REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION

PRETORIA

(1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED.
20 JUNE 2022 .....
DATE SIGNATURE

CASE NO: 56892/21

In the matter between:

LUNGHILE NURSING SCHOOL	**APPLICANT**
AND	
THE CHAIRPERSON OF THE APPEAL COMMITTEE OF SANC	**1st RESPONDENT**
THE SOUTH AFRICAN NURSING COUNCIL	**2ND RESPONDENT**
THE REGISTRAR: SANC	**3RD RESPONDENT**

JUDGMENT

CEYLON , AJ

A. INTRODUCTION:

[1] This application consists of two parts. In part A, the Applicant prays for an order in the following terms:

> 1. that this matter be heard on an urgent basis and the normal rules relating to forms and services be dispensed with;
>
> 2. that the orders of the Appeal Committee contained in sub-paragraphs 1.1, 1.2 and 1.3 of the Ruling by the Appeal Committee be suspended pending the final determination of Part B of this application;
>
> 3. that the 2nd and 3rd Respondents be interdicted from implementing the aforesaid orders pending the final determination of Part B of this application;
>
> 4. that the 2nd and 3rd Respondents be ordered to release the results of all the students which are currently withheld by the 3rd Respondent;
>
> 5. that cost be awarded against any Respondent who opposes the application.

[2] The relief sought by the Applicant in Part B is irrelevant for purposes of this application. It will therefore not be dealt with at this stage.

B. FACTUAL BACKGROUND/MATRIX:

[3] Around July 2018 the Applicant sent a list of student names to the 2nd Respondent (SANC) for registration as the 2nd intake for 2018, with enclosed proof of payment of registration fees.

[4] In August 2018, the 2nd Respondent returned the registration forms in relation to the said students ("the June 2018 group") and advised that a resolution has been taken that the Applicant have been barred from taking further students in. Around February 2019 the Applicant lodged an internal appeal against this decision in terms of section 57 of the Nursing Act.

[5] In May 2019, after the appeal was not heard, due hereto that no appeal committee was appointed, the Applicant approached this Court and an Order to compel was granted. On application for leave to appeal the latter decision, the latter application was dismissed, after which the 2nd Respondent petitioned the SCA.

[6] In October 2019, the Applicant submitted to the 2nd Respondent the relevant records in compliance with the order of Sardiwalla J, whereafter the 2nd Respondent registered seventy-one (71) students of the June 2018 group, except for 2 of these students, who by then went to other schools, to write the November 2019 examinations.

[7] In November 2019, the Applicant was instructed to complete and submit a certain form/template which related to the June 2018 group.

[8] Around August 2020, the 2nd Respondent withdrew the SCA appeal and tendered the wasted costs.

[9] On 15th July 2020 the Applicant received correspondence form the 2nd Respondent, to the effect that, with regards to the information it received by way of the said form/template, submitted by the Applicant and clinical facilities, that the information received was falsified, and that the 2nd Respondent's Exco has taken 2 resolutions:

> (i) that the June 2018 group who wrote their examinations in November 2019 have to repeat one thousand (1000) clinical hours and that the clinical facilities used for clinical placement should keep proper records of the process;
>
> (ii) that the Applicant make written submissions within thirty (30) days on why it should not be de-accredited, due to the fact that it had submitted falsified information and there was no proof of proper clinical education and training.

[10] On 13 August 2020, the Applicant directed correspondence to the 2nd Respondent requesting an opportunity to study the discrepancies and remedy the issue.

[11] Around October 2020, the 2nd Respondent advised the Applicant by letter that it (2nd Respondent) had restored the de-accredit it as a nursing education institution due to non-submission of the reasons why it should not be de-accredited. The Applicant, through its attorneys, requested an urgent meeting with the 2nd Respondent to discuss the issues, whereupon the 2nd Respondent's attorney requested clarity on the issues to be discussed at such meeting.

[12] On 03 November 2020, the Applicant's attorneys forwarded a letter to the 2nd Respondent's attorneys seeking an undertaking, *inter alia*, on the following:

(i) that the de-accreditation be suspended with immediate effect, pending the filing of an internal appeal; and

(ii) that the trainee nurses be allowed to write their exams on 18th and 20th November 2020.

[13] The Applicant then brought an urgent application (under case no: 57264/20) in this Court, and an Order was granted on 16 November 2020 (per Mokose J) in terms of which the students were permitted to write the exams and that the decision to de-accredit was suspended pending that the internal appeal process be lodged within thirty (30) days of this said Order.

[14] On 18 November 2020 the 2nd Respondent disallowed twenty-four (24) of the ninety-four (94) students of the June 2018 group from writing the examinations. The Applicant then again approached this Court on an urgent basis, and was ordered by Harms J to allow the students to write the exams on 20 November 2020 and also that a special examination be convened for those who missed the exams of 18 November 2020.

