

**IN THE COURT OF APPEAL OF LESOTHO**

**HELD AT MASERU**

**C OF A (CIV) NO. 22/2022**

**CIV/APN/37/2021**

In the matter between-

**REGISTRAR, LESOTHO MEDICAL, DENTAL**

**AND PHARMACY COUNCIL  
APPELLANT**

**1<sup>st</sup>**

**LESOTHO MEDICAL, DENTAL**

**AND PHARMACY COUNCIL  
APPELLANT**

**2<sup>nd</sup>**

and

**MICHAEL ILUNGA YANGINDU  
RESPONDENT**

**CORAM:** P MUSONDA AJA  
M H CHINHENGO AJA  
J VAN DER WESTHUIZEN AJA

**HEARD:** 18 OCTOBER 2022

**DELIVERED:** 11 NOVEMBER 2022

***SUMMARY***

*An order by a competent court, with jurisdiction, may not simply be ignored as null and void because it is perceived to be wrong in law,*

*or requiring unlawful action. Options like appealing and rescission are available. The High Court has jurisdiction to hear an application that a party who failed to comply with the order must be held in contempt of court. The party in whose favour the order was granted has standing to approach the court with a contempt application. The legal impossibility to comply with an order is a defence in contempt proceedings. In this case the order was complied with.*

## **JUDGMENT**

**P MUSONDA, AJA; J VAN DER WESTHUIZEN, AJA:**

### **Introduction**

[1] This is an appeal against a High Court judgment by Hlaele J. The Court held the appellants (the Registrar of the Lesotho Medical, Dental and Pharmacy Council and the Council) in contempt of court for disobeying an earlier High Court order. That order reflected a settlement between the respondent (Dr Michael Ilunga Yangindu) and the appellants. As the applicant in the court *a quo*, Dr Yangindu successfully initiated contempt proceedings against the Council and its Registrar.

[2] The issues raised in the appeal include questions regarding jurisdiction; *locus standi*; the interpretation of the above-mentioned order; and how to deal with a court order that is perceived to compel a party subject to that order to act unlawfully.

## **Factual and litigation history**

[3] The appellants regulate the medical, dental and pharmacy professions in Lesotho. They have the power to register and deregister members of these professions. The respondent is a medical doctor, stationed at Queen 'Mamohato Hospital. As a foreigner from the Democratic Republic of Congo, he came to Lesotho in 2013, after he had graduated at the University of Kinshasa in 2005 and obtained his Master's degree at the same institution in 2009. He was initially registered by the appellants as a General Practitioner, but in 2018 he was registered by them as an Internal Medicine Specialist. The respondents undertook verification procedures, as statutorily imposed on them<sup>1</sup>.

[4] Shortly after the registration as an Internal Medical Specialist, the registration was revoked by the appellants, resulting in the doctor being deregistered as an Internal Medicine Specialist. He, however, retained his registration status as a General Medical Practitioner. He alleged that such downgrading was done without him being heard. So, he applied to the High Court to review the decision to deregister him.

[5] The review application resulted in a negotiated settlement between the parties. This was encapsulated in a final court order, by consent, dated 16 March 2022. It stated:

*“The deed of settlement filed of record by the parties is hereby made an order of court in the following terms:*

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<sup>1</sup> The Medical, Dental and Pharmacy Council Order, 1970 (MDPC Order)

*(1) The Respondents shall, upon renewal of the Applicant's certificate, re-register the Applicant as an Internal Medicine Specialist and issue the applicant with a certificate to that effect.*

*(2) The respondents shall not interfere with the Applicant's status and or conduct of his profession except by due process of the law.*

*(3) No order as to costs."*

[6] This order (especially (2)) was the subject matter of the contempt proceedings in the court below. The facts alluded to above are common cause.

## **The High Court**

*The applicant*

[7] As the applicant in the High Court, Dr Yangindu averred that after obtaining the court order, he attempted to renew his certificate as an Internal Medicine Specialist. He was informed that the certificate could not be renewed. The refusal resulted from an instruction by the Council.

[8] He argued that the failure by the appellants to renew his certificate and to re-register him as an Internal Medicine Specialist was an act of contempt regarding the earlier court order. He therefore pleaded that the High Court direct the Registrar to appear before the Court to show cause why she should not be committed for sixty days to jail for contempt of court. An order for costs on attorney and client scale was also prayed for.

