

- '1.1. Be registered as a student at the University of Pretoria (UP)
- 1.2. Participate in all programs at the University of Pretoria that are necessary for the fulfilment of the requirements for the degree of Masters of Medicine (MMed (iv) – Psych).'¹

[2] The applicant is a medical doctor and duly registered as a medical practitioner as envisaged in terms of the Health Professions Act 51 of 1974.

[3] The applicant is a registered student for the degree in Masters of Medicine in the speciality of Psychiatry. Students who are registered in master's degrees are referred to as "registrars". The applicant qualifies to be so referred. He is further employed by the Gauteng Department of Health as Chief Medical Officer in the Mental Health Program serving Community Mental Health Services in the greater Tshwane region.²

[4] The first, second and third respondents are, for the purposes of this application, referred to hereinafter as the University of Pretoria (U.P.) The fourth respondent, Health Profession Council of South

¹ Notice of Motion – page 2

² Founding Affidavit – page 6 – paragraph 1

Africa (HPCSA) is cited herein as it may have the interest in the outcome of the case. No relief is sought against them. No appearance has been entered on its behalf.

[5] There is a string of events, episodes, allegations of racism and umpteenth correspondence between the applicant and UP that culminated up to the issuing of a letter by Prof Grove to the applicant. I find it inevitable to quote the contents of the entire letter. It is stated:

‘Dear Padayatchi

PENDING DISCIPLINARY HEARING – REQUEST TO SUSPEND STUDIES

Your letter dated 6 April 2011 in which you request permission to interrupt your studies at the University of Pretoria with immediate effect for a period of two months, refers.

As you are aware, the complaints underlying the pending disciplinary hearing against you are of a serious nature.

In the letter referred to above, you have requested permission to interrupt your studies for two months due to challenges of a personal nature.

If the request is granted you will be a registered student of the University and subsequently subject to the University's rules and regulations. This will therefore not lead to a stay of the disciplinary process that has already commenced.

Should you, however, decide to discontinue your studies at the University of Pretoria due to medical reasons, you will no longer be a registered student of the University and therefore not subject to the University's disciplinary code and procedure. Once your health has improved, you will be entitled to apply for re-admission to the University and specifically the Faculty of Health Sciences.

In order for the University, at that stage, to consider your application for re-admission, you would have to submit a report to the Registrar of the University by a psychiatrist of your choice stating that your psychiatric health is of such a nature that you will be able to resume your studies at the University and that your future behaviour will not pose a threat to staff, students and/or other third parties. Please note that the University will be entitled to obtain a second opinion in this regard by a psychiatrist appointed by the University (at the University's cost).

If you reapply to the University, the University reserves the right to refuse your application for admission if the University is of the opinion that good reasons exist why you should not be readmitted to the University (obviously subject to the University's obligation to act in an administratively fair manner).

If you are re-admitted the University will be entitled to set conditions for such re-admission. The University may also prescribe where you are to render services during your training. This will be in your own interest as well as in the interest of staff and students that were affected by incidents that underlie the pending disciplinary hearings and will at all times be in the University's discretion. Should you be re-admitted subject to the above conditions, the University will not proceed with the disciplinary hearing referred to above.

Please indicate whether you wish to interrupt your studies as indicated in your letter or whether you would prefer to discontinue your studies, taken into consideration the implications related to each of the said options.

Please notify this office of your decision in order to ensure that the necessary arrangements are put in place as speedily as possible in the interest of all parties concerned.³

[6] On the 20 April 2011, the applicant responded thereto in his letter where he stated:

'I hereby formally request that I be temporarily deregistered as a student at the University of Pretoria for health reasons with effect from 1 April 2011 ... '⁴

³ Annexure DDP7 to Founding Affidavit page 55 - 56

⁴ Annexure DDP8 to Founding Affidavit Page 57

[7] Two months later, the applicant applied for re-admission as a student at the UP. Reiteration of the contents of the letter quoted at paragraph [5] above was the UP's response. The applicant, as a matter of common cause, was on 27 February 2012, allowed to re-register as a student. He was, however, not 'permitted to continue with the academic or practical training programmes of the University; he was not allowed to attend the patients in the Department of Psychiatry ...'⁵

[8] The UP has in my view, complied with the applicant's first prayer. This requires no further consideration. Participation in all programmes at the UP that are necessary for the fulfilment of the requirements for the degree of Masters in Medicine (MMed (iv) – Psych) is the only issue that requires consideration. It must be borne in mind that UP had indicated to the applicant that his re-admission would be subject to:

8.1. The applicant submitting a report to the Registrar by a psychiatrist of his choice that his psychiatric health was such that he would be able to resume his studies at the University, and that his future behaviour would not pose a threat to staff, students and/or third parties.