[15] In January 2021 the Applicant released some of the results of the students who wrote the October 2020 exams, but not the results of the June 2018 group who wrote exams on the same dates. Further, the 2nd Respondent released results of certain students who wrote the November 2020 exams, but excluded the results of the students of the June 2018 group who wrote as a result of the order of Mokose J.

[16] In December 2020 the Applicant was allowed an extension to file their internal appeal by 15 January 2020, but a further extension was refused by the 3rd Respondent.

[17] The internal appeal was lodged on 23 February 2021 and an appeal committee was appointed April 2021. Around April 2021 the 2nd Respondent advised the Applicant that its papers for the internal appeal was submitted out of time.

[18] The Applicant again approached this Court on an urgent basis, seeking to set aside the decision to implement the appealed decision, but this application was dismissed due to a lack of urgency by Mokose J.

[19] The appeal was heard on 28 September 2021 and the appeal committee delivered its report (decision) on 08 November 2021.

[20] On 11 November 2021, the Applicant approached this Court, again on an urgent basis, and it was removed from the Roll of 22 November 2021, as it was not compliant with the directives and was directed to the Judge President's office for a special allocation (per Baloyi-Mere AJ).

[21] The Applicant is now challenging the decision of the 1st Respondent (of 08 November 2021) in this current application, also on an urgent basis.

C. ISSUES TO BE DETERMINED

[22] It is common cause between the parties that the following are the issues for determination by this Court:

(a) urgency in respect of the interim interdict;

(b) whether the Applicant met the requirements for an interim interdict and a final interdict (in respect of prayer 4 which relate to the release of the results of the students).

[23] In the Applicant's papers as well as the hearing, the Applicant's attorneys persisted that the matter is urgent and it should therefore proceeded on a urgent basis before this Court on the hearing date [refer to para 5, Applicant's new Heads of Argument, on pg 046-6 of Caselines]. The 2nd and 3rd Respondent's opposed the urgency of the application and fully sets out their grounds of opposition in the Heads of Argument under the heading "No urgency", from paragraph 3 onwards, and also in their Answering affidavit, under "No Urgency", pg 030-6 and further.

[24] This Court entertained the said urgent application and dismissed it with costs, agreeing largely with the grounds raised by the 2nd and 3rd Respondents. The Court then proceeded with the hearing on the merits on the same date.

D. THE APPLICANT'S CONTENTIONS:

[25] The Applicant contended that, in order to succeed with the relief of an interim interdict, it must show the following:

(a) a prima facie right though open to some doubt;

(b) a reasonable apprehension of irreparable harm or imminent harm;

(c) the balance of convenience; and

(d) no alternative remedy.

[26] With regards to the prima facie right, the Applicant made the following submissions:

- that the de-accreditation directly threatens the existence and livelihood of the Applicant and its employees; the Applicant's constitutional rights to do a trade of its choice and the Applicant's student's rights to education is threatened and they have all been subjected to serious psychological and financial stress as a result hereof. The Applicant submitted that it has prospects of success in relation to the review application contemplated in part B of their application.

[27] With regard to Reasonable apprehension of harm, the Applicant submitted as follows:

- the Applicant will suffer complete financial ruin of the school and its asset base, since some of the assets are subject to financial obligations.

- the school, having built its brand over many years, locally and internationally, will suffer serious reputational damage which may not be restored again.

- the school will loose qualified staff members who will leave with institutional memory and experience.

- students whose results have been withheld are suffering from various problems, including psychological stress, loss of job opportunities and financial ruin.

- the above indicate serious harm to the school and its students and the school may not be able to recover by the time the reviews is heard.

[28] In terms of the balance of convenience the following submissions were made:

- that the balance of convenience favour the Applicant;

- the Appeals Committee gave contradictory decisions and refused to adhere to the *audi alteram partem* rule;

- the 2nd and 3rd Respondents will not suffer any prejudice if the interim interdict is granted whereas the Applicant and its students will suffer great and irreparable harm;

- it is important that the legislative scheme of the Nursing Act and its Regulations be tested for compliance with the Constitution and the review will benefit all stakeholders, and bring certainty to the profession and the rule of law if the Constitution is complied with in practice.

[29] With regard to the requirement of no alternative remedy, the Applicant's contentions were the following:

- all internal remedies available to the Applicant have been exhausted;

- the review is the only available, legal remedy available to the Applicant and its students in the circumstances.

