

IN THE HIGH COURT OF SOUTH AFRICA(CAPE OF GOOD HOPE PROVINCIAL DIVISION)CASE NUMBER:

12156/2005

DATE:

2 SEPTEMBER 2008

5 In the matter between:

TREATMENT ACTION CAMPAIGN1<sup>st</sup> APPLICANTSOUTH AFRICA MEDICAL ASSOCIATION2<sup>nd</sup> APPLICANT

and

MATTHIAS RATH1<sup>st</sup> RESPONDENT10 DR RATH HEALTH FOUNDATION AFRICA2<sup>nd</sup> RESPONDENTSAM MHLONGO3<sup>rd</sup> RESPONDENTDAVID RASNICK4<sup>th</sup> RESPONDENTALEXANDRA NIEWIECKI5<sup>th</sup> RESPONDENTANTHONY BRINK6<sup>th</sup> RESPONDENT15 TREATMENT INFORMATION GROUP7<sup>th</sup> RESPONDENTGOVERNMENT OF THE REPUBLIC OFSOUTH AFRICA8<sup>th</sup> RESPONDENTDIRECTOR GENERAL, DEPARTMENT OFHEALTH9<sup>th</sup> RESPONDENT20 CHAIRPERSON MEDICINES CONTROLCOUNCIL10<sup>th</sup> RESPONDENTREGISTRAR OF MEMBERS11<sup>th</sup> RESPONDENTMEMBERS OF THE EXECUTIVECOUNCIL FOR HEALTH WESTERN25 CAPE PROVINCE12<sup>th</sup> RESPONDENT

JUDGMENT

(Application for Leave to Appeal)

This is an application by the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> respondents for leave to appeal against some of the parts of my judgment and order handed down on 13 June 2008. The 1<sup>st</sup> and 2<sup>nd</sup> applicants conditionally apply for leave to cross-appeal against those parts of my judgment in which I declined to grant certain relief claimed by them as against the 1<sup>st</sup>, 4<sup>th</sup> and the 5<sup>th</sup> respondents. The application for leave is conditional on the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> respondents being granted leave to appeal.

10 In addition to a conditional application for leave to cross-appeal, the 1<sup>st</sup> and 2<sup>nd</sup> applicants have brought an application in terms of Rule 49(11) of the Uniform Rules of this court, to have paragraphs 2 and 3 of the order I made to remain in operation and to be given effect to pending final determination of leave to appeal. The 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> respondents do not oppose such an application.

Now having heard counsel for the parties, I am of the view that there are reasonable prospects that another court might come to a different conclusion from which I reached on the following grounds as set out in the respondents' notice of appeal:

1. Whether Vita Cell is a medicine within the meaning of the Medicine & Related Substances Act 101/1965 ("The Medicines Act").

2. Whether the word “sell” in the Medicines Act ought to be given a narrow meaning which excludes donation.


Leave to appeal against the remaining grounds of appeal as set out in the respondents’ notice of appeal is dismissed, as there is no reasonable prospect of success of appeal on those grounds.

It follows therefore that the 1<sup>st</sup> and 2<sup>nd</sup> applicants shall be granted leave to cross-appeal in terms of paragraph 1 of the conditional application for leave to appeal. Leave to cross-appeal on the remaining grounds as set out in paragraph 2, 3 and 4 of the applicants’ notice of application for leave to cross-appeal, is dismissed. Leave to appeal and cross-appeal is accordingly granted to the Supreme Court of Appeal, with costs to be costs in the appeal.

As far as the 1<sup>st</sup> and 2<sup>nd</sup> applicants’ application in terms of Rule 49(11) of the Uniform Rules of this court, I hereby make the order in the following terms:

1. It is ordered that paragraphs 2 and 3 of the order I made on 13 June 2008, shall remain in operation and are to be given effect to, pending the final determination of the leave to appeal.

2. No order is made as to costs.



---

ZONDI, J