IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

9/11/2015

CASE NO: 56939/2014

DATE OF HEARING: 5 NOVEMBER 2015

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

9/11/2015
DATE

SIGNATURE

In the matter between:

TIGH LEBELO LESIBA Applicant

and

UNIVERSITY OF LIMPOPO Respondent

J U D G M E N T

OLIVIER, AJ:

INTRODUCTION & RELEVANT FACTS

1. The applicant, a medical doctor, approaches this court to compel the respondent to provide him with adequate reasons in terms of s 5 of the Promotion of Administrative Justice Act (the PAJA) for its refusal to register him as a student in order to complete the degree of M.Med in Psychiatry. The respondent argues that adequate reasons were in fact provided.

2. The matter has a protracted history. The applicant enrolled for the M.Med (Psychiatry) degree in 2005. The degree consists of a combination of theory and a dissertation. The applicant does not contest that his dissertation has not been completed.

3. The rules of the University specify that a student in this degree programme should complete it within 4 years. In the case of the applicant, it means that the degree should have been completed by end of 2008. He was registered in 2005-2008, and again in 2010 and 2011. (This is according to the letter from Prof Holland to Prof Sibara, dated 30 August 2013. See below.) He did not register in 2009.

4. In May 2011 the applicant passed what appears to be the last component of his theory section.

5. The applicant then submitted this research proposal to the SREV level, where it was passed. The next step would have been consideration at the MREC level, but the relevant committee refused to consider his proposal due to the applicant not being registered in 2012.

6. On 23 May 2012 the applicant wrote to Prof L Hay, chairperson of the Higher Degrees Committee, applying for an extension of his registrarship, and by implication, his registration.

7. A memorandum from said Prof Hay to the applicant's head of department, Prof S Rataemane, dated 13 June 2012, set out the decision of the committee not to support the extension of his registration. Prof Hay explained that the application had not been approved for the following reasons:

    a. That he had reached the maximum duration of the degree as per General Rule G10, having first registered in 2005 and 2010 being his last registration for the degree.
    b. That he had already been given a 'last and final opportunity' to complete his degree before the end of 2011.
    c. That it was 'difficult to foresee how the student will complete his research requirements by the end of 2012 given his letter stating that his protocol is still to be reviewed by the MREC.'

    This memorandum was not addressed to the applicant, nor was he copied in. He denies that its contents were ever communicated to him.

8. The applicant wrote a letter to the Executive Dean of the Faculty of Health Sciences, Prof Holland (dated 17 July 2012), requesting to be allowed to register for 2012. In this letter, the applicant cited the progress he had made with his research protocol as well as that he would have time to complete his research by end of 2012. (This addresses one of the reasons cited in the memorandum for the HDC's decision.) The applicant denies that this was an appeal, but rather a plea.

9. The 'appeal' was rejected by the Faculty Academic Exclusions Committee on 7 November 2012; the applicant was informed of the outcome by letter dated 16 November 2012. The reasons cited for the rejection were that there were no mitigating factors present that could persuade the committee to annul the decision to exclude him, and again that he had exceeded the maximum period as per the university's rules. The applicant denies receiving this letter, with applicant's counsel arguing that there should have been proof of service or receipt. I do not think that it is reasonable to expect communication by registered post or by service. The letter was sent to the address used by the applicant in his previous written communications with respondent.

10. The matter then went to the Senate Academic Exclusions Appeals Committee (SEAC). The applicant was informed of the outcome in a letter from the university registrar dated 10 October 2013. Attached was a letter dated 30 August 2013 addressed to Prof Sibara, the

Deputy Vice Chancellor: Academic & Research, from Prof Holland, the executive dean, who said that he had once again considered the exclusion of the applicant, following the decision of the Senate Exclusions Appeals Committee, which read as follows:

'The Committee NOTED the following:

The reservations of the HOD (Psychiatry) regarding the progress of the student. The Chairperson of SREC (Prof S Mda) to be contacted by Prof Sibara to assist regarding the student's ability to fulfil the research requirements for the degree. An Internal Assessor from the Psychiatry Department to assist in supervising the student should he be found eligible to fulfil the research requirements.'

In the letter, Prof Holland further indicated that it would be problematic to implement this decision as the head of psychiatry, Prof Rataemane, had to approve all applications, and that he had indicated that he would not approve any submissions from the applicant as 'extraordinary efforts' had already been made to assist the student, 'with very poor cooperation from the student'. In the result, Prof Holland deemed himself 'unable to approve the continued enrolment' of the applicant.

