



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

CASE NO 116/2018

HELD AT MBABANE

In the matter between:

SIPHO CYPRIAN MOHALE

APPLICANT

And

THE SWAZILAND MEDICAL & DENTAL COUNCIL

1st RESPONDENT

THE REGISTRAR OF THE SWAZILAND MEDICAL

AND DENTAL COUNCIL

2nd RESPONDENT

THE ATTORNEY GENERAL

3rd RESPONDENT

Neutral Citation: *Syphon Cyprian Mohale v The Swaziland Medical & Dental Council and 3 Others [116/2018][2018] SZHC 16 (16 February, 2018)*

Coram: LANGWENYA J

Heard: 2 February 2018, 12 February 2018

Delivered: 16 February 2018

Summary: *Administrative law-Medical/student intern contracted to do internship for sixty-eight weeks effective March 2017 by the first respondent-On 29 January 2018 internship unilaterally cancelled by the first respondent-Respondents plead error and misrepresentation by applicant-Audi alteram partem rule not adhered to by the respondents-First respondent a body created by statute and its exercise of public power regulated by statute- Before public body can exercise public power in a way that adversely affects an individual it should afford the individual a right*

to be heard-failure to act in accordance with the twin concepts of audi alteram partem and procedural fairness renders decision nugatory.

JUDGMENT

INTRODUCTION

[1] On 2 February 2018 the applicant filed of record an urgent application against the respondents. The application was asking for an order in the following terms:

1. Dispensing with the usual time limits, procedures and manner of service provided for in the Rules of the Court and hearing the matter as one of urgency;
2. Condoning the applicant for non-compliance with the said Rules;
3. Reviewing and setting aside the decision of the first respondent discontinuing the applicant's internship at the Mbabane Government Hospital;
4. Pending finalization of prayer 3 above, directing that the applicant proceeds with his internship at the Mbabane Government Hospital;

5. Costs in the event of unsuccessful opposition;

6. Further and/or alternative relief.

BACKGROUND

[2] The applicant is a male adult of thirty eight years old and is presently enrolled at Shenyang Medical College, China and holds a bachelor of nursing degree.

[3] In September 2012 the applicant enrolled at Shenyang Medical College, China for a Bachelor of Medicine and a Bachelor of Surgery (MBBS). In accordance with the requirements of his degree, the applicant has to undergo an internship for sixty-eight (68) weeks in a teaching hospital.

[4] In January 2017, the applicant applied to carry out his student internship with the first respondent and was successful as he was given a provisional certificate of registration in March 2017. He was subsequently posted at the Mbabane Government Hospital. The applicant has continuously worked as an intern from 6 March 2017 until 29 January 2018 when his internship was

abruptly, if unilaterally stopped by the first and second respondents. It should be observed that in December 2017, the applicant was awarded a certificate of appreciation by the Mbabane Government Hospital. This certificate was signed among others, by the Director of Health Services.

URGENCY

[5] In my view, and not in so many words, the applicant has demonstrated that this application is urgent. The applicant found urgency in the fact that the unlawful discontinuance of his internship has infringed his right to procedurally fair, reasonable and lawful administrative action with the consequential precipitation of emotional stress if he is unable to complete his internship.

RESPONDENTS' AVERMENTS

[6] The respondents aver, among others, that they discontinued the applicant's internship because it was granted in error; that the applicant is not a holder of a degree in Medicine as such he is not entitled to be registered as a medical intern; that it was a grave error so to register the applicant- an error

that was occasioned by ‘operational challenges¹’ within Council; that the applicant misrepresented himself as a graduate awaiting his certificate at the time of his registration as a medical intern; and that in the absence of a qualification in medicine, the applicant cannot carry out his internship as this would place the patients’ lives in danger.

[7] I am, however unable to find that a qualified nurse, who is now a student intern and works under the able, expert supervision of experienced medical practitioners is a danger to patients. I am also unable to find that a qualified nurse and intern who only in December 2017 was given a certificate of commendation signed by none other than a Director of Medical Health, among others, is a danger to patients’ lives².

The following factors are not in dispute:

[8] That the applicant is an undergraduate student enrolled at Shenyang Medical College since 2012; that he applied to carry out a student’s internship with

¹ See Dr Priyan Mahaliyana Dissanayake’s supplementary affidavit, paragraph 8 where it is stated ‘[T]he error in registering the applicant is not only deeply regretted but the respondent also seeks condonation from this Honourable Court based on the fact that at the time the applicant was registered, the Council had operational challenges in that there was no full time Registrar and the Registrar at the time was also performing a dual role as she is an employee at the Ministry of Health as Deputy Director of Health Services...’

