IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN CASE NO: D844/09

DATE: 18 DECEMBER 2009

Not Reportable/Reportable

In the matter between

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|---|---|
| The Health and Other Services Personnel Trade Union of South Africa ("HOSPERSA") | First Applicant |
| Khulumabakwaziwo Joseph Ntshangase | Second Applicant |
| Khombisile Maureen Hadebe | Third Applicant |
| Ncengimpilo Maureen Thabethe | Fourth Applicant |
| Nkosingiphile Gremmah Zondo | Fifth Applicant |
| Ntombifithi Doris Sangweni | Sixth Applicant |

And others

and

| | |
|---|---|
| The Member of the Executive Council Responsible For Health (KwaZulu-Natal) | First Respondent |
| Dr S Zungu N.O. | Second Respondent |
| D.T Memela N.O. | Third Respondent |
| M.O. Simelane N.O. | Fourth Respondent |

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JUDGMENT

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Pillay D, J

This is an urgent application for an interim order interdicting the respondents from changing the terms and conditions of employment of the seventh and further applicants and from implementing any steps to abolish the Simdlangetshe Health Sub-District and certain other relief.

The matter was before the Court on two previous occasions. The parties have since had an opportunity to exchange full pleadings and heads of argument. They have also had an opportunity to attempt to resolve the dispute through negotiation and mediation. The matter presented before the bargaining council twice since the last adjournment. However, the dispute remains unresolved and now ripe for this Court's determination.

In the interests of expeditious dispute resolution the Court is ready to determine the dispute finally. Consequently it is not necessary to consider whether the matter is urgent or not, given the ripeness of the matter for determination.

The background to the dispute is that initially the parties had engaged each other in the bargaining council about rationalising and restructuring the Simdlangetshe Health Sub-District. They had reached the point where they had agreed to integrate the sub-district with the Itshelejuba Hospital. On the respondent employer's version, the parties had agreed to continue engaging each other about how the integration would take place. Until that was done, the employer submits that it undertook not to transfer or relocate the employees. On the applicants' version, the employer had relocated and transferred employees contrary to an agreement not to do so. In the course of the interaction between the parties, the landlord where the sub-district office was accommodated refused to extend the lease on a

month-by-month basis and wanted to secure a three-year lease. The employer was not willing to commit to a three-year lease when the integration process was underway. As a result, the sub-district had to vacate the premises in October instead of the end of December as originally planned and agreed with the applicants. As a result, the employer did not conclude the consultative process and left the premises at short notice.

The applicants have since arranged with the landlord to hold the premises available to the employer pending this application and pending consultation amongst the parties. In the meantime, the employer has proceeded with the integration of the services provided by the sub-district with the hospital.

In terms of the integrated services, the employer does not rent alternative premises. It incurs the cost of transporting workers over 35 kilometres periodically from the area where the sub-district had been to the hospital. It has relocated supplies to a nursing home closer to the point of delivery of health services and arranged for medical supplies to be properly stored. The services, according to the employer, have not been interrupted.

That, then, is the background to the dispute. The applicants' concerns are fourfold: The first concern was the distance of 35 kilometres between where the sub-district had been and the hospital which the employees and also the community might have to travel for services. The second concern was the unilateral change in conditions of service and effectively the transfer of the employer from the sub-district to the hospital without proper consultation. The third concern as the high-handed manner in

which the employer effected the changes, in particular, Mr Blomkamp emphasised the employer's persistence in proceeding with the relocation despite this application being brought. Lastly, the adverse impact of the relocation on service delivery remains a concern.

In the opinion of the Court, the concerns about distance and transport for the employees have been addressed; the employer is providing transport for the workers whenever necessary. Furthermore, the employees do not have to travel every day to the hospital. Supplies have been relocated closer to the points where services have to be rendered for the convenience of employees and the community. On the applicants' own evidence there are district offices closer to the hospital and employees working closer to the hospital who are not adversely affected by the relocation.