[30] At the hearing, Mr Maake for the Applicant, also submitted as follows:

- prima facie right:

- that the Appeal Committee did not comply with the provisions of the Court Orders of Sardiwala and Mokose JJ.
- the Chairperson of the Appeals Committee was biased in favour of the Respondents. He relied on Basson v Hugo.
- the Appeals Committee did not provide reasons for its decision.
- the Applicant was not advised or warned of the inspection in loco by the Respondents and their officials.
- the recommendation made by the Committee did not refer to any de-accreditation.
- the Applicant did not receive a fair appeal process in terms of the requirements set out in the Basson decision, *supra.*
- with regards to the decision to de-accredit the Applicant (letter of 15 July 2020) – there is no basis for this decision in the Committee's Report. The de-accreditation is a punitive measure, not a corrective one.
- with regards to the contention by the Respondents that this appeal was a wide one, this is not correct. The process of appeals is determined by the chairperson/presiding officer of the Committee, not by anyone else or the parties.

- regarding harm/apprehension of harm:

- the result of ninety-seven (97) students are still being withheld by the Applicant, and this is an infringement of their Constitutional rights.
- the Applicant as a school have been in existence for over 20 years with no problems or issues. Even the Report of the Committee does not mention any previous harm, difficulties or trouble to anyone by the Applicant.
- the Respondents does not suffer any harm by its conduct, only the Applicant and its students.
- the effects of Covid 19 impacted negatively: nurses were needed to assist in the treatment of Covid patients and the Respondents prevented them from doing so. Most of the students are from impoverished communities and sponsored by their employers and government to get training at the Applicant's school, and are now frustrated by the de-accreditation.
- there is definite prejudice suffered by the Applicant and its students.

- balance of convenience:

a mixture of factors were raised, including the facts of this case, the conduct of the Appeals Committee and so on. These factors indicate that balance of convenience favours the Applicant.

- alternative remedy:

the Applicant lodged the appeal, which was finalised by the Appeals Committee. There is no other remedy available. The Court is the only remedy available to the Applicant.

- costs:

- The Applicant submits that costs should follow the result, but requested costs *de bonis propriis* against the Chairperson of the Appeals Committee and normal costs against the other Respondents.

[31] In his reply at the hearing Mr Maake made the following submissions:

- there is no training and education provided by the Applicant since the Order of Mokose J. The school is currently deserted.
- the Act does not state that the appeal is a wide process [Section 57 (5)], and to do so is not a correct interpretation thereof. Section 57 (6) states that the Chairperson must determine the process and communicate this to the parties; it is therefore not a wide process, but a strict one.
- students are not a party to the proceedings and the Applicant has no locus standi to act on their behalf: this is an incorrect viewpoint. In terms of Section 28 or 29 of the Constitution, any party can act on behalf of another. Even the judgments of Sadiwala and Mokose JJ had no issues with this representation.
- courts should be slow to interfere with statutory/administrative powers: this is not a correct interpretation. The courts may interfere in certain circumstances.
- unfair procedure followed: adverse action was taken, decision made and only thereafter allowed Applicant to request reasons. This is not fair process. Respondents had statutory obligations to follow fair processes [Basson decision, *supra*].
- audi alteram partem rule: it must be applied in all stages of the investigation and process, which was not done throughout the process.
- court interference with Regulations: court needs to make a pronouncement on the Regulations as the validity of the Regulations are being challenged.
- costs: if the Order is granted, but not prayers 4,5 and 6, then the Applicant will return to Court for relief. It will be in the interest of justice for those prayers also to be granted.
- Applicant made out proper case and the Orders should be granted.

E. THE RESPONDENT'S CONTENTIONS:

[32] - prima facie right:

The Respondents submitted that the Applicant failed to show a prima facie right to provide training and education to nursing students for the following reasons:

(i) the Applicant must show a legal right, which is being infringed or which it apprehends will be infringed, and if it fails to do so, its application must fail - relying on CB Prest: The Law & Practice of Interdicts at pg 52; Coolair Ventilator Co (SA) (Pty) Ltd v Liebenberg 1976 (1) SA 686 (W).

(ii) the Applicant seeks to protect the rights to train nursing students, which right is strictly regulated by the Act and Regulations for good reasons. Nurses do an extremely important job that requires knowledge, experience and integrity, as they work with the lives of people, wide powers and responsibilities have therefore been given to the Nursing Council in the Act and the promulgated Regulations in which the details of the requirements for training of nurses are outlined. The right in question has therefor been limited for very good reasons.

(iii) when complaints of inadequate training provided are received, the Council, as watchdog over the quality of training and education of nurses, is enjoined by the Act and Regulations to investigate. This is what the Council did in terms of section 4 (2)(k) of the Act, upon receipt the information provided by the Applicant in the template provided and the comparison it made with information received from the clinical facilities, and, it appeared that the information provided was falsified and that the evidence of clinical training was totally inadequate.

(iv) in order to be entitled to the right to train nurses, the Applicant must have evidence of quality control mechanisms over the clinical education and training of student nurses as required by Regulation 2(2)(d) of R.173. The evidence provided in the template by the Applicant regarding the mechanisms it utilised over the clinical education and training was falsified and indicated that some students never attended any clinical training.

