


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NUMBER : 61844/2021

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE	YES / NO
(2) OF INTEREST TO OTHER JUDGES	YES / NO
(3) REVISED	
15/11/2022	
DATE	SIGNATURE

In the matter between:

THE MINISTER OF HEALTH

1st Applicant

**THE DIRECTOR-GENERAL NATIONAL
DEPARTMENT OF HEALTH**

2nd Applicant

and

SOLIDARITY TRADE UNION

1st Respondent

**THE LIONS OF SOUTH AFRICAN INDEPENDENT
PRACTITIONERS ASSOCIATION**

2nd Respondent

THE SOUTH AFRICAN PRIVATE

3rd Respondent

PRACTITIONER FORUM

BARBARA PRETORIUS

4th Respondent

CHRISTA ROLEEN

5th Respondent

BREAAN SPIES

6th Respondent

ANJA HEYNZ

7th Respondent

In re:

SOLIDARITY TRADE UNION AND SIX OTHERS

Applicants

and

MINISTER OF HEALTH AND TWO OTHERS

Respondents

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date for hand-down is deemed to be on 15 NOVEMBER 2022.

J U D G M E N T

VAN HEERDEN AJ

[1] When this matter commenced, this Court had the following *prima facie* concern, namely:

1. Can this Court hear an application for rescission where the subject judgment of such rescission i.e. the Bokakoa-Judgment, is currently

pending finalisation by virtue of the confirmation thereof in terms of section 167(5) of the Constitution, at the Constitutional Court.

[2] It was only during argument that this Court was made aware of the fact that the Constitutional Court, on 26 October 2022 issued the following Directions:

“1. The parties are directed to file written submissions of no more than 20 pages addressing the following issues:

(a) whether it is competent for the High Court to rescind its order of constitutional invalidity, where such an order has no force or effect in terms of section 172(2)(a) of the Constitution.

(b) whether it is in the interest of justice to grant the stay application where the respondents can raise, in answering affidavit in the confirmation proceedings in this court, (the Constitutional Court) the points they would have raised in the High Court.

2. Written submissions must be filed by

(a) the applicants, on/or before Wednesday, 2 November 2022; and

(b) the respondents, on/or before Wednesday, 9 November 2022.

3. Further directions may be issued.”

[3] This Court is of the view that it may not entertain the rescission application pending finalisation of either:

1. The current processes in terms of the Constitutional Court's Directions; and/or
2. The process as contemplated in section 167(5) of the Constitution.

COST

[4] This Court was only made aware of the Constitutional Court's Directives during argument on the day of the hearing.

[5] It would have assisted this Court greatly had it been made aware of the Constitutional Court's Directives earlier for purposes of which this Court could also have engaged the Constitutional Court in obtaining specific Directives in dealing with the current application, under these somewhat novel circumstances.

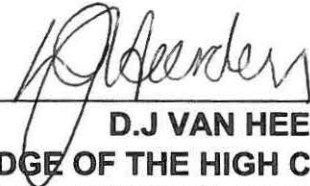
[6] Therefore, the respondents should not be out of pocket and can certainly not be blamed for the rescission application not proceeding. The applicants should as a result pay the cost.

[7] Accordingly the following order is made:

1. The matter is postponed *sine die* pending:
 - 1.1 finalisation of the processes pertaining to the Constitutional Court's Directives; and
 - 1.2 the process as contemplated in section 167(5) of the

Constitution.

2. The applicants are ordered to pay the cost.



D.J VAN HEERDEN
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES

For the applicants:

Adv ZZ Matebese SC
With him Adv NS Mteto
Instructed by: N Qongqo of the State Attorney, Pretoria

For the respondents:

Adv M Davel
Instructed by: SVS Attorneys

Date of hearing: 15 November 2022
Date of judgment: 15 November 2022