



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES

(2) OF INTEREST TO OTHER JUDGES: YES

(3) REVISED.

2022-07-26

DATE

SIGNATURE

Case Number: 22547/2020

In the matter between:

DR WILLEM JOHANNES VISAGIE

Applicant

and

HEALTH PROFESSIONS COUNCIL OF

SOUTH AFRICA

First Respondent

MEDICAL AND DENTAL PROFESSIONAL

BOARD

Second Respondent

APPEAL COMMITTEE OF THE HEALTH

PROFESSIONS COUNCIL OF SOUTH AFRICA Third Respondent

**PROFESSIONAL CONDUCT COMMITTEE OF
THE MEDICAL AND DENTAL PROFESSIONAL**

BOARD Fourth
Respondent

PRO FORMA COMPLAINANT Fifth Respondent

JUDGMENT

POTTERILL J

Background

[1] The applicant, Mr Willem Johannes Visagie, [Dr Visagie] is seeking the review and setting aside of the finding of the fourth respondent, the Professional Conduct Committee of the Medical and Dental Professional Board [the Conduct Committee] as provided for in ss 6(1),6(2) and 8(1)(c) of the Promotion of Administrative Justice Act No 3 of 2000 [PAJA]. The Conduct Committee on 13 February 2019 found Dr Visagie guilty of unprofessional conduct [the decision]. The decision was taken pursuant to a disciplinary inquiry [inquiry] that was held in terms of Chapter IV of the Health

Professions Act No 58 of 1974 [the Act] and the regulations published under GN R102 in Government Gazette 31859 [the regulations] on 6 February 2009.

- [2] The second respondent is the Medical and Dental Professional Board [the Board] and the third respondent is the *Ad Hoc* Appeal Committee [the Appeal Committee]. The fifth respondent is the *Pro Forma* Complainant, an employee of the Council who presents the complaint and evidence at the inquiry. All the respondents opposed the application and when not referred to individually will be referred to collectively as the respondents.

The common cause facts

- [3] Mrs J T Fitchett [the patient], 67 years old at the time, had undergone a laparoscopic procedure at the hospital on 28 November 2008. This procedure was performed by Dr L J Kriel, a specialist gynaecologist. On 29 November 2008 Dr G J Viljoen who was standing in for Dr Kriel was concerned about the patient's condition as she had acute abdominal pain and referred the patient to Dr Visagie. Thus on 29 November 2008 Dr Visagie took over the surgical care of the patient. Dr Visagie is a qualified registered medical practitioner and specialist surgeon in private practice at Netcare Olivedale Clinic Johannesburg.
- [4] Dr Visagie on the morning of the 29th consulted and examined the patient and again later in the afternoon/early evening. He requested a blood test and a report on the X-rays. On early morning rounds on 30 November 2008 he noticed that the patient's incisional wound from the surgery performed by Dr Kriel was

bulging and smelled of small bowel content. He performed an exploratory laparotomy and found an injury to the small bowel. He closed the perforation and the patient was thereafter admitted to the ICU. The patient's condition improved, but deteriorated to such an extent that she sadly passed away on 29 December 2009 as a result of sepsis and ultimately organ failure.

- [5] The patient's family laid a complaint against Dr Visagie and other medical practitioners. Dr Visagie provided a written response to the complaint. Dr Visagie was charged with unprofessional conduct in that he acted in a manner that was not in accordance with the norms and standards of his profession. The charge sheet contained one charge of alleged unprofessional conduct in that Dr Visagie failed and/or neglected to make an appropriate and/or correct diagnosis of the patient's condition. The charge sheet also contained four alternative charges. The detail of the charge sheet will be addressed later on in the judgment.
- [6] The inquiry proceeded before the conduct committee with evidence being led and pursuant to argument on 13 February 2019 Dr Visagie was informed that he had been found guilty of all 5 charges. The Conduct Committee did not impose a penalty, because Dr Visagie was advised that the decision was reviewable under PAJA and his legal team had to assess whether this was a viable option.
- [7] On 1 April 2019 the Council and the *Pro Forma* Complainant received a letter from Dr Visagie's attorneys that they wished to proceed with an application for review, but was concerned that the Council may contend that Dr Visagie had not exhausted an internal remedy as required by s7(2) of PAJA. Dr Visagie accordingly

delivered a notice of his intention to appeal the decision to an Appeal Committee as an internal appeal in terms of s10(2) of the Act and regulation 11.