² See Annexure ‘D’ a certificate of appreciation awarded to the applicant and signed by the Director of Health Services; Senior Medical Officer and the CME Coordinator.

the first respondent in January 2017 and was allowed to do so by the first and second respondents; that the applicant worked continuously at the Mbabane Government Hospital as an intern from March 2017 until January 2018 when his internship was unilaterally cancelled by the respondents; that in December 2017, the applicant was awarded a certificate of appreciation by the Mbabane Government Hospital; and that the applicant is a qualified nurse who holds a Bachelor's degree in nursing³.

APPLICATION FOR INTERNSHIP: A RESTATEMENT

[9] As earlier stated, in January 2017, the applicant applied to be allowed to do his student internship with the first respondent and the application was granted. He was given a provisional certificate of registration. From the applicant's documents to the first respondent it is clear that he sought to be allowed to do his student internship and not a postgraduate internship. I refer, hereunder to the contents of annexure 'A', 'B' and 'F'.

[10] Annexure 'A' is a provisional certificate written on the letter heads of Shenyang Medical College and provides as follows:

³ See Dr Velephi Okello's supporting affidavit, paragraph 10.

*“This is to certify that **Mr. Mohale Cyprian Sipho** studied as an undergraduate student in Bachelor of Medicine and Bachelor of Surgery (MBBS) from September 2012 at school of international Education, Shenyang Medical College. He has **completed all the courses with required results** according to the teaching plan of school of international education, Shenyang Medical College. **On submission of the compulsory internship document the student** will be awarded with final degree. (my emphasis)”*

[11] The provisional certificate from Shenyang Medical College has a student number and a passport number of the applicant.

[12] Annexure ‘B’ is a letter from Professor Wang Huiwen, Director of Shenyang Medical College and states as follows:

Dear Sir/Madam,

TO WHOM IT MAY CONCERN

I write to introduce to you Mr./Miss MOHALE CYPRIAN SIPHO, a

*student of Shenyang Medical College. He/She is pursuing a medical course in our College for 6 years since 2012. He/She wishes to do his/her internship in a teaching hospital outside China for about **68 weeks** from **January 18, 2017 to May 20, 2018.** (my emphasis)*

Attached to this letter is a provisional plan for his/her internship

The student is of good conduct, ready to study and cooperative.

Counting on your co-operation.

[13] *Annexure 'F' is a letter from the Director of Shenyang Medical College dated 3 January 2017 and states as follows:*

Subject: Invitation for Giving Graduation examination and Attending the Graduation Ceremony in SMC

Dear MOHALE CYPRIAN SIPHO,

Greetings from Shenyang Medical College.

I am glad to inform you that we are going to give the graduation examination and hold a ceremony for 2012 batch of foreign students in Shenyang Medical College during June, 2018.

You are kindly required to witness the great moment in Shenyang Medical College before May 20, 2018.

P.S. Your parents are also welcome if they want to come and join in the ceremony.

[14] A reading of the documents presented by the applicant to the first respondent shows that the applicant is still enrolled as a student at Shenyang Medical College; that he has completed all the courses with required results and that in accordance with the teaching plan of Shenyang Medical College, the applicant has to submit proof that he has completed his internship⁴ on the basis of which he will be awarded his final degree. In other words, the completion of internship is a condition precedent to the applicant getting his medical qualification. I can therefore find no substance in respondents' argument that the applicant misrepresented facts to them and 'presented himself as one who had completed his studies and was just awaiting his graduation certificate⁵'. How such a candid and full disclosure (through the documents submitted) by the applicant has been misconstrued as that of a

⁴ See annexure 'A' where it is stated 'According to the teaching plan of school of international Education, Shenyang Medical College, on submission of the compulsory internship document the student will be awarded with final degree'.

⁵ See, second respondent's supporting affidavit, paragraph 8.

post graduate candidate escapes me.

[15] According to Fouche⁶, '*misrepresentation is a false statement...of facts, made before conclusion of the contract by one party to the other party with the intention to persuade the latter to conclude the contract*'.

