



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case No: 3113/2015

In the matter between:

26/8/2016

DR WOUTER BASSON

Applicant

and

**HEALTH PROFESSIONS COUNCIL OF
SOUTH AFRICA**

Respondent

IN RE:

the application between:

DR WOUTER BASSON

Applicant

and

PROFESSOR J F N HUGO

1st Respondent

PROFESSOR R E MHLANGA

2nd Respondent

**HEALTH PROFESSIONS COUNSEL OF
SOUTH AFRICA**

3rd Respondent

(1)	REPORTABLE: YES <input checked="" type="radio"/> NO
(2)	OF INTEREST TO OTHER JUDGES: YES <input checked="" type="radio"/> NO
(3)	REVISED.
<i>26/8/2016</i> DATE	
<i>[Signature]</i> SIGNATURE	

JUDGMENT

HF JACOBS, AJ:

[1] The facts germane to this application are mostly common cause. On Monday 19 January 2015 the applicant walked out of a disciplinary inquiry before a Committee of the Health Professions Council of South Africa (the third respondent in this application). The applicant later that day applied to the Judge sitting in the urgent court, Baqwa J and was granted the following relief contained in a draft order prepared by the applicant's legal representatives:

- "1. Applicant is ordered to serve the application on the Respondents on the 19th of January 2015 before 16h30 by way of e-mail.*
- 2. First and Second Respondents are prohibited to proceed with the disciplinary proceedings against Applicant, pending the finalisation of this application,*
- 3. Respondents are ordered to file answering affidavits, if any, on or before 16h00 on the 20th of January 2015.*
- 4. Applicant is ordered to file replying papers, if any, on or before 10h00 on the 21st of January 2015.*
- 5. The application is postponed till 10h00 on the 21st of January 2015."*

[2] On Thursday 22 January 2015 the application was argued before Bam J and the next day, 23 January 2015, Bam J made the following order:

*"1. The applicant is granted the right to institute the application for the recusal for the first and second respondents, if he is inclined to do so, within 10 days of this order. The third respondent is ordered to pay the applicant's costs, the costs to include the costs of two counsel."*¹

[3] When the applicant's bill of costs was sent to the respondents, their attorney contended on behalf of the third respondent, that the costs order embodied in the judgment of Bam J does not include the costs of 19 January 2015 when the order quoted in paragraph 1 above was made by Baqwa J.

[4] The applicant contended that the order of Bam J is unambiguous and includes the costs of the proceedings before Baqwa J and applies in terms of Rule 42(1)(b) for a variation. The respondents argue that in the absence of an express statement in the orders of Bam J or of Baqwa J holding the third respondent liable for the costs of 19 January 2015, the third respondent would not be liable for those costs.

[5] The applicant now applies for an order in terms of Rule 42(1)(b) to remedy the order of Bam J of 23 January 2015 to vary that order to include a further paragraph that stipulates that *"the costs will include the cost incurred by the applicant pertaining to the appearance on the 19th of January 2015"*.

¹ The order is on the last page of the written judgment of Bam J.

[6] The order with which a judgment of a court concludes is the executive part of the judgment that defines what the Court requires has to be done, or not done, so that the parties to the suit (and others) may know. It may be said that the order must undoubtedly be read as part of the entire judgment and not as a separate document. The Court's directions must be found in the order and not elsewhere. If the meaning of an order is clear and unambiguous, it is decisive, and cannot be restricted or extended by anything else stated in the judgment.² If a court order is considered by a person to be ambiguous does not mean that it is. Its meaning must be determined through established rules of interpretation.

[7] The basic rules of interpretation of a judgment or order of a Court are no different from those applicable to the construction of documents.³ Interpretation of a document should take place by having regard to the context provided by the reading of the provisions of the document in the light of the document as a whole and the circumstances attendant upon its coming into existence. The context of the document is fundamental and the apparent purpose to which the document is directed determines its context. A sensible meaning is to be preferred to one that leads to an insensible result or one that undermines the apparent purpose of the document.⁴

² *Administrator, Cape & Another v Ntshwaqela & Others* 1990 (SA) 705 AD at 716.

