter of first, not last, resort.⁸

[9] The first applicant contended that the latter policy applies only when a practitioner's privileges are in place, and he/she commits serious misconduct. Then, termination may be immediate. Thus, for example, this would apply where a doctor engaged in conduct that seriously threatened the hospital and its patients. In these circumstances, he or she should not be allowed to continue practising. Hence, the complained-of conduct would necessitate immediate removal, which would, logically, protect the hospital and its patients.⁹

[10] In both cases, the hospital respondents elected not to remove the first applicant immediately under this guillotine clause, and enforcement of the termination decision was delayed for several months. This was and is one of the main issues raised by both the patients in the related matter and in this matter.¹⁰

[11] Simply put, the applicants' argument in the related matter was that the first and second respondents should be bound by their election not to proceed with immediate termination.¹¹

[12] One critical legal issue in the related matter was the hospital respondents' argument that, even if the patients were entitled to compel compliance with the hospital respondents' policies, those policies were not binding on the hospital respondents. They say their policies may be used against doctors with practising privileges, but not against the hospital respondents.¹²

[13] Aggrieved by this decision, the hospital respondents sought leave to appeal. After extensive argument, I delivered a further judgment refusing leave to appeal. I was advised during the hearing of this application for leave to appeal that the hospital respondents have

⁷ This following their "Management Policy" ("conduct" policy).

⁸ This following their "Privileges Policy".

⁹ The hospital respondents did not terminate the first applicant's privileges with immediate effect.

¹⁰ The termination decision was taken but the enforcement thereof was delayed for several months.

¹¹ Manifestly, their own policies do not support their decision and no explanation is offered for the delay.

¹² I found that policies could not be implemented in a "one-sided" manner.

sought leave to appeal to the Supreme Court of Appeal and that the result of this application was pending. The issues in this application for leave to appeal are distinct from those in the related application (the patients' application), as this case involves an employer-employee relationship. This application falls to be decided on the facts of this application for leave to appeal.¹³

CONSIDERATION

STARE DECISIS

[14] As I understand it, I may not depart from a prior decision in the same court unless I am satisfied that the prior decision was clearly wrong, arrived at by manifest oversight or misunderstanding, and that a palpable mistake has been made.¹⁴

[15] The current case before me, by way of application for leave to appeal, is a subset of the case advanced by the patients, in which I refused leave to appeal. The patients' arguments on the issue of practising privileges are somewhat similar to those in the current application. The hospital respondents are attempting to reargue this issue without identifying an appealable error that would alter the order made in the patients' case.¹⁵

[16] I consistently found that the hospital respondents' policies regulated the relationship between the hospital and the first applicant and that they fall to be interpreted together. I reasoned that the hospital respondents elected to pursue a certain specified course, then changed tack altogether, and ultimately failed to prove misconduct justifying termination. Nothing has changed, influenced or informed this prior reasoning in this case. Thus, I cannot depart from my prior decision on these issues.¹⁶

GROUND OF APPEAL

¹³ I understand that leave to appeal has been granted in the "patients" matter (the related matter).

¹⁴ Tubular Holdings (Pty) Ltd v DBT Technologies (Pty) Ltd 2014 (1) SA 244 (GSJ).

¹⁵ The same arguments are rehearsed over and over again.

¹⁶ The related matter did not involve an employer-employee relationship.

[17] I will deal only with a limited number of further grounds of appeal. This does not mean that I have ignored the other complaints raised by the hospital respondents.¹⁷

[18] This notwithstanding, because of the nature and formulation of the application for leave to appeal, it was left up to me to ultimately attempt to distil the grounds of appeal. The first applicant's case is that the cancellation was invalid based on the policies annexed to the founding papers. His case has not changed. The hospital respondents seek to wish away the binding nature of these policies by saying they are discretionary guidelines. This is despite an initial averment in the hospital respondents' pleadings, under oath, that they accepted these policies as binding.¹⁸

[19] Now the hospital respondents contend for a contractual interpretation issue, which they say is the very stuff of appeals. They argue that another court may find that the privileges policy gives them the power to terminate the applicants' practising privileges by ignoring the conduct policy as a constraint on that same power. Put another way, at a very belated stage the hospital respondents are attempting to recast binding policies as non-binding guidelines because it suits them. I held in both cases that the policies must be interpreted together. This whole case is about conduct, so it would be untenable to wish away the very policy that regulates conduct. The language, context and purpose all point in the same direction.¹⁹

[20] The privileges policy contains the clause on which the hospital respondents steadfastly rely. It records:

'...Notwithstanding the provisions of our policy on Management of Unacceptable Conduct by a Medical Practitioner ... the company also reserves the right to suspend or terminate admitting privileges immediately on written notice to this effect should a doctor make himself or herself guilty of unacceptable behaviour, unprofessional conduct or participating in activities which the hospital or Group consider as detrimental to its reputation or business

¹⁷ Several complaints were raised as opposed to legitimate grounds of appeal.