(v) the Applicant failed to show that the allegations of dishonesty and incompetence, which are probably the most serious allegations the Applicant could face, are not true, despite all the information available to it. The Applicant therefor failed to comply with Regulation 2(2)(d) of R.173, which is a requirement for accreditation.

- irreparable harm/prejudice:

(i) the alleged harm to its reputation the Applicant stands to suffer is a direct result of its stubborn refusal to disprove the Council's allegations, which are factually based on incompetency and dishonesty. Since 15 July 2020, the Applicant has done nothing to show that the findings into the quality of its conduct are incorrect.

(ii) it seems the Applicant completely disregarded the de-accreditation, which became effective on 15 January 2021, despite all the correspondence addressed to by the Council's attorneys regarding same. The Applicant, in its Replying papers, now argues that the internal appeal it lodged now suspends the accreditation. The Applicant, by necessary implication, simply carried on the training of students since May 2021 as if the de-accreditation was suspended.

- <u>prospects of success:</u>

- the ruling of the Appeals Committee is unassailable and none of the review grounds set out in the Applicant's founding affidavit at paragraph 56 has any merit:

(i) in respect of the 30 day period the Applicant was granted to provide reasons why it should not be de-accredited, it contends that it was excused from doing so as it did not receive the email from the Respondent's attorneys of 18 August 2020. This argument is disingenuous according to the Respondents. The letter of 15 July 2020 was clear and to the point. The letter was addressed to the Council, two days before the expiry of the said period, in which it requested an extension of the period, shows the recklessness and irresponsible conduct of the Applicant when it was faced with the most serious task in its existence, namely to explain why its further existence should not be terminated.

(ii) the failure to respond to the allegations against the Applicant during November 2020 is of crucial importance. The said Regulation 2(2)(d) of R.173 places the responsibility to provide evidence of quality control mechanisms over clinical education and training on the institution wishing to be accredited.

(iii) the appeal process was regular and well managed by its chairperson. When the parties agreed upon the exchange of affidavits in the appeal, the Applicant's representatives must have realised that the appeal is a wide appeal, which is, in essence, a rehearing of the issues. It had the opportunity to convince the Committee that the allegations of dishonesty and incompetence is unfounded. Prior to the hearing, parties submitted Heads of Argument, and in the Council's heads, extensive argument was submitted that the appeal process will not be restricted to the record of decision, but it is a wide appeal. Even upon receipt of such heads, the Applicant failed to request a postponement or to supplement its papers by responding to the serious allegations levelled at it.

(iv) in light of the above the prospects of a successful review of the Appeal Committee's ruling is extremely remote.

- for the reasons stated above, the Applicant failed to show irreparable harm and also that the balance of convenience favours it.

- conclusion:

- the Applicant failed to show that it is entitled to the urgent hearing of part A of this application and that it grossly abused the process of this Court in respect of urgent applications.

- the application should be struck of the roll with punitive costs.

- applicant also failed to make out a proper case for the interdict sought. Therefore part A of this application should be dismissed with costs.

[34] At the hearing the following submissions were made by Mr Pretorius on behalf of the Respondents:

- prima facie right:

- right to nursing training and education a restricted right for strict control of quality of training and education.
- the 2nd Respondent exercised its decision to de-accredit in terms of Section 42 of the Nursing Act, read with Regulations 2 (2), 6 and 10 (1)(a) thereof.
- accreditation is a continuous process and not a once-off one: the 2nd Respondent has a duty and powers to ensure that education and training of nursing students is done to the highest standards and quality. If there is failure to comply with said legislation, or the Council's advises, the Council may de-accredit [Regulation 14 (1)(a)], which can include de-accreditation on grounds of false information, fraud, dishonesty an incompetence.
- the Respondent's acted on complaints received from a nursing association regarding quality of training by the Applicant and also did an inspection in loco at the Applicant's premises to investigate the facts on the complaint.
- the Respondents sent the template to the Applicant and compared it with information received from hospitals/clinics and found several discrepancies, and requested reasons why the Applicant should not be de-accredited. The Applicant responded and requested a meeting to discuss the said discrepancies, but did not request reasons in terms of the PAJA Act. An extension to furnish reasons were extended, but a second request (for further extension) was refused.
- Applicant never refuted allegations of fraud and dishonesty and raised no defence against it.

- the Respondents did comply with the audi alteram partem rule by inviting the Applicant to give reasons why it should not be accredited in terms of letter dated 15 July 2019.
- the Applicant has no locus standi to appear or to act on behalf of its students.
- the Applicant, even though de-accredited, still carries on business of training of nurses, which is an offence in terms of Section 42 (4) of the Act.
- Applicant refuse/fail to furnish any evidence that it did not falsify the information/documentation provided to the 2nd Respondent, therefore has no prima facie right.

- irreparable harm:

the Applicant still has student nurses in training and carries on business as usual and they get paid by the students and their sponsors.