## *The respondents*

[9] The first respondent in the High Court averred that, as the Registrar of the Council, she was the custodian of all records of medical practitioners in Lesotho<sup>2</sup>. The function of the second respondent, the Council, was to regulate the practice of the medical professionals<sup>3</sup>.

[10] As a point *in limine* the respondents submitted that the Court did not have jurisdiction to hear the matter, because by doing so it would usurp the Council's powers.

[11] Another preliminary point raised by them, was that the applicant lacked *locus standi*, because his academic credentials did not meet the required standards set by the relevant Regulations. Standing could furthermore not be based on an unlawful court order, according to the respondents in that Court.

[12] As to compliance with the order, the respondents' case was:

*“Neither the 1<sup>st</sup> nor 2<sup>nd</sup> Respondent can be held in contempt of Court for in reality, when the order was made it was a mistake common to the two parties. No legal right or legitimate claim can flow from an evidently compromised order as expressed above”.<sup>4</sup>*

[13] The order was labelled as a “mistake”, because under sections 14 and 16 of the Medical, Dental and Pharmacy Council Act 13 of 1970 (as amended) the Council had the right to deal with

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<sup>2</sup> Section 12 of the MDPC Order

<sup>3</sup> Section 3 of the MDP Order

<sup>4</sup> Para 3.8 of the founding affidavit

registrations. The doctor did not qualify to be a fully-fledged medical practitioner, but only to work as an intern. This was because the university from which he obtained his medical degrees was not one of the universities recognised in the Regulations.

[14] He thus was not qualified to be registered as a General Practitioner, which was a prerequisite for being registered as an Internal Medicine Specialist. He should not have been allowed to practice as either a General Practitioner, or an Internal Medicine Specialist. His initial registration as a General Practitioner was invalid. The Council realized this only after his registration as a General Practitioner and, in fact, after the court order, based on the settlement, had been issued.

[15] According to the respondents in the court *a quo* the relevant court order was *pro non scripto*, and, as such, not enforceable. The respondents thus conceived a collateral attack against contempt proceedings. They did not appeal the order.

### *The judgment*

[16] The learned judge in the High Court perceived the issues to be decided as follows:

- (1) Was the order of 16 March 2022 lawful or not; and was it enforceable?
- (2) Can the order be the basis of contempt proceedings?

(3) Did the High Court have jurisdiction to entertain the relief sought?

(4) Did the applicant have *locus standi*?

[17] As to jurisdiction, the High Court acknowledged that the renewal and registration process vested in the Registrar and not in the Court. However, the Court may exercise jurisdiction in review proceedings based on legally tenable grounds.

[18] The High Court relied on Lord Diplock's statement in *Breines Vulkan Schiffbau und Maschinenfabrik v South India Shipping Corporation Ltd*<sup>5</sup>:

*"The general power to control its own procedure so as to prevent being used to achieve injustice. It applies to an almost limitless set of circumstances. There are four general categories for its use, namely to:*

- a. Ensure convenience and fairness in legal proceedings;*
- b. Prevent steps being taken that would render judicial proceedings ineffective,*
- c. Prevent abuses of process."*

[19] The High Court's strongly held view was that if a court cannot enforce its own orders, or is unable to take steps to prevent judicial proceedings being rendered ineffective, its inherent jurisdiction would be reduced to nothing. The High Court's inherent jurisdiction

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<sup>5</sup> A 3076/2016/2017 ZAGPTH 279 (28/3/2017)

is spelled out in the Constitution<sup>6</sup>. The Court indeed had jurisdiction to hear the contempt proceedings, the Judge concluded.

[20] As to *locus standi*, the High Court cited *Gross and Others v Pentz*<sup>7</sup>, in which Harms J said that-

*“the question of locus standi is in a sense a procedural matter, but it is also a matter of substance. It concerns the sufficiency and directness of litigation in order to be accepted as a litigating party.”*

[21] The Court found that the doctor’s *locus standi* flowed directly from the very fact that he had obtained an order by the court. He had the responsibility as well as the right to ensure that the order was complied with. Even if the order were indeed *pro non scripto*, that on its own would not vitiate his *locus standi* in contempt proceedings. As long as an order has not been set aside, it must be complied with. As the applicant in the contempt proceedings, the respondent, Dr Yangindu, had *locus standi* - so the Court decided.

[22] The High Court interrogated the question whether the order of 16 March 2022 was lawful and enforceable, within the context of the essence of and requirements for contempt of court. This, the Judge did with reference to multiple decisions.

