



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

South African Dental Association v Minister of Health (20556/2014) [2015] ZASCA 163

MEDIA STATEMENT

Today the Supreme Court of Appeal (SCA) dismissed an appeal by the South African Dental Association (SADA) and upheld the order of the Gauteng Division of the High Court, Pretoria. In the result, the SCA confirmed the validity of regulations made by the first respondent, the Minister of Health, in terms of the Health Professions Act 56 of 1974, inter alia recognising dental assistants as a profession, and defining the scope of that profession.

SADA challenged the validity of the regulations on a number of grounds, being (i) that the Minister had no statutory power to make the regulations in question; (ii) the Minister failed to take into account written representations by SADA; and (iii) the Minister's actions in promulgating the regulations were irrational.

SADA's challenge was opposed by the Health Professions Council of South Africa (the second respondent), the Professional Board for Dental Therapy and Oral Hygiene (the third respondent) and the Dental Assistants Association of South Africa (the fourth respondent, DAASA).

SADA's challenges were all based on the provisions of the Promotion of Administrative Justice Act 3 of 2000 (PAJA). However, in respect of all but one of the regulations challenged, its application was instituted significantly outside of the time period required in terms of s 7(1) of PAJA. As SADA had not applied for condonation for this failure to comply with the requirements of PAJA, it was time-barred, and the SCA rejected the challenges to these regulations.

The remaining regulation defined the scope of the profession of dental assistants. SADA argued that the Minister was not empowered to make such a regulation, because the Act did not empower him to open a register for a new health profession, and there could be no definition of the scope of a profession for which there was no register. The SCA rejected this argument, as it would make the Act unworkable and no new health profession could be established. This would have the effect of rendering the Act nugatory.

The SCA accordingly rejected SADA's challenges to the regulations promulgated by the Minister, and dismissed the appeal. In ordering that SADA pay the costs of the respondents, the SCA explained that the manner in which SADA had conducted the litigation was open to criticism. For example, although claiming to represent the interests of dental assistants, SADA initially failed to join DAASA, the largest dental assistants' organisation, and then when DAASA sought leave to intervene, SADA opposed that application.

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