- success on review:

a fair procedure was followed in the internal appeal process: the procedure must be fair, not perfect. The current application did not outline why the procedure was allegedly unfair.

- double jeopardy:

- this rule does not apply to proceedings of this nature, only to criminal matters.
- invalid regulations: no case was made out for this relief and it is therefore not before Court. This Court can therefore not adjudicate this issue.
- effect of de-accreditation: the ruling of the Appeals Committee recommended that students be transferred to other accredited institutions and the Applicant should not proceed to provide training following the de-accreditation.
- the Court should be slow to interfere with executive powers granted to the 2nd Respondent as per the National Treasury v OUTA decision, *supra*, if this Court grants the Order in favour of Applicant, it would be interfering with the duties and obligations of the Respondents under the law.

- costs:

Applicant cannot seek punitive costs as it did not pray for it, nor laid any basis for such costs, therefore it should not be granted.

- with regards to prayer 4 (final interdict): no factual basis were laid for same in the papers; it was only sought from the bar, and should not be entertained and granted.
- prayer 5: the Respondent already released the results directly to the students in terms of the Appeal Committee ruling and the decision of Louw J on the conditions of such release of merits.

- prayer 6 (record to be filed): this should be done by way of the usual procedure in terms of Rule 53 or the Applicant can bring an application to compel for same. It can therefore not be granted on the papers before this Court.
- relief sought: that the application be dismissed with costs.

F. LEGAL PRINCIPLES:

[35] The following case authorities have been consulted in this matter:

- nature and general requirements for interim interdicts:

(i) In National Gambling Board v Premier, Kwa-Zulu Natal & Others, the Constitutional Court stated the following regarding interim interdicts:

"*An interim interdict is by definition a court order preserving or restoring the status quo pending the final determination of the rights of the parties. It does not involve a final determination of these rights and does not affect their final determination. The dispute in an application for an interim interdict is therefore not the same as that in the main application to which the interim application relates. In an application for an interim interdict the dispute is whether applying the relevant legal requirements, the status quo should be preserved or restored pending the decision of the main dispute. At common law, a court's jurisdiction to entertain an application for an interim interdict depends on whether it has jurisdiction to preserve or restore the status quo*" [2002 (2) SA 715 (CC) at 730-731 [49]].

(ii) It is trite that, in order to succeed with an application for an interim interdict, the applicant must allege and prove the following:

(a) a clear or prima facie right;

(b) an injury actually committed or reasonably apprehended;

(c) that the balance of convenience favour the granting of the interdict;

(d) no alternative remedy is available

This was held in the well known Setlogelo v Setlogelo decision [1914 AD 221 at pg 227] and also in National Treasury v Opposition to Urban Tolling Alliance 2012 (11) BCLR 1148 (CC).

- clear right:

(i) This requirement was explained on Simon NO v Air Operations of Europe AB and Others [1998] ZASCA 79 as follows:

"*The accepted test for a prima facie right in the context of an interim interdict is to take the facts averred by the applicant, together with such facts set out by the respondent that are not or cannot be disputed and to consider whether, having regard to the inherent probabilities, the applicant should on those facts obtain final relief at the trial. The facts set up in contradiction by the Respondent should then be considered and if serious doubt is thrown upon the case of the applicant, he cannot succeed*".

(ii) In Spur Steak Ranches Ltd v Saddles Steak Ranch 1996 (3) SA 706 (C) at 714 F-H, the Court held that:

"*...the requirement for a right prima facie established, though open to some doubt, involves two stages. Once the prima facie right has been assessed, that part of the requirement that refers to the doubt involves a further enquiry in terms whereof the court looks at the facts set up by the respondent in contradiction of the applicant's case in order to see whether serious doubt is thrown on the applicant's case and if there is a mere contradiction or unconvincing explanation, then the right will be protected. Where however, there is serious doubt, then the applicant cannot succeed*".

- apprehension of harm:

(i) In determining the reasonable apprehension of harm or the continuation of the alleged irreparable harm, the test is an objective one. In City of Tshwane Metropolitan Municipality v Afriforum and Another [2016] ZACC 19 at para 55, the Court explained that:

"*Before an interim interdict may be granted, one of the most crucial requirements to meet is that the applicant must have a reasonable apprehension of irreparable harm and imminent harm eventually should the order not be granted*".

(ii) This entails a reasonable apprehension that the continuance of the alleged wrong will cause irreparable harm to the Applicant. [LF Boshoff Investments (Pty) Ltd v Cape Town Municipality 1969 (2) SA 256 (C); Moller NO & Another v Murray NO and Others (2308/2021)[2021] ZAMPMBHC 34 (26 July 2021) at para 16].

Irreparable harm or loss is the loss of property (including incorporeal property and money) in circumstances where its recovery is impossible or improbable. The loss need not necessarily be any financial loss, it may consist of an irremediable breach of the applicant's rights [Moller NO, *supra*, at para 16; Braham v Hood 1956 (1) SA 651 (D) at 655B].