[16] Even if the applicant had misrepresented facts verbally (which I find he did not), *in casu* the contract of internship would have become voidable and the respondents had a choice between enforcing or cancelling the contract of internship⁷. A voidable agreement must be considered as being valid, giving rise to rights and obligations, until such time as the misled party sets it aside. Even in cancelling the agreement, the first respondent being a body established by statute has to adhere to the rules of natural justice, the *audi alteram partem* rule being one of them.

ADMINISTRATIVE LAW POSITION OF THE SMDC

[17] The first respondent is a public entity established by statute⁸ and therefore

⁶ Fouche, M.A *et al* *Legal Principles of Contracts and Commercial Law*, LexisNexis Butterworths, Durban, sixth edition, 2004 page 61.

⁷ Setting aside the contract of internship would mean *restitution in integrum*. This means that both parties must be returned to the position which they were before the conclusion of the contract.

⁸ See The Medical and Dental Practitioners Act, 1970, section 3

operates under statutory authority. The first respondent's power to allow the applicant to register for internship predicates a correlative power to discontinue the applicant's internship. The respondent's decision to discontinue the applicant's internship involves the exercise of public power. The power to discontinue the internship is sourced in a statutory provision.

[18] Because the power to register applicant's internship is statutory and is not an *incidental* arising from the contract of internship it is implicit that the correlative power to discontinue the internship is also statutory. Consequently, the discontinuance of the applicant's internship amounts to administrative action as envisaged by section 33 of the Constitution⁹ and renders the first respondent's decision susceptible to administrative review.

[19] It is an established principle in our law that an administrative body such as the Swaziland Medical Dental Council (SMDC) may, in a proper case, be bound to give a person who is adversely affected by its decision the

⁹ Section 33(1) of the Constitution of Swaziland Act 1/2005 provides that '[A] person appearing before any administrative authority has a right to be heard and to be treated justly and fairly in accordance with the requirements imposed by law including the requirements of fundamental justice or fairness and has a right to apply to a court of law in respect of any decision taken against that person with which that person is aggrieved.

opportunity to make representations. This will be the case if it can be shown that the other party (in *casu* the applicant) has some right or interest or some legitimate expectation of which it would not be fair to deprive him without a hearing¹⁰.

LEGITIMATE EXPECTATION: A RESTATEMENT

[20] The principle of legitimate expectation is based on the duty of an administrative body to act fairly when making an administrative decision which adversely affects an individual. Such a body must observe the principles of natural justice. In the case of *Administrator, Transvaal and Others v Traub and Others*¹¹ the Court said the following:

“When a statute empowers a public official or body to give a decision prejudicially affecting an individual in his or her liberty or property or existing rights, the latter has a right **to be heard before the decision is taken unless the statute expressly or by implication states the contrary**’ (my emphasis).”

¹⁰ Refer to *Hlatshwayo v Swaziland Government and Another* [2007] SZIC 2 (01 January 2007) Industrial Court judgment; *Joel Lukhele v Principal Secretary-Ministry of Agriculture and Co-operatives and another* High court case No. 3022/1999 (unreported); *Nonhlanhla Mzileni v Commissioner of Customs and Excise and 2 others* Industrial Court case No. 371/2004 (unreported); see also *Schmid v Secretary of State for Home Affairs* 1996 (2) CH 149 (CA); and *Administrator Transvaal v Traub* 1989 (10) ILJ 823 (A)

¹¹ [1989] ZASCA 90; 1989 (4) SA 731 (A)

[21] From the above authorities, it is clear that a public organ such as the first respondent which derives its authority from a statute to conclude an agreement of internship with the applicant and a correlative authority to discontinue internships, has a statutory obligation to afford the applicant a pre-dismissal hearing in accordance with the precepts of the *audi alteram partem* rule.

EVALUATION OF THE EVIDENCE

[22] In this matter, it is common cause that the applicant's internship was discontinued on 29 January 2018 by a letter addressed to the directorate of Health signed by the Registrar of the SMDC. The letter was not copied to the applicant. According to the respondents' supporting affidavit the letter was given to the applicant by Dr. Okello. The aim was so the applicant could discuss its contents with the Registrar and to try to map a way forward. This happened after a decision adverse to the applicant had been taken. I am not persuaded by respondents' version of events coming late as it did in the supporting affidavit and not in the answering affidavit.