- [8] The Council undertook to arrange an internal appeal and upon receiving the transcribed proceedings Dr Visagie on 5 August 2019 delivered his grounds of appeal and summary of argument. On 2 September 2019 the *Pro Forma* Complainant delivered his summary of argument with it in the main submitting that Dr Visagie was not entitled to an internal appeal, because the matter had not been finalised and no penalty had been imposed. Dr Visagie replied to these submissions arguing that the Appeal Committee was properly seized of the appeal and was obliged to hear the appeal on its merits.
- [9] On 12 September 2019 the Appeal Committee entertained the matter, but refused to address the merits seeking only arguments as to whether the matter was ripe for hearing. On 8 November 2019 Dr Visagie was verbally informed by the Appeal Committee that the matter was not ripe for appeal and that the matter was removed from the roll.
- [10] This decision of the internal Appeal Committee is appealed against in the High Court by means of notice of motion and affidavit and is pending [the High Court Appeal].

Is *lis pendens* applicable?

- [11] On behalf of the Respondents it was argued that the pending High Court appeal is between the same parties, same subject-matter

and in respect of the same cause of action constituting *lis pendens* and that this application must be dismissed.

- [12] The appeal is brought in terms of s20(1) of the Act against the decision to refuse to hear the appeal. The initial appeal was limited in that the relief sought was an order directing the Appeal Committee to entertain the appeal. The amended notice of appeal however had the initial relief sought as an alternative to: “*that the Third Respondent’s decision be set aside and be replaced with a decision whereby the Fourth Respondent’s finding (i.e. the finding in terms whereof the Fourth Respondent found the Applicant guilty of unprofessional conduct on 13 February 2019) is set aside.*”
- [13] The founding affidavit set out that the amendment to the notice of appeal was for the purposes of hearing the appeal and this review simultaneously. This was because there would be a substantial overlap with the evidence to deal with the appeal on its merits and the review. It was also submitted that the main purpose of the launching of the appeal was to circumvent an argument by the Conduct Committee that Dr Visagie failed to exhaust the internal remedy as provided for in s7(2) of PAJA.
- [14] Only the review was heard before me. *Lis pendens* has at its foundation that there should be finality in litigation and that once a suit has commenced the suit must be brought to its conclusion before the chosen tribunal and should not be replicated.¹ This principle ensures an avoidance of multiplicity of litigation or conflicting judicial decisions on the same issues.
- [15] There is little doubt that the appeal and review lodged are between the same parties pertaining to the same finding of the Conduct

¹ *Nestlé (South Africa) (Pty) Ltd v Mars Inc* 2001 (4) SA 542 (SCA) par [16]

Committee. The appeal is brought in terms of s20(1) of the Act and the review in terms of s6 of PAJA. An appeal is however on the merits and the review pertains to fair administrative justice. The approach by the two presiding officers and the principles applied in the review and the appeal would thus be wholly different, albeit the result may be the same. I am thus satisfied that *lis pendens* herein is not applicable.

[16] But, even if I should be wrong, the whole matter has been argued before me and it would not serve the interests of justice to find that since the appeal was issued first, it must be heard first and the self-same comprehensive arguments must be repeated before another court. A court must however ensure that the possibility of contradictory relief by two different courts is avoided.² I agree with the finding of the court in *Liberty Life Association of Africa v Kachelhoffer NO and Others* 2001 (3) SA 1094 (C) at 1108F-G and 1110J-1111C adopted in *Earthlife Africa (Cape Town) v Director-General: Department of Environmental Affairs and Tourism and Another* 2005 (3) SA 156 para [38] and [39]. that an appeal and a review are “two distinct and dissimilar remedies” and “where both are available, the review must be disposed of first as, if the correctness of the judgment appealed against is confirmed, a review of the proceedings is ordinarily not available.”

[17] It would defeat one of the purposes of *lis pendens*, reiterated in *Socratous v Grindstone Investments* 2011 (6) SA 325 (SCA) para [10], burdening this court’s congested court rolls further, granting a dismissal on *lis pendens*, after it had been fully ventilated, for another court to hear the matter afresh.

² *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Others* 2004 (4) SA 490 (CC)

- [18] Every matter will have to be judged on its own facts to determine whether *lis pendens* is applicable and whether it would be in the interests of justice to hear the review first whilst ensuring that there are no conflicting judgments on the same issue before two courts.