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<sup>6</sup> Section 119(1) provides that “the High Court has unlimited original jurisdiction to hear and determine any civil or criminal proceeding and the power to review the decisions or proceedings of any subordinate or inferior court,... board or officer exercising judicial, quasi-judicial or public administrative functions under any law and such jurisdiction and powers as may be conferred on it by this constitution or by or under any other law”.

<sup>7</sup> (1996) ZASCA 78 22 August 1996) at 632 .



[23] In the Namibian case of *Veronica Lotteryman (previously Trump, born Cronje) v Fredrick James Lotteryman and Others*<sup>8</sup> Geier J held:

*“It is indeed well established that an applicant for contempt on this basis must show that an order was granted against the respondent and that the respondent was either served with the order or was informed of the grounds of the order against him and could have no reasonable ground disbelieving the information and that the respondent had either disobeyed it or had neglected to comply with it.*

[24] In another Namibian case, *Aegams Data (Pty) Ltd and Others v Sebata Municipal Solution (Pty) Ltd*<sup>9</sup>, Muller J said:

*“Our law is clear that a litigant cannot opt out against an existing Court order or an act. This is commonly referred to as the doctrine of “dirty hands” or “clean hands”. This doctrine has been considered in old English cases and the ratio is “purge first and argue later”. In this context of an existing law or Court order it means that until such time as that law or Court order had been set aside it must be complied with. It is irrelevant that the law or Court order may be unconstitutional or wrong.”*

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<sup>8</sup> Case No 2293/09

<sup>9</sup> CC No 27 and 28/2018

[25] On the definition and purpose of contempt, the High Court cited *Coetzee v Government of the Republic of South Africa*<sup>10</sup> Sachs J said:

*“In order to give their rulings and decisions legal force, Courts of law are armed with the power to order that one who acts contemptuously against such by disregarding them to purge, such contempt. Failure to purge attracts dire consequences such as incarceration. It is a mechanism which has since received a stamp of approval stating that it complies with the principles of constitutionalism notably the rule of law in that it maintains the dignity and authority of the Courts as well as their capacity to carry out their functions, should always be maintained.”*

[26] Relying on case law, the High Court held that the Applicant must prove –

- (1) the existence of the order;
- (2) that the order was served on or brought to the notice of the alleged contemtor;
- (3) non-compliance with the order; and
- (4) that the non-compliance was willful and *mala fide*, thus deliberate defiance of the order.

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<sup>10</sup> CC No 19/1994; 1995(4) SA 631 (CC)

[27] On the interpretation of the order at the centre of these proceedings, the High Court quoted *Firestone South Africa (Pty) Ltd Genticuno v AG*<sup>11</sup>:

*'The basic principles applicable to the construction of documents also apply to the construction of a Court's judgement or order. The Court's intention is to be ascertained primarily from the language of the judgement or order as construed according to usual well-known rules.'*

[28] The High Court found that nowhere did the Court order the Registrar to register the doctor without due process. The words "upon renewal" presuppose that the renewal shall be as a result of the process envisaged in the Regulations and statute governing the respondents. This is as opposed to an order which would read "the respondents are directed to renew...." The intention of the order, ascertained from contextual meaning, charged the appellants to adhere to their Regulations. According to section 16 of the MDPC Order the Council may refuse registration.

[29] The Registrar is the custodian of the laws that govern the Council. The respondents in the High Court could not be heard to be saying that they do not know the legal procedure or due process outlined by their Regulations in relation to objecting to renewal of licenses. To make matters worse, the order that they are contemptuous against is a negotiated order. They thus had full control of the wording and the desired outcome inserting a legal

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<sup>11</sup> 1977 (4) SA 298 (A) at 304 D-H.

protection against a directive by the Court to register the applicant without due process.

[30] The High Court found that there had been willful and *mala fide* non-compliance with the order. The order could have been appealed against. Blatant non-compliance was not acceptable. The Court ordered the Council and its Registrar to purge the contempt within 30 days.

### **This Court**

[31] Aggrieved by the order, they noted an appeal to this Court, based on five grounds of appeal:

- (1) The High Court erroneously rejected the collateral attack staged by the respondents,
- (2) It erroneously concluded that it had jurisdiction to enforce an order that was *pro non scripto*.
- (3) The Court erroneously concluded the applicant had *locus standi* to enforce the orders which were a product of the order which was by 'concession' erroneous
- (4) It misinterpreted the order that had been granted by consent, which resulted in the erroneous finding of contempt.
- (5) The Court erroneously concluded that there was *mala fide* and that facts pleaded exhibited proof of contempt beyond reasonable doubt of being in contempt

### *Submissions*

[32] Before this Court the parties essentially presented the same arguments that had been submitted to the High Court. The appellants argued that the order was unlawful, null and void and not enforceable. Thus the High Court had no jurisdiction to enforce it and the respondent no standing to apply to the Court. According to the respondent, the possible invalidity of his initial registration as a General Practitioner had no influence on the validity of the order.

