THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

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STATUS Immediate

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

***National Health Laboratory Service v Mariana Magdalena Lloyd-Jansen Van Vuuren* (20044/2014) [2015] ZASCA 20**

MEDIA STATEMENT

Today, the Supreme Court of Appeal (SCA) upheld an appeal against a decision of the Gauteng Local Division, Johannesburg.

The issue before the SCA was whether the conclusion of an employment contract between the appellant and the respondent had the effect of novating (i.e. completely extinguishing) a previously concluded training and employment contract, with the result that all rights and obligations arising from that previous contract would also be extinguished.

The respondent, Ms van Vuuren, was a medical doctor who, as part of the process of further qualifying as a specialist pathologist, in 2006 entered into a training and employment contract (the initial contract) with the appellant, the National Health Laboratory Service. The initial contract set out the respondent's training regime and required her, once she had qualified as a pathologist, to work in that capacity for the appellant for a period of two years. The contract further provided that should she fail to work for this period, she would reimburse the appellant for the expenses incurred in her training. This amount was quantified in the contract as R2 million.

In 2010, the respondent qualified as a pathologist, and the appellant employed her in that role in terms of a new employment contract (the second contract). This second contract made no mention of the obligation to work for the appellant for two years or the R2 million penalty in the event she resigned earlier than the stipulated period. After four months, the respondent resigned and refused to

pay the penalty, contending that the conclusion of the second contract had terminated the initial contract including the penalty provision.

The appellant then instituted action in the Gauteng Local Division, Johannesburg for payment of the R2 million. The high court, ruling on the merits, found in favour of the respondent.

On appeal, the SCA held that this was a matter of interpretation of the two contracts. This court noted that the contracts must be interpreted in the light of all relevant and admissible context, including the circumstances in which the documents came into being. The SCA also referred to an established principle that novation will never be presumed by the court.

Upon consideration of whether the requisite intention to novate could be inferred from all the available evidence, the SCA rejected the respondent's interpretation on the basis that it was contrary to the background circumstances of the contracts. This court held that it was evident that the contracts served different purposes and could exist simultaneously and without conflict. Thus it was held that novation had not occurred.

In the result, the SCA upheld the appeal and set aside the order of the high court. It issued a declarator that the obligation recorded in clause 3.4 of the contract concluded on 4 January 2006 continued to exist notwithstanding the conclusion of the employment agreement dated 16 April 2010 between the appellant and the respondent. The court further declared the respondent liable to the appellant pursuant to the provisions of the relevant clause.

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