REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

7/3/14

CASE NO: 69766/11

(1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED.

7 March 2014 .....

DATE SIGNATURE

In the matter between:-

THE SOUTH AFRICAN DENTAL ASSOCIATION NPC Applicant

and

THE MINISTER OF HEALTH First Respondent

THE HEALTH PROFESSIONS COUNCIL

OF SOUTH AFRICA Second Respondent

THE CHAIRPERSON OF THE PROFSSIONAL BOARD

FOR DENTAL THERAPHY AND ORAL HYGIENE Third Respondent

THE DENTAL ASSISTANTS ASSOCIATION

OF SOUTH AFRICA Fourth respondent

J U D G M E N T

Ismail J:

[1] This is an application wherein the applicant seeks an order in terms of Rule 53 of the uniform Rules of court for the review and setting aside seven ministerial regulations, regulating the profession of Dental Assistants. These regulations were promulgated in terms of the provisions of the Health Professional Act 1974 [The HPA].

[2] The fourth respondent is joined in this matter by virtue of Mavundla J provisionally ordering the fourth respondent to be joined in the matter. The learned judge ordered the court hearing the application should determine, whether or not fourth respondent should have standing in this matter. This aspect would be dealt with further on in this judgment.

[3] In the course of this judgment the applicant would be referred to by either as the applicant or by the acronym SADA; and the fourth respondent as such or DAASA. The first respondent would be referred to as such or as the Minister; the 2nd respondent as such or the Council; and the third respondent as such or as the Board.

[4] In the founding affidavit the deponent Margaretha J Smit stated:

"This founding affidavit is filed in support of an application and principle at reviewing and setting aside certain decisions taken and administrative action performed by the

Minister of Health, who is the first respondent in this proceedings, which decisions are *ultra vires* the powers of the Minister or are otherwise unlawful in terms of the provisions of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) or the Constitution of South Africa, 1996 ("the Constitution") "

The applicant contends that there are five regulations which are impugned in this application. These regulations are as follows:-

4.1 Regulations published as government Notice 338, dated 16 April 2005, as amended by Government Notice R580, dated 30 May 2008 - referred to as the "Original Qualification Regulations"

4.2 regulations published in Government Gazette 31633, dated 28 November 2008 – referred to as " the Board regulations"

4.3 Regulations Relating to the Qualifications for Registration of dental Assistants, Amendment, published in Government Gazette number 35046 on 14 February 2012. – referred to as "the revised Qualification Regulations"

4.4 Regulations Relating to the Qualification for Registration of Student Dental Assistants Amendment published as government notice R395 In government Gazette number 35363 o 21 May 2012 – referred to as " Student qualification Regulations "

4.5 Regulations Defining the Scope of the Profession of Dental Assistants published as government Notice R396 in Government Gazette number 35364 on 21 May 2012 – referred to as "the Scope Regulation".

[5] The applicant in its papers avers that the during April 2005 and purportedly acting in terms of the Health Professional Act 56 of 1974 ("the HPA") the Minister promulgated regulations ("the Qualifying Regulations") purporting to set out the qualifications required for registration as a dental assistant, with second respondent, the Health Professional Council of South Africa ("the HPCSA"). The qualifying Regulations were *ultra vires* the provisions of the HPA because it purported to stipulate the qualification for registration as a dental assistant in circumstances in which dental assistants did not, prior to the promulgation of the Qualifying Regulations,

form part of any health profession or registration category.

[6] The applicant in its notice further prays that during November 2008, the Minister promulgated regulations pursuant to section 15 of the HPA (" the Board Regulation") in terms of which the Minister purported to constitute a professional board that included dental assistants. This was done:

1. In circumstances in which no health profession for dental assistants existed; or

2. only the qualifying Regulations were promulgated.

[7] The applicant is of the view that the Board Regulations were like the Qualifying Regulations which preceded them, *ultra vires* the provisions of the HPA.

[8] The HPA is the bedrock and foundational piece of legislation which governs the conduct of professional activities within the health care sector in this country.

Section 1 of the HPA defines a health professions as:

" any profession for which a professional board has been established in terms of section 15."

[9] Section 15(1) permit the Minister to establish a professional board in respect of a health profession, however a health profession exist only if a professional board is established. The applicant submitted that in addition to the requirement that a professional board being established prior to a health profession being constituted, such a health profession should also be registrable in terms of the HPA. This is governed by section 17 of the HPA. Such registration with the HPCSA is a prerequisite for practising as a registered or registrable profession in the Republic..