### *Jurisdiction*

[33] Mainly for the reasons stated by the High Court, based on the case law it referred to, it correctly found that it did indeed have jurisdiction. The argument that assuming jurisdiction in a case like this would amount to the court usurping the powers of the appellants is quite absurd. The Council and its Registrar are subject to the law, as set out in the legislation creating and governing them, as well as the legal principals of administrative justice. They are not above the law.

[34] Courts are constitutionally mandated to uphold the law. A significant part of their case load consists of applications for the review of decisions by public functionaries. In this capacity the respondent approached the High Court to review the appellants' decision to de-register him as an Internal Medicine Specialist. Rightly so, the appellants did not then object to the High Court's jurisdiction. Instead, they agreed that the order at the center of this matter be made by the Court.

[35] Who then, other than the Court, is responsible for ensuring compliance with an order of the Court? Courts have been approached with contempt applications over ages. Sometimes state agencies like the police are cited, so that they can assist with enforcement.

### *Standing*

[36] Similarly, the High Court correctly found that the respondent, as the applicant in that Court, had *locus standi*. The reasons put forward by the High Court and the authority it relied on support its finding. It is difficult to conceive that someone with a court order in her or his pocket would not have standing to approach that court, when the order is not complied with. Who else would have standing? It is wholly unthinkable that *locus standi* could depend on the perception of those responsible for executing the order of its correctness or otherwise. The appellants' argument in this regard resulted from their submission that the order was *pro non scripto*. This is dealt with below.

### *How should litigants deal with an "unlawful" order?*

[37] Because of the nature of humankind, the role of law in society and the way litigation is conducted, very many orders made by courts of law are regarded by those on the receiving end as wrong. Are they entitled simply to regard those orders as *pro non scripto*, never having been written, not issued, in fact non-existent, destined for the trash can - and certainly not to be heeded? The mere thought is not only legally and logically flawed, but extremely

dangerous for the ideal of the rule of law and for basic order and peace in a society.

[38] All respectable legal systems allow for an appeal to a higher court against any order that is regarded as wrong by a party to the litigation from which the order emanated. Sometimes different interpretations of the applicable law and the order itself play a role. Simply to disregard the order is not an option. No litigant has the choice whether to comply with or obey an order, based on one's judgment on how good or bad the order is.

[39] Some orders are more clearly wrong than others. If a court orders a parent to kill a child to save it from hunger, it would be clear that the order mandates unlawful conduct, because murder is a crime. Should the parent somehow be charged with contempt of court for not having killed the child, the fact that a serious crime was required to be committed would render compliance with the order legally impossible will be a valid defence. This is a crude example though. Many orders which are regarded as legally improper or unjustified, are not that blatant.

[40] Orders also sometimes result from fairly innocent mistakes. For example, default judgment may be given against someone who is absent from court, perhaps because he or she got lost and is in a different courtroom at that time, but then appears 20 minutes later to apologise and explain their absence. In such cases an appeal would be unnecessarily cumbersome. Therefore the rules of courts in several jurisdictions provide for the rescission of an order which

was sought or granted by way of an obvious error. Once again, simply ignoring the order is not an option available to the litigant who was absent.

[41] Assuming that the appellants are correct that the order of 16 March 2022 was legally impossible to comply with, one or more of the above avenues could and should have been utilized. The order may not just be disregarded as if it was never made.

[42] In *Department of Transport v Tasima (Pty) Ltd*<sup>12</sup> Khampepe J stated on behalf of the Constitutional Court of South Africa:

*“Allowing parties to ignore Court orders would shake the foundations of the law and compromise the status and constitutional mandate of the Courts. The duty to obey Court orders is the stanchion around which a State founded on the Supremacy of the Constitution and the rule of law is built.”*

At para [186] she continued:

*“The essence of contempt lies in violating the dignity, repute or authority of the Court. By disobeying multiple orders issued by the High Court, the department and the corporation ... violated the Court’s dignity, repute and authority of the judiciary in general.”*

[43] The power of courts to punish non-compliance of their orders is thus linked to the severe consequences of disobedience. In *Marabe v Maseru Magistrate Court*<sup>13</sup> the following was said:

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<sup>12</sup>(2016) ZACC 39 2017 2 SA 622.