³ Herbstein & Van Winsen: *The Civil Practice of High Courts of South Africa* 5th Ed, Vol 1 p 936.

⁴ *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA).

[8] It is in my view clear from the order of Bam J that he, sitting in the urgent Court of this Division (which at any time demands swift decision-making while time to prepare a written judgment is a luxury), intended to award the costs of the application before him to the applicant. It is also in my view clear that Baqwa J did not award the costs to the applicant on 19 January 2015. In the absence of an order by Baqwa J or provision pertaining to costs in his order of 19 January 2015 stating otherwise, I have to infer that the issue of costs was not considered at all on 19 January. The parties also did not state in the papers in this application that costs was argued before Baqwa J. The wording of the order of Baqwa J tallies with such an interpretation and is the only plausible conclusion considering that Baqwa J on 19 January 2015 expressly ordered that the respondents be served with the papers and were to be afforded the opportunity to file their answering affidavits before 16h00 on 20 January 2015 and that the applicant was allowed to file its replying papers, if any, before 10h00 on the 21st of January 2015. It is in my view unlikely that Baqwa J would have granted or even considered a costs order against the respondents (or any of them) or not granting the applicant his costs of the day on 19th January 2015. The relief sought before Baqwa J on 19 January is contained in paragraph 2 of the order. It is in the form of interim interdictory relief and constitute substantial success in the application. Relief of that kind is often granted in the urgent Court in this Division without consideration of the costs aspect of the dispute. Costs often stand over for consideration once all parties to the suit have had

the opportunity to be heard and placed evidence before the Judge in the urgent court to consider a costs order.

[9] What is absent from the judgment of Bam J is any reasoning or consideration given to the costs of 19 January 2015. At the time of his judgment Bam J must have been aware of the order of Baqwa J. The appearance on 19 January before Baqwa J was the first step in obtaining interim relief. That relief brought the disciplinary proceedings to a halt. Bam J a few days later as per paragraph 1 of his order granted the applicant further interim relief and those costs were, and are, in my view part of the costs of the application of which Bam J awarded the costs to the applicant.

[10] In my view there is nothing ambiguous in the judgment of Bam J calling for clarification. The order is clear. The costs of the entire urgent application of that week were awarded to the applicant. The costs in that context include the costs of the appearance before Baqwa J.

[11] This application was necessitated by the stance adopted by the third respondent. The third respondent's interpretation of the order is wrong and the applicant should have placed his bill before the Taxing Master for taxation. In my view the application in terms of Rule 42(1)(b) cannot succeed. It is evident from the papers filed of record that the third respondent would have continued with its objection and allegations of ambiguity as far as

the court order is concerned. As stated by Mahomed J in *Battis*⁵ it is not one of the functions of the Court to give legal advice. There seems to be some animosity between the litigants in these proceedings. Thus the dispute. I am entitled in terms of section 21(1)(c) of the Superior Courts Act 10 of 2013 to issue a declaratory order. I am prepared to exercise my discretion in that regard as will be seen from the order that follows.

[12] As far as the costs of this application is concerned it is clear that the application was necessitated as a result of the unfounded view adopted by the third respondent as far as the costs of the 19th of January 2015 is concerned. In my view the applicant should be awarded the costs of this application.

Under the circumstances I make the following order:

1. The costs order of Bam J of 23 January 2015 shall include the costs incurred by the applicant pertaining to the appearance on 19 January 2015 before Baqwa J;
2. The third respondent is ordered to pay the costs of this application.



H F JACOBS
 ACTING JUDGE OF THE HIGH COURT
PRETORIA

Date: 26 August 2016

⁵ *Battis & Another v Elcentre Group Holdings Ltd & Others* 1993 (4) SA 69 WLD at 75E.