⁵ Answering Affidavit paragraph 49.4

8.2. The University would be entitled to obtain a second opinion by a psychiatrist appointed by the University at its own cost.

8.3. The University still reserved the right to refuse his application if it was of the opinion that good reasons exist why he should not be re-admitted to the University.

[9] The applicant consulted with Drs Dikobe and Valli in his endeavour to comply with the first condition mentioned above. Dr Lerato A.M. Dikobe opined that the applicant 'has improved sufficiently to enable him to continue with his specialist training program in Psychiatry.'⁶ The doctor further opined that the applicant 'does not pose a danger to himself or others in the University or workplace.'⁷

[10] Dr Ahmed Vali assessed the applicant. The doctor states that 'since [the applicant's] temporary resignation from his registrar's post about a year ago, he [the applicant] has been in remission and we agreed to stop his medication last year. [The applicant] continued to work in 4 clinics seeing psychiatric patients daily and has not had any further outbursts ...'⁸

⁶ Annexure DDP 9 to Founding Affidavit page 60

⁷ Ibid

⁸ Annexure DDP 10 to Founding Affidavit page 61. My under line

[11] Dr Valli recommended the return of the applicant to his registrar training post as the applicant is now in full remission. Professor, Dr D.L. Mkize corroborates Dr Valli's report. Prof Mkize recommended:

'It is recommended that he be allowed to re-register and continue with his studies. He is fit to perform registrar duties at the university and hospital. He currently poses no threat to staff, patients, students or any other persons.'⁹

[12] It is apparent that the reports of doctors appointed by UP and those by the applicant, were tabled at the Health Committee of HPCSA. The committee considered the said reports and resolved that the applicant can continue with his registrar training program under the supervision of Dr Chala.¹⁰

[13] It is clear from the reading of UP's answering affidavit and submissions made that the said reports are not disputed.

[14] UP contends, however, that they reserve the right to refuse the applicant's application if it was of the opinion that good reasons exist

⁹ Annexure DDP 13 to Founding Affidavit page 70

¹⁰ DPP 14 page 71

why the applicant should not be permitted to continue with his training program towards his Master's degree.

[15] UP relies on allegations that led to the charges levelled against the applicant as "good reasons" not to permit the applicant to continue with his studies. All such allegations have not been tested by the disciplinary committee, a tribunal or a court of law. It is trite law that every person accused of having transgressed the law or the rules remains innocent until proven guilty. There are no factual findings by any disciplinary committee, tribunal or a court of law on the conduct of the applicant.

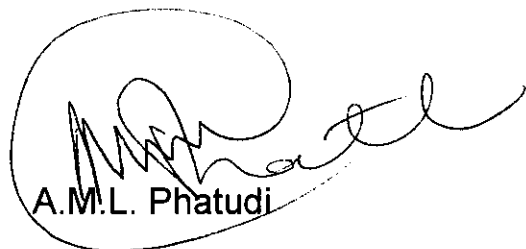
[16] In the absence of the factual findings, a disciplinary committee's verdict or a court order imposed on the applicant, UP's "good reasons" are, in my view, not good enough to rely on not to permit the applicant to continue with his training programme towards completing his Master's degree.

[17] It is trite that cost follow the event. The applicant succeeds with his application and thus entitled to his costs.

I in the result, make the following order:

Order:

- 1. The University of Pretoria (First, Second and Third respondent) is directed to:**
 - (a) Register the applicant as a student at the University of Pretoria.**
 - (b) Permit the applicant to participate in all programmes at the University of Pretoria that are necessary for the fulfilment of the requirement for the degree of Masters of Medicine (MMed (iv) – Psych)**
- 2. The First, Second and Third (university of Pretoria) is ordered to pay the applicant's cost.**



A.M.L. Phatudi

Judge of the High Court

On Behalf of the Applicant:

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C/O Jacobson Levy Inc.
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Adv. P Mookie

On Behalf of the 1st
to 3rd Respondents:

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