



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED:

Date: **14th December 2017** Signature: _____

CASE NO: 2016/9239

In the matter between:

ABBAS: SAMEER ABDULLAH

Applicant

and

THE SOUTH AFRICAN VETERINARY COUNCIL

First Respondent

THE CHAIRMAN, S A VETERINARY COUNCIL

Second Respondent

**THE NATIONAL COUNCIL OF SOCIETIES FOR THE
PREVENTION OF CRUELTY TO ANIMAL NPC**

Third Respondent

JUDGMENT

ADAMS J

[1]. This is an opposed application by the applicant for the review and setting aside of a decision of the first respondent relative to a disciplinary hearing. The disciplinary committee had found him guilty of unprofessional conduct in that he had contravened certain of the provisions of the Professional Code of Conduct of the first respondent. The applicant is and was bound to the Code of Conduct by virtue of his membership in the first respondent.

[2]. In his notice of motion, the applicant applies for an order reviewing, correcting and / or setting aside the decision of the first respondent taken at its meeting held on the 20th and 21st October 2015. The decision of the first respondent was as follows:

1. The applicant was found guilty of unprofessional conduct in that he had contravened section 3.2.1 of the first respondent's Code of Conduct and Practice. The relevant provision provides that if a veterinarian registers a facility and opens the doors for business, the veterinarian is then obliged to render veterinary services to all clients / treat all patients who enter the practice, unless the refusal to do so can be justified; and
2. The first respondent varied the sentence imposed by its disciplinary committee on the applicant to twelve months' suspension, wholly suspended for a period of five years, on condition that the applicant was not found guilty of any unprofessional conduct during the period of suspension and that the applicant sat and passed the first respondent's jurisprudence examination during the period of suspension.

[3]. The review application is based on the following grounds that the first respondent:

- (a) Had disregarded the fact that the third respondent, according to the applicant, never clearly and unmistakably identified itself to the applicant as the applicant's client;
- (b) Disregarded the fact that the third respondent, according to the applicant, failed to provide the applicant with an unambiguous mandate;
- (c) Disregarded the fact that the applicant cancelled, according to the applicant, any mandate that he may have received, which cancellation the third respondent accepted;
- (d) Disregarded the applicant's constitutional right to freedom of choice and association; alternatively, did not take into account and completely disregarded the applicant's alleged justification for his refusal to provide further veterinary services in respect of the animals on the relevant farm;
- (e) Erred in finding that the applicant was not a credible witness.

[4]. The very crisp issue which I am required to adjudicate in this application for review is whether or not the first respondent had correctly rejected the applicant's explanation in justification of his refusal to render the veterinary services in question.

[5]. The first respondent opposes the application on the basis that, in its view, it had correctly found, in the exercise of its statutory mandate as the *custos morum* of the veterinary profession, that:

- (a) There was no ambiguity as to the fact that the third respondent was the applicant's client and had been so accepted by the applicant;
- (b) There was no ambiguity in the mandate given to the applicant by the third respondent;

- (c) The purported cancellation of the mandate was in breach of the applicant's obligations towards his client and without objective justification;
- (d) The provisions of clause 3.2.1 of the Code of Conduct and Practice do not offend the applicant's Constitutional right to freedom of choice and association;
- (e) The justification proffered by the applicant, *ex post facto*, does not withstand objective scrutiny;
- (f) On an objective review of the evidence received at the disciplinary inquiry into the applicant's conduct, a correct conclusion was made that the applicant was not a credible witness.

[6]. It is accepted by the applicant and therefore common cause that the first respondent is mandated by statute to *inter alia* exercise effective control over the professional conduct of persons practicing the veterinary professions, to determine the standards of professional conduct of persons practicing the veterinary professions and to protect the interest of the veterinary professions and to deal with any matter relating to such interests. The first respondent also has the duty to maintain and enhance the prestige, status and dignity of the veterinary professions and the integrity of persons practicing such professions.

[7]. In terms of the Rules Relating to the Practicing of Veterinary Professions ('the Rules'), which govern the conduct of Veterinary practitioners, the applicant was required to conduct himself in the manner prescribed by the rules. For example, the applicant, as a practitioner, was required and obliged by the rules to to serve the public to the best of his ability and in the light of the latest scientific knowledge. Importantly, the application was under a duty, in terms of the rules not to refuse treatment to an animal and not to abandon the treatment

of an animal under his professional care unless he is satisfied that he has done his utmost to safeguard the welfare of the animal concerned.

[8]. S 3.2.1 of the Code of Conduct is central to the dispute in this review application. The introduction to the section provides as follows

‘A veterinarian has the right to freedom of association as allowed for in the Constitution but this is not absolute. In exercising this right he / she has to be aware that any decision made has to be justified and the rights of the other party have to be considered and respected.

To illustrate the point, no veterinarian would be entitled to render services only to clients from a certain race or ethnic group and be able to justify his/her actions on the basis of his/her constitutional rights to freedom of association.

If a veterinarian elects not to practice his/her profession he / she is entitled to do so. However if a person opts to practice the profession of the veterinarian, registers a veterinary facility and opens the doors for business the veterinarian is then obliged to render the veterinary services to all clients/treat all patients who enter the practice unless the refusal to do so can be justified.