Was s7(2) of PAJA and s (11) of the Act complied with?

- [19] In *Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining and Development Co Ltd and Others* 2014 (3) BCLR 265 (CC); 2014 (5) SA 138 (CC); [2013] ZACC 52; [2013] ZACC 48, the Constitutional Court elaborated on the duty in terms of PAJA to exhaust internal remedies, finding that –

“[119] *In clear and peremptory terms, s 7(2) prohibits courts from reviewing ‘an administrative action in terms of this Act unless any internal remedy provided for in any other law has first been exhausted’. Where, as in this case, there is a provision for internal remedies, the section imposes an obligation on the court to satisfy itself that such remedies have been exhausted. If the court is not satisfied, it must decline to adjudicate the matter until the applicant has either exhausted internal remedies or is granted an exemption. Since PAJA applies to every administrative action, this means that there can be no review of an administrative action by any court where internal remedies have not been*

exhausted, unless an exemption has been granted in terms of section 7(2)(c)."

[20] The requirement that an internal remedy must be exhausted is not absolute: *"The duty to exhaust internal remedies is therefore a valuable and necessary requirement in our law. However, that requirement should not be rigidly imposed. Nor should it be used by administrators to frustrate the efforts of an aggrieved person or to shield the administrative process from judicial scrutiny. PAJA recognises this need for flexibility, acknowledging in s 7(2)(c) that exceptional circumstances may require that a court condone non-exhaustion of the internal process and proceed with judicial review nonetheless."*³

[21] The crux of the appeal in the appeal to the Appeals Committee, the Appeal to the High Court and this review is whether a finding can be appealed or reviewed before a penalty has been imposed and whether the finding was appealable or reviewable. The issue has never changed, only the forum and the method of attack. The internal appeal was thus not a ruse, but a reasonable attempt to exhaust the available internal remedy. I am satisfied that the appeal to the Appeals Committee construed reasonable steps to exhaust an available internal remedy. The Appeals Committee rightly or wrongly refused to entertain the appeal, thus rendering exhaustion futile.

³ *Koyabe and Others v Minister for Home Affairs (Lawyers for Human Rights as amicus curiae)* 2010 (4) SA 327 (CC) para [38]

Must an extension of the time period of 180 days be granted by this Court?

- [22] In terms of s7(1) of PAJA a review must be brought without unreasonable delay and not later than a period of 180 days from the date when Dr Visagie gained knowledge of the decision of the Conduct Committee. The date of the decision was 13 February 2019 and Dr Visagie knew of this decision on this date. The 180-day period thus expired on 12 August 2019, but the review application was only launched 19 May 2020, rendering it nine months late. So went the argument on behalf of the respondents.
- [23] In terms of s9 of PAJA an extension of the period can be granted if agreed between the parties or on application to court, if the interests of justice so require.
- [24] On behalf of Dr Visagie it was argued that the decision pertaining to the unsuccessful appeal to the Appeal Committee was read out on 8 November 2019. This process, it was argued constituted the internal appeal as contemplated in terms of s7(1) (a) of PAJA and s 10(3) of the Act. The written reasons for the decision was received 19 November 2019. The 180-day period from 19 November 2019 would thus have run out on 1 June 2020. If the court was to find that 8 November 2019 was the date from which the 180-day period ran, then the time period would need to be extended for 12 days, from 7 May 2020 to 19 May 2020, which would not prejudice the respondents and would be in the interests of justice.
- [25] The respondents further contended that the U-turn that Dr Visagie made from seeking a postponement for a review, but then

launching an appeal, is of no moment and Dr Visagie cannot benefit from his own decision to adopt an incorrect legal route. The court should not countenance forum shopping as a justification for an extension of the 180 days. Dr Visagie placed blame on the respondents for not entertaining the appeal, but he must stand or fall by his own elections. There is a public interest element in the finality of administrative decisions and the extension of the review period would cause further delays in the finalization of the inquiry. The events that started this process dated back as far as 2008 and 13 years later this inquiry has not been finalized. It would not be in the interests of justice to extend the period.

[26] The commencement of the time of the running of the 180- days can only commence when the reason for the decision of the internal remedy was conveyed to Dr Visagie, i.e. 19 November 2019. Section 7(1) refers to the date on which **the reasons** [my emphasis] for the administrative action became known.⁴ The cause of the delay was thus the exhausting of the internal remedy.

