

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

**CASE NO:060251/2023**

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED

**E LABUSCHAGNE**

**DATE:20 JULY 2023**

In the matter between:

**SEFAKO MAKGATHO HEALTH SCIENCES UNIVERSITY** Applicant

and

**NASHEEL HIRAMUN** Respondent

In re:

**NASHEEL HIRAMUN** Applicant

and

**SEFAKO MAKGATHO HEALTH SCIENCES UNIVERSITY** Respondent

**JUDGMENT**

[1] The Sefako Makgatho Health Sciences University (the "University") brought an urgent application, seeking the suspension of an order granted by Holland- Muter J on 27 June 2023, pending the finalisation of an application for

leave to appeal, a petition to the Supreme Court of Appeal in the event of leave to appeal being refused and the appeal.

[2] The background to the current application is that the respondent is a registered medical student ( the "student") with the University, who brought an application against the University on 25 May 2023 in which he sought an order that the University credit him with marks obtained during the 2022 Academic Year for the Module Obstetrics and Gynaecology (MOBA060). The student sought an order that his marks must be condoned and that an order be granted that the University award him the degree of MBChB. He further sought an order that the University place his name on the list of persons due to graduate on 26 May 2023. The order sought would be an interim order pending finalisation of a review.

[3] The matter served before Kooverjie J, who granted an order in different terms.

[4] The University filed an application for leave to appeal against the order granted by Kooverjie ,the terms of which are incorporated into the order sought to be stayed in these proceedings.

[5] On 30 May 2023, the day on which the University filed its application for leave to appeal, the student served an extremely urgent application in terms of Section 18(3) of the Superior Courts Act. The application was struck off the urgent roll on 31 May 2023 by Van Niekerk AJ. The student brought a further urgent application in terms of Section 18(3) to be heard on 20 June 2023. On 20 June 2023 the urgent application of the student was again struck from the roll for lack of urgency.

[6] On 22 June 2023 the student lodged a fourth urgent application to implement the order of Kooverjie J. The urgency was premised upon an alleged offer of an internship commencing on 1 July 2023. The student added two further

points, contending that the University's application for leave to appeal against the judgment and order of 25 May 2023 had lapsed and further that the order of 25 May 2023 is interim in its application.

[7] On 27 June 2023 the matter served before Holland-Muter J, who granted an order in the following terms:

*"1. The applicant's non-compliance with the Uniform Rules of Court is condoned and the matter is heard on an urgent basis.*

*2. Pending the termination of the relief in Part B:*

*2.1 The respondent is ordered to comply with the order granted 25 May 2023 under case number 2023/045588 by Honourable Justice Kooverjie as follows:*

*2.1.1 The issue of confirming the applicant's marks in respect of the obstetrics and gynaecology module is referred to the School Examination Committee for their reconsideration of their decision in terms of Rule G22.3;*

*2.1.2 Upon arriving at the decision they are required to furnish the applicant by no later than close of business on 29 June 2023 with his marks and/or percentage as well as a written explanation as to how the calculation as arrived at in respect of the said module;*

*2.1.3 The School Examination Committee are further required to consult with the applicant, confirming his final mark and/or percentage by no later than close of business on 29 June 2023 in respect of the said module;*

*2.1.4 In the event that the respondent and/or the School Examination Committee deem it necessary, the issue confirming the premature registration for Year 6 should be referred to the Senate in terms of Rule G27.1.*

*3. The respondent is ordered to pay the costs of the application on a party and party scale, cost of one counsel."*

[8] On 29 June 2023 the University lodged an application for leave to appeal against the judgment and order of Holland-Muter J.

[9] On the same day the student launched an application for contempt, which application was also heard and dismissed by Holland-Muter J on the same day.

[10] Against this backdrop the University approaches the Court for a stay of the order of Holland-Muter J. The stay application was launched on 30 June 2023. The University refers as basis for urgency to the application for contempt of court which served before the Court on 29 June 2023, but which was struck for lack of urgency. It bears noting that, while the contention of the University is that it was struck for lack of urgency, counsel for the student contended that it was dismissed on its merits as well.