¹⁸ This shift in the approach by the hospital respondents is left unexplained on the papers.

¹⁹ The hospital respondents seek to wish away the conduct policy altogether when this case is about conduct,

*interests, or which shows a trend of patient care which falls short of standards accepted of a doctor in that discipline....*²⁰

[21] Thus, the hospital respondents must exercise these additional powers only in exceptional circumstances that warrant immediate dismissal of the first applicant.²¹

[22] Put another way, this policy cannot be used as a second stick to beat the first applicant and, in so doing, ignore the terms of the conduct policy. These provisions in the privilege policy are to be used sparingly where the doctor's ongoing presence is untenable. The hospital respondents attempted to justify, retrospectively, the summary cancellation of the applicants' hospital privileges.²²

[23] This interpretation would render the conduct policy's structured framework of rehabilitation and warnings meaningless, converting it into an arbitrary discretion. Contractual discretion must be exercised rationally and fairly within the established policy framework.²³

[24] I found that the conduct policy governed ordinary issues, while the privileges policy was reserved for urgent protection of clinical standards. The hospital respondents' failure to act immediately, choosing a lengthy inquiry route instead, fatally undermines its reliance on summary termination powers. I attempted to distinguish (and believe I did) between the employment and privileges relationships, holding that the hospital respondents could not transpose internal disciplinary findings (generally inadmissible as proof of the underlying facts in subsequent civil proceedings) into a separate contractual framework justifying termination.²⁴

[25] The first applicant's attorney correctly pointed out the difficulty with the hospital respondents' chosen route because a first serious incident required rehabilitation under the conduct policy. Because of this, the hospital respondents changed tack altogether, seeking to rely on the privileges policy, the disciplinary findings, and alleged pressure from the first

²⁰ This is not disputed.

²¹ This is precisely why this power is given.

²² This was never explained by the hospital respondents on the papers.

²³ I say this was not done by the hospital respondents.

²⁴ The hospital respondents never explained why their termination decision was delayed.

applicant's patients as a basis to cancel the first applicant's privileges. Thus, the hospital respondents' own processes caused the problem.²⁵

[26] Put another way, the hospital respondents must now show that another court would probably reject this account of the sequence, which is grounded in the hospital respondents' own letters and in the undisputed fact that they did not terminate immediately.²⁶

[27] Turning now to the contractual basis for termination. The hospital respondents relied on hearsay affidavits from deponents lacking first-hand knowledge, which are insufficient in motion proceedings to prove repudiatory misconduct. These affidavits may explain why the disciplinary enquiry was initiated, but they did not prove that the first applicant committed repudiatory misconduct justifying termination of his contractual privileges.²⁷

[28] Turning now to the issue of waiver. The hospital respondents argue that the first applicant waived or novated his practising privileges when he accepted his promotion. Waiver requires clear proof of an intentional abandonment of a known right. The intention to novate must be proved expressly or by necessary implication from all the circumstances, including the parties' conduct.²⁸

[29] The waiver argument is and was fact bound. I rejected it on the evidence and on the parties' conduct. I can find no legal principle identified that another court would apply differently.²⁹

[30] Finally, to obtain leave to appeal, the hospital respondents contend that my judgment has broader importance. My judgment turned on the hospital respondents' own policies and was case specific. The pleaded acceptance of a specific, peculiar contractual regime and (in my view) a failure to prove a contractual basis for termination were specific to this case and its pleaded facts. My judgment does not even attempt to lay down a general rule concerning practising privileges at hospitals in general. Further, compelling reasons on their own are

²⁵ The first applicant cannot be blamed for this impermissible approach

²⁶ This shift in the stance by the hospital respondents was never explained on the papers.

²⁷ Nothing was done to remedy the hearsay evidence presented and it was left untouched.

²⁸ National Health Laboratory Service v Lloyd-Jansen van Vuuren 2015 (5) SA 426 (SCA).

²⁹ The waiver argument is untenable.

insufficient to trigger the grant of leave to appeal, as there must, in addition, be prospects of success.³⁰

CONCLUSION AND ORDER

[31] For these reasons, I find that the application for leave to appeal discloses no appealable error of law or fact and has no reasonable prospects of success on appeal. Thus, the appropriate order is as follows:

1. The application for leave to appeal is refused.
2. The first and second respondents are directed, jointly and severally, the one paying the other to be absolved, to pay the costs of the application for leave to appeal, including the costs of two counsel on Scale C.

E D WILLE
(CAPE TOWN)

APPEARANCES

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³⁰ Southern Africa Litigation Centre v Minister of Justice and Constitutional Development 2016 (3) SA 317 (SCA) at para 24.