[27] In terms of s7(1)(a) of PAJA the 180 days from 19 November 2019 would have run out on 18 May 2020. The review application was launched on 19 May 2020. In as far as that is outside the 180-day period I am granting an extension of the 180 days as the extent of the delay is negligible. I agree with the contention of the respondents that this matter must now reach finality. If the extension is refused there is a real possibility that the appeal before the High Court will then be prosecuted causing further delay and this court has a duty to prevent duplication of litigation and ensure finalization of the administration of justice. Granting the

⁴ *Asla Construction (Pty) Ltd v Buffalo City Metropolitan Municipality and Another (South African Civics Organization as amicus curiae)* [2017] 2 All SA 677 (SCA)

condonation will ventilate the issues raised. As a general rule piecemeal litigation is discouraged, but there are important issues raised pertaining to findings of a disciplinary hearing that may impact the sanctioning. On a conceptus of these facts and circumstances I find it in the interest of justice to grant an extension of the 180 days in as far as it is necessary.

Must this court entertain this review before a penalty has been imposed?

[28] On behalf of the respondents it was argued that there is no prejudice to Dr Visagie if the inquiry was completed. He would have the exact same remedies available after the penalty was imposed should he be unhappy with the findings. Dr Visagie was attempting to put an end to the inquiry and if he was successful the court will open the floodgates to all parties with a succession of piecemeal reviews. The rule against interfering in uncompleted proceedings was entrenched and the courts will only interfere in exceptional cases where justice cannot be attained by other means. Dr Visagie had not set up any exceptional circumstances.

[29] Dr Visagie's counsel submitted that he was frustrated in exhausting the internal remedy and that constituted exceptional circumstances for this court to intervene. There was also exceptional circumstances because the Conduct Committee found Dr Visagie guilty of "all 5 charges" not satisfying the jurisdictional requirement of section 42(1) of the Act requiring a finding of guilty of either improper, or disgraceful conduct. It would not be lawful for the Committee to impose a sanction where the finding is clearly

wrong. The finding is also irregular because he was not charged with 5 counts, but a main charge and 5 alternatives and the irregularity is destructive of the decision and will result in an unlawful sanction.

[30] Although more grounds of review were raised I am satisfied that, if these two grounds are upheld, Dr Visagie would suffer irreparable harm if he is unable to secure immediate judicial consideration before imposition of a sanction.⁵ This is fortified by the provision of s42(1A) of the Act providing that if an appeal is lodged against erasure or suspension from practice such penalty remains effective until the appeal is finalised; the sanction is thus immediate, with an appeal or review not suspending the penalty.

[31] The argument that entertaining this review application before imposition of a penalty will entitle every person confronted with a disciplinary hearing to rush to court, presupposes that all findings of the Conduct Committee raise reviewable issues. Rushing to a court with no reviewable issues will gain nothing, except the burden of a costs order.

[32] I am satisfied that there are exceptional circumstances to entertain the review at this stage.

The grounds of review

The approach to expert evidence

[33] The *Pro Forma* Prosecutor and Dr Visagie both called expert witnesses. The Committee heard the evidence of Prof Bornman

⁵ *Slagment (Pty) Ltd v Building, Construction and Allied Workers' Union and Others* 1995 (1) SA 742 (A) at 756; *Basson v Hugo and Others* 2018 (3) SA 46 (SCA)

on behalf of the *Pro Forma* Prosecutor and summarised it as follows:

“... we were presented with technical evidence and also what level of care one should expect from a reasonable practitioner He explained that the practitioner should have first-hand knowledge of his patient’s condition using every possible route to find the information. His evidence included an article as well as his opinion on erroneous diagnosis and important information about the pulse rate which was above 100 for over 18 hours.”

Prof Bornman was not happy with the nursing report and also the fact the they did not report the leaking wound which became evident soon after Dr Visagie saw the patient for the first time. He also expressed his opinion that further investigations like a sonar or CT scan could have been done.

[34] The Conduct Committee summarized the evidence of the expert on behalf of Dr Visagie as follows:

“Prof Warren appeared as the expert witness for the respondent. He gave defensive testimony with no documentation. His evidence was that he would do the same as Dr Visagie did and did not prove anything on the balance of probability.”

[35] The argument went that upon a reading of the findings pertaining to the expert witnesses the Committee had placed an onus on Dr Visagie to prove his innocence, contrary to the correct onus that the *Pro Forma* Prosecutor bears the onus to prove the misconduct of Dr Visagie. No reasons were provided as to why Prof

Bornman's evidence was seemingly not accepted and Prof Warren's evidence was. There were no reasons provided as to why his expert opinion could not logically be supported in assessing Dr Visagie's conduct.

