



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 2014/0043

REF NO: 9/2/4/5

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

17 February 2017

In the *ex parte* Application of :

R S Singh

In terms of section 47(2) of Act 17 of 2002

JUDGMENT

FISHER J:

[1] This application comes to me for my consideration in chambers. It seeks the reclassification of a State Patient to an involuntary mental health care user as provided for under section 47 of the Mental Health Care Act 17 of 2002 ("the Act").

[2] The relevant provisions of the Act read as follows:

47. Application for discharge of State patients.—(1) Any of the following persons may apply to a judge in chambers for the discharge of a State patient:

- (a) The State patient;
- (b) an official *curator ad litem*;
- (c) an administrator, if appointed;
- (d) the head of the health establishment at which a State patient is admitted;
- (e) the medical practitioner responsible for administering care, treatment and rehabilitation services to a State patient;
- (f) a spouse, an associate or a next of kin of a State patient; or
- (g) any other person authorised to act on behalf of a State patient.

(2) Such an application must be in a prescribed form and contain—

- (a) reasons for the application;
- (b) a report by a psychologist, if the State patient has been assessed by such a person;
- (c) where the applicant is an official *curator ad litem* or an administrator, a report containing a history and a prognosis of a mental health status of the State patient from—

(i)

the head of the health establishment where the State patient is admitted; and

(ii)

two mental health practitioners and one of whom must be a psychiatrist;

(d) details of any application made for the discharge of the State patient within 12 months before the application in question;

(g) any information relevant to the application held by the applicant.

(3) The Registrar of the High Court must submit a copy of the application to an official *curator ad litem*, where the applicant is not an official *curator ad litem*. The official *curator ad litem* must within 30 days of receipt of the application, submit a written report to the judge in chambers and such report must—

- (a)

set out and contain a history and a prognosis of the mental health status of the State patient from—

(i)
the head of the designated health establishment at which the State patient has been admitted; and

(ii)
two mental health practitioners and one of whom must be a psychiatrist;

- (b) contain a report from a psychologist if the State patient has been assessed by such a person;
- (c) indicate whether another application was made for the discharge of the State patient concerned within a period of 12 months and the status of such application; and
- (d) make recommendations on whether the application should be granted and the basis for the recommendation.

(4) On considering the application, the judge in chambers—

- (a) must establish whether another application for the discharge of the State patient concerned is pending or had been considered within a period of 12 months, in which case, the application referred to in subsection (3) must be dismissed;
- (b) must establish whether the official *curator ad litem* has a conflict of interest with the State patient, in which case a legal practitioner must be appointed to assist in the processing of the present application; and
- (c) may call for further information and assistance from the applicant, mental health practitioner or a relevant curator, as may be necessary to process the application.

(5) The legal practitioner appointed in terms of subsection 4 (b) must—

- (a) adduce any available evidence relevant to the application;
- (b) perform the functions and duties as required by the judge in chambers concerned to process the application; and
- (c) be remunerated by the national department responsible for justice and constitutional development according to the tariffs and scale of benefits and allowances determined for this purpose by the member of Cabinet responsible for justice and constitutional development.

(6) On considering the application, the judge in chambers may order that the State patient—

- (a) remain a State patient;
- (b) be reclassified and dealt with as a voluntary, assisted or involuntary mental health care user in terms of Chapter V;
- (c) be discharged unconditionally; or

(d) be discharged conditionally.

(7) For the purposes of this section "**legal practitioner**" means an attorney or an advocate who has a right of appearance in a High Court.

[3] The patient is Mr Pieter Engelbrecht who is currently detained at Sterkfontein Hospital. The application is made by one, S R Singh, who is stated to be the responsible medical practitioner. The application is dated 08 March 2016 – i.e. nearly a year ago. In terms of the Act, the application is to be made in a prescribed form¹. The form used by Mr Singh however differs from the prescribed form² materially in that it does not contain the provision made on the form for the charge against the patient. This becomes important with reference to what is set out below in relation to the charge.

[4] The court file contains a document which is called a "psychological report". It is signed by one, Mr M J Mapunya – who is stated to be the Head of the health establishment. In terms of this document, reclassification is recommended so as to place the patient in a less restrictive environment. This document is dated 15 March 2016. It contains scant information.

