



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

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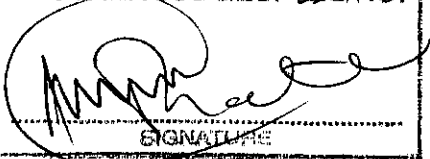
(1) REPORTABLE: ~~YES~~/NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO.

(3) REVISED.

16/04/2014

DATE


SIGNATURE

Case No: 6210/2012

Date heard: 11 February 2014

Date of judgment: 16 April 2014

In the matter between:

ARWYP MEDICAL CENTRE (PTY) LTD

Applicant

And

THE MINISTER OF HEALTH SERVICES

IN HIS/HER CAPACITY AS HEAD OF THE

NATIONAL DEPARTMENT OF HEALTH

First Respondent

THE MEMBER OF THE EXECUTIVE COUNCIL

IN HIS/HER OFFICIAL CAPACITY AS HEAD OF THE

DEPARTMENT OF HEALTH AND

SOCIAL DEVELOPMENT, GAUTENG

Second Respondent

THE DIRECTOR-GENERAL OF THE

NATIONAL DEPARTMENT OF HEALTH IN

HIS/HER OFFICIAL CAPACITY

Third Respondent

THE HEAD OF THE DEPARTMENT OF HEALTH

AND SOCIAL DEVELOPMENT IN HIS/HER OFFICIAL
CAPACITY

Fourth Respondent

THE CHAIRPERSON: APPEAL ADVISORY

COMMITTEE IN HIS/HER OFFICIAL CAPACITY

Fifth Respondent

JUDGMENT

A.M.L. PHATUDI J:

[1] The applicant, a company with limited liability, conducts a medical centre at 20 Pine Avenue, Kempton Park. The applicant seeks an order

‘1. Reviewing [and] setting aside the decision or decisions by the Appeals Advisory Committee ... in terms of which the sixth respondent’s application to erect a private hospital or unattached operating Theatre unit known as Leboneng Hospital (Leboneng) was approved (“the decision”)

2. That the applicant be allowed an extension of the 180 days period during which the applicant had to institute the review proceedings in terms of section 9(1)(b) of the Promotion of Justice Act 3 of 2000 (PAJA) ...’¹

[2] The sixth respondent (Leboneng) was only cited insofar as it may have had the interest in the application. No order as to costs was sought against Leboneng provided it did not oppose the application. Leboneng is the only respondent that opposes the application.

¹ Notice of Motion, Bundle 1 – page 3

[3] In short, Leboneng applied to the second respondent for approval to erect a private hospital or unattached operating theatre units² at Plot 697, Ravenswood Road, Boksburg.³ The second respondent did not approve of its application. Leboneng appealed against such decision. The appeal Advisory Committee upheld Leboneng's appeal. On the 21 January 2010, Leboneng advised that its application for 200 bed private hospital in Boksburg was successful. It is clear from the reading of Leboneng's answering affidavit⁴ and the applicant's replying affidavit⁵ that the applicant engaged business relationship pertaining to the hospital to be established in Boksburg. The said engagement did not bear any fruit.

[4] Leboneng raises the following two points *in limine*⁶ which are opposed.

4.1 That the applicant does not have *locus standi*, in terms of PAJA, in that the applicant is not a person as contemplated in PAJA

² Founding Affidavit – paragraph 10 at page 12

³ Leboneng's application bundle 2 – page 100

⁴ Answering Affidavit – paragraph 14

⁵ Replying Affidavit – paragraph 15.1 – 15.5

⁶ Answering Affidavit – paragraph 12 – 30 – pages 236 - 242

and is accordingly not vested with a sufficient interest to obtain the relief sought; and

4.2 That the application is fatally defective as the applicant failed to comply with the provisions of section 7 and 9(1) (b) of PAJA.

[5] Section 6(1) of PAJA provides that 'any person may institute proceedings in a court or a tribunal for the judicial review of an administrative action.'

[6] It is inevitable to state that the applicant seeks to invoke the right to a just administrative action entrenched by section 33 read with section 38 of the Constitution of the Republic of South Africa (Constitution). For ease of reference, section 33 of the Constitution provides:

'(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

(2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.

(3) National legislation must be enacted to give effect to these rights, and must –

- (a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;
- (b) impose a duty on the state to give effect to the rights in subsection (1) and (2); and
- (c) promote an efficient administration.'