(iii) The harm must be anticipated or ongoing, and must not have taken place already, and in cases where money is not at stake, the harm consists, when interim relief is considered, in the applicant's temporary disablement from enjoying the right [National Treasury & Others v OUTA & Others (2012) ZACCT8; 2012 (6) SA 223 (CC); Corium

(Pty) Ltd v Myburgh Park Langebaan (Pty) Ltd 1993 (1) SA 853 (C) at 857J-858; Economic Freedom Fighters v City of Cape Town & Another (17099/21)[2021] ZAWCHC 209 (19 October 2021) at para [44]].

(iv) In V&A Waterfront Properties (Pty) Ltd v Helicopter and Marine Services (Pty) Ltd [2004] 2 All SA 664 (C) at para 18 and LF Boshoff Investments,*supra,* at 267, it was confirmed that the test to determine harm is present is objective and the question is whether a reasonable man, confronted by the facts, would apprehend the probability of harm. Actual harm need not be established. However, if any applicant can establish a clear right, an apprehension of irreparable harm need not be established. [Also see EFF v City of Cape Town, *supra*, at para [45]].

- balance of convenience:

(i) In Eriksen Motors (Welkom) Ltd v Protea Motors, Warrenton and Another 1973 (3) SA at 691C-G it was held that the considerations of a prima facie right, a well-grounded apprehension of irreparable injury and the absence of an ordinary remedy are not individually decisive, but are interrelated, for example, the stronger the applicant's prospects of success the less his need to rely on prejudice himself. Conversely, the more the element of some doubt, the greater the need for the other factors to favour him. [Also refer to Fulsome Properties (Pty) Ltd v Selepe & Others [14001/2021] [2021] ZAGPPHC 196 (06 April 2021) at para [47]].

(ii) With regards to this requirement, the Court must balance the prejudice to the Applicants, if the interim interdict is refused, against that of the Respondents if it is granted [Breedenkamp v Standard Bank of SA Ltd 2009 (5) SA 304 (GSJ) at 314G; Lieberthal v Primedia Broadcasting (Pty) Ltd 2003 (5) SA 39 (W) at 43F].

(iii) The consideration of this requirement is often the deciding factor in these types of applications [Coalcor (Cape) (Pty) Ltd & Others v Boiler Efficiency Services CC & Others 1990 (4) SA 349 (C) at 361D-E]. It usually revolves itself into a consideration of the prospects of success and the balance of convenience; the stronger the prospects of success, the less need for such balance to favour the applicant; the weaker the prospects of success, the greater the need for it to favour him [Eriksen Motors, *supra*, at para [48]].

- no alternative remedy available:

(i) In Moller NO, *supra*, it was stated that this enquiry is whether or not the applicants can obtain adequate redress in some other form of ordinary relief or an alternative legal remedy [at para [19]; Camps Bay Residents and Ratepayers Association v Augaustides 2009 (6) SA 190 (WCC) at 1951-1956A].

(ii) With regards to this requirement, it was held that the applicant must have no ordinary or satisfactory legal remedy available to him. Because an interdict is a drastic remedy, the court will not grant an interdict when some other form of redress will be adequate or would provide similar protection [Letsoalo & Others v Tepanyekga & Others (19/2018) [HCA 14/2019] [2020] ZALMPPHC 74 (28 August 2020)].

- discretion of the court:

(i) A Court has a discretion whether or not to grant an interim or temporary interdict. In Messina (Transvaal) Development Co Ltd v South African Railways and Harbours 7929 AD7 95 at 215-216 the Court held that:

"*In an application for an interim interdict pending action, the Court has a large discretion in granting or withholding an interdict. And the Court is entitled to and must regard the possible consequences, both to the applicant and to the respondent which will ensure if an interdict is granted or withheld*".

- final interdict:

(i) It is trite that an applicant seeking a final interdict must show a clear right; an injury actually committed or reasonable apprehended; and the absence of similar protection by any other remedy. Once the applicant has established the said requisite elements, the scope for refusing the relief is limited. There is no general discretion to refuse relief [Setlogelo v Setlogelo 1914 A-D 221 at 227; Van Deventer v Ivory Sun Trading 77 (Pty) Ltd 2015 (3) SA 532 (SCA) [2014] ZASCA 169 at para 26; Pilane & Another v Pilane & Another [2013] ZACC 3 at para 38].

(ii) All three requirements must be together satisfied, not just one or some of them [Letsoalo & Others v Tepanyekga & Others, *supra*, at para 15].