In the circumstances, the Court is satisfied that the applicants' concerns about transport, which was not their primary concern, have been addressed.

Regarding their second concern about unilateral changes in the terms and conditions of service, the Court is less concerned with form than with the substance of the dispute. The employer has conceded that it did not complete the consultation process. To that extent the Court has given direction as to how the consultation process can be advanced before the bargaining council, which will be seized with conciliating or arbitrating the dispute. Insofar as the functions of the employees have changed as a result of the relocation and integration, that is one of the matters that the parties must continue to consult on with a view to placing the employees whose conditions have changed appropriately within the administration and

remunerated appropriately according to the posts to which they are assigned or reassigned.

As regards the third concern, namely the high-handed manner in which the employer has conducted itself, the employer was caught between a rock and a hard place with the precipitous cancellation of the lease agreement. If its conduct was at all high-handed, the applicants have certainly brought it to heel in this application.

As regards the last concern which the applicants allege is their primary concern, namely, the interruption or adverse impact on service delivery, the Court has trawled through the applicants' papers in search for better information on how service delivery is impaired by the relocation. Regrettably, it has not found any, or sufficient evidence to establish how service delivery would be impaired by the relocation and integration of services.

On a reading of the papers as a whole, the applicants' preoccupation is with their self-interest rather than the interests of the community. This is understandable, considering that they are employees who are keen to protect their interests; however, from the perspective of the Court the interests of all concerned must be taken into account, with primacy given to the community and the public interest.

In these circumstances, the Court finds that the balance of convenience favours the refusal of the interdict. However, that is not the end of the matter. As indicated to the parties the Court intends to give directions on the further pursuit of this matter. The direction of the Court is tendered purely as guidance to the parties when they ventilate the dispute at the

bargaining council.

In developing the guidance, the Court places the delivery of services at the forefront of resolving the dispute. To that end, the employer is directed to provide the applicants with the following information:

(a) The cost of maintaining the status quo;

(b) The cost of rendering services pursuant to the integration and relocation;

(c) Evidence of the positive and negative impact on the delivery of services;

(d) A full account of how services are rendered after the integration and relocation.

This information and any other information material to resolving the dispute should be given to the applicants at least 30 days before the bargaining council hearing. The applicants are free to verify the information it receives from the employer; the Court emphasises that the concern is the delivery of services to the community. To the extent that that is impaired, the parties are directed to engage each other with a view to improving services.

In concluding that the balance of convenience favours the dismissal of the application, the Court takes into account that most of the workers are already reporting to the hospital or tendering services and are supervised via the hospital. It also takes into account that the sub-district office was principally an administrative centre with minimum supervision from the hospital. The integration now requires greater supervision from the hospital over the administrators of the centre and the services they render to the community.

The employees at the sub-district have lost their independence or autonomy to administer themselves. This may be the underlying but true cause of the tensions. The parties should recognise this as a possible source of the resistance to the changes, rather than the impact on service delivery and address it appropriately. In the circumstances, the APPLICATION IS DISMISSED WITH NO ORDER AS TO COSTS.

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Pillay D, J

Date of Editing: 25 February 2010

Appearances:

For the Applicant: Adv PJ Blompkamp instructed by L Cain Attorneys

For the Respondent: Adv JI Henriques instructed by State Attorney

# TRANSCRIBER'S CERTIFICATE

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## HOSPERSA AND OTHERS v DEPARTMENT OF HEALTH KZN

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# REPUBLIC OF SOUTH AFRICA

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**HOSPERSA AND OTHERS**

**versus**

**DEPARTMENT OF HEALTH KZN AND OTHERS**

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**BEFORE THE HONOURABLE MADAM JUSTICE PILLAY**

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ON BEHALF OF APPLICANT : MR P BLOMKAMP

ON BEHALF OF RESPONDENT : MS HENDRICKS

**REPORT ON RECORDING**

Clear recording.

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