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REPUBLIC OF SOUTH AFRICA



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

CASE NO: 19/15448

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

In the application of:

A E

Applicant

and

**CHIEF EXECUTIVE OFFICER
HELEN JOSEPH HOSPITAL**

First Respondent

HELEN JOSEPH HOSPITAL

Second Respondent

MEC FOR HEALTH: GAUTENG PROVINCE

Third Respondent

GAUTENG PROVINCIAL DEPARTMENT OF HEALTH

Fourth Respondent

MINISTER OF HEALTH

Fifth Respondent

DIRECTOR-GENERAL: DEPARTMENT OF HEALTH

Sixth Respondent

LEGAL SUMMARY

MAKUME, J:

[1] The applicant brought an urgent application. In Part A the Applicant seeks in substance that first, second and third Respondents be interdicted from refusing to administer emergency healthcare to her whilst in Part B the Applicant seeks an order declaring that fifth and sixth Respondent's policy of refusing placement of an asylum seekers and or refugees into the chronic renal treatment programme, kidney dialysis, kidney and renal transplant to be inconsistent with the Bill of Rights in the constitution.

[2] This matter raised a number of constitutional issues. The Applicant relied on the bill of rights which guarantees everyone the right to dignity, equality and healthcare. On the other hand the second respondent raised a defence that it was bound by a policy document as well as Section 6 of the National Health Act 61 of 2003 to restrict provisions of such medical services as required by the Applicant to South African Nationals only or to people who have received refugee status.

[3] The Applicant contended that for as long as she is in the country she was entitled not to be treated differently irrespective of whether or not her presence is lawful or not. She relied not only on the constitution but also on International agreements of which South Africa is not only a member but a

significant signatory. The Applicant alleged that second respondent's conduct amounts to unfair discrimination against her.

[4] The court held that it was not true that the Applicant was unfairly discriminated as there are numerous South Africans who have been excluded from renal treatment of the same nature on the basis of scarcity of resources. It was just unfortunate that the Applicant happened to be further excluded because of some provisions of the National Health Act.

Further, the court held that **Soobramoney vs Minister of Health Kwa-Zulu Natal Case No. CCT 32/97** a judgment by Chaskalson P applied in this matter, in so far as it was explained in that judgment that it was lawful and constitutional to deny patients healthcare when provision of such was not available due to limited resources. All the rights in the Bill of Rights are subjected to limitation.

[5] It was further held that In Soobramoney's case the Constitutional Court accepted that the guideline for chronic dialysis is also based on the patient being eligible for renal transplant. A patient who is eligible for a transplant will be provided with dialysis until an organ donor is found and a kidney transplant has been accepted.

[6] Consequently the Applicant was not entitled to the relief she sought because the respondents successfully demonstrated that it was not only because she was a foreign national that she was denied treatment. They were

faced with limited resources and had tried to stabilise her condition. Further, they had a long list of other patients waiting for these expensive treatments.