G. EVALUATION:

[36] The requirements for the interim interdict:

- prima facie right:

The main contentions of the Applicant regarding its prima facie right revolves around the constitutional rights to trade and to education in terms of Section 27 and 29 respectively. The Applicant contended that the de-accreditation of the nursing school offended these constitutional rights. In addition, the Applicant further submitted that Appeal Committee failed to comply with the Court Orders granted by Judges Sardiwalla and Mokose respectively, that it did not provide reasons for its decision and did not follow a fair appeals procedure as required in the Basson decision *supra,* including a failure to apply the audi alteram partem rule properly.

On In the other hand, the Respondents argued that the Applicant failed to comply with the provisions of the Nursing Act and its Regulations, specifically to put quality control mechanisms over the education and training of nursing students in terms of Regulation 2 (2)(d) of R.173, as well as the the provisions of Section 42 of the said Act. This has led the Respondent to investigate the misconduct of the Applicant and requested the Applicant to furnish reasons why it should not be de-accredited. As the Applicant failed to do so, the Respondents proceeded in terms of Section 42, read with Regulations 2 (2), 6 and 10 (1)(a) and 14 to de-accredit the Applicant. The Respondents alleged that the Applicant is guilty of an offence in terms of Section 42 (4) of the Act in that it is currently still in operation despite being de-accredited.

The Respondents were at great pains to point out that the Applicant has a duty to provide proper education and training of student nurses, to ensure that the highest quality and standards are followed and that the Applicant must avoid dishonesty and incompetence in its duties and obligations. The Respondents went on to submit that nurses do a very serious and important job in our societies and work with the health and lives of the sick and vulnerable patients, and, therefore proper education and training is crucial. The Respondent submitted that the Applicant falsified information and made itself guilty of fraud, dishonesty and incompetence, which the Applicant has not been able to refute to date.

In view of the above, the Respondents submitted that the Applicant did not show a *prima facie* right in the circumstances.

In the opinion of this Court, the rights contended for by the Applicant, namely that of its right to trade or do business and the rights of the students to their education and training at the school, within the context of the *prima facie* right requirements, will not afford the Applicant final relief at the trial as the Court is of the view that the Respondent's contentions cast serious doubt on that of the Applicant.

The Respondents' contentions speaks directly to the Applicant's breach of the Nursing Act and its Regulations. Where there is such serious allegations of dishonesty and incompetence, and the Applicant does not provide evidence or explanation to the contrary, the Applicant cannot expect its rights to be taken seriously and the Respondents allegations to be ignored. The Respondent's submissions on the serious nature of the work nurses is expected to do once qualified, their (Respondent's) obligations to ensure that high standards and quality education should be provided and the interests of the public [that the Respondent is ensuring the proper education and training of nurses], are important and legitimate concerns. The nursing profession and the public deserves and demand no less. These concerns of the Respondents are not mere contradictions or unconvincing explanations, they are genuine and fair.

In light of the above, and the requirements set in the Simon NO, Spur Steak Ranches; Setlogelo and National Treasury decisions, *supra*, this Court is not convinced that the Applicant succeeded in showing a clear right and its contentions can accordingly not be sustained.

- irreparable harm:

The main points the Applicant raised in respect of this requirement is that it has suffered financial and reputational harm, and that its harm also include loss of its staff members who will leave with institutional memory and experience.

The Applicant also submitted that its students are suffering from various problems, including psychological stress, loss of employment opportunities and financial ruin. It further contended that many students are still without their results, which is being withheld by the Respondents and such students may loose their financial sponsorships.

The Respondents contended that the harm the Applicant complains about, is as a result of its stubborn refusal to comply with the Councils request to disprove or refute the allegations of dishonesty and incompetence, which resulted in the de-accreditation. The Respondents also indicated that the Applicant is still continuing with its business operations and gets paid by the students and their funding agents. The Respondents also recommended that students be transferred from the Applicant to other schools in order to mitigate their alleged losses.

In the view of this Court, the Applicant has indicated that the harm it refers to fall within the purview of the rights recognised in the National Treasury, Moller NO and LF Boshoff Investments decisions, *supra*. According to the Applicant, the harm is still ongoing and further anticipated, within the meaning envisaged in the Corium (Pty) Ltd and National Treasury decisions, *supra*. From the evidence before it, this Court agrees with this contention of the Applicant.

On the other hand, the Applicant did not, in the opinion of this Court, refute the allegations of the reasons or grounds of the harm (de-accreditation and the consequences thereof). Further, this Court finds the harm to be largely self-inflicted by the Applicant as it did, for example, not provide reasons why it should not be de-accredited, even after an extended period provided by the Respondents to do so.

This Court views the harm that poorly or untrained nurses would do the profession and the unsuspecting public as very serious. It is therefore incomprehensible that the Applicant does not provide proof against the allegations of dishonesty and incompetence. Even on the evidence before this Court, it has not been able to find proper disproof of such allegations.

In light of the above, this Court is not convinced that the requirement of harm has been met in light of the Afriforum, Moller NO and V&A Waterfront Properties (Pty) Ltd decisions *supra*.

