

IN THE HIGH COURT OF LESOTHO

In the matter between:

DR. DOMITILLA KOKUTEKELEZA MUSOKE

APPLICANT

and

**LESOTHO MEDICAL DENTAL AND PHARMACY
COUNCIL**

RESPONDENT

JUDGEMENT

**Delivered by the Honourable Chief Justice, Mr Justice J.L. Kheola
on the 2nd day of March, 1998**

This is an application for an order in the following terms:

1. Dispensing with the forms and the periods of service of this Application on the grounds of its urgency.
2. That the Respondent be ordered and compelled by this Honourable Court, to consider the Applicant's Application, without delay, as ordered by the Appeal Court, within a specific period of be determined by this Honourable Court and to immediately enter or cause to be entered, her name in the Register as permanently registered in terms of section 14 of the **Medical, Dental and Pharmacy Order of 1970** as amended from

time to time.

3. That the Respondent be ordered to pay costs of this Application on Attorney and Client scale.
4. Granting such further and/or alternative relief as the above Honourable Court may deem it fit.”

Most of the facts in this application are common cause and they are as follows:

1. It is common cause that the parties in this application have previously been involved in protracted litigation starting from 1993
2. That litigation culminated in C. of A. (CIV) No.28/96 of the Court of Appeal whose order reads as follows:
 - “2.1 The first respondent is ordered forthwith to consider the applicant’s registration as a medical practitioner in terms of section 14 (as amended) of Order 13 of 1970, read with section 16 thereof.
 - 2.2 The respondents are ordered jointly and severally to pay the costs of the two applications for condonation, and any wasted costs related to the scheduled hearing in January 1997.
 - 2.3 The respondents are ordered to pay jointly and severally the applicant’s costs of suit in respect of the application (including the hearings of 7 and 25 September 1995) and two-thirds of her costs on appeal (other than those specified in 2).”
3. The judgment of the Court of Appeal was delivered on the 20th June, 1997.
4. Following the above judgment the applicant lodged her application for

permanent registration on the 7th July, 1997.

5. It is common cause that until the 1st December, 1997 when the applicant instituted the present application the respondent had not informed the applicant what it was doing with her application.

In her founding affidavit the applicant alleges that the respondent has no good reasons to delay considering her application and enter her name into the permanent register. The applicant has brought this application on urgent basis because the fact that she has not been registered in the permanent register is a handicap to her normal practice as a professional and to her patients as they cannot get medical aid benefits. The applicant has applied to be professionally covered by insurance, but her application has been unsuccessful because she has no registration certificate as proof that she is a registered medical practitioner.

In its answering affidavit deposed to by Dr. Lepoqo Jonathan Molapo who is the President of the respondent, it is alleged that on the 5th November, 1997 the Council of the respondent convened a meeting at which the applicant's application was considered. The matter was postponed to the 10th December, 1997 to enable members to read the Appeal Court judgment.

It is further alleged that according to the provisions of the Medical, Dental and Pharmacy Order 1970 section 9 the Council is supposed to meet twice a year and the first meeting had been held some time in February 1997. As a result the Council only sits at the beginning of the year and at the end, unless there is a special meeting.

The first issue is whether the applicant's application was an urgent matter requiring the

respondent to hold a special meeting in terms of the law. There can be no doubt that the matter was extremely urgent not only because the order of the Court of Appeal was clear that the applicant's application should be considered forthwith or without any delay or at once, but also because the applicant was disabled to get an insurance cover because she was not permanently registered as a medical doctor. For the same reason her patients suffered certain disadvantages.

The judgement of the Court of Appeal was delivered on the 20th June, 1997. The respondent and its members did not read the judgment until the 4th November 1997 i.e. some 4½ months later when the meeting was postponed to the 10th December to enable members to read it. The respondent was obviously defying the order of the Court of Appeal by not considering her application forthwith or without delay . It cannot reasonably be concluded that by considering the application about five months after the judgment was delivered that that was forthwith. It was considered after an inordinate delay.

It is correct that meetings of the respondent are held twice a year unless a special meeting is convened. The President of the respondent made no attempt to hold a special meeting. When an urgent matter arises five months before the holding of the normal meeting he cannot sit back and say that there is nothing he can do. He could have written to all members and suggested that there was an urgent need for the holding of a special meeting in order to consider applicant's application. I am of the view that by not making arrangements for the holding of a special meeting of the respondent the President was actually failing to comply with the order of the Court of Appeal. He cannot be heard to say he made arrangement for the consideration of the applicant's application for permanent registration forthwith after the judgment was delivered.


The delay of five months was too long and altogether unreasonable.

The respondent filed its answering affidavit on the 11th December, 1997 but it decided not to tell the applicant what the outcome of her application was which had been considered on the previous day the 10th December, 1997. Its counsel attempted to give evidence from the bar to explain what transpired on the 10th December, 1997, but his evidence was unacceptable. He ought to have filed a supplementary answering affidavit.

It seems to me that the applicant was entitled to launch this application because a delay of about five months was clear proof that the respondent was not prepared to comply with the order of the Court of Appeal which required it to consider her application forthwith.

In the result the Court makes the following order:

1. The respondent is ordered to consider the applicant's application within thirty (30) days of this order and to immediately inform the applicant of the outcome of her application.
2. The respondent is ordered to pay the costs of this application on the attorney and client scale.


J.L. KHEOLA
CHIEF JUSTICE
2nd February, 1998.

For Applicant - Mr. Mphalane
For Respondent - Mr. Matoane