

THE HIGH COURT

[2022] IEHC 248

RECORD NO. 2022/493/SS

BETWEEN

MS. K

APPLICANT

AND

CLINICAL DIRECTOR OF DROGHEDA DEPARTMENT OF PSYCHIATRY

RESPONDENT

**EX TEMPORE JUDGMENT of Ms. Justice Niamh Hyland delivered on 12 April 2022**

1. This is my decision on the application under Article 40.4 brought by the applicant who is currently detained in the Department of Psychiatry in Drogheda, County Louth ("DDOP", also referred to as the "approved centre"), pursuant to s.24 of the Mental Health Act 2001. She asks that I declare her detention unlawful and that she be released.

**Procedural history of proceedings**

2. An inquiry was directed by Meenan J. on 4 April 2022 and the respondent was ordered to certify in writing the grounds of the applicant's detention. I heard the matter on 8 April 2022. The respondent produced a certificate certifying that the applicant was detained on foot of an Admission Order made on 2 April 2022, a copy of which was attached thereto. The Order was contained in what is known as a Form 13, as issued by the Mental Health Commission, and is entitled "*Certificate and Admission Order to Detain a Voluntary Patient*".
3. The Form identified that the professional who detained the applicant pursuant to s.23(1) on 1 April 2022 was a registered nurse. The Admission Order was signed by Dr. Ukobo on 2 April 2022. The Form requires to be signed by the consultant psychiatrist responsible for the care of the applicant or a person deputised by them. This is provided for under s.24(6) of the Act.
4. Following the making of the Order on 2 April, the applicant's solicitor, Ms. Cogan, was appointed by the Mental Health Commission as a legal representative for the applicant by reference to s.17 of the 2001 Act. This provides that following the receipt by the Mental Health Commission of an Admission Order, the Commission shall as soon as possible, *inter alia*, assign a legal representative to represent the patient at the Tribunal that will review the detention. In that context, Ms. Cogan had been permitted to download the Order detaining the applicant from the Mental Health Commission Central Information System. Surprisingly, although she had been requesting it since 2 April, no copy had been furnished to her by the DDOP. The version of Form 13 downloaded by her identified that the professional who detained the person pursuant to s.23(1) was a consultant psychiatrist. This is obviously different to the version of the Form 13 certifying the detention that had been provided to the High Court which, as I have said, identified the relevant person as a registered nurse. In both versions of the Form, the reasons were as follows: "*Ongoing delusions, wishes to leave hospital, limited insights, risk of misadventure.*"

5. Given the discrepancy in the Forms, I directed at the end of the hearing that the respondent file an affidavit explaining why this was so. I received an affidavit of Valerie McQuaid, sworn 8 April 2022, on 11 April 2022. I deal with the contents of same below. However, I should say that I have also this morning received two additional affidavits: an affidavit of Valerie McQuaid sworn 12 April 2022 and an affidavit of Dr. Ukobo sworn 12 April 2022. Those affidavits introduce new facts. Ms. McQuaid in her affidavit says that she noted two errors. First, that the incorrect box was ticked in relation to section.1 of Part 1 in respect of the person who had detained the applicant under s.23, that the box marked "*consultant psychiatrist*" was ticked when it should have been the box marked "*registered nurse*". She does not identify the means by which she knew this was a mistake. She also identifies that a signature required at section9 of the Form was not included and the signature that should have been included was a signature of Dr. Thekiso.
6. She says that Dr. Ukobo was the inpatient consultant psychiatrist and that he uploaded the Form, and she says that she brought the error she had noted to the immediate attention of Dr. Thekiso and on Monday morning he correctly completed statutory Form 13. She says that she then uploaded it. It is not completely clear to me who amended the entry as to whether it was the psychiatrist or the nurse who had carried out the s.23 hold.
7. Then there was another affidavit from Dr. Ukobo who says he was the consultant psychiatrist on call on 2 April 2022, and that he uploaded the documentation by using the account of Ms. McQuaid, and he did so at 14:16.
8. That is the additional material that has just been provided to me this morning, and I have been able to consider it and incorporate it into my judgment. I have also heard submissions on same from counsel for the applicant in circumstances where the applicant did not have an opportunity to reply to those affidavits, but she was happy to proceed on the basis that she made submissions and those submissions were replied to by counsel for the DDOP. Before considering in more detail these affidavits I am going to set out the relevant facts.