Veterinarians shall base their personal and professional conduct thereon that they shall, as far as it is within their professional ability, not refuse retreatment to an animal unless the refusal to do so can be justified.’

[9]. One of the grounds on which a practitioner may refuse to treat an animal, which is specifically legislated for is ‘where the owner of an animal has been rude, antagonistic or has sought the services of the veterinarian with ulterior motives’. Also, treatment may be refused where the treatment required falls

outside the ability that may reasonably be expected of the veterinarian. In an emergency a veterinarian must render a service to the best of his / her ability until the animal can be referred to a more capable colleague or institution.

[10]. The facts in this matter, which gave rise to the disciplinary hearing, in a nutshell are as follows:

[11]. Following receipt of reports of possible maltreatment of animals on a farm, the third respondent obtained a warrant in terms of section 8 of the Animals Protection Act, No. 71 of 1962, authorising them to enter any premises where any animal is kept, for the purpose of examining the conditions under which it is so kept and to exercise in respect of any animal the powers conferred by section 5(1) of the Animals Protection Act upon a police officer. The applicant visited the farm in order to assist with the examination as per the request from the third respondent.

[12]. According to the applicant, he was not requested to prepare a report and neither did he undertake to prepare a report one. His version is that he only undertook to see if he could help animals on the farm. It is submitted by Mr Van Bergen, Counsel for the first and second respondents, that, if the applicant had not been requested to prepare a report and had only undertaken to see if he could help animals on the farm, then what was the purpose of him visiting the farm. This anomaly, so the respondents contend, is accentuated by the fact that on his own admission, the applicant did give any treatment to any animals. I find myself in agreement with this submission.

[13]. I also find myself in agreement with the submission on behalf of the respondents that it is improbable that the third respondent required the applicant's presence merely to get authorisation to euthanize animals – the

provisions of the warrant and having regard to the powers afforded to a police officer in terms of section 5(1) of the relevant Act, made such a purpose superfluous.

[14]. On the probabilities, and having regard to all of the evidence, the only purpose for which third respondent required the attendance of the applicant on the farm was to obtain expert evidence, and to have him prepare a report. This is what the first respondent found. The applicant disagrees with this finding.

[15]. On their arrival on the farm the third respondent found that all animals in general had a severe skin condition (redness of the skin and hair loss). Some were emaciated. Numerous dead pigs were scattered around the piggery, some of which were culled (slaughtered) and some of which were in the process of decomposition (denoting that the animals had been dead for some time). The Applicant spent approximately one hour on the farm and he took a number of photographs, which are also referred to in his clinical notes. He offered to perform a post – mortem examination on a sheep and provided a bag in which to put the carcass. The applicant did in fact perform a post – mortem examination on a sheep carcass that the third respondent brought from the farm.

[16]. In view of the facts in this matter, the version of the applicant to the effect that he had not entered into a veterinarian / client relationship, is improbable and was rightly rejected by the disciplinary hearing. So too his denial that he had undertaken to perform a post - mortem on a sheep carcass and to produce a report in relation thereto.

[17]. A conspectus of all of the evidence, confirms that the version of the applicant as highly improbable and was rightly rejected by the disciplinary hearing as false.

[18]. The applicant has sought to justify his conduct by alleging impropriety and ulterior motive on the part of the third respondent and its employees. He says, for example that the employees of the third respondent and the local SPCA had spent the day on the farm altering the conditions and situation. This claim by the applicant is so unlikely and it borders on the ridiculous. This is the one part of the applicant's version that, on its own, justified a conclusion that he was not credible witness.

Analysis

[19]. Having regard to the evidence as a whole, I am of the view that the applicant's attempt at justifying his refusal to render the veterinary services in question demonstrates his untruthfulness. His version that he did not want to be part of the fraud being perpetrated by the third respondent is far – fetched.

[20]. In sum, at the disciplinary hearing and the subsequent appeal the applicant gave a version, which, objectively speaking, is far – fetched and the hearing was justified in rejecting his explanation as false.

[21]. This brought the applicant squarely within the prescripts of s 3.2.1, which means that he was rightly found guilty and sentenced.

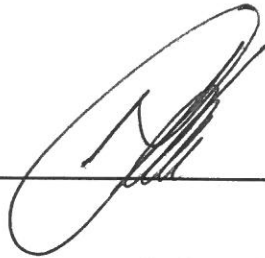
[22]. There is therefore no basis upon which the decision should be reviewed.

[23]. The application therefore stands to be dismissed with costs.

Order

In the circumstances I make the following order:

1. The applicant's review application be and is hereby dismissed.
2. The applicant shall pay the first, second and third respondents' cost of the application.



L ADAMS

*Judge of the High Court
Gauteng Local Division, Johannesburg*

HEARD ON:	25 th October 2017
JUDGMENT DATE:	14 th December 2017
FOR THE APPLICANT:	Adv J E Kruger
INSTRUCTED BY:	Pieter Schoeman Attorneys
FOR THE FIRST & SECOND RESPONDENTS:	Adv C H Van Bergen
INSTRUCTED BY:	Ric Martin Incorporated
FOR THE THIRD RESPONDENT:	Adv Bezuidenhout
INSTRUCTED BY:	Marston & Taljaard