[10] Mr Leech SC acting for the applicant submitted that this application was founded on the principle of legality and that the regulations referred to in para [3] above, were *ultra vires* the provisions of the Health Professions Act. In the event it is found that provisions of the various regulations are inconsistent with the principle of legality the court would be obliged in terms

of section 172(1)(a) of the Constitution to declare the regulations as being invalid.

[11] The applicant submitted that the Minister did not have the powers in terms of the HPA to make the regulations which he/she made and furthermore in so far as the Board regulations and Original Qualification are concerned they were promulgated without due consideration by the First Respondent .

Qualification Regulations in terms of section 61 (1) read with sections 24 and 25 of the HPA. When that was done the HPA had not been amended. Section 24 reads as follows:

" The minister may, on recommendation of council, prescribe qualifications obtained by virtue of examinations conducted by a university, a technikon or other examining authority in the Republic ,which, when held singly or conjointly with any other qualification, shall entitle any holder thereof to registration in terms of the Act if he or she has, before or in connection with or after acquisition of the qualification in question, complied with such conditions or requirements as may be prescribed."

The applicant submitted that the Minister was entitled under this section to

prescribe qualifications which would permit the holder of the qualification to register in terms of the Act. This presupposes that there was a register for dental assistants at that time. The applicant argued firstly that there was no register for dental assistants and secondly that the Board of Dental Therapy and Oral Hygiene regulated only that profession and finally there was no dental assistant on that Board at that time.

Section 24 entitles and prescribes registration of a person to register, however, there was no register at the time. The First Respondent's power to prescribe such qualifications in terms of section 24 in order to recognise a profession for dental assistants required registration and therefore a register was required.

Up to that stage, i.e. the promulgation of the Qualifying Regulations, dental assistants did not require formal qualifications and the majority of them obtained training whilst being employed by dentists. Accordingly the applicant argued that the first respondent did not have the power to prescribe qualifications for registration as dental assistants where the Act was silent and contained no requirement for registration.

[12] The first respondent avers that during April 2000, the Board recommended and the council resolved to establish a register for dental assistants in terms of section 18(1). The applicant contended that to recommend and resolve does not imply that it was actually done. To this end the applicant's argued that the Council and the Board in their own affidavits suggested that as at 9 April 2001 no register was created or existed.

[13] The applicant also submitted that at no point prior to the promulgation of the Board regulations had the Minister established a profession for dental assistants or extended the Board's powers to regulate the activities of dental assistants. This the applicant avers was neither challenged nor contradicted by the Minister in his second affidavit. It was submitted that Minister could in terms of section 15 of the Act only constitute a Board for a Health profession registrable under the Act. For that reason the board regulations also fall to be set aside.

[14] During 2012 the Minister promulgated regulations namely the revised Qualification Regulations and the Student Qualification Regulations and the

Scope Regulations. These regulations fall in a different category as counsel for the Minister argued that the application should fall to be dismissed as the challenge was brought in terms of Legality regarding the Board Regulations and the Original Qualification regulations. Mr Maenetje SC submitted that where the provisions of The Promotion of Administrative Justice Act 3 of 2000 [" PAJA"] applies it should be involved to challenge administrative actions.

[15] The preamble of PAJA reads:

WHEREAS section 33 (1) and (2) of the Constitution provides that everyone has the right to administrative action that is lawful, reasonable and procedurally fair and that everyone whose rights have been adversely affected by administrative action have the right to be given written reasons:

AND WHEREAS section 33 (3) of the Constitution requires national legislation to be enacted to give effect to those rights, and to-

- provide for review of administrative action by a court or, where appropriate , an independent and impartial tribunal;

- impose a duty on the state to give effect to those rights; and

- promote an efficient administration.

The first respondent's counsel submitted that where PAJA applied a party did not have an election or choice whether to proceed in terms of PAJA or to proceed in terms of the Constitution. Mr Leech on the other hand submitted that a party always has a right to proceed against impugned legislation on the ground of Legality and is not restricted to PAJA.

The argument advanced by the first and fourth respondents was that judicial review in terms of section 6 (2)(a)(i) of PAJA must be brought in terms of section 7, which should be instituted within a reasonable time and not later than 180 days after the date. DAASA in its affidavit raised the point that PAJA applied and that the applicant was out of time and notwithstanding the point raised by it no application for condonation was brought.