[11] The University contends in these proceedings that, on account of all these steps taken by the student, the University approaches the Court on a semi- urgent basis *"and in particular that an application has now been lodged for contempt of court. The urgency of the matter is based on these steps by the respondent to nevertheless proceed to enforcement. The respondent has not completed his 6th year of study and, as such, he is not entitled to a placement for an internship."*

[12] It is apparent that the University is under the impression that the

contempt application was merely struck for lack of urgency, while the student contends that it was dismissed *in toto*.

[13] The University refers to the contempt application in the proceedings before me as though they are still to be decided and constitute the grounds of urgency. By the time the founding affidavit was deposed to, the contempt application had already been dismissed. However, the deponent for the University, with reference to correspondence of 28 June 2023 emanating from the student's attorneys contends that *"it has been made clear that the respondent is not only desirous to immediately proceed to execute on the court order, but it has now issued an application for contempt of court"*. I can only assume that this application was drafted in anticipation of the contempt application being heard, but by the time the affidavit was signed, those contempt proceedings had already been dismissed. This ground of urgency had therefore fallen away by 30 June 2023. The question is whether there are further grounds of urgency.

[14] The University contends that the stay that it seeks in these proceedings will return the parties to the position that they held prior to the order of Holland- Muter J on 27 June 2023. The deponent contends: *"It will cure the difficulty created by the instant court order in ignoring both leave to appeal including the provisions of the Uniform Rules of Court in Rule 49(1)(a)(b) including (e) as well as Section 1B of the Superior Courts Act."* The University was therefore approaching the court on a belts and braces approach to secure a stay.

[15] Counsel for the student advised that the review application as referred to in the order of Kooverjie J, related to an order declaring that the University's leave to appeal was late and therefore did not suspend the order of Kooverjie J. I do not have the review application before me, but it appears that the University has a different understanding. The review would be a challenge to the University's decision of March 2022 in which the University resolved that the

student's 6<sup>th</sup> year enrolment was invalid.

[16] If the leave to appeal filed by the University against the order of Holland-Muter J on 29 June 2023 has had the effect of suspending such order, then there is no need to grant a further order to that effect.

[17] Applications for leave to appeal and suspension of orders are dealt with in Section 18 of the Superior Courts Act, 10 of 2013. A summary of those provisions amount to the following:

17.1 The lodging of an application for leave to appeal suspends all orders that are final in effect;

17.2 An application for leave to appeal does not suspend an order which is interlocutory and is not final in effect.

17.3 It follows that a Section 18(3) application to implement an interlocutory order which does not have the requisite qualities of finality, is not competent. Such application in terms of Section 18(3) only relate to orders that have been suspended by the leave to appeal, i.e. orders that are final in effect (whether they are interlocutory or not).

[18] Having regard to the content of the order of Holland-Muter J, it is apparent that very specific steps had to be taken within a very short timeframe. The court ordered on 27 June 2023 that certain steps had to be completed by the end of June 2023. None of these issues are to be revisited by the court in Part B proceedings. The order granted by Holland-Muter J is therefore final in effect and is therefore appealable. I find that the filing of the notice of appeal against the order of Holland-Muter J, filed on 29 June 2023, has in law suspended the order of Holland-Muter J.

[19] In the light of this finding, a further application in terms of Rule 45A for

the suspension of the order is not necessary, and is not, on the facts, urgent.

[20] In the light thereof that the only grounds for urgency relate to the student's persistence in enforcing the court order by contempt proceedings, and such contempt proceedings having been finalised by dismissal on 30 June 2023, no urgency exists at present. Even if there were grounds for urgency, the effect of the leave to appeal against the judgment of Holland-Muter J has already achieved what this application sought to achieve, namely, to suspend the order of Holland-Muter J.

[21] In the light of the aforesaid the following order is made:

1. The application is dismissed with costs.

**E. LABUSCHAGNE  
ACTING JUDGE OF THE HIGH  
COURT  
GAUTENG DIVISION, PRETORIA**

#### APPEARANCES

Applicant's Counsel:	Adv VP Ngutshana
Instructed by:	Mogaswa & associates inc. attorneys
Respondent's Counsel:	Adv. L Moela
Instructed by:	Hlongwane Mavhase attorneys