

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 1 2 0 5 8 / 2 0 2 3

1. REPORTABLE: NO
2. OF INTEREST TO OTHER JUDGES: NO
3. REVISED: NO
DATE: 10 July 2023

In the matter between:

THE BOARD OF HEALTHCARE FUNDERS NPC

Applicant

And

COUNCIL FOR MEDICAL SCHEMES

1st Respondent

THE REGISTRAR OF MEDICAL SCHEMES

2ND Respondent

THE MINISTER OF HEALTH

3rd Respondent

JUDGMENT

Botha AJ

1. The Applicant applies for an order in the following terms:

1) That the First and Third Respondents be directed to comply with Rule 53(1)(b) of the Uniform Rules of Court within ten (10) days from the date of this order by despatching to the Registrar and the Applicant all the documents listed in the Applicant's Notice in terms of Rule 30A of the Uniform Rules of Court;

2)The First and Third Respondents to pay the costs of this application, jointly and severally, with the Second Respondent if he opposes this application; and

3)further and/or alternative relief

2. The Applicant's notice in terms of Rule 30A contains the list of documents sought, which is quite a substantial list.

See: Caselines 04-26 to 04-35

- 3 The main application is a review in terms of Sec 6 of Act 3 of 2000 (PAJA) and the First and Second Respondents were in terms of R 53 (1) (b) of the Uniform Rules of Court required to despatch the record within 15 days of receipt of the Applicant's Notice of Motion, containing all documents and information relevant to the decisions under challenge of the Applicant.

- 4 A record was delivered , but, according to the Applicant, it comprised mainly of documents sourced from the Respondent's website which was already accessible to everyone. Therefor the Applicant takes the stance that that the record is not sufficient for purposes of Rule 53 review proceedings and the Applicant alleges that what is missing are source documents upon which decision-making is based and the documents reflecting deliberations regarding how the Respondents came to make the challenged decisions.

- 5 As a result the Notice in terms of R 30A with a comprehensive list of documents were served on the Respondents. All the alleged missing documents were properly described and identified.

- 6 Letters were written to and fro between the attorneys of the parties which resulted in the filing of a "Supplementary record" containing sixteen (16) of the requested items only. This happened on 11 November 2022.

- 7 The Applicant was clearly not satisfied with the response from the Respondents and launched this application 4 days later, which action was

regarded by the Respondents as an indication that the Applicant did not consider the delivery of the 16 items at all.

8 It needs mentioning that the relevancy of the sought-after documents were never an issue during the correspondence between the parties. What occurred quite often was that the Respondents frequently requested indulgences, starting in April 2022 when they had to deliver reasons in terms of Sec 5 of PAJA. Then an indulgence was sought when they had to deliver the Record after issuing of the Review application. The latest was an indulgence to file their answering affidavit in this application. It needs mentioning that condonation for the late filing of the Answering affidavit was granted when the application was argued.

9 Compliance with Rule 53 time frames is not just a procedural process, but is a substantive requirement which serves to ensure that the substance of the decision is properly put to the fore at an early stage. Any attempt to frustrate this should be met with displeasure by the courts.

See: GCB v Jiba 2017 (2) SA 122 (GP) par 112

10 Counsel for the Respondents called the list of documents in the Rule 30A notice a “Horrendous shopping list”. The fact that the documents sought seems to be voluminous and the list quite extensive is of no concern. As stated above, the documents are properly identified and described.

11 The Applicant relies heavily on the judgement of the Constitutional Court in the Helen Suzman case in which it was held that every scrap of paper that can throw light on the decision-making process is relevant and needs to be produced. I agree.

See: Helen Suzman Foundation v Judicial Service Commission 2018 (4) SA 1 (CC) paras 18 and 19

12 Counsel for the Respondents also suggested a longer period than the 10 days in Rule 30A to provide the sought after documents in the event that this

application is successful. I am not sure that I can do that.

13 I am satisfied that the Applicant discharged the onus and made out a proper case that the documents required are relevant to the review.

14 I therefore make the following order:

1) The First and Third Respondents are directed to comply with Rule 53(1)(b) of the Uniform Rules of Court within ten days from the date of this order by despatching to the Registrar and the Applicant all the documents listed in the Applicant's Notice in terms of Rule 30A dated 4 October 2022.

2) The First, Second and Third Respondents are ordered to pay the costs of this application, jointly and severally.

GB BOTHA

Acting Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 7 June 2023

Judgment delivered: 10 July 2023

Attorneys for applicant:
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JJ Brett SC

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