



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

ROUX v HEALTH PROFESSIONS OF SA

The Supreme Court of Appeal (SCA) today upheld an appeal against a judgment of the North Gauteng High Court, Pretoria. The high court had dismissed an application by Ms Roux, a clinical psychologist- the appellant in the present case- in which she sought to have a second charge of unprofessional conduct, which was preferred against her by a pro forma complainant purportedly acting on behalf of the Health Professions Council of South Africa (HPCSA), set aside. This court held that the pro forma complainant had no the authority to prosecute a charge of alleged unprofessional conduct which had not been authorised by the preliminary committee of inquiry of the board. It further held hat the decision of the pro forma complainant in including a charge of misdiagnosis was not sourced in law and had offended the principle of legality.

The background facts to the application and the appeal are set out in brief hereafter. The second respondent, Mr Powell, had lodged a complaint with the HPCSA against the

appellant who had been appointed by the office of the Family Advocate to compile a forensic report for the purpose of litigation between Powell and Ms Linda Petzer concerning Powell's right of access to their minor son. Powell complained that the appellant had assumed multiple relationships, namely, that of a clinical (forensic) psychologist and that of a therapeutic psychologist to his son *and* that she had misdiagnosed him (Powell). The matter was referred to the committee of preliminary inquiry which decided, pursuant to expert opinion received by it, that only the multiple relationships charge should be prosecuted. The committee then referred its decision to the pro forma complainant for the formulation of the charge sheet. The pro forma complainant drafted a charge sheet which included only the multiple relationships charge. However, as a result of Powell's aggressive intervention the pro forma complainant added the misdiagnosis charge.

The high court in dismissing the application reasoned that the committee of preliminary enquiry had provided the entire dossier of information to the pro forma complainant and that he was at large to determine how the charges were to be formulated, including adding the second charge.

In upholding the appeal, the SCA held that it was the function of the committee, not the pro forma complainant, to specify the conduct to be the subject of the inquiry. In the present case it had only authorised the prosecution of the multiple relationships charge. The SCA noted that the committee consisted of health professionals who possess skills in the field of psychology. These professionals were best suited to decide whether there were grounds on which to conduct an inquiry into unprofessional conduct. The pro forma complainant's task, the SCA held, was only to utilise his legal skills to ensure that the circumscribed conduct was accurately encapsulated in an intelligible form by way of a formal charge sheet. If this were not so, the SCA stated, the wrong professionals would be charged with tasks beyond their expertise.

The SCA further held that the decision of the pro forma complainant to include the misdiagnosis charge was not sourced in law and had offended the principle of legality. It

had to be reviewed and set aside for want of statutory power. The SCA also held that the appellant was not prevented from applying to court for relief where her very complaint was the illegality or fundamental irregularity in respect of the pro forma complainant's decision to include the misdiagnosis charge. There was no reason why she should first subject herself to an unauthorised inquiry which would entail costs and wasted time before challenging its illegality.

Consequently, the SCA upheld the appeal and substituted the order of the high court with an order setting aside the misdiagnosis charge and directing the HPCSA to hold an inquiry only in respect of the multiple relationships charge within two months of the date of the judgment.