

Further Heads of Argument for the dismissal of the outstanding charges against Dr De Vos

1. The Pro Forma has informed the Committee that it now wishes to withdraw counts 1 and 2 against Dr De Vos. It gives as the reason that the complainant no longer wishes to proceed with the matter against Dr De Vos (I will return to this reason at a later stage.)
2. Given that Dr De Vos has already entered a plea to counts 1 and 2, it obviously is not open to the Pro Forma to withdraw the charges. All he can do is close his case. Accordingly we take the “withdrawal” as a closing of their case.
3. This then leads to the situation where Dr De Vos must decide what he must do.
4. As already indicated in my previous submissions, Dr De Vos has submitted the summaries of 3 expert witnesses to the Committee, which evidence is uncontradicted and unchallenged. We once again would alert the Committee to them in the following respects:
 - i. The absence of expert witnesses to rebut the said expert witnesses of Dr De Vos indicates that their evidence is accepted that an unborn child is human life (Dr Warton’s expert summary), that an elective abortion may result in long term adverse emotional and psychological damage to the mother (Professor Coleman’s expert summary) and that adoptive parents are freely available in the Western Cape (Mrs Deborah Linde’s expert summary).

- ii. This evidence fully supports the plea of Dr De Vos, namely:
 - a. That Dr de Vos was acting in the best interests of the patient when he informed her that to have her unborn child killed could lead to long term emotional and psychological damage to her.
 - b. That Dr de Vos was acting in accordance with “doing good doing no harm” when he acted as he did, both as regards the pregnant patient and obviously the unborn child, who according to Dr Warton’s evidence was his other patient.
 - c. That Dr De Vos was affirming the autonomy of the patient by giving her all the relevant information she needed so that she could make an informed decision. Included in this information in addition to what is referred to in a. and b. above, is that there would definitely have been willing adoptive parents to whom the patient’s baby would have gone.

Accordingly, the Committee respectfully would have to find Dr De Vos not guilty on counts 1 and 2, AND IMPORTANTLY on the unchallenged evidence before it, that Dr De Vos acted in a highly professional way by giving the information he did to the patient and by being very conscious that he had a responsibility to the mother and to the unborn child.

- 5. Returning to the reason given for the “withdrawal” of the charges. We alert the Committee to the following exchange at pages 151 – 152:

MR MATTHEE: Sorry, Mr Chair, just one, one thing that I failed to.

CHAIRPERSON: I will offer him a right of reply to that too.

MR MATTHEE: Ja, ja.

CHAIRPERSON: Please.

MR MATTHEE: Just, firstly I am not quite sure what, what Mr Gajana wants to hand to you. My understanding and when we met I was, the agreement was and he confirmed that what I handed in now is, was the directive and that was the directive to the pro forma complainant. Now it seems like he is trying to

supplement that. I, you know, just 10, 15 minutes ago we agreed that that was what was sent to the pro forma complainant.

And then also in terms of counts 1 and 2, from what we were informed and what we have now placed on record and I would also make this in terms of your *in limine* rulings and it is covered in our, in our points, my Lord and – Mr Chair – technically in terms of the inordinate delay and the purpose, what purpose it served, it is now on record, if you look at count 1 and 2 that the person who allegedly, whose dignity was impinged, whose autonomy was impinged, whose right to self-determination has not made a statement, is not going to give evidence.

I do not know how the pro forma complainant can get past that. It is her dignity. It is her right to autonomy that allegedly was impinged. She is not going to give evidence. Any other evidence will simply be hear-say unless she comes and says that. So it is what is, what is now being admitted that there is no such statement. It is, it is an insurmountable problem on charges 1 and 2 and to persist in the knowledge that there is no such statement and to persist with these charges does amount to an abuse. Thank you, Mr Chair.

CHAIRPERSON: Do you want to respond?

MR GAJANA: Thank you, Chairperson, if I may, very shortly. It has never been my suggestion in any manner or form, Chairperson, that Ms Jacobs will not testify. I did concede we do not have a statement by her but I never mentioned that she would not come and testify before this committee. I would like to just end there, Chairperson. Thank you.

CHAIRPERSON: Okay, thank you. Alright, it has been a long day, not altogether unproductive. It was a great shame that all of this could not have happened in pre-trials and so forth but here we are. We have spent a day at least clearing some of the murk and hopefully the issues are going to emerge. We do not appear to be quite ready yet to have charges put to Dr De Vos for him to plead. That really does need to happen, if it is going to happen as early as possible tomorrow so that we can make progress.

On the other hand it may turn out that that is not the way matters unfold. I do not have a view on that yet. There are key things that are important to this committee which we are going to need to tease out tomorrow and one of them is going to have to be whether the Preliminary Committee was able on a fact informed “

6. Furthermore last year already, and on the 23rd February 2020, all three the expert summaries were filed on behalf of Dr De Vos. The Pro Forma filed no response to these three experts. The Medical Council and its representative had since last year to do this. The only reasonable conclusion which can be drawn is that he did not file anything because from the outset some 3 ½ years ago, there never was a complainant for counts 1 and 2. There thus was no need to respond as they knew they could not proceed on counts 1 and 2 when it came to the crunch. In effect by their dishonest conduct and continued delays, they obviously decided to punish Dr De Vos by means of their own default.
7. Thus from the outset, as was argued by us in our *in limine* arguments, the process was fatally flawed as the Preliminary Inquiry Committee could never have had a statement by the patient/”complainant” when it gave its direction about Dr De Vos, as regards counts 1 and 2.
8. The process was thus fundamentally flawed from the outset. There simply has never been a complainant for counts 1 and 2, and this was known by all those involved in driving this malicious prosecution of Dr De Vos.
9. The only reasonable conclusion which can be drawn is that in fact this matter against Dr De Vos, as regards count 1 and 2, has been driven not by the patient, but by certain people in positions of power at 2 Military Hospital, Wynberg. Chief of these in terms of the documents are Drs van Wyk and Ismail.

10. Accordingly we would invite this committee not only to express its strong disapproval of how Dr De Vos has been treated, but that it suggest to the Medical Council that the conduct of the two said doctors, and anyone else who might have been involved in this vendetta against Dr De Vos, be investigated with a view to being charged for unprofessional conduct.
11. We are aware of what we are asking this committee to do in this respect, but once again would highlight as a result of the conduct of the said doctors Dr De Vos has not been permitted to practice as a doctor since 30 June 2017.
12. Furthermore, we again highlight that the record will clearly show that all the delays in affording him an opportunity to defend himself have been caused by the Medical Council, at the instance of the said doctors, inclusive of fundamentally changing the charges against him and failing to provide him with the necessary detail to enable him to prepare his defence.
13. Furthermore Dr De Vos has bent over backwards to try and facilitate the speedy resolution of his hearing, including agreeing to make assumptions about the charges against him and very timeously going to great effort to obtain the expert evidence of three extremely well qualified and experienced experts, and giving the Medical Council more than enough time to respond if it wanted to. Here it must be remembered that the Medical Council should have responded to everything above long before the state of lockdown was declared.
14. In the light of all the above, natural justice cries out for this Committee to now exercise its discretion in a just way and not only find that Dr De Vos acted in an exemplary manner at all times, but that those who drove this ideological vendetta against him should be investigated for unprofessional conduct.

15. Once again, it is our hope that this Committee will act decisively and bring this travesty of justice to an immediate end by finding that Dr De Vos acted professionally and expressing its strong disapproval at the manner in which the HPSCA has treated him and by recommending to the HPSCA that it conduct an investigation into who and why drove this vendetta against Dr De Vos.

Keith Matthee SC

6th October 2020