11. In response, the applicant wrote a letter to the respondent, dated 1 November 2013, requesting reasons in terms of s 5 of the PAJA. The applicant asserts that the respondent did not respond to this and subsequent requests (dated 8 November 2013, 5 December 2013, 19 March 2014).

12. The respondent was informed by letter on 30 June 2014 that the applicant would be approaching the High Court for relief. The matter was originally set down for trial on 19 September 2014, but it was removed from the roll.

THE LAW AND CONSIDERATION OF FACTS

13. It depends on the circumstances of the case whether reasons are adequate.[1] There is a link between the adequacy of reasons and their explanatory power.[2] In *Sprigg Investments 117 CC*, in the context of whether reasons provided for tax assessments were adequate, Maya JA explained that the question was 'whether the respondent has sufficiently been furnished with the commissioner's actual reasons for the tax assessments to enable it to formulate its objection thereto'.[3] And in *Koyabe v Minister for Home Affairs*, the Constitutional Court said that [o]rdinarily, reasons will be adequate if a complainant can make out a reasonably substantial case for a ministerial review or an appeal'.[4]

14. The primary South African case on adequate reasons is *Minister of Environmental Affairs and Tourism v Phambili Fisheries ((Pty) Ltd*, where the Supreme Court Appeal, quoting Australian case law,

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[1] Rean International Supply Company (Pty) Ltd v Mpumalanga Gambling Board 1999 (8) BCLR 918 (T).
[2] Hoexter *Administrative Law* 2ed (2012) 476.
[3] Commissioner, South African Recenue Service v Sprigg Investment 117 CC t/a Global Investment 2011 (4) SA 551 (SCA) para 14.
[4] Koyabe v Minister for Home Affairs

described in some detail what constitutes adequate reasons.[5] Hoexter 477-478 conveniently divides the description into two main propositions:

'The first proposition is that adequate reasons should be *specific*, be written in *clear language* and *be of a length and detail appropriate to the circumstances*. Relevant factors in this regard include the nature and importance of the decision, its complexity and the time available to the administrator.

The second proposition is that reasons should *consist of more than mere conclusions*, and that they should *refer to the relevant facts and law* as well as *the reasoning process leading to those conclusions*.'

15. Although it is clear that a mere restatement of a statutory provision (or a rule) is insufficient reason,[6] it not always necessary for lengthy explanations provided that the explanation is sufficiently clear to a person in the applicant's position.[7]

16. The respondent argues that it had given adequate reasons. I agree. It is my view that the reasons given by the respondent, viewed as a whole, provided the applicant with sufficient reasons to determine why the decisions of the various committees and decision-makers had gone against him. The reasons were of sufficient length under the circumstances. Even if the memo of 13 June 2012 had not been addressed to him and had possibly not come to this attention, the

[5] 2003 (6) SA 407 (SCA) para 40.
[6] See Nkondo v Minister of Law and Order 1986 (2) SA 756 (A).
[7] See Ngomana v Chief Executive Officer of the SA Social Security Agency 2010 ZAWCHC 172 .

essence of those reasons found their way into subsequent communications to the applicant.

17. The rule in terms of which the applicant had been excluded, was not merely reiterated – there was a sufficient explanation, setting out why the applicant had not complied with the rule, by showing how he had exceeded the time limit.

18. In respect of the mitigating circumstances referred to in the communication of 16 November 2012, the statement that none was present, was sufficient. Had there been a positive finding that *aggravating* factors were found, the respondent would have been under an obligation to disclose these.

19. Much was also made by applicant's counsel of the communication of 10 October 2013 and the attached letter dated 30 August 2013, particularly the references to the views of Prof Rataemane. Although the outcome itself was not satisfactory to the applicant, the reason given was adequate, namely that Prof Rataemane indicated that he would not consider any submission from the applicant, as extraordinary effort had been made to assist the student, and that there had been poor cooperation from the student.

20. Lastly, it needs to be said that this was a request for adequate reasons as stated in the notice of motion, not a review of the decision to exclude the applicant. I therefore limited myself to a consideration of

this issue only. In a review, the applicant could have challenged the actual decision to exclude him on various grounds, as outlined in s 6 of the PAJA. Some of the issues raised by the applicant in his founding and answering affidavits relate more to particular grounds of review, such as procedural fairness or rationality, rather than adequate reasons. I refrain from expressing an opinion on the merits of any review.

ORDER

In the result I make the following order:

21. The application is dismissed with costs.

OLIVIER, AJ

JUDGE OF THE HIGH COURT