



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

CASE NO: 44983/2020

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: 13 MAY 2022

SIGNATURE

In the matter between:

GERHARD VOSLOO NO

First Applicant

THE SOUTH AFRICAN MEDICAL

ASSOCIATION TRADE UNION (under administration) Second Applicant

and

THE SOUTH AFRICAN MEDICAL

ASSOCIATION NPC

First Respondent

THE REGISTRAR OF LABOUR RELATIONS

Second Respondent

J U D G M E N T (In Leave to Appeal)

This matter has been heard by way of a virtual hearing and otherwise disposed of in terms of the Directives of the Judge President of this Division. The judgment and order are accordingly published and distributed electronically.

DAVIS, J

[1] Introduction

On 28 March 2022 this court dismissed the application by the administrator of the South African Medical Association Trade Union (the administrator) to have the South African Medical Association (SAMA) wound-up. The administrator now seeks leave to appeal that judgment and order.

[2] Discretion


- 2.1 On 18 May 2020 Van Niekerk J granted certain declaratory orders in the Labour Court in favour of the administrator. These were premised on the fact that deductions made from the salaries of medical doctors in Government employ in terms of section 13(3) of the Labour Relations Act could only validly have been made in favour of a trade union, which SAMA, despite its historical representation of such doctors, was not.
- 2.2 Despite the above declaration, this court found that the extent of the consequential debt which may be owing by SAMA to the administrator, was far from settled and that a factual dispute exists in this regard. The court found that the *Badenhorst* – rule pertaining to winding-up applications found application and that the indebtedness was *bona fide* disputed on reasonable grounds.
- 2.3 In the event that this court may have been wrong in the above conclusions, the court exercised its overriding discretion against the winding-up of a voluntary association which not only represents thousands of doctors nationwide in private practice, but also represents and renders benefits to thousands of doctors who are also members of the trade union under the control of the administrator.

- 2.4 The scope for a court of appeal to interfere with the exercise of a discretion by a court of first instance is narrow. The principles are trite and need not be repeated here.
- 2.5 However, should there be a fundamental flaw in the basis upon which such a discretion had been exercised, it may well be open to attack on appeal.
- 2.6 In this regard, the administrator argued that the effect of the judgment of Van Niekerk J was clear that “*all amounts deducted [from Government doctors’ salaries] ... were remitted in terms of section 13(3) to and for the account of the second applicant*” (the trade union).
- 2.7 Should the administrator’s argument be correct, it might mean that the administrator was in the position of a creditor with a judgment in its favour which might entitle it to a winding-up order *ex debito justitiae*. Should this be so, it would have considerably narrowed the scope of this court’s discretion.
- [3] Section 17(1)(a)(iii) of the Superior Courts Act 10 of 2013
- 3.1 This section provides that leave to appeal may be granted “*where there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration*”.
- 3.2 While there is not, strictly speaking conflicting judgments in the customary fashion, this court’s interpretation of the judgment of Van Niekerk J (with which SAMA agrees) is diametrically opposed to the interpretation thereof by the administrator.
- 3.3 The existence of the differing interpretations, now concretised in the two judgments, is in my view a “compelling reason” to grant leave to appeal.

3.4 Certainty in respect of this issue might also lead to the curtailment of further litigation, should the administrator seek to recover whatever he alleges is due to the trade union in an action or further legal process (other than by way of a winding-up), which recovery he is duty-bound to pursue. Having regard to the fact that the two conflicting interpretations are reflected in judgments of different jurisdictions, I am of the view that the resolution of this issue should be done by the Supreme Court of Appeal.

[4] Order

1. Leave to appeal is granted to the Supreme Court of Appeal.
2. Costs of the application for leave to appeal shall be costs in the appeal.



N DAVIS
Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 6 May 2022

Judgment delivered: 13 May 2022

APPEARANCES:

For Applicant: Adv PA Swanepoel SC together with
Adv DJ Groenewald

Attorney for Applicant: Serfontein Viljoen & Swart, Pretoria

For the 1st Respondent: Adv DM Fine SC together with
Adv MJ Cooke

Attorneys for the 1st Respondent: Welman & Bloem Inc, Pretoria