### **Facts**

9. The applicant was born on 29 May 1962 and lives in Navan. She suffers from lupus and has no history or prior engagement with mental health services. An application for her involuntary detention in an approved centre was made by Mr. Alvarez under s.9 of the 2001 Act on 14 March 2022. A recommendation for her involuntary detention in the approved centre was made by Dr. Lee by reference to s.10 of the Act a few hours later. An Admission Order detaining her for a period of up to 21 days was made by Dr. Thekiso, the responsible consultant psychiatrist, by reference to s.14 of the Act on 15 March 2022.
10. A mandatory statutory review of the Admission Order was scheduled for 1 April 2022 and Ms. Cogan, solicitor, was appointed by the Mental Health Commission as the applicant's legal representative. The applicant was reviewed by an independent consultant psychiatrist ("ICP") appointed by the Commission under s.17 of the Act. In her report, the ICP concluded that the applicant was suffering from a mental disorder under s.3(b)(1) and (2) of the Act (i.e. failure to admit the person to an approved centre would be likely

to lead to a serious deterioration in his or her condition and detention in an approved centre would be likely to benefit that person). She diagnosed the applicant as suffering from an acute psychotic episode and delusional beliefs. She notes that the applicant's doctor is of the opinion that a physical cause requires to be considered, given that she suffers from lupus but the patient continues to refuse those investigations.

11. On 1 April 2022, the Tribunal reviewed the Admission Order by way of video conference hearing and decided to revoke the Admission Order by reason of non-compliance with the provisions of s.9 of the Act. The Tribunal concluded that the patient was presently suffering from a mental disorder within the meaning of the terms set out at s.3(1)(b) of the 2001 Act. This was based on the evidence of Dr. Thekiso. The Tribunal considered that the risks did not reach the immediate level required by s.3(1)(a) of the Act but the evidence suggested the presence of a real basis for concern.
12. As regards procedural compliance, the Tribunal decided that there had been a failure to comply with s.9 and 14 of the Act, in that, in relation to the Admission Order, the age box was blank and the gender box was blank but nonetheless the Form was filled in and initialised. The Tribunal decided those defects did not affect the substance of the Order and so did not cause an injustice. However, in relation to the application form, it was found there was a serious defect in that the box at paragraph 12 was blank. They held this was a fundamental matter as it related to the question as to whether there was a previous refusal of an application. A defect of this nature was held to be significant and serious on the face of the form and affecting the substance of the Order and as such it could not be inferred that no injustice had been caused. The Tribunal, therefore, revoked the Admission Order on the basis that the defect was a defect on the face of the form itself.
13. The first page of the record of the Mental Health Tribunal proceedings refers to the Tribunal finish time as being 2:00pm. However, in the affidavit of Ms. Cogan she avers that the Tribunal informed her of its decision by way of video link on or about 13:45 and that she told the members she would telephone the applicant on her mobile phone to explain the decision. She said she did so in around 13:53. Given that that evidence is not contradicted I will accept that time.
14. The applicant said she wanted to leave the approved centre immediately. Ms. Cogan avers that she advised the applicant that she was no longer detained and that she should leave directly if this was her intention. I will read out paragraph 9 of Ms. Cogan's affidavit as it is of some importance:

*"I am instructed by Ms. K and I believe that she took my telephone call in the room from which she had participated in the Tribunal hearing and that she went immediately to the reception in the approved centre and informed the staff there that she would need the belongings that had been taken from her on her arrival in the centre and that she was going to her room to get her things. She went to the room, packed her bag and returned directly to the reception area, when, between the reception and exit locked double doors, she asked that the doors be opened,*

*the nurse whom she asked told her the doctor wanted to speak to her and that he would be back in 10 to 20 minutes. She said she did not want to talk to him, that she wanted to go. Another doctor approached her and told her that he wished to talk to her to explain some things. She said she did not want to talk to him, that she wanted to leave. She remained waiting there for the doors to be opened, insisting that she wanted to go."*