[23] Dr. Okello states that the applicant misrepresented certain information to her

and presented himself as someone who had completed his studies in medicine. How the applicant misrepresented himself is, to me unclear. I am not persuaded that the applicant so misrepresented himself. This I say because the certificate and documents filed by the applicant when he applied for internship are clear that the applicant is not a graduate yet.

[24] It is Dr Okello's version that she called the applicant in January 2018 to ask him to furnish her with his graduation certificate. How this request could be made eleven months after the applicant had, through his certificate and letters from his College, shown that completion of his internship was a condition precedent to him graduating in June 2018, escapes me. I am unable to comprehend what discussions between the applicant and Dr Okello at the application for internship stage would supersede the documentary evidence being annexures 'A', 'B' and 'F'. The documents presented by the applicant were readily accessible to the respondents. In fact it was on the basis of the documents submitted that he was granted internship. The failure of the respondents to do due diligence before registering applicant's internship cannot be imputed on the applicant, but in my view, it could only be attributed to extreme slackness or negligence on the part of the respondents. Such slackness or negligence should not

prejudice the applicant.

[25] The respondents have deposed to affidavits confirming that the discontinuance of the applicant's internship was predicated upon the resolutions made by the Board of the first respondent. The discontinuance of the internship was effected even though there was no letter from the respondents addressed to the applicant informing him that his internship has been discontinued.

[26] What I am dealing with here is quintessentially a matter of procedural fairness in administrative action. Annexure 'E1' is the letter discontinuing the applicant's internship and it reads as follows:

Discontinuation of Medical Internship; Mr. Siphon Cyprian Mohale

Mr. Siphon Cyprian Mohale has been an undergraduate student from Shenyang Medical College of China/International Division enrolled for a degree of MBBS, from September 2012, for a six year degree program.

He was sent back to Swaziland, with a 'provisional certificate' indicating

that he still has to fulfill another sixty-two weeks of clinical attachments, in order for him to achieve and complete the requirements for the actual degree in Medicine.

Since he has yet to finish the Undergraduate clinical attachments (some countries categorize this as undergraduate student Internship), he cannot be categorized as a post graduate medical intern without obtaining the actual medical degree.

Our reference is The ‘Medical and Dental Practitioners Act of 1970, Section 6 (1) regarding medical internship training and section 19 regarding the person entitled or licensed as medical practitioners.

The incident has been carefully considered by the Swaziland Medical and Dental Council Board, on the 14th of January 2018, and it came up with the resolution that,

- 1. Mr. Siphon Cyprian Mohale should be considered as an undergraduate student intern and NOT a post graduate medical intern.***

- 2. He should be relieved of the duties of a post graduate medical intern immediately.***

3. *The final two years of clinical attachment of the Medical and Dental undergraduates degrees should be done under careful and close supervision by the faculty/University and the university should be responsible for the end product.*
4. *A 62 week clinical attachment outside the faculty will raise questions against the standards of training by the university.*
5. *Mr. Mohale must return to the (sic) Sheng Yang University/China, and complete the degree requirements and furnish SMDC with a degree certificate to revoke his status. (My emphasis)*

The letter is signed by Dr. Priyani Mahaliyana Dissanayake who is the Registrar of SMDC.

[27] The applicant's prayer that this Court reviews and sets aside the decision of the first respondent discontinuing the applicant's internship at the Mbabane Government Hospital is predicated on the twin concepts of *audi alteram partem* (hear the other party) and procedural fairness.

[28] The *audi alteram partem* rule is recognized as part of rules of natural justice and it refers to the right of every person to be **consulted or heard** before a decision or step is taken that affects or may affect such person. Put differently, the *audi alteram partem* rule says no person should be condemned unheard.

[29] Procedural fairness on the other hand ‘*is concerned with giving people an opportunity to participate in the decisions that will affect them and- crucially-a chance of influencing the outcome of those decisions. Such participation is a safeguard that not only signals respect for the dignity and worth of the participants, but is also likely to improve the quality and rationality of administrative decision making and to enhance its legitimacy*¹²’.

