DRAGANA DJORDJEVIC
versus
THE CHAIRMAN OF THE PRACTICE CONTROL COMMITTEE OF THE MEDICAL AND DENTAL PRACTITIONERS COUNCIL OF ZIMBABWE
and
THE REGISTRAR OF THE MEDICAL AND DENTAL PRACTITIONERS COUNCIL OF ZIMBABWE

HIGH COURT OF ZIMBABWE
MAKONI J
HARARE, 25 March 2009 and 28 September 2009

H Zhou (SC), for the applicant
G Mamvura, for the respondent

MAKONI J: The applicant seeks a declaratory order to the effect that the applicant is entitled to the issue of an unrestricted practicing certificate permitting her to practice as a specialist obstetrician and gynecologist. She also seeks consequential relief that the respondents issue her with unrestricted practicing certificate permitting her to practice as a specialist obstetrician and gynecologist and costs of suit.

The background facts are that the applicant is a Yogoslavian citizen. She has a residence permit which permits her to remain in Zimbabwe indefinitely. On 8 February 2000,the applicant applied for provisional registration as a medical practitioner and specialist registration as a obstetrician and gynecologist. She was duly registered on 7 August 2001 with the practicing certificate restricting her practice to a government central hospital. She commenced work at Parirenyatwa Hospital. The applicant then took unpaid leave from 29 July 2002 to 28 February 2003. To check what happened to the 2001 registration.

In April 2005 the applicant applied for re-registration on the provisional register. This was approved in May 2005 subject to her obtaining a post of senior registrar obstetrician and gynecologist working in government hospital under the supervision of a specialist gynecologist.. In February 2006 the applicant wrote to the first respondent requesting re-registration as approved in May 2005. She attached confirmation of an offer of employment by

Parirenyatwa group of hospitals. She was duly registered on the provisional register with effect from 23 February 2006 for a period of three years.

In January 2008, the applicant applied for the issue of an unrestricted practicing certificate. The application was not approved. The applicant then filed the present application.

In its opposing papers, the first respondent raised a point *in limine* that the applicant had not exhausted the domestic remedies available to her before approaching the court.

I will deal with this point first.

Mr *Mamvura* for the respondents submitted that in terms of s 22 of the Health Professions Act [*Cap 27*:*19*] ("the Act"), any person who is aggrieved by any decision taken in regard to him by Council, may appeal against the decision to the Authority within thirty days after being informed of the decision.

Section 123 of the Act provides for an appeall from the Authority to this court.

It was further submitted that the appeal procedure was capable of affording the applicant effective redress. No special circumstances or reasons were advanced by the applicant for approaching this court. The applicant ought to have exhausted the domestic remedies available to her under the domestic legislation.

Advocate Zhou submitted that the point raised *in limine* is without merit and ought to be dismissed. (For this reason he dealt with it at the end). He said that this court has already stated in *McGown* v *Health Professions Council* 1994 (1) 86 H that in such disputes as the present one, the procedure for an appeal does not apply.

He further submitted that in an application for a declaratory order, `such an order will be granted even if some other form of relief is available.

In my view, the *McGown* case, *supra*, can be distinguished from the present matter. In that matter SMITH J, when he made the remark that "the applicant does not have a right of appeal against the condition imposed by the PCC", he was dealing with the provisions of the now repealed Medical, Dental and Allied Professions Act [*Cap 244*]. That Act did not provide a procedure for an appeal where a person had a condition imposed by the PCC. The repealed Act did not have a provision similar to s 22 (1) of the Act which provides for an appeal to lie to the Health Professions Authority of Zimbabwe ("the Authority") by any person who is aggrieved by any decision taken in regard to him by a Council. It did not also provide for an appeal to the High Court whereas the Act further provides for an appeal to lie to this court were any person is aggrieved by a decision of the Authority. See s 128 (1).

In my view, the appeal procedure is available to the applicant as such a procedure is available in terms of the Act to any person aggrieved by any decision taken in regard to him (the underlining is my own emphasis)

The applicant has decided to approach the court rather than proceed by way of domestic remedies provided for in the Act. It has been laid down in a number of cases that were domestic remedies are capable of providing effective redress in respect of the complaint, a litigant should exhaust the domestic remedies themselves unless there are good reasons for not doing so. See *Girjac Services Private Limited* v *Mudzingwa* 1990 (1) ZLR 243 S at 247. The same approach was adopted in *Masunda* v *Chairperson of Cresta Lodge Disciplinary and Grievance Committee* HH 115-94 (not reported) and *Moyo* v *Forestry Commission* 1996 (1) ZLR 173 (H) at 191 D – 192 B.

The applicant did not advance in her founding papers, good reasons for not pursuing the domestic remedies available to her. However it was submitted on her behalf that a declaratory order will be granted even if some other form of relief is available. See *Jansen* v *AFC* 1995 (1) ZLR 63 H at 74 H to 75 A. In that case the point was also made that the merits of each case constitute one of the circumstances of the matter to which regard must be paid before a declaratory order is issued.

In *casu* the applicant seeks a declaratory order to the effect that she is entitled to an unrestricted practicing certificate. The nature of the relief being sought by the applicant is such that she is asking me to substitute my own decision for that of the first respondent. It has been held in these courts that a court will not interfere in the sphere of practical administration. See *Director of Civil Aviation* v *Hall* 1990 (2) 354 (S) at 361 E. There are issues which, in my view can, best be revolved by the administrative structure provided for in the Act.

In my view there are disputes of fact which this court cannot resolve. They would require the expertise provided for in the Act. In para 13 to her founding affidavit the applicant disputes that she remains registered on the provisional register of medical practitioners. She refers to annexure C to disprove the respondents averments. This court cannot say whether registration on the specialist register is the same as registration on the permanent register. The court does not know what to do with the fact that during the period of the applicant's initial registration on the provisional register, she was absent without leave for a certain period. Such issues can best be dealt with by the domestic remedies provided for in the Act.

In view of the above, I am not able to grant to the applicant the relief that she seeks. The Health Professions Authority is capable of providing effective redress in respect of the applicant's complaint. She ought to have exhausted the domestic remedies available to her under the domestic legislation.

In the result the point *in limine* is upheld.

Accordingly, the application is dismissed with costs.

Gill Godlonton & Gerrans, applicant's legal practitioners

Scanlen & Holderness, respondents' legal practitioners