15. At paragraph 10 she discusses the time after 14:29 and I do not need to open that paragraph. At paragraph 13 she avers that she spoke to the applicant at 17:24 on Saturday, 2 April and that the applicant sent her a document being the notification provided by reference to s.16 of the Act, of the making of an Order at 13:42 on 2 April 2022 by reference to s.24. Ms. Cogan said she spoke to a staff nurse on 2 April who confirmed to her that the applicant was detained under an Order.
16. Ms. Cogan exhibits a letter of 1 April 2022 that she sent to the DDOP where she identifies that her client wished to be discharged from the hospital, that she was being prevented from leaving the hospital despite the revocation Order and calling upon the hospital to immediately discharge her. The hospital was therefore fully aware that Ms. Cogan was acting for the applicant and was aware of her contact details.
17. A supplemental affidavit was sworn by Ms. Cogan on the same day, being 4 April 2022, whereby she outlines the difficulty she encountered when seeking to obtain a copy of the document setting out the basis for the applicant's detention. On 2 April 2022 she requested from the approved centre a copy of the documents and was told that in the absence of the Mental Health Act administrator, the availability of scanning facilities to furnish the documents to her was unclear and the administrator would not be available until Monday, 4 April. She said she spoke to the Mental Health Act administrator on 4 April to urgently request a copy of the detaining Orders and was told she would receive them as soon as possible. In fact, she never received those documents from the DDOP. On the morning of 4 April, as I note above, she was appointed by the Mental Health Commission as the legal representative for the applicant and downloaded the Order from the Mental Health System in that context.
18. Returning to the events of the 1 April 2022, it appears from the affidavit of Ms. McQuaid, sworn 7 April, who was the Mental Health administrator at the DDOP, that after the decision of the Tribunal, Ms. McQuaid spoke to the applicant and mentioned to her that it would be better for her to have a planned discharge in conjunction with her treating consultant. She says that after the applicant received a call from her solicitor, Matthew Lines, staff nurse and key worker, followed the applicant to her room saying he would get her bag from the storeroom as she had indicated she needed to get her bags and coats, and leave.
19. Ms. McQuaid said she rang Dr. Thekiso to advise him the applicant wished to leave the hospital and he advised his preference would be to review the applicant. Ms. McQuaid avers she was in the nursing station when Matthew Lines and the applicant came back to the nursing station area, and after a brief conversation he said he was initiating s.23(1).

Ms. McQuaid went back to the nursing station to check the time of the commencement of s.23(1) and noted that the time was 14:15. She avers at paragraph 6 that Dr. Thekiso arrived at the approved centre within 20 minutes and reviewed the Applicant. She indicated that she contacted a second opinion consultant, Dr. Ahmed, and arranged for him to review the applicant the following morning at 11:00am. She contacted the consultant on call, Dr. Ukobo, and updated him with regard to the plan.

20. At paragraph 8 she said she spoke to Ms. Cogan early Monday morning, 4 April, who advised her she had been ringing the Department of Psychiatry at the weekend seeking a copy of the new Order, but she had received no call back. Ms. McQuaid said she was reluctant to release the report as it was not confirmed that the Form 13 was processed by the Mental Health Commission. She said;

*"If I was to give a copy of the Form 13 I would have stepped outside the process, the Mental Health Commission processes forms, and if I released that it meant that the Order was released prior to the Mental Health Commission reviewing and releasing. I was not comfortable with this and I always follow process."*

She says that the Form was later released from the Mental Health Commission to Ms. Cogan. At paragraph 9 she says:

*"I spoke with the ADON on duty over the weekend and she advised me that staff felt intimidated and staff on duty were not comfortable releasing as they were not familiar with such things. This was agreed by the consultant on call at the weekend."*

21. She does not refer to the basis upon which the hospital certified the detention or to the Form 13 that was attached to the certificate that was presented to me. Importantly, at no point does she identify the difficulties with the Form and she does not set out the sequence of events that have now been identified in her affidavit of 12 April and in part in her affidavit of 8 April.
22. An affidavit was also sworn by Matthew Lines on 7 April 2022. The totality of his evidence in relation to the revocation of the Order and the initiation by him of s.23(1) at 14:15 is set out at paragraphs 4 and 5. Again, given their importance, I will read them in full;

*"4. Following the Tribunal, I asked [Ms. K] if she was willing to stay in the hospital voluntarily so we could continue with her treatment plan. Ms. Valerie McQuaid was present for this conversation. [Ms. K] informed me and Ms. McQuaid that she was willing to remain in hospital voluntarily and continue with her current treatment plan. Just as this conversation was finishing [Ms. K] received a phone call from her legal representative, Ms. Cogan. After the call from Ms. Cogan, [Ms. K] voiced to myself that she would be leaving hospital and requested entry into the storage room to retrieve her belongings. I gave [Ms. K] her bag and [Ms. K] proceeded to her bedroom. I then returned to the nursing station."*

5. [Ms. K] returned in a distressed state to the nursing station, where she voiced that she experienced having visual hallucinations of Michael standing outside her bedroom. [Ms. K] had voiced she was fearful of Michael attempting to get into her room the night previous and was irritable with the nurses as they would not allow her to enter the nurses station. I questioned [Ms. K] if this was the same man that she was fearful of on admission, she confirmed that it was the same man. When I questioned more on this, [Ms. K] refused to engage. I formed the opinion and communicated my opinion to [Ms. K]; namely, that she would benefit from a proper discharge plan to prevent deterioration and another possible admission to hospital. Following this interaction, I felt that in my professional opinion that [Ms. K] should not leave the hospital due to delusional beliefs and her current mental state."