[5] A similar document dated 08 March 2016 also termed a "psychological report" and also completed by Mr Singh (only now in his capacity of "Registrar/ Medical Officer") is also in the file. It makes the same recommendation as the other psychological report. This report provides a diagnosis of mood disorder due to epilepsy. It states the educational qualifications of the patient as grade 3 and in this report the nature of the charge against the patient is given as "attempted murder". His prognosis is described as "FAIR - PROVIDED HE REMAINS ADHERENT TO TREATMENT AND REFRAINS FROM ILLICIT SUBSTANCE USE".

[6] Then there is a third report: it is also dated 08 March 2016 and repeats the findings and recommendations of Mr Singh in his report of the same date in almost

identical terms. This latter report is made by one, S N F Sotobe Mose who is designated in the report as a psychiatrist.

[7] In terms of section 47 it is the duty of the Registrar to submit the application to an official *curator ad litem*.³

[8] The official curator then has the duty to compile a report. Such a report is to contain *inter alia* a history of the patient, his prognosis, and a recommendation as to the order that should be granted by the judge in chambers. The report of the official curator is thus an important component of the process.

[9] The official curator in this instance is M P Nengovhela, a deputy director of public prosecutions. The application in the file bears a date stamp which is suggestive of the office of the DPP having received it on 23 March 2016.

[10] The curator has produced a report which is said to be based on the hospital file and the curator's file on the patient. The report of the curator is dated 7 February 2017. Why this report should come approximately 11 months later is not explained. This, notwithstanding that section 47 requires that the report of the curator be made within 30 days. There is a reason for this time limitation: the condition and circumstances of a patient are obviously fluid and have the potential to change significantly over time. If this time limit is not observed this will affect the process. A judge would be constrained to make a decision on reports which are almost a year old. In the same vein the curator is not able to make a proper recommendation to assist the judge with information which is not current in relation to the state of the patient.

[11] The report of the curator is of serious concern, apart from its lateness:

1. It describes the charge with which the patient was charged as being the attempted stabbing of a 9 year old child and the actual stabbing (twice) of a 4 year old.
2. The curator then says however in a covering letter that the charge which led to the patient being detained was one of attempted rape.
3. The patient is said to have appeared in the Krugersdorp Magistrate Court on 27 June 2012 and referred for 30 days observation and to have then been detained at Sterkfontein Hospital in terms of section 42 of the Act. It is not explained further how the detention came about.

[12] This delay in the reporting of the curator and the anomalies in the application which are described above, make it impossible for me to make the necessary consideration and determination of the matter without further information. I thus call for such information as set out in my order below.

[13] Adherence to the rigorous processes of evaluation and reporting set out in section 47 is vital for the preservation and protection of the rights of the patient, his family, his community, the victims of the conduct which led to the charge, and society in general. The process must be treated seriously and with due regard to the fact that a patient will as a result of his reclassification have to engage and interact differently and with different constraints.

I thus make the following order:

1. The Official Curator shall compile a report, to be delivered within 30 days of this order (to my chambers – 806), which report shall deal with the following aspects relating to this application and the patient:

- a. The present condition and circumstances of the patient – both physical, psychological, and emotional;
- b. How the patient's circumstances have changed since March 2016;
- c. The criminal charge against the patient that led to his committal;
- d. An explanation as to how and why the delays and anomalies mentioned in this judgment have occurred.

2. The curator's report:

- a. must be supported by the further reports of :
 - i. the head of the designated health establishment at which the State patient has been admitted;
 - ii. two mental health practitioners one of whom must be a psychiatrist;
 - iii. a psychologist other than the applicant.
- b. shall make recommendations as to whether the order should be granted and the basis for such recommendations.

3. The application is postponed sine die.



FISHER J

JUDGE OF THE HIGH COURT

Date of consideration (in chambers):

17 February 2017

Judgment Delivered:

17 February 2017

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1. Section 47(2)
 2. Form MHCA 29 prescribed in terms of the General Regulations: GNR 1467 of 15 December 2004
 3. Section 47(3)