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

Case number: A13/2024
(1) REPORTABLE: NO
(2) OF INTEREST TO OTHERS JUDGES: NO
(3) REVISED
08/08/2024

In the matter between:

WYNAND JOHANNES DERCKSEN **APPELLANT**
ID. 6[...]

And

HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA **1ST RESPONDENT**

DR. PARMANAND NARAN **2ND RESPONDENT**

CORAM: MABESELE AND BAM JJ

JUDGMENT

MABESELE J:

[1] This is an appeal against the decision of the first respondent in which it exonerated the second respondent from a professional negligence in

performing the angiogram on the appellant. The appellant appeared in person. This appeal is launched in terms of section 20 of the Health Professions Act[1]. The section reads:

(1) "Any person who is aggrieved by any decision of the council, a professional board or a disciplinary appeal committee, may appeal to the appropriate High Court against such decision."

[2] The first respondent dismissed the appellant's complaint on the grounds that: (i) the complication that occurred (on the part of the appellant) was an expected one, and (ii) the second respondent managed the complication appropriately and made a follow up consultation to assess the aggression of the complication.

[3] The appellant raises four grounds of appeal as follows:

1. The first respondent's inquiry-

   (a) did not take all explanation, replies, notes and facts into consideration;

   (b) were based on the second respondent's explanation and was not factually evaluated;

   (c) did not afford the appellant opportunity to reply to the documents presented by the second respondent;

   (d) failed to take into consideration that the clinical notes presented by the second respondent had multiple misrepresentations.

[4] Both parties presented their cases in writing to the board of inquiry of the first respondent.

[1] 56 of 1974.

[5] The complaint against the second respondent was based on a duty of care, according to the appellant. The appellant argued that the second respondent, well knowing his (appellant) medical history, complications, and risk factors of a coronary angiogram procedure, did not contemplate the finding of an alternative saver method of testing other than the coronary angiogram, or postponed the coronary angiogram procedure for a more suitable day and time seeing that the second respondent experienced a day with a long list with numerous complex cases. The appellant argued that the second respondent did not refer him to a cardio vascular specialist for further evaluation of the abdominal aorta dissection, and the second respondent did not properly explain to him what abdominal aorta dissection or false lumen is, and has failed to make follow ups which resulted in the deterioration of the abdominal aorta dissection.

[6] The second respondent is a cardiologist. He holds MBBCh and MMed degrees. He first consulted the appellant on 9 April 2018. At the time the appellant was 52 years old. The appellant had a coronary artery bypass graft and mitral valve repair in 2016 by Dr Martin Bruwer. In March 2017 the appellant had a lengthy admission at Life Groenkloof Hospital for tiredness and shortness of breath. Bilateral small flued collections were detected and a presumptive diagnosis of an autoimmune condition was made. Regional wall motion abnormalities, a marker of underlying cardiac dysfunction, were already detected at this point. The appellant was seen with similar complaints during at least two admissions at Life Groenkloof Hospital.

[7] The symptoms of the appellant's illness suggested a cardiac origin, especially since his lungs had been assessed three times previously. Clinical examination did not show any cross cardiac failure. The regional wall motion abnormalities, as had been noted in 2017 already, where the anterior wall and septum were moving less than the lateral wall were noted when performing an echo cardiogram. The appellant

was admitted with a diagnosis of angina equivalents. Further investigations were ordered. The appellant was started on optimal medical therapy for his angina equivalents.

[8] On 18 April 2018, stress ECG as well as cervical spine MRI were performed. The cervical spine MRI did show some degenerative disease but not enough to fully explain the appellant's symptoms. The stress ECG did show changes which implied potential narrowing of his coronary artery disease. A diagnostic coronary angiogram was advised.

[9] A lengthy discussion on 11 April 2018 ensued regarding the procedure including the fact that coronary angiograms on patients with previous bypass grafts take longer, have higher complications rates and are more complex. The appellant agreed, that in view of his ongoing symptoms without diagnoses, to undergo the proposed procedure. The procedure was scheduled for 11 April 2018 to be done later during the cause of the day. Due to a long list with numerous complex cases the appellant was taken to theatre at 23h30. The diagnostic procedure showed all grafts to be patent, poor condition of his native vessels and his cardiac function and values to be within normal limits. The feel on the wires had changed towards the end of the procedure. The suspicion of an arterial dissection was entertained. The appellant was, however, asymptomatic. A diagnostic fluoroscopy was taken and confirmed the presence of a dissection but with noted good flow and with the appellant being asymptotic. A Doppler of the appellant's distal pulses confirmed triphasic flow in theatre. The appellant was immediately informed of the complication. He was transferred to the ICU for monitoring and dual anti-platelet therapy.

