



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY

JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 9 October 2025

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal.

The IPA Foundation (NPC) v South African Pharmacy Council (1024/2023) [2025] ZASCA 148 (9 October 2025)

Today, the Supreme Court of Appeal (the SCA) dismissed the appeal by the appellant, the Independent Practitioners Association Foundation (the IPA), against certain orders of the Gauteng Division of the High Court, Pretoria (the high court). The court dismissed its application to set aside two decisions of the respondent, the South African Pharmacy Council (the SAPC).

The IPA is a non-profit company that is wholly owned and controlled by its members, who are family medical practitioners in private practice. The SAPC is a statutory body and regulator of the pharmacy profession, established in terms of s 2 of the Pharmacy Act 53 of 1974 (the Pharmacy Act).

The IPA challenged the SAPC's implementation of PIMART. PIMART is a government-initiated intervention, in terms of which accredited pharmacists are permitted to administer first-line therapy for the treatment and management of HIV/AIDS. To receive PIMART accreditation, practising pharmacists would need to undertake supplementary training. Upon completing such training, pharmacists would need to apply for a PIMART permit, which would be issued by the Director-General under s 22A(15) of the Medicines Act.

The implementation of PIMART required amendments to the Pharmacy Act to expand the scope of practice for specifically qualified pharmacists providing PIMART services. Such pharmacists would be able to, among other things, conduct consultations with HIV patients at a pharmacy or at an approved healthcare setting. PIMART was in response to the ever-rising rates of HIV infections, despite earlier interventions. Pharmacists were identified as being well-positioned to provide the first line of HIV therapy.

On 22 March 2021, the SAPC published Board Notice 71 of 2021 (Board Notice 71) in the *Government Gazette* (the *Gazette*), inviting interested parties and stakeholders to submit substantiated comments or representations concerning PIMART within 60 days of publication. The prescribed notice period ended on 21 May 2021. It is common ground that the IPA did not submit any comments within the specified period. It submitted its comments well after the prescribed period, and after the publication of the board notice through which PIMART was implemented. However, the SAPC received comments from interested parties within the required period, all of which, in principle, supported the implementation of PIMART.

On 13 August 2021, the SAPC published in the *Gazette* Board Notice 101 of 2021 (Board Notice 101). This notice outlined: (a) the implementation of PIMART services; (b) the competency standards for such pharmacists; and (c) the criteria for approving a curriculum for a PIMART course.

The IPA argued that the publication of Board Notice 71 did not provide sufficient notice to its members because: (a) it was issued at an inconvenient time when members were busy dealing with the COVID-19 pandemic; and (b) it was only published in the *Government Gazette*, a publication that, according to the IPA, is not generally read. Therefore, the IPA claimed that the publication of Board Notice 71 was procedurally unfair in terms of s 3 of the PAJA. Substantively, the IPA argued that the SAPC's decision to implement PIMART was not rationally connected to the purpose for which it was adopted, and violated various provisions of s 6(2) of the Promotion of Administrative Justice Act 3 of 2000 (the PAJA).

Regarding procedural fairness, the high court found that the SAPC had provided sufficient notice of its intention to adopt PIMART; that the nature and purpose of PIMART were clearly explained; and that the IPA and other interested parties were given a reasonable opportunity to comment or make representations. The high court therefore concluded that the SAPC's administrative action was procedurally fair.

As to the substantive grounds of review under s 6(2) of the PAJA, the high court held that the decision to utilise PIT as a vehicle for PIMART and to enable adequately trained pharmacists to provide PIMART services was rationally connected to: (a) the purpose for which it was made; (b) the information before the SAPC; and (c) the reasons given by the SAPC. The high court found that this decision was rationally connected to the SAPC's objectives to assist in the fight against HIV/AIDS. On these grounds, the high court dismissed the IPA's review application.

On appeal in the SCA, the IPA persisted with its contentions advanced in the high court. It also complained that the high court had impermissibly struck out certain supporting affidavits attached to its replying affidavit.

In a unanimous judgment written by Makgoka JA (Nicholls, Hughes and Unterhalter JJA and Chili AJA concurring), the SCA identified the issues for determination as being whether:

- (a) the high court correctly granted the SAPC's strike-out application;
- (b) the IPA had standing to bring the application;
- (c) the publication of Board Notice 71 was procedurally fair;
- (d) the introduction of PIMART was rational, generally, and in terms of s 6 of the PAJA.

As to the strike-out application, the SCA affirmed the trite principle that an applicant must stand or fall by the averments made in its founding affidavit. It agreed with the high court that the IPA had sought to impermissibly make out a new case in the replying affidavit.

Regarding the IPA's standing, the SAPC had contended that s 3(1) of the PAJA required the IPA to show that Board Notice 101 affects the rights or legitimate expectations of its members and, consequently, lacked standing if it fails to show this. The SCA disagreed. It explained the reach of s 3(1) of the PAJA, with reference to the jurisprudence of the Constitutional Court, and held that where review of public power is challenged under the PAJA, a broad approach to standing under s 38 of the Constitution should apply. Because PIMART concerned public health, specifically focused on increasing access to therapy for people living with HIV/AIDS, it impacted the field in which the IPA's members operate. It was therefore necessary and in the interests of the administration of justice to subject PIMART's conceptualisation and implementation to judicial scrutiny at the instance of the IPA, given the impact of PIMART upon the professional work conducted by the members of the IPA. The SCA accordingly concluded that the IPA had the necessary standing to challenge the implementation of PIMART.