Section 33 of the Constitution provides:

'Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are –

- (a) anyone acting in their own interest;
- (b) anyone acting on behalf of another person who cannot act in their own name;
- (c) anyone acting as a member of, or in the interest of, a group or class of persons;
- (d) anyone acting in the public interest; and
- (e) an association acting in the interest of its members.'

[7] Leboneng's counsel submits that the applicant failed to demonstrate that it has the necessary *locus standi* as an "interested person" referred to in section 6(1) of PAJA. He refers to

Giant Concerts CC v Rinaldo Investments (Pty) Ltd⁷ where, he submits, the court held that 'the own-interest litigant must therefore demonstrate that his or her interest or potential interest are directly affected by the unlawfulness sought to be impugned'⁸

[8] It is common cause that the applicant is neither acting on behalf of another person who cannot act in their own name⁹ nor as a member of, or in the interest of, a group of or class of persons,¹⁰ nor in the public interest¹¹ nor an association acting in the interest of its members.¹²

[9] The Constitutional Court¹³ succinctly considered what a litigant acting solely in his or her own interest must demonstrate how his or her interests or potential interests are directly affected by the unlawfulness sought to be impugned.

⁷ Giant Concerts Cc v Rinaldo Investments (Pty) Ltd [2012] ZACC 28 (CCT25/2012) (29 November 2012) unreported.

⁸ Ibid paragraph [43]

⁹ Section 38 (b) of Constitution

¹⁰ Section 38 (c) of Constitution

¹¹ Section 38 (d) of Constitution

¹² Section 38 (e) of Constitution

¹³ In Giant Concerts Cc v Rinaldo Investments (Pty) Ltd

[10] The applicant submits that it is an “affected person” as contemplated by PAJA in that they conduct a medical centre which is 20km away from the area where Leboneng intends to erect the private hospital. The applicant further submits that its medical centre consist of 343 beds. The applicant’s last submission is that they were never afforded the opportunity to object or make any representations in respect of Leboneng’s application.

[11] In my evaluation of the evidence tendered and submissions made, I find the applicant’s submissions lacking merit. First, the applicant’s medical centre and Leboneng are 20km apart. I find no merit that the applicant will suffer prejudice in that the parties will stop patronising their medical centre for Leboneng. The applicant’s medical centre is in Kempton Park whereas Leboneng will be erected in Boksburg

[12] Secondly, the applicant engaged Leboneng in establishing business relations pertaining to the hospital to be established. This aspect is not denied. The applicant launched, in my view, this

application upon failure by them to secure business relations with Leboneng. They simply seek to frustrate Leboneng's venture.

[13] The applicant enjoys 343 bedded medical centre. The applicant fails to demonstrate that Leboneng's 200 bed private hospital will adversely affect their business. There is no application by the applicant lodged for the increase of its medical centre beds. Neither is there an intention to lodge such application.

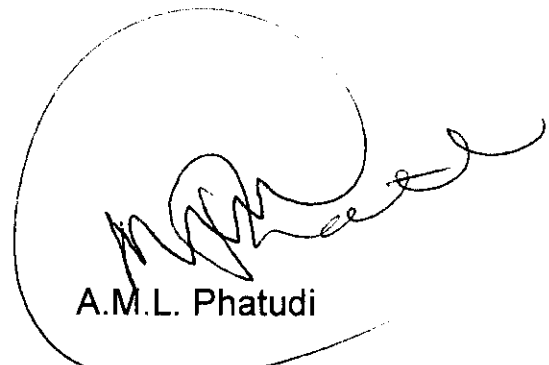
[14] In view of the fact that the applicant failed to demonstrate that their interest or potential interest are directly affected by the granting of licence to Leboneng, leaves me with no option but, on this leg alone, to dismiss the application for lack of *locus standi*.

[15] It is trite that cost follow the event. The sixth respondent succeeds with its opposition and is thus entitled to its costs. Both parties employed senior counsel. The costs must thus include the cost of senior counsel.

I in the result, make the following order:

Order:

- 1. The respondent's point *in limine* on *locus standi* is upheld.**
- 2. The applicant's application is dismissed with costs, including the costs of senior counsel.**



A.M.L. Phatudi
Judge of the High Court

On Behalf of the Applicant:

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On Behalf of the 6th

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