[16] If that argument is upheld it would mean that the application

regarding the Original Qualification Regulation and Board Regulations should be dismissed. It is common cause between the parties that the Minister's actions in this matter related to an administrative function and therefore PAJA applied. The crisp question to be determined is whether an administrative act can be attacked on the grounds of legality in preference to PAJA. If so it would affords a party an option to proceed by that means or in terms of PAJA.

Mr Leech submitted that a challenge in term of the principle of legality can be brought at any time. Whereas PAJA has time restrictions (which can be extended).

[17] Mr Maenetje SC submitted that the application in respect of the pre-2012 regulations should fall and be dismissed due to the unreasonable delay in launching the application. He contended that once PAJA applied, the review application cannot be decided without reference to it. – *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Others* 2004 (4) SA 490 (CC) para [26] where O Regan J stated.

" *In these circumstances, it is clear that PAJA is of application to the case and the case*

cannot be decided without reference to it. To the extent, therefore, that neither the High Court nor the SCA considered the claim made by the applicant in the context of PAJA, they erred. Although the applicant did not directly rely upon the provisions of PAJA in its notice of motion or founding affidavit, it has in its further written arguments identified the provisions of PAJA upon which it now relies."

[18] Counsel for the Minister submitted that the principle of legality, on which the applicant pins its case, i.e. the *ultra vires* issue, extends only to whether the Minister had powers to make the regulations. This question whether the Minister took all the relevant considerations into account and whether he/she acted procedurally fairly, is one that is governed by PAJA.

[19] The first respondent's counsel furthermore submitted that even if the applicant is found to be correct that it is entitled to bring the review on the ground of legality at any time it wishes to do so the application is not properly before court because it concerns aspects that are squarely governed by PAJA.

This argument clearly implied that a party does not have an election to choose to bring a legality review where PAJA applies. He relied upon the

matter of *Opposition to Urban Tolling Alliance and Others v The South African Roads Agency Limited and Others* a Judgment of Brand JA in the Supreme Court of Appeal under case number 90/2013 particularly at para [36] and [38].

"[36] the fourth basis invoked by the appellants as to why the 180 day time bar should be extended was that it was the requirement of the rule of law that the exercise of all public power should be lawful and that SANRAL and the government has failed to act legally. As I see it, however, the argument is misconceived. While it is true that the principle of legality is constitutionally entrenched, the constitutional enjoinder to fair administrative action, as it has been expressed through PAJA expressly recognises that even unlawful administrative action may be rendered unassailable to delay."

[20] Further on at para [38] the learned judge continued;

" [38] However, the passage in *Oudekrall* upon which the appellants rely is authority for the contrary. The passage makes clear that, unless an invalid administrative act is set aside by a competent court, it is regarded as valid for the purposes of consequent acts. This is supported by the following statement in the unanimous judgment by the Constitutional Court in *Camps Bay Ratepayers' & Residents' Association and another v Harrison and another* 2011 (4) SA 42 (CC) at para 62:

'As was explained in *Oudekrall estates (Pty) Ltd v City of Cape Town and others* [par 31] administrative decisions are often built on supposition that previous decisions were validly taken

and unless that previous decision is challenged and set aside by a competent court , its substantive validity is accepted as a fact. Whether or not it was indeed valid is of no consequence."

[21] The argument advanced by applicant's counsel was that the applicant could not attack the minister's promulgation of the regulations until the regulation was enacted, whereby it made it an offence for dental assistant not to be registered, and equally made it an offence to hire them in the absence of registration. This argument in my view is based on convenience and one which was aimed at taking issue with the regulations at the latest possible time, hence the attack is launched in terms of section 33 of the Constitution and not in terms of PAJA. Even if the applicant is correct that Promulgation of criminal sanctions motivated it to seek a review it could have brought the application in term of PAJA, and if the 180 day period had lapsed condonation could have been sought or the opposite party could have been approached for time extensions. It is only when the shoe pinched and registration become a requirement, on its version, that the applicant reacted. Notwithstanding the so called 'illegality' of the earlier regulations which for years were not challenged.

[22] The time delay in launching the application in my view is a consideration which this court cannot ignore. The Minister, Council and Board have for years, approximately 15 years, been trying to regulate dental assistants. This process also involved the participation of the applicant in the regulation of the 'profession' as they were important role players. Dental assistants have been in limbo throughout this period and are anxious to know whether their work would be regulated or not. To this end DAASA seeks a counter application wherein the Minister is ordered to continue with legislation regulating dental assistants.