[36] Contrary thereto the respondents argue that the findings of the Conduct Committee clearly demonstrate that it analysed both experts' evidence and the fact that the Committee did not set out what evidence it preferred, did not mean that it was not considered.

[37] A finding of a Conduct Committee must be supported by its reasons. The purpose of reasons is to inform the person charged as to why his conduct deviated from the expected norm. A Conduct Committee of this Council consists of doctors and one legal person. In most these hearings assessment of expert evidence will be the main focus in coming to a finding. Correct analysis of the expert evidence is thus essential. Conveying this assessment to the charged doctor in the reasons is paramount.

[38] The reasons herein are seriously lacking in that there was a failure to subject the expert evidence to assessment in accordance with established legal principles. What is required of the Conduct Committee is *"to determine to what extent the opinions advanced by the experts were founded on logical reasoning and how the competing set of evidence stood in relation to one another, viewed in light of the probabilities."*

It is wrong to decide a matter *"by simple reference where there are conflicting views on either side, both capable of logical support. Only where expert opinion cannot be logically supported at all will*

it fail to provide 'the benchmark by reference to which the defendant's conduct falls to be assessed.'"⁶

[39] In the reasons there were no weighing up of the expert evidence and a finding why it seemingly accepted the evidence of Prof Bornman versus the evidence of Prof Warren. No explanation is given as to why Prof Warren's evidence was rejected or why his opinion could not be logically supported at all. It seems that because Prof Bornman had an article and documents his evidence was accepted, without informing as to why this made his evidence credible. It is not understood what is meant by Prof Warren's evidence being "*defensive*"; did he not answers questions, did he not give reasons for his submissions, were the answers not capable of logical support? If his evidence was not rejected there are no reasons set out as to why Prof Bornman's evidence was to be accepted over the evidence of Prof Warren. It seems the fact that Prof Warren had no "*documents*" were held against him; why and what documents were necessary is not set out.

[40] The reasons are so fatally flawed that the only conclusion is that the Conduct Committee did not give due consideration to the expert evidence. It must be remembered that this finding can lead to a serious penalty of a practitioner being deprived of his right to earn a living. This possible result requires from the Conduct Committee to at the very least in its reasons set out on what evidence and why one expert's evidence is preferred above another by applying the correct legal principles. Any reader of these reasons simply cannot do so. The legal member of the

⁶ *Lourens v Oldwage* 2006 (2) SA 161 (SCA) at 175G-H

Conduct Committee member must assure that the reasons comply with these principles.

The onus to prove the charges

- [41] The reasons must be interpreted the way they are expressed; i.e., the ordinary meaning of the words. It was expressed herein that Prof Warren “*did not prove anything on the balance of probability.*” Prof Warren as the expert for Dr Visagie had no onus; the onus is on the *Pro Forma* Prosecutor to prove the case. This sentence cannot be interpreted to mean that the Conduct Committee meant that the *Pro Forma* Prosecutor had the duty to prove the case. The Conduct Committee went further and found that the *Pro Forma* Prosecutor “*adequately*” proved the case; adequacy is not the test for finding of guilty. The Conduct Committee is required to apply the rules of procedure and basic evidentiary rules.
- [42] The Conduct Committee committed two serious mistakes of law and this erroneous approach to the expert evidence and the onus permeates the ultimate decision. On these mistakes alone the review should be granted in terms of s6(2)(d) in that the decision was materially influenced by an error of law.⁷ The Conduct Committee adopted the wrong approach when it considered the evidence and such erroneous basis vitiated the finding due to a reviewable irregularity.⁸
- [43] The mistakes in law would also lead thereto that the decision itself was not rationally connected to the reasons given for it by the conduct committee – PAJA s6(2)(f)(ii)(dd)

⁷ *Pepkor Retirement Fund and Another v Financial Services Board and Another* 2003 (6) SA 38 (SCA)

⁸ *South African Veterinary Council and Another v Veterinary Defence Association* 2003 (4) SA 546 (SCA)

The finding of guilty of “unprofessional conduct”

[44] The Conduct Committee found Dr Visagie guilty of “*unprofessional conduct*”. In terms of s41(1) of the Act a professional board has the power to constitute an inquiry pursuant to a complaint, charge or allegation of unprofessional conduct and to impose any penalty in terms of s42(1). Unprofessional conduct is defined in s1 of the Act as:

“120. Unprofessional conduct is defined in section 1 of the Act as follows:

‘unprofessional conduct’ means improper or disgraceful or dishonourable or unworthy conduct or conduct which, when regard is had to the profession of a person who is registered in terms of this Act, is improper or disgraceful or dishonourable or unworthy.