[10] On 12 April 2018 the appellant was again advised of the aforementioned complication. He was also given an overview of the complication including the risks and management that was embarked on. A CT coronary was performed, confirming the suspected

dissection. The seriousness with which the condition was treated was emphasised by the fact that the appellant was kept in ICU until 14 April 2018 for close monitoring. The reason for the prolonged ICU admission was also explained to the appellant. A repeat angiogram was also performed on 14 April 2018 to ensure no extension of the dissection. The appellant was discharged on 16 April 2018. After the appellant was discharged in a satisfactory, stable condition on 16 April 2018, he was readmitted on 25 April 2018, complaining of symptoms of shortness of breath and tiredness.

[11] On 26 April 2018 an arteria Doppler of the appellant's lower limbs was performed. This confirmed triphasic flow in both legs. The appellant was requested to follow up on 15 May for review and discussion of the outstanding blood results. The appellant failed to arrive for his consultation on the said day. The consultation was rescheduled for 28 May 2018. Once again, the appellant failed to arrive for the consultation.

[12] On 7 February 2019, an e-mail was received from the appellant, complaining that he had developed chest pain. He was requested to be consulted earlier than his scheduled consultation of 20 February 2019. He was also requested to have blood investigations performed. On review of the results of the blood investigations the appellant was admitted to the hospital on 8 February 2019. Besides all the routine tests requested, the condition of the appellant's right lower limb was emphasised. Pulses were again noted to be equal and palpable, implying no flow limitations around the appellant's right leg.

[13] During the appellant's admission from 8 February 2019 to 13 February 2019, an MIBI scan was performed, confirming no change in his cardiac condition. Due to the ongoing unexplained symptoms, an opinion was request from Dr R Kalpee, a certified rheumatologist at Life Groenkloof Hospital. Dr Kalpee made special arrangements to review the appellant at Zuid Afrikaans Hospital. Dr Gideon Naudé,

pulmonologist at Zuid Afrikaans Hospital also reviewed the appellant and performed lung function tests. Both these specialists were of the opinion that there was ongoing respiratory involvement from a rheumatological condition. The appellant was not happy with the opinion and had expressed his desire to seek another opinion. The appellant was also not satisfied with the medication which had been prescribed. The appellant was subsequently discharged from hospital.

[14] Between March and June 2019 the appellant consulted Dr Peet Viviers and Dr Martin Bruwer. He underwent a lung biopsy on 19 March 2019 at the Wilgers Hospital. Two weeks after discharge the appellant developed a bleed into his lung. He required emergency open lung surgery which complicated with a fistula. He required 20 days of drainage and hospitalisation. This, left the appellant with a right lung that has been damaged, distorted and underexpanded to the extent that the appellant was consulted by Dr Paul Williams at Milpark Hospital in May 2019 with a view towards a lung transplant.

[15] The appellant argued in his grounds of appeal that the explanations and facts presented by him to the board of inquiry were not taken into consideration. There is no merit in this ground of appeal. For example, the issues of negligence which was raised by the appellant with regard to angiogram was equally considered with the response of the second respondent who mentioned that the angiogram procedure was performed by Dr Kurian and him, both being specialists.

[16] The appellant failed to demonstrate, clearly, his point that the clinical notes presented by the second respondent had multiple misrepresentions.

[17] The appellant argued also that he was not afforded an opportunity to reply to the documents presented by the second respondent to the board of inquiry. The appellant failed to explain whether the board of inquiry was obliged to afford him an opportunity, and if so, in terms of

which rules of the board, is the board of inquiry obliged to do so. What is crystal clear is that the appellant's complaint was entertained by the first respondent. The appellant acknowledges that his sickness is complicated. He was sent from one specialist to another. A CT coronary angiogram was performed on him on several occasions. For all these reasons, we are unable to disagree with the decision of the second respondent.

Therefore, the following order is made:

1. The appeal is dismissed.

2. No order as to costs.

M M MABESELE
JUDGE OF THE HIGH COURT, PRETORIA

I agree

BAM
JUDGE OF THE HIGH COURT, PRETORIA

Date of hearing: 6 August 2024
Date of judgment: 8 August 2024

APPEARANCES:

On behalf of the appellant:	In Person
On behalf of the second respondent:	Ms. Unity Ramaifo
Instructed by:	MacRobert Attorneys Brooklyn, Pretoria