[23] Counsel for the second and third respondents submitted that the applicant raised no objections, including in November 2008 questioning the legality of the board's regulatory power over the professional activities of the dental assistants profession.

Furthermore, the issue of a register which the applicant relied upon had not been in existence on it's own version until April 2001 and the applicant did not raise this issue until it launched the application during December 2011. It is submitted that in 2001 the applicant supported the establishment of a

register for dental assistants. The applicant now argues that at the time the 2005 and 2008 regulations were promulgated no register for dental assistants was in place and hence the impugned regulations should be set aside.

[24] Miss Mkwanazi acting for the second and third respondents submitted that the procedure followed prior to the promulgation of the relevant regulations was the notice and comment procedure. There was no obligation on the part of the administrator to respond to each and every comment or consideration received by it. All that was expected of the Minister was that the administrator was responsive to the comments received.

In this regard Prof Chitke, the Chairperson of the task team, made the point to the applicant's Vice president and its representatives on the task team that:

" .. SADA was regarded as a very important stakeholder to assist it the successful implementation of dental assistants registration... The Task Team expected robust interaction with SADA, but on the basis of participation, as the board had no intention to deviate to professionalise dental assistants" (2 nd and 3rd respondents Answering affidavit TEM 16).

[25] The applicant's launching of this application at this late stage, after three ministers , had endeavoured to regulate the profession is opportunistic and the court has to ask itself what prejudice would there be to the applicant other than possible financial implications to them. I have not dealt with the aspect of the fourth respondents status in this application, however, I will revert to this aspect when I deal with DAASA hereunder.

[26] In *Bengwenyama Minerals v Genorah Rresources* 2011 (4) SA 113 at 138A para [61] Froneman J refers to *Zondi v MEC for Traditional Local Government Affairs and others* 2005 (3) SA 589 (CC) where Ngcobo J stated:

" PAJA was enacted pursuant to the provisions of s 33, which requires the enactment of national legislation to give effect to the right of administrative action. PAJA therefore governs the exercise of administrative action in general. All decision-makers who are entrusted with the authority to make administrative decisions by any statute are therefore required to do so in a manner that is consistent with PAJA. The effect of this is that statutes that authorise administrative action must now be read together with PAJA

unless upon a proper construction, the provisions of the statutes in question are inconsistent with PAJA."

[27] Chaskalson CJ in the *Minister of Health v New Clicks SA (Pty) Ltd and others* 2006 (2) SA 311 at para [92]-[97] dealt with the Constitution and PAJA. At para [93] the Chief justice stated the following:

"[93] However I do not agree, with the approach adopted by both the majority of the High Court, and later the SCA, that notwithstanding the provisions of PAJA the regulations were subject to an independent review for lawfulness under s 33 of the Constitution."

In the same matter at para [97] the learned Chief Justice continued by stating:

"[97] Professor *Hoexter* sums up the relationships between PAJA, the Constitution and the common law, as follows:

'The principle of legality clearly provides a much-needed safety net when PAJA does not apply. However, the Act cannot simply be circumvented by resorting directly to the constitutional rights. (The PAJA itself can of course be measured against the constitutional rights, but that is not the same thing.) nor is it possible to sidestep the Act by resorting to the common law. This too is logical, since statute inevitably dispose rights of the Act, but it cannot be regarded as an alternative to the Act."

Dental Assistants Association of South Africa [DASSA]

[28] DAASA seeks leave to intervene in this application. It was not originally cited as a party to the application. DAASA was provisionally granted leave to be joined in this matter, see para [2] above.

[29] The applicant challenges the *locus standi* of the DAASA and it avers that this organization does not have the power to sue or be sued. It is an unincorporated voluntary association established in terms of its constitution. DAASA's constitution does not authorize it to be a litigant in proceedings. To this end the applicant relied upon the matters of South *African Optometric Association v Frames Distributors Ltd t/a Frames Unlimited* 1985 (3) SA 100 (O) 104B.- where the court held that the interest was at best an indirect interest.

[30] DAASA on the other hand argued that it exist since 1983 and that

it has a membership of approximately 3 000 dental assistants. It seeks leave to join this application in order to advance, protect and promote the interest of dental assistants and also the public interest. It was submitted on its behalf that DAASA has a direct and substantial interest in the matter. It seeks to uphold the its members rights to just administrative action and that it also seeks to uphold their rights to dignity and equality with recognition to a regulated profession. This matter concerns the exercise of public power and therefore is a Constitutional issue.