<sup>13</sup>Constitutional Case No 18/2020.



*“The authority of the judiciary to enforce compliance with its orders by imprisonment is inherent from its constitutional role as the guardian of the Constitution underpinned by the rule of law. Disobedience of orders of Courts strike at the very heart of the rule of law .... Hence the Constitution grants power to the Courts to punish any private or State-actor adjudged guilty of disobeying a Court order and to secure compliance with legal obligations.”*

[44] In support of their view to the contrary, the appellants relied on the South African decision of *NGP v Motala*<sup>14</sup>, in which the Supreme Court of Appeal stated:

*“In my view ... Kruger AJ was not empowered to issue and therefore it was incompetent for him to have issued the order that he did. The learned Judge had usurped for himself a power that he did not have. That power had been expressly left to the Master by the Act. His order was therefore a nullity. In acting as he did, Kruger AJ served to defeat the provisions of a statutory enactment. It is after all a fundamental principle of our law that a thing done contrary to a direct prohibition at law is void and of no force and effect (*Schierhout v Minister of Justice 1926AD 99 at 109*). Being a nullity a pronouncement to that effect was unnecessary. Nor did it first have to be set aside by a Court of equal standing”.*

[45] Too wide an interpretation of *Motala* must be guarded against. In that matter Kruger AJ made an appointment, which in terms of the Companies Act 61 of 1973 was the duty and prerogative of the

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<sup>14</sup> 172/11 (2011) ZASCA 238

Master of the Supreme Court. The court had no authority to do it. *Motala* is distinguishable from the present case. The authority of the High Court is not in dispute. It was accepted by the parties before it. The effect of the order is in dispute, because of alleged impossibility to comply with it without breaking the law.

[46] This matter is also distinguishable from *Lewis*<sup>15</sup>. The order was not made against a party who was not cited in the proceedings.

[47] During oral argument counsel for the appellants conceded that the appellants should have taken the order on appeal. The High Court correctly referred to options such as appeal and rejected the appellants' submission that the order could be ignored. It is not easy to imagine an order by a properly constituted and authorized court, with jurisdiction, being *pro non scripto*.

*Was the order unlawful?*

[48] But, the above may not be decisive in this case. Was the order indeed unlawful? Did it demand the legally impossible from the appellants?

[49] It seems clear that the respondent was not entitled to be registered even as a fully-fledged medical doctor and as a Medical Practitioner, because of the fact that he had received his qualifications from a university not recognised by the law of Lesotho. This Court was referred to our decision in *Lerotholi v Registrar of Lesotho Medical, Dental and Pharmacy Council and*

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<sup>15</sup>*Lewis Marks v Middel* 1904 TS 291 at 303.

*Other*<sup>16</sup>. It dealt with a litigant who had acquired academic credentials from a university that was not recognized in the Regulations, as in the instant case. The Court discussed the procedure which such an individual had to follow in order to be recognized in terms of the statutory prescriptions.

[50] Therefore the appellants could not without more re-register him as an Internal Medicine Specialist.

[51] But, is that really what the order compelled the appellants to do? As indicated above, the High Court focused on the words “upon renewal of the Applicant’s certificate” and concluded that the order was lawful.

[52] The High Court wanted to rebut the submissions by the appellants that enforcement of the order would encroach on their powers and duties and compel them to discard their legally prescribed procedures. The Court found that because of the above-mentioned wording, this was not the case. The Court found the appellants to be in contempt.

[53] Perhaps there is a simpler route, based on the interpretation of the order. The respondent initially approached the Court because his registration as an Internal Medical Specialist had been revoked. He was still a registered General Practitioner. His status as a General Practitioner was not in issue. He wanted to work as an Internal Medicine Specialist and to be re-registered as such. That is

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<sup>16</sup> LAC (1990-1994) 75

what he pleaded with the Court to order. The settlement was reached on that basis.

[54] So, the Court ordered the Council and its Registrar to do just that - “re-register (him) as an Internal Medicine Specialist”, no less and no more. The appellants were neither ordered to register him, nor to renew his registration, as a General Practitioner. The “upon renewal of (his) certificate” phrase probably refers to his registration as a General Practitioner, seeing that this appears in the order before the instruction to re-register him as an Internal Medicine Specialist. It does not constitute an order to renew his certificate as a General Practitioner, because this is not what he asked the Court for in the first place.

