



**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

**Date:** 30 NOVEMBER 2022

**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*

*Mapholisa N O v Adv K I A Phetoe N O (163/2021) [2022] ZASCA 168 (30 November 2022)*

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Today, the Supreme Court of Appeal (SCA) handed down judgment upholding an appeal against a decision of the Gauteng Division of the High Court, Pretoria (the high court).

The issue before the SCA was whether the High Court was correct in dismissing an application to review a decision by an organ of state and in finding that the internal remedy of an appeal ought to have been exhausted in terms of s 7(2) of the PAJA, given that the review was brought by one organ of state against another organ of state. The appellant was appointed as a *pro forma* complainant by the Registrar of the HPCSA, in terms of the Health Professions Act 56 of 1974 (the Act), he litigated as an organ of state. So too is the body that took the decision under challenge. The first to sixth respondents are members of the PCC, a committee established in terms of s 15(fA) of the Act, read with regulation 6 of the Regulations. They are cited in their official capacities. The seventh respondent, Dr Percy Miller (Dr Miller) is a registered medical doctor under the Act and practising as such in the private sector. He was the respondent in a complaint of unprofessional conduct referred to the PCC. The eighth respondent is the HPCSA, a statutory body established in terms of s 2 of the Act. The ninth respondent is Ms Malinda Miller (Ms Miller). She lodged the complaint against Dr Miller. The tenth respondent is Ms Violet Gaolebale Senna (Ms Senna), who is now deceased. She was Dr Miller's patient and the complaint laid against Dr Miller was in respect of his treatment of Ms Senna. At the inquiry a point *in limine* was raised on Dr Miller's behalf. It was argued that Ms Miller, who laid the complaint, had no locus standi because she was not Dr Miller's patient and was not in a position to provide evidence as to what transpired between Dr Miller and Ms Senna. On 3 July 2017 the PCC upheld the point in limine.

The SCA found that, despite the fact that in *Gijima* an organ of state sought to review and set aside its own decision, the Constitutional Court quite clearly reasoned that the rights under s 33 of the Constitution are enjoyed by private persons and not organs of state.

In concluding the above, the SCA was fortified by *Special Investigating Unit and Another v Engineered Systems Solutions (Pty) Ltd* when it remarked: 'Although the scenario seemed to have been left open by the Constitutional Court in *Gijima*, it seems doubtful that the SIU would be regarded as being *in a position akin to that of a private person*. The Constitutional Court in *Gijima* went on to say "it seems inconsonant that the State can be both the beneficiary of the rights and the bearer of the corresponding obligation that is intended to give effect to the rights. This must, indeed, be an indication that only private persons enjoy rights under section 33", and by extension under PAJA

With regard to the merits of the review of the case the SCA found that the definition of the term 'complainant' in reg 1 of the regulations is wide enough to include 'any natural or juristic person, group or professional body, including a professional association or society, a teaching or training institution, or any health care or related facility, that lodges a complaint against a registered person about alleged unprofessional conduct.

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