It was submitted that the court should exercise a wider approach of the rules relating to *locus standi* in the constitutional era and that the fourth respondent should be permitted to participate in these proceedings.- see *Rail Commuters Association Group v Transnet Ltd* 2005 (2) SA 350 CC.

It avers that it has a direct and substantial interest in the matter and that it may be prejudicially affected by the courts judgment. It relied upon the dictum of *Amalgamated Engineering Union v Minister of Labour* 1949(3) SA 637 (A) at 657 where the court held that it may *mero motu* join such a party.

[31] Counsel for DAASA submitted that in view of the active involvement

of the fourth respondent in the process leading up to the promulgation of the impugned regulations, SADA ought to have joined DAASA as a party to the dispute at the outset of these proceedings.

[32] If this court were to make a ruling that DAASA does not have *locus standi* thereby non suiting its participation in these proceedings it would thereby silence the voice of an organization which has a membership of at least 3 000 dental assistants affiliated to it. In keeping with the constitutional ethos that the constitution should embody the spirit of an open an democratic society, I believe that to stifle the views of an organization which has some bearing on an issue and more particularly where it represents a substantial number of people would not be tenable, particularly where it concerns a public law issue.

[33] Mr Jansen on behalf of DAASA relied upon the decision of *Pharmaceutical Manufacturers of SA: In Re Ex parte president of the Republic of South Africa 2000 (2) SA at para [36]* of the judgment where Chaskalson P stated:

"The prerogative is a doctrine of English law and, as the Appellant Division pointed out

in *Sachs v Donges NO*, questions concerning the prerogative were governed in South Africa by principles of English law. Lord Denning has described the prerogative as 'a discretionary power exercisable by the executive government for the public good, in certain spheres of governmental activity for which the law has made no provisions ....The law does not interfere with the proper exercise of the discretion by the executive in those situations; but it can set limits by defining the bounds of the activity; and it can intervene if the discretion is exercised improperly or mistakenly. That is a fundamental principle of our constitution."

[34] SADA also raised the point that if the court were to permit DAASA to be joined to these proceedings then it should determine whether it should condone DAASA's late filing of its answering affidavit. The affidavit ought to have been filed by the 25 January 2013, however it was only done two weeks thereafter. It is not necessary for the purposes of this judgment to state the reason for the delay save to say that I considered the reasons raised in the heads of argument and in the papers. In any event the papers were filed on the same day as the review papers and DAASA accordingly submitted that there was no prejudice to the applicant.

[35] When the court is to determine whether condonation should be

granted or refused the court is guided by the judgment of *Malane v Santam Insurance Company Limited* 1962 (4) SA 531 at 532 C-E where Holmes JA stated:

" In deciding whether sufficient cause has been shown, the basic principle is that the Court has a discretion to be exercised judicially upon a consideration of all the facts, and in essence it is a matter of fairness to both sides. Among the facts usually relevant are the degree of lateness, the explanation therefore, the prospects of success, and the importance of the case. Ordinarily the facts are interrelated; they are not individually decisive, for that would be a piecemeal approach incompatible with a true discretion, save of course if there are no prospects of success there would be no point in granting condonation.. "

[36] In its papers DAASA expressed the view that the applicant has not made out a case to set aside the impugned regulations. In support of this contention it avers that the applicant cannot avoid the provisions of section 7 of PAJA by submitting that its challenge is based on the principle of legality and not on the bases of PAJA. In this regard DAASA relied upon *Hoexters, Administrative Law in South Africa 2nd edition Juta* at p134. DAASA argued that by allowing a litigant to bypass PAJA altogether It would frustrate the constitutional and legislative scheme providing for the

review of administrative action.

[37] To this end DAASA contended that administrative action must be challenged within a reasonable time, but no later than 180 days as stipulated by PAJA. The argument is further advanced by stating that the applicant only brought this review application during December 2011, six years after the 2005 regulations promulgated and three years after the 2008 regulations.

[38] DAASA contended that the applicant should have made out a case for condonation, but despite it raising this aspect in their response,the applicant simply elected not to do so. This aspect, namely the failure of the applicant to seek condonation, was also raised by Adv Maenetje SC when he addressed the court. It was submitted on behalf of both the first and fourth respondents that the failure to seek condonation was fatal and that on this ground alone the application should be dismissed.

