



CUBAN DOCTORS GET RAW DEAL

Seven Cuban doctors working in South Africa who pulled out of the official 'country-to-country agreement' faced 'utter confusion and contradiction' in dealing with their provincial health employers and local regulatory authorities.

Labour Court Judge DJ Pillay said this when ruling in favour of an interdict preventing Limpopo Province from sacking 7 Cuban doctors in June this year.

The doctors were subjected to harassment, threatening letters, asked to return to Cuba under false pretenses and had their family lives disrupted when they signalled their intention to opt out of the 'country-to-country' agreement.

Several had already married South Africans, had children and obtained permanent residence, and 2 were married to each other. All sought to continue practising in the public health service, for which they were adequately qualified.

Some of the doctors, subsequently faced with de-registration by the Health Professions Council of South Africa (HPCSA) (not a respondent in the court interdict), found an unlikely ally in the Department of Home Affairs.

Home Affairs Minister, Dr Mangosuthu Buthelezi, in a letter to his cabinet colleague, Health Minister Dr Manto Tshabalala-Msimang, takes issue with her and the Cuban Embassy over their attempts to sabotage the Cubans' efforts.

Writes Buthelezi: 'No foreign nationals are required to submit a letter of consent from their governments when applying for permanent residence status. You will appreciate that such a requirement cannot be made applicable to Cuban nationals only. The mere fact that Cuban nationals are at present experiencing difficulties in applying for immigration permits, is being viewed

by their South African spouses as being discrimination on the basis of nationality — they regard it as an infringement of their Constitutional rights in terms of human dignity and family life.'

Buthelezi says that neither the Aliens Control Act nor the latest Immigration Act requires prospective immigrants to be in possession of private (foreign) passports; therefore any attempt by the Cuban government to withdraw the doctors' passports would have no effect on their applications for permanent residence in South Africa.

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He would instruct his officials to disregard any previous instructions that immigration applications not be accepted from Cuban doctors married to South African citizens or permanent residents.

The inter-cabinet correspondence was obtained from Buthelezi by lawyers for Cuban doctors using the Promotion of Access to Information Act.

In her labour court judgement, Judge Pillay labelled as 'quite extraordinary' and 'smacking of a cover-up', contradictions in affidavits explaining the legal basis for the doctors' de-registration by the HPCSA. She singled out HPCSA Registrar Boyce Mkhize and Medical and Dental Professions Board (MDPB) chairman, Professor Len Becker, as responsible for confusion over 'an elementary matter (such) as the legal basis for the registration of the Cuban doctors'.

Outlining a baffling sequence of official correspondence regarding the applicants, the judge said what emerged was 'utter confusion and contradiction about their employment and registration amongst the respondents themselves'. One doctor's hospital superiors recommended that his registration be extended while the national health department said he no longer qualified for registration because he had broken his contract by opting out of the political agreement.

Pillay described as 'hostile, unexpected and unexplained' a subsequent letter from Dr N Nkademeng, General Manager of Limpopo's Department of Health, ordering the eviction of obstetrician and gynaecologist at Warmbaths Hospital, Dr Jorge Perez Donato.

This was the catalyst for Donato bringing the interdict against Nkademeng, his political boss and the Superintendent of Warmbaths Hospital, a Dr Ricardo.

In the letter, Nkademeng instructed Ricardo to demand proof from Donato of registration with the HPCSA or face eviction from his residence and the hospital within 48 hours of being shown the written directive. The directive added that Donato's failure to produce such proof would result in him 'not setting foot on the properties of Limpopo Province Department of Health unless as a patient'. Ricardo faxed Donato's HPCSA registration certificate to Nkademeng, asking him to supply a copy of the alleged agreement that Donato's registration was conditional upon the 'country-to-country' agreement being kept. He received no response.

Instead Nkademeng wrote that opting out of the agreement had 'implications on relations between the Republic of Cuba and the Republic of South Africa'.



The judge rejected Nkadimeng's argument that Donato's HPCSA registration was limited in terms of what the Limpopo Department of Health said were 'additional express oral terms', which it claimed were known to all participants of the scheme.

These oral terms were allegedly that the certificate of registration would become null and void with effect from the date of termination of the agreement.

However, none of the respondents had produced any documentary proof of the alleged 'express oral terms', nor could he find anything in the Health Professions Act stating that registration was subject to any such terms. The government-to-government agreement, while requiring a practitioner to be registered with the HPCSA, is silent on whether a party opting out of the agreement is *not* entitled to be registered with the HPCSA.

Pillay said it was as unlikely that the HPCSA would permit registration, subject to oral conditions, as it was that parties to a government-to-government agreement would not reduce to writing such important terms. Even if such terms existed, it would be a political and contractual matter between the Cuban authorities, Donato and the Cuban doctors.

An applicant ceasing to participate in the scheme was not a factor when registering Cuban doctors, simply because it did not affect his/her qualifications or professional competence — and Donato's competence was undisputed.

'By alleging that the registration of the Cuban doctors was relaxed, the HPCSA can hardly be suggesting that it permitted less than competent persons to be registered and to serve the community,' Judge Pillay remarked.

She said the Health Professions Act was meant to assist in the promotion of the health of the population of South Africa. Terminating the registration of

Cuban doctors and preventing them serving Limpopo Province could 'hardly achieve this'.

Judge Pillay described the authorities against whom she granted the interdict as 'less than forthright and fair' in their dealings with Cuban doctors.

The HPCSA had chosen to make common cause with Limpopo Province and its officials. The case was 'a shocking waste of public funds'. The judge recommended that those officials responsible 'be investigated and brought to account'.

She said her judgement in Donato's interdict applied equally to the disputes of Donato's 6 colleagues as the material facts were 'substantially similar'.

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According to the HPCSA, the 7 doctors were first registered between 1996 and 1998, after being evaluated under a 'special arrangement' made specifically so they could be employed 'in specific hospitals to render a specific service'.

MDPB chairman, Professor Becker, told the SAMJ that because medical training in Cuba differed to that in South Africa the HPCSA regularly sent a team of local experts in various disciplines to Cuba to assess applicants for registration in terms of the government-to-government agreement. 'Their general medical training is not as comprehensive as ours and their registration in Cuba is discipline-specific. Their specialist training is generally adequate for certain specific posts — which is what we go over to assess,' he said.

The annual numbers taken on in various disciplines depended on public

health sector needs at any given time and registration was therefore limited to working in a 'specific hospital in a specific discipline'. 'Our letter to them quite categorically states both this and that their registration is conditional upon these terms,' he added.

Becker confirmed that there were 'no oral terms at all — the hash-up with these 7 doctors came from the Limpopo Province's side'. He did not believe the judgement would affect the other approximately 450 foreign-qualified Cuban doctors employed in State or provincial administrations who were granted limited registration as practitioners. All had been assessed in Cuba and passed the criteria for limited registration.

He said limited practice registration was now well established.

'Either we register them to practise only under supervision or, in the case of the Cuban agreement, to practise under certain specific conditions,' he said.

Any Cuban doctor opting out of the government-to-government agreement was free to re-write the local limited practice exam or, if they wanted to work independently, write the equivalent of the local final-year medical exam.

When the 'Cuban solution' to health care crisis in South Africa was first mooted in 1995 by then Health Minister, Dr Nkosazana Zuma, the MDPB had held 'long discussions' with the government because of their concern over the potential lowering of standards.

He said this was the reason for the annual pilgrimage to Cuba by MDPB medical experts to assess incoming recruits for limited registration in specific disciplines.

Chris Bateman