Concerning procedural fairness, the SCA noted that, despite the timing of the notice (during the COVID-19 lockdown), other interested parties were able to review and comment on its contents. There was therefore no reason advanced why the IPA could not do so.

The SCA concluded that the SAPC had demonstrated procedural fairness by publishing Board Notice 71 for public comment within 60 days. The process included adequate notice and an opportunity for stakeholders to participate, meeting the requirements of procedural fairness under s 3 of the PAJA.

The IPA's other complaint about the publication of Board Notice 71 was that it was only published in the *Gazette* and on the SAPC's website. It contended that it should have been widely published. The SCA found that the SAPC was statutorily required by s 49(4) of the Pharmacy Act to publish Board Notice 71 in the *Gazette*. To the extent it did, the SAPC fulfilled its statutory obligation, and there was no further legal requirement. The SCA therefore concluded that the SAPC adhered to procedural fairness.

The SCA turned to the IPA's rationality challenge. It was considered against this background. Despite previous efforts to reduce new HIV infections, new infection rates remained high. As a result, the Department of Health decided to involve pharmacists, among other medical professionals, because their accessibility allows them to deliver first-line HIV treatment, particularly in rural areas. This accessibility was critical, as the unchallenged evidence before the Court was that millions of people in the rural areas of South Africa remain undiagnosed and untreated for HIV.

The SCA concluded that PIMART was thus a crucial intervention in the public interest, devised by a group of medical experts. These included the HIV Clinicians Society, a team of healthcare professionals heavily involved in caring for and treating people living with HIV/AIDS. Moreover, the SCA concluded, its development involved designing specialised training programmes for pharmacists to enable them to provide PIMART services.

Thus, through PIMART, the SAPC aimed to improve access to healthcare for HIV first-line treatment, given the inadequacy of previous initiatives. PIMART was rationally connected to that objective, as it promotes the right to access healthcare and supports the fight against HIV. Therefore, contrary to the IPA's contentions, PIMART is an essential intervention in the fight against HIV/AIDS. Its introduction constitutes a rational legislative and practical measure

within the competence of the SAPC as an organ of the State in enhancing access to healthcare for HIV treatment, in fulfilment of the State's obligation under s 27(2) of the Constitution. The SCA concluded that these were legitimate and compelling public interests and, accordingly, rational. On these grounds, the SCA found no merit in the IPA's submissions on rationality.

The SCA also considered the IPA's grounds of rationality under s 6(2) of the PAJA. The IPA had emphasised the distinct professional domains of pharmacists and medical doctors as regulated by the Pharmacy Act and the Health Professions Act, respectively. It argued that the decision to implement PIMART was not authorised by the empowering provisions of these Acts, thereby breaching s 6(2)(e)(i). The IPA contended that PIMART would impermissibly encroach upon the professional domain of medical practitioners.

The SCA rejected these submissions and pointed out that, as the fight against HIV/AIDS was a collaborative effort involving various health professionals, medical practitioners do not have exclusive rights to care for people living with HIV/AIDS. PIMART's scope is limited and applies only to accredited pharmacists. It is restricted to prevention, first-line antiretroviral therapy, and the initiation of TB-preventative therapy for uncomplicated, non-immunocompromised HIV-positive individuals, in accordance with the department's guidelines. Thus, the introduction of PIMART will not alter the scope of practice of medical practitioners involved in treating HIV/AIDS.

The IPA also contended that the implementation of PIMART conflicted with existing legislation, namely, the Medicines Act and the Health Professions Act, in violation of s 6(2)(f)(i). According to the IPA, the effect of these statutes is that pharmacists are not authorised to diagnose or treat diseases. It argued that they neither possess the clinical training and experience to initiate and manage a patient on HIV/AIDS therapy, nor the clinical expertise to monitor the patient's outcomes.

Ordinarily, pharmacists are not authorised to prescribe medicines under schedules 3, 4 and 5, based on s 22A of the Medicines Act. The section provides for control of medicines, scheduled substances, medical devices and *in vitro* diagnostics. In terms of s 22A(4), pharmacists may only offer schedule 1 and 2 medicines without a prescription. They can offer Schedule 3 medicines in certain specified circumstances. For Schedule 4, 5, and 7 medicines, pharmacists can only do so on prescription by a medical practitioner.

The SCA pointed out that s 22A(15) carves out an exception to the above provision, by authorising the Director-General to issue permits to health practitioners other than medical practitioners, authorising them to provide any of the scheduled medicines. This is the provision that the Director-General used to allow PIMART-accredited pharmacists to apply for permits to prescribe substances classified as Schedule 3-5. The SCA pointed out that the IPA disregarded this provision in its argument that expanding a pharmacist's scope conflicts with the Medicines Act. The Director-General acted within the powers granted by this provision, the validity of which the IPA has not challenged. Therefore, in the absence of a challenge to this empowering provision, it was not open to the IPA to contend that pharmacists were not suitable or competent to prescribe Schedule 3, 4, and 5 substances.

For all these reasons, the SCA dismissed the IPA's appeal with costs, including the costs of two counsel.

****END****