[39] The applicant brought the application for review premised on the principle of legality. It was submitted on the applicant's behalf that an attack

on administrative action based on the principle of legality could be brought at any time. I am inclined to agree with the first and fourth respondents argument that this is not so. See *New Clicks* referred to at para [26] above.

[40] In my view the applicant should have brought this application in terms of the provisions of PAJA and in doing so it ought to have applied for condonation. The failure of the applicant to do so was fatal. This application premised on legality was brought more than ten years after it was decided to regulate and create a profession for dental assistant.

In view of the time delay the applicant brought the action in terms of the principle of legality as opposed to PAJA. However the applicant contends that its attack in terms of Relating to the Qualifications for Registration of dental assistants, Amendment, published in Government Gazette number 35046 on 14 February 2012. – referred to as "the revised Qualification Regulations" and the Scope of the Profession of Dental Assistants published as government Notice R396 in Government Gazette number 35364 on 21 May 2012 – referred to as "the Scope Regulation" is not out of time and that those regulations ought to be reviewed in terms of PAJA.

[41] DAASA instituted a conditional counter-claim whereby it seeks an order that the Minister should proceed to take the necessary steps to cure the defects so that the Dental Assistant may be regulated in a lawful manner.

[42] DAASA also submitted that in the event that the Minister acted irregularly the court should exercise its discretion not to set aside the promulgated regulations and that the court should rather order the Minister to cure the defects.
In this regard I dealt with this aspect above at para [25]. See *Bengwenyama Minerals v Genorah Resources* 2011 (4) SA 113 the court exercised its discretion in favour of prejudiced parties.

[43] The applicant submitted that the Minister was not entitled to promulgate the Scope and Board regulations in the absence of a Register for Dental Assistance. In my view this raises the issue of what came first the chicken or the egg. Mr Maenetje argued that the sequence within which things were done may not have been orderly; however, the court should

ultimately ask itself whether things were done albeit not in proper sequence.

It is clear that the register was only effected in 2001 after the promulgation of the two regulations namely the Scope and the Board.

The applicant argued that the register had to be created in order for a profession to be created. However, by 2001 the register had been created and no proceedings were brought to set aside the promulgations of the impugned regulations. The argument advanced on behalf of the applicant that the was no need to create a profession for dental assistants, as for decades dental assistants were trained and worked under the supervision of dentists and therefore the scope regulations were unnecessary. Whilst it is true that this was the traditional manner in which dental assistants operated in the past and presently It does not necessary follow that this method should continue *ad infinitum*. We live in a modern age were people need to be scientifically trained and the skills should be enhanced in most facets of life. It appears that SADA is averse to change and moving into a new era, and they do not desire dental assistance to be

regulated or professionalised.

[44] The time delay aspect has been dealt with above, see *Oudekrall Estates (Pty) Ltd v City of Cape Town and others* [par 31] and the *New Clicks matter, supra.*

[45] I am of the considered view that the prejudice dental assistants would suffer if the regulations were set aside far outweighs any defects which might exists in the promulgation of the regulations.

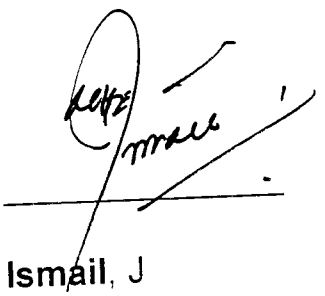
[46] I would recommend that the Minister continues with his regulations in furtherance of the legislation regarding dental assistants, however, the Minister should afford the parties a two year moratorium period before the failure to register as dental assistants would be met with criminal sanctions. This recommendation would equally apply to hiring dental assistants, by dentists, who are not registered during the moratorium period.

[47] Accordingly I make the following order:

(1) The application is dismissed

(2) The fourth respondent is joined to this proceedings and its application for condonation is granted.

(3) The applicant is ordered to pay the costs of the respondents.



Ismail, J

APPERANCES.

For the applicant	Adv Leech SC and Ms K Hofmeyer Instructed by: Werksmans Attorneys, c/o Edelstein- Bosman Inc, Pretoria
For the First Respondent:	Adv Maenetja SC instructed by the State Attorney, Pretoria
For the 2nd and 3rd Respondents:	Adv T Mkhwanazi, instructed by Moduka Attorneys, Pretoria
For the Fourth Respondent:	Adv R Jansen and adv G Snyman