[30] Expanding on the right to notice and the opportunity to be heard, **Halsbury’s Laws of England** says the following:

“*The rule that no person is to be condemned unless that person has been given prior notice of the allegations against him and a fair opportunity to be*

¹² *Joseph and Others v City of Johannesburg and Others* 2010 (4) SA 55.

heard (the *audi alteram partem* rule) is a fundamental principle of justice. This rule has been refined and adapted to govern the proceedings of bodies other than judicial tribunals; and a duty to act in conformity with the rule has been imposed by the common law on administrative bodies not required by statute or contract to conduct themselves in a manner analogous to a court. Moreover, even in the absence of any charge, the severity of the impact of an administrative decision on the interests of an individual may suffice in itself to attract a duty to comply with this rule... However, the nature of an inquiry or a provisional decision may be such as to give rise to a reasonable expectation that persons prejudicially affected should be afforded an opportunity to put their case at that stage; and it may be unfair not to require the inquiry to be conducted in a judicial spirit if its outcome is likely to expose a person to a legal hazard or other substantial prejudice. The circumstances in which the rule will apply cannot be exhaustively defined, but they embrace a wide range of situations in which acts or decisions have civil consequences for individuals by directly affecting their interests or legitimate expectations¹³.

[31] With the passing of the Constitution which enshrines a Bill of Rights, procedural fairness is now a constitutional requirement in administrative action. The requirement of procedural fairness goes further than the traditional meaning of the duty to afford one an opportunity of being heard. Even

¹³ *Halsbury's Laws of England* Judicial Review, Volume 61 (2010) 5th edition, paragraph 639

in cases such as the one *in casu* where the statute establishing the SDMC does not expressly provide that a person must be heard before a decision that adversely affects his rights is made, the Swaziland Medical and Dental Council must act fairly.

[32] In the present case, and in particular the respondent's answering affidavit, does not address the applicant's lamentation of being condemned unheard. This, in my view is telling. The first and second respondents are entrusted with taking administrative decisions which affect the rights of people such as the applicant. For the respondents to have closed themselves in their office and by way of fiat discontinue the applicant's internship without procedurally hearing the applicant's version and without indicating how the decision to discontinue applicant's internship was arrived at- whether by tossing a coin or otherwise - leaves the applicant speculating about the manner in which the determination was made. Such conduct by the respondents is anything but fair. In my view, it is important that the power given to the Swaziland Medical and Dental Council ought to be properly exercised and not abused. In a more forthright and eloquent manner Professor Sir William Wade says the following:-

“The powers of public authorities are...essentially different from those of private persons. A man making a Will, may subject to any right of his dependants dispose of his property just as he may wish. He may act out of malice or a spirit of revenge, but in law this does not affect his exercise of his power. In the same way a private person has an absolute power to allow whom he likes to use his land...regardless of his motives. This is unfettered discretion. But a public authority may do none of these things unless it acts **reasonably and in good faith and upon lawful and relevant grounds of public interest.** The whole conception of unfettered discretion, is inappropriate to a public authority which possesses powers solely in order that it may use them for the public good. But for public bodies the rule is opposite and so of another character altogether. It is that any action to be taken must be justified by positive law. **A public body has no heritage of legal rights which it enjoys for its own sake, at every turn, all of its dealings constitute the fulfilment of duties which it owes to others; indeed, it exists for no other purpose...** But in every such instance, and no doubt many others where a public body asserts claims or defences in court, it does so, if it acts in good faith, only to vindicate the better performances of the duties for whose merit it exists. It is in this sense that it has no rights of its own, no axe to grind beyond its public responsibility, a

*responsibility which defines its purpose and justifies its existence,
under our law that is true of every public body. This rule is necessary
in order to protect the people from arbitrary interference by those
set in power over them...'(my emphasis)."*

[33] From the above, it can be said that statutory bodies such as the Swaziland Medical and Dental Council must conduct their proceedings in a manner that will be just to all parties. Failure to do so is an invitation to this Court to interfere and ensure that justice is done.

[34] It was submitted on behalf of the respondents that in January 2018 Dr. Okello enquired from the applicant about the latter's graduation certificate. It was submitted on behalf of the respondents that the applicant asked Dr. Okello to bear with him as he had worked hard to 'accumulate enough days to go back to China to finish up his studies and graduate sometime this year (2018).' The applicant, through his legal representative denied that he was ever called by Dr. Okello (now a Deputy Director) to discuss the issue of his certificate prior to the time he was told that his internship had been discontinued.