- balance of convenience:

The main points submitted by the Applicant was that the Appeals Committee gave contradictory decisions and refused to apply the audi alterem partem rule. The Applicant argued that it and its students suffers and stand to suffer further harm whereas the Respondents will suffer no harm if the interim interdict is granted. Accordingly, the balance of convenience, it contends, favours the Applicant.

The Respondents submitted that it followed a fair process, including to apply the audi alterem partem rule, and that such process only needs to be fair, not perfect.

The Respondents further argued that the Applicant did not explain why they submitted that the process is unfair in the current application.

This Court is of the view that the harm the Applicant refer to is largely self-inflicted, as pointed out previously. This Court is further of the view that the Respondents, as the watchdog over the Applicant in terms of the Act aforesaid, cannot be expected not to execute its legal mandate by allowing dishonesty and incompetence to proceed. The interest the Respondent is mandated to protect, namely that of the profession and the public at large, are more important than that of the Applicant and its students as it is its duty to respect and protect the rights to a proper and quality standard of education and training for future nurses and that of the public (mostly sick and vulnerable patients), to the right to proper health care.

This Court is further of the view that the prospects of success on review is very slim, particular in light of the prima facie rights and irreparable harm requirements not met in this application, as envisaged in the Bredenkamp, Eriksen Motors (Welkom) Ltd and Coalcore decisions, *supra*.

This Court is therefore not persuaded by the Applicants contentions, but rather that the balance of convenience favour the Respondents in the current circumstances.

- no alternative remedy:

This Court agrees with the submission of the Applicant that it exhausted all its interim and alternative remedies and has other option but to approach this Court. The Applicant has satisfied this Court that it has met the requirement as envisaged in Moller NO and Letsoala, *supra*.

B. final interdict (prayer 4):

This relates to prayer 4 of this application. The requirements for this type of interdict has been detailed in paragraphs [35] hereof and in the Setlogelo and Pilane decisions, *supra*.

In this prayer, the Applicant seeks an Order that the results of the students in the June 2018 group be released and apparently based its request on grounds more or less the same as for the interim interdict. The Applicant contented that it will be in the interest of justice that this prayer be granted.

In the view of this Court, no factual basis was laid for this prayer in the evidence before it and it was requested from the bar, as submitted by the Respondents.

In addition, the Applicant did not specify which results of which students should be released, and this Court cannot be expected to adjudicate on grounds that are not properly placed before it. Further, the Applicant did not dispute the Respondent's contentions that most of the results were already released directly to the students.

This Court is therefore not persuaded that it would be in the interest of justice that this relief be granted in the circumstances.

(C) Prayers 5 and 6 of the application:

This Court agrees fully with the contentions made on behalf of the Respondents, which was outlined herein-above.

(i) With regards to prayer 5, it was already dealt with above (refer to paragraphs [35]B hereof).
(ii) Regarding prayer 6, the Respondent indicated that the normal route has to be followed to have the record filed. The Applicant should have proceeded by way of an application to compel or rule 53 to secure the result it seeks. In any event, no basis was laid in the papers for said relief before this Court, and therefore cannot be sustained.

H. CONCLUSION:

The Applicant did not comply with the requirements for the relief sought as explained above. The application can therefore not succeed.

I. COSTS:

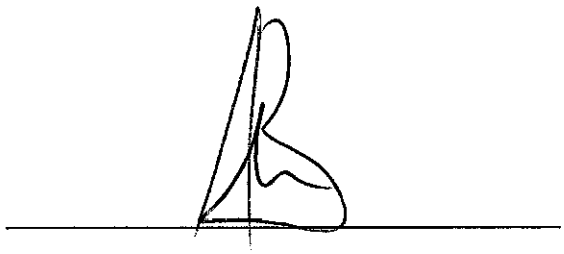
(i) The general rule is that costs follow the result unless there are good grounds to deviate from this rule [Myers v Abramson 195 (3) SA 438 (c) at 455].

(ii) The Applicant requested cost *de bonis propriis* against the Chairperson of the Appeals Committee, based largely on accusations of bias and unfair procedure followed at the appeal. After careful consideration of all the evidence in this regard before it, this Court could not find any substantiating factors of bias or unfairness on the part of the Chairperson in question. This Court is therefore not inclined to award such cost.

J. ORDER:

In the result, the following Order is made:

(i) The application for the urgent hearing of part A is dismissed with costs, due to a lack of urgency.
(ii) The application is dismissed with costs.



B CEYLON

Acting Judge of the High Court of South Africa

Gauteng Division

Pretoria

Hearing Date:	17 March 2021
Judgment Date:	20 June 2021

APPEARANCES:

For the Applicant:	Mr M Maake
Instructed by:	Masilo Maake Attorneys

	Pretoria
For the Respondent:	Adv JAL Pretorius
Instructed by:	Maponya Inc Attorneys
	Arcadia, Pretoria