121. ...

122. Section 42(1) of the Act in relevant parts provides as follows:

‘Any person registered under this Act who, after ... an inquiry held by a professional conduct committee, is found guilty of improper or disgraceful conduct, or conduct which, when regard is had to such person’s profession, is improper or disgraceful, shall be liable to one or more of the following penalties ...’

[45] Dr Visagie may thus be charged with unprofessional conduct, but must be found guilty of either improper or disgraceful conduct. The argument that this is a technical point that could be addressed at the sanctioning process by seeking clarity as to what Dr Visagie was found guilty of, confirmed that the respondents agree that a charged person must be found guilty of either improper, or disgraceful conduct. These two adjectives are used disjunctively and *“it is incumbent on a disciplinary tribunal functioning under this section, one would think, to specify which adjective is appropriate.”*⁹ This is not a technical point; a person having been found guilty, at the very least needs to know what it is he has been found guilty of as a very basic entrenched right without having to seek clarity.

[46] It is important to know for preparation of sanctioning because on an ordinary grammatical interpretation of the words *“disgraceful”* and *“improper”*, disgraceful conduct would attract a heavier sanction than improper conduct. In *Thuketana v Health Professions Council of South Africa* 2003 (2) SA 628 (T) in para [26.7] found as follows:

“... It is clear, in my view, that ‘disgraceful conduct’ is therefore conduct which is of a more reprehensible nature than ‘improper conduct’. It is also clear, in my view, that the tribunal which has to decide whether or not a medical practitioner is guilty of the one or the other type of conduct must make a value judgment and that it is a discretionary matter ...”

⁹ *South African Veterinary Council and Another v Veterinary Defence Association* 2003 (4) SA 546 (SCA) para [19]

[47] The guilty finding without specifying improper or disgraceful is subject to review and another very clear reason why this review must be entertained before sanctioning takes place. This finding must be set aside because a mandatory procedure or condition prescribed by an empowering provision was not complied with.¹⁰

Is the finding of guilty of “all 5 charges” reviewable?

[48] Dr Visagie was found guilty on one main count and four alternative charges. This is in law untenable and fatal and must be set aside. The Conduct Committee had to find Dr Visagie guilty of either the main charge or one or more of the alternatives, but not the main and the alternative charges. This is beyond the powers of the Conduct Committee and this finding is to be reviewed and set aside.¹¹

[49] The sum total of these irregularities renders the finding of guilty of all 5 charges unreasonable, unlawful and unfair.

Substitution of the Conduct Committee's decision with the Court's decision.

[50] I had debated this prayer in terms of s8(1)(c)(ii)(aa) of PAJA with counsel for Dr Visagie indicating that the court would not be empowered to decide this matter as it is not in as good a position as the administrator to make the decision because the enquiry would be presided over by experts in the same field as Dr Visagie; putting them in a better position than this Court. But, in any event, I

¹⁰ PAJA s6(2)(b)

¹¹ PAJA s6(2)(f)(i)

did not in the review make a decision on the merits or entertain the evidence with a view as to decide the merits, simply due to the nature of a review.

[51] I do not find it necessary to address any of the other review grounds as the finding is clearly reviewable.

[52] I accordingly make the following order:

[52.1] The finding of the Conduct Committee is reviewed and set aside.

[52.2] If the Respondents decide to institute a new inquiry against Dr Visagie a new Conduct Committee with other members must be convened.

[52.3] The respondents are to carry the costs of this application jointly and severally.

S. POTTERILL
JUDGE OF THE HIGH COURT

CASE NUMBER: 22547/2020

HEARD ON: 26 April 2022

FOR THE APPLICANT: ADV. W. VAN NIEKERK

ADV. T. SARKAS

INSTRUCTED BY: Bowman Gilfillan Inc.

FOR THE RESPONDENTS: ADV. X. MOFOKENG

INSTRUCTED BY: Geldenhuys Malatji Inc

DATE OF JUDGMENT: 26 July 2022