

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION: BISHO)**

Case NO. 1044/2018

MARIA DAMON

APPLICANT

And

SUPERINTENDENT GENERAL:

DEPARTMENT OF HEALTH: EASTERN CAPE

DR THOBILE DOUGLAS MBENGASHE

1ST RESPONDENT

MEMBER OF THE EXECUTIVE COUNCIL:

DEPARTMENT OF HEALTH EASTERN CAPE

DR PUMZA PATRICIA DYANTYI

2ND RESPONDENT

Heard:

Delivered:

JUDGMENT

DAWOOD J

1. The applicant herein sought access to her employee records pertaining to certain emoluments attachments. Amounts were apparently deducted from her salary without her consent and without her having been served with a summons.

2. It is common cause that the information was furnished after service of the application papers.
3. The only issue being that of costs with the respondent. Claiming *inter alia* that the request was made to the incorrect Information Officer and accordingly they are not liable to pay any costs; but the applicant averring that the request was properly made.
4. The deponent to the respondent answering affidavit *inter alia* averred:
 - i) That the applicant failed to comply with the Department's Promotion of Access to Information Act No 2 of 2000 manual in that—
 - a) The records are not held at the provincial seat of the department in Bisho but at Grey Hospital where the applicant is employed.
 - b) Clause 2 (c) of the definition defines Deputy Information Officer as the Head Of Department or Superintendent General or delegated functionary, meaning that the hospital Chief Executive Officers or District Office Managers and Hospital Managers duly appointed in any of the hospitals or District offices within the Department of Health.
 - c) That pages 7 to 22 of the manual provide the list of delegated Deputy Information Officers where the request for information must be directed if the information so requested is not held at the provincial seat of the department in Bisho.
 - d) The information sought was neither requested from the chief executive officer of the Grey Hospital nor the District Manager who are the custodians of the information requested and have not been cited.
 - e) The applicant accordingly failed to comply with the PAIA manual and they have a right in terms of clause 7.4 to oppose.
 - f) It was also alleged that the applicant was entitled to obtain this information directly from the beneficiaries being the judgment creditors free of charge and that the records in fact show that she consented to these emoluments deductions and that she had the

right to challenge the correctness of any such information provided to her by the judgment creditor.

g) The respondent accordingly in conclusion stated:

- (i) That the applicant failed to make the request in terms of the PAIA manual;
- (ii) That she made the request to the incorrect office namely the S.G of the department who is not the custodian of the emolument orders.
- (iii) That she has failed to make out a case as she was aware of her debts and consequently the judgments granted against her.
- (iv) That she had consented to the emoluments deductions that she now claims to be unaware of.
- (v) That the proceedings are accordingly vexatious and frivolous and an abuse of the court process.
- (vi) That the application ought to be dismissed with costs.

5. Under introduction of the Promotion of Access to Information Manual for the Province of the Eastern Cape Health it is stated:

“In respect of the Department of Health for the Province of the Eastern Cape, the Deputy Information Officer is the Head of Department/Superintendent General.

The Head of Department has, for purposes of expediency and convenience, delegated his powers as the Deputy Information Officer in respect of requests for medical records, to the duty appointed heads of the various hospitals in the Province.”

At paragraph 8 it is *inter alia* stated that the Eastern Cape Department of Health holds the following:

Legal Documents e.g. ... other records relating to the work of the Eastern Cape Department of Health Legal Services...

The requested information in this case was employee's records, and not medical records.

6. The Superintendent General or Head of Department as the deputy Information Officer has accordingly not delegated his powers to the duly appointed heads of the various hospitals in the province for purposes of obtaining employee records according to the manual relied upon by both parties herein.
7. Furthermore, paragraph 8 states that the Eastern Cape Department of Health is in possession of employee records and does not appear to state that the individual hospital at which the employee is employed is in possession of the same.
8. The applicant accordingly appears to have requested the information from the correct Deputy Information Officer.
9. It was incumbent upon the first respondent to then, in the event of that information not being in his possession to transfer the request for information to the relevant Deputy Information Officer and to inform the requestor of the transfer in terms of 7.3.2 and 7.3.3 of the manual.
10. The first respondent remained supine until the application was launched and failed to respond at all the request.
11. It was a simple matter for the first respondent to simply reply and state that it was not in possession of the requested records when it received the request.
12. On the other hand, it appears from the respondent's answering papers that the applicant was indeed aware of the emolument attachments and had consented to the same.
13. It further appears that the applicant could have obtained this information from the judgment creditor or emoluments beneficiary free of charge.
14. The objective document that is attached to the respondent's papers demonstrates that the applicant had consented to the emolument attachment order and monthly deductions.
15. The applicant did not file a replying affidavit gainsaying either of these averments. Further based on the *Plascon-Evans* rule, the respondent's version in this regard must be accepted.¹

¹ *Plascon-Evans Paints Ltd v van Riebeck Paints (Pty) Ltd* 1984 (3) SA 623 (A).

16. It is also evident from the document that was attached that it was addressed to Grey Hospital and not Bisho.
17. The applicant clearly had an inexpensive speedy alternate route available to her to obtain the information sought which she failed to utilize.
18. She was not precluded from seeking this information from the first respondent but given the fact that an inexpensive, speedy remedy was available she clearly ought to have utilized the same or at least indicated why it was not possible to do so or what additional information the respondent had that could not be provided by the judgment creditor or emolument beneficiary.
19. Having regard to the foregoing in the exercise of my discretion despite finding that the information was requested from the correct Deputy Information Officer, I direct that the respondents only pay 50% of the applicant's party and party costs jointly and severally the one paying the other to be absolved.

20. ORDER

The first and second respondents are directed to pay fifty (50%) percent of the applicant's costs jointly and severally the one paying the other to be absolved.

DAWOOD J

JUDGE OF THE HIGH COURT

DATE HEARD:

07 NOVEMBER 2019

DATE JUDGMENT DELIVERED:

14 JANUARY 2020

Appearances

Counsel for the Applicant:

MS VAN VUUREN

Instructed by:

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ASSOCIATES
INCORPORATED

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MR POSWA

Instructed by:

STATE ATTORNEY

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Superintendent General Department of health Eastern Cape Dr Thobile Douglas
Mbengashe