[55] The “upon renewal” phrase indicates the time or stage of proceedings when he had to be re-registered as an Internal Medical Specialist, namely *when* his certificate as a General Practitioner was renewed. It could also be construed as a condition, in other words, *if* his certificate as a General Practitioner is renewed. This interpretation would correspond with the legal position, namely that one has to be a General Practitioner in order to become an Internal Medicine Specialist. It would also not contradict the statutory duties of the appellants.

[56] On this interpretation, the order would neither be unlawful, nor expect the legally impossible from the appellants. They had to go through the process of renewal of his certificate as a Medical Practitioner; and if successful, thereupon re-register the doctor as

an Internal Specialist. If the renewal of the Medical Practitioner certificate does not happen, it would be the end of the matter. In such a case re-registration as an Internal Medical Specialist does not have to follow and indeed cannot follow.

[57] From the appellants' submission that the order was "a mistake", it would appear that the above interpretation is not what they had in mind at the time of the settlement. Their subjective intention, based on ignorance of or disregard of the legal position, could not outweigh the wording of the order though. This approach accords with the *Firestone* decision referred to above.

[58] It could also be argued that, if the order is capable of different interpretations, the one that favours the legality of the order should prevail over one that would render the order to be unlawful or nonsensical. Courts can hopefully be presumed to make lawful enforceable orders.

*Were the appellants in contempt?*

[59] As indicated by the authorities referred to above, the power of courts to punish contempt of court has for long been part of our law. The term 'contempt of court' is of ancient origin, having been used in England certainly since the thirteenth century and perhaps earlier. It is based not on any exaggerated notion of the dignity of judges, witnesses or others, but on the duty of preventing any attempt to interfere with the administration of justice<sup>17</sup>.

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<sup>17</sup> Order 52/1/2 Rules of the Supreme Court of England 1999.

[60] The order being lawful, were the appellants in contempt? The High Court concluded that the order was lawful; and held them in contempt. What were the appellants supposed to do in order not to be in contempt? This is not entirely clear from the High Court's judgment. They could not have successfully appealed an order with which there is nothing wrong. What the High Court might have had in mind, was that the appellants should have embarked on a due process to determine whether the respondent was entitled to be registered as a General Practitioner; followed thereafter by looking at his possible re-registration as an Internal Medicine Specialist.

[61] However, they indeed attended to the renewal of Dr Yangindu's certificate to work as a General Practitioner. They concluded that this could not be done, because the university where he had qualified was not on their list of approved institutions. Following from that, he could not be re-registered as an Internal Medicine Specialist. This is not in contravention of the order, but in accordance with it. The appellants did not realise that they had not failed to comply with the order. Thus they embarked on bizarre and dangerous arguments, such as that the order had to be regarded as *pro non scripto* and ignored. They were not in contempt though.

[62] Should the above interpretation of the order be too semantic and thus unconvincing, and the order indeed demanded the legally impossible, the age-old Latin maxim, which is part of the common law, would apply: *Lex not cogit ad impossibilia; impossibilia nulla est obligatio* - the law does not compel or expect the

impossible. In this case we are dealing with legal rather than physical impossibility. The same principle applies.

[63] Either way, the appellants were not in contempt of court. In finding that they were, the High Court erred. The appeal must succeed.

### **Costs**

[64] In this case costs should not follow the result in the High Court as well as in this Court. The appellants are responsible for much of the confusion and disagreement. They agreed to the order of 16 March 2022. According to them, they did so by mistake. Then they embarked on a calamitous path of arguing that they were entitled to ignore the order, instead of trying to interpret the order in a way that would render it lawful and meaningful, or to appeal or apply for rescission if they regarded it as wrong in law or the result of a mistake.

### **Order**

[65] The following is ordered:

(1) The appeal is upheld.

(2) The order of the High Court is set aside and replaced with the following:

(a) The application is dismissed.

(b) There is no order as to costs.

(3) There is no order as to costs in this Court.



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**P MUSONDA**  
**ACTING JUSTICE OF APPEAL**

I agree



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**J VAN DER WESTHUIZEN**  
**ACTING JUSTICE OF APPEAL**

I agree:



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**M H CHIHENGO**  
**ACTING JUSTICE OF APPEAL**



**For the Appellants:** Adv MS Rasekoai  
Adv J Rampai

**For the Respondent:** Adv L Masoeu