



HEALTHCARE & LIFE SCIENCES

Court Orders Gauteng Department of Health to Provide Cancer Treatment to Patients Awaiting Care

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On 27 March 2025, the Gauteng Local Division of the High Court, Johannesburg, granted urgent interim relief in the matter of *Cancer Alliance v Member of Executive Council for Health Gauteng Province and Others* 2025 ZAGPJHC 136 (27 March 2025) ("the *Cancer Alliance* matter"), ordering the Gauteng Department of Health ("GDoH") to devise and implement a plan to provide radiation oncology services to cancer patients on a backlog list at two Gauteng hospitals.

Issues

The main issue before the court concerned the GDoH's constitutional obligation to provide healthcare services, particularly radiation oncology treatment, to cancer patients. Cancer Alliance, being a collective group of cancer control non-profit organisations and advocates, argued that the GDoH had failed to utilise the sum of R784 million that had been allocated to it by the Gauteng Provincial Treasury in March 2023 to address the backlog in surgical and radiation oncology services. Of this amount, R250 million was allocated to the outsourcing of radiation oncology services. Despite this allocation, the GDoH did not devise or implement a plan to provide these services, leading to the return of the unspent R250 million to the Gauteng Provincial Treasury at the end of the fiscal year.

According to Cancer Alliance, the GDoH's failure to provide timely radiation oncology services violated the following sections of the Constitution^[1] –

- section 7(2), which mandates the State to respect, protect, promote, and fulfil the rights enshrined in the Bill of Rights;
- section 27, which provides that everyone has the right to have access to health care services, and requires the State to take reasonable measures progressively to realise this right and ensure no one is denied emergency medical treatment;
- section 33, which guarantees the right to just administrative action that is lawful, reasonable, and procedurally fair; and
- section 195(1), which outlines principles for public administration, including the efficient use of resources, responsiveness to people's needs, public participation in policymaking, and fostering transparency through timely and accurate information.

Judgment and order

In deciding to grant the interim relief sought, the court found that the need for urgent redress had become clear from the circumstances of the case, in which patients on the backlog list had been "*deprived of radiation oncological treatment for so long that repeated surgeries and repeated chemotherapy virtually became routine and early death at times became inevitable*".^[2] The court considered the impact of the GDoH's conduct on the patients' constitutional rights and found that the GDoH, without justifiable reason, ignored the patients' right to receive outsourced radiation oncology treatment, which flowed from the ring-fenced funds that had been made available for that specific purpose.

The GDoH was also found to have ignored Cancer Alliance's attempts to persuade it to communicate with Cancer Alliance regarding the tender process, and to follow a deviation process in terms of the Treasury Regulations to procure the requisite radiation oncology services. In so doing, the court held that the GDoH infringed the patients' and Cancer Alliance's rights under section 195 of the Constitution. Van Nieuwenhuizen AJ criticised the GDoH for its lack of accountability and transparency in handling the allocated funds, finding that "*a high standard of professional ethics [was] not maintained, efficient, economic and effective use of resources [was] not promoted, services were not provided impartially, fairly, equitably and without bias and [patients'] needs were not responded to...*".^[3]

On the basis that patients on the backlog list face life-threatening illness which, in the absence of treatment, would lead to further deterioration of their health and even death, the court found that actual, irreparable harm had, in the circumstances, already occurred, was continuing to occur and was reasonably apprehended. The GDoH, in arguing that the issues raised would ultimately be dealt with in Cancer Alliance's review application, was found to appear "insensitive and dismissive" of the actual harm suffered by the patients to whom it owed undisputed constitutional obligations.

The court, therefore, held that a "compelling need" existed in the circumstances for a mechanism to be put in place to ensure that the GDoH was held to account for its constitutionally imposed obligation to provide healthcare services to the patients on the backlog list. The court found that office bearers at the GDoH had "*conducted themselves as a law unto themselves*" and "*decided it inappropriate to be held to account*" to Cancer Alliance, which had been acting in the public interest.^[4] As a result, the court issued a supervisory interdict^[5] in terms of which the GDoH was ordered to –

- update the backlog list compiled by Cancer Alliance of cancer patients awaiting radiation oncology services in Gauteng within 45 days of the court order;
- take all necessary steps to provide radiation oncology services to the backlog patients awaiting treatment at the hospitals in question, being the Charlotte Maxeke Johannesburg Academic Hospital and Steve Biko Academic Hospital; and
- file a report within three months of the order detailing (i) the steps taken to provide radiation oncology services to cancer patients on the backlog list in Gauteng, and (ii) the GDoH's long-term plan to provide radiation oncology services at the Gauteng hospitals.

Conclusions

The court's decision in the *Cancer Alliance* matter is significant for several reasons –

- first, it reinforces the constitutional obligation resting on the State to provide access to healthcare. The judgment underscores that the State must take positive steps to fulfil this right and cannot neglect its duties, particularly when funds have been allocated for specific health services;
- second, the judgment highlights the importance of accountability and transparency in public administration, with the court having found that the GDoH's handling of the tender process for radiation oncology services was fraught with delays and inefficiencies; and
- third, the court's decision to issue a supervisory interdict sets a precedent for future cases where there is a need to ensure compliance with constitutional obligations, particularly with regard to the right to access to healthcare.

The judgment in the *Cancer Alliance* also underscores the judiciary's role in ensuring that State entities comply with their constitutional obligations, particularly in the context of the right of access to healthcare, and to do so in a timeous manner.

[1] Constitution of the Republic of South Africa, 1996

[2] Paragraph 523 of the decision in the *Cancer Alliance* matter

[3] Paragraph 559 of the decision in the *Cancer Alliance* matter

[4] Paragraph 603 of the decision in the *Cancer Alliance* matter

[5] Against which decision the GDoH has since noted its intention to appeal



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