[35] The Registrar deposed to both the answering and the supplementary affidavits on behalf of the respondents and makes no reference to a meeting between Dr. Okello and the applicant. The Registrar makes no reference to the ‘referral’ by Dr. Okello of the applicant to the Registrar’s office so that a way forward could be mapped. It is unclear as it is not stated why this crucial information was not deposed to in an answering affidavit as that would have allowed the applicant to respond there to. What is clear is the obfuscation of the issues by the deputy Director. It is telling that the Deputy Director does not say when in January 2018 she met with the applicant to enquire about his graduation certificate; she is clear, however that on receipt of correspondence from Council (annexture ‘E1’) she called the applicant to discuss the letter.

[36] The discontinuation of applicant’s internship was considered and resolutions made thereon on 14 January 2018. Annexure ‘E1’ is dated 29 January 2018-the date on which the applicant was informed about the discontinuation of his medical internship. If the Deputy Director’s version is to be believed, it is inconceivable that the applicant would rest on his laurels and not act to have the matter addressed soon after his first meeting with the Deputy Director. It was in the applicant’s best interests to

act timeously to have the matter addressed. For the above reasons, I am not persuaded that the applicant was engaged by the respondents prior to his medical internship being discontinued by the respondents.

[37] It was argued further on behalf of the respondents that the applicant was afforded a hearing in terms of section 21 of the *Medical and Dental Practitioners Act, 1970* which provides:

‘[21](1) A person aggrieved by-

- (a) The refusal of the Council to register him or any degree, diploma, or certificate in terms of this Act; or*
- (b) The erasure from the Register of his name or of any degree, diploma, certificate or other particular which he maintains he is entitled to have entered in the Register;*

May within one month from the date of the notification by the Registrar to him of the refusal under paragraph (a) or of the erasure under paragraph (b) require the Registrar to state in writing the Council’s reasons for such refusal or erasure as the case may be, and the said reasons shall be supplied to such person by the Registrar within fourteen days of receipt by the Registrar of a request for such reasons.

(2) A person may within one month from the date of the dispatch by the Registrar to him of the reasons referred to in subsection (1), apply to the High Court for the relief referred to subsection (3).

(3) The High Court may either dismiss the application or, if it is of the opinion that the Council has not acted in accordance with the provisions of this Act, make an order for the entering in the Register of the applicant's name or of any particular as aforesaid, or may remit the matter to the Council for further consideration, or make such other order, including an order as to costs, as to it may seem just.

(38) The contents of this section are self-explanatory. The section deals with appeals against refusal to register as medical practitioner or dentist. The section does not deal with affording a party a hearing before an adverse decision which affects him is taken. The section deals with affording a person a hearing at the proceedings *post* de-registration- and not with giving a person a hearing prior to de-registration. Also, this section is confined to the registration of medical practitioners or dentists. The applicant falls in neither of these categories. It is my considered view that Section 21 does not

apply to the case *in casu* for the reason that the Swaziland Medical Council Board resolved to discontinue the applicant's medical internship without so much as consulting and hearing the applicant **before** the resolutions adversely affecting the applicant were taken; much against the rules of natural justice.

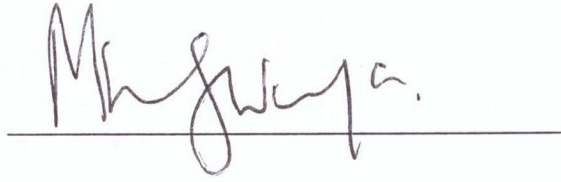
[39] In my view, the manner in which the applicant's internship was abruptly discontinued is not characterized by hallmarks infused with notions of basic tenets of justice and fairness. Bereft of any embellishment, the conduct of the first respondent's Board to discontinue the applicant's internship without consulting and affording the applicant a hearing offends the notion of one's sense of justice and fairness. For this reason, the decision of the first respondent discontinuing the applicant's internship at the Mbabane Government Hospital is reviewed and set aside.

ORDER

[40] I accordingly make the following order:

1. The usual time limits, procedures and manner of service in terms of the

- Rules of this Court is dispensed with and the matter is deemed to be urgent.
2. The applicant's non-compliance with the Rules of this Court in relation to order number 1 is condoned.
 3. The decision of the first respondent discontinuing the applicant's internship at the Mbabane Government Hospital is reviewed and set aside.
 4. The applicant should continue with his internship at the Mbabane Government Hospital.
 5. Costs to follow the result.

A handwritten signature in black ink, appearing to read 'M. Langwenya J.', is written over a solid horizontal line.

M. LANGWENYA J.

For Applicant : Ms. N. Ndlangamandla

For Respondents : Mr. Z. Shabangu