23. Immediately after that, at paragraph 6, he says at 14:15 on 1 April he initiated s.23.

#### **Treatment within the meaning of the Act**

24. In the decision of the Court of Appeal in *RGF v. Clinical Director Department of Psychiatry, Midland Regional Hospital [2021] IECA 309*, Birmingham J. identified that the live question in that case was whether, during the period between the making and notification of the Order of the Tribunal revoking the Admission Order and the re detention of the applicant, was he being treated within the meaning of the 2001 Act. Ultimately the Court decided that he was, in that case, being so treated. Precisely the same question arises here.

25. I agree with the respondent that in certain respects the facts are similar to those in the case of *RGF*. No medication was administered during the time period in question and there were no scheduled sessions with any professionals during that time. In both instances the time period in question was short, although much shorter here than in *RGF*; in that case it was about 70 minutes, whereas here it was no more than 23 minutes, i.e. 13:53 to 14:15. Just as in *RGF*, the fact that the applicant needed treatment cannot be taken into account in deciding whether she was a voluntary patient and equally, her desire to leave cannot be relied upon to show that she was not a voluntary patient.

26. Before analysing what happened during those minutes, it is important to recall that the power under s.23 and s.24 to detain a person in an approved centre despite their desire to leave is one that impacts upon one of the most significant fundamental rights protected under the Constitution, i.e. the right to liberty. Any curtailment of that right must be considered very carefully. Where it is done pursuant to a statutory regime, that regime must be followed to the letter and any review of the exercise of that power must take care to analyse each and every step and to ensure that the regime has been followed.

27. In relation to the question as to whether a person is or is not a voluntary patient (a necessary precondition to the exercise of s.23 and s.24), the question of treatment must be carefully analysed on the individual facts of each and every case. It could never be the case that the mere presence of a person in an approved centre, having previously been a patient there, could be sufficient for a conclusion to be drawn that he or she is being treated there.

28. As Birmingham J. observed in *RGF*, had there been no engagement with the applicant in that case and had he simply been left alone to await the arrival of his wife, he would not have concluded that the applicant in that case was being treated. However, he was satisfied that what happened during the relevant period was that the applicant was provided with important professional advice. He observed as follows:

*"In my view, the giving of that advice, alongside the urging of the applicant to follow that advice, meant that during this relevant period he was receiving patient treatment."*

29. Here, I have concluded that during those 22 minutes in this case, the applicant was not receiving patient treatment. Unlike the applicant in *RGF*, she did not have a meeting with her consultant psychiatrist either alone or in the presence of a staff nurse. In *RGF* the meeting lasted 20 minutes, a not inconsiderable time. During that meeting the applicant said he would take medication if he was to leave on being asked this question by the psychiatrist.
30. The respondent makes the case that treatment was also being administered here, but the time period during which any treatment could have been administered by the approved centre was extremely short. At some time after 13:53, after the applicant had the discussion with her solicitor on the phone, the applicant indicated she wished to go and asked for entry to the storeroom to retrieve her belongings. She went off with Nurse Lines, he gave her the bag and she then went to her bedroom and he returned to the nursing station. It was only when she returned to the nursing station she had what appears to be, and what must have been, a brief conversation with Nurse Lines, where she told him about her hallucinations about a man called Michael and Nurse Lines told her she would benefit from a proper discharge plan to prevent deterioration. There does not appear to have been any attempt to get her to see a psychiatrist at that point or any discussion of medication.
31. It appears there was some conversation also with Ms. McQuaid who told the applicant it would be better for her to have a planned discharge the following day in conjunction with her consultant. I accept the submission of the applicant that any such conversation could not be considered part of her treatment, given that Ms. McQuaid is not medically qualified, although I do not accept it was inappropriate for Ms. McQuaid to speak to her in this respect.
32. In the circumstances, as a matter of fact, it does not seem to me that the applicant's conversation with Nurse Lines about staying in hospital could have been more than 7 minutes. In fact, on the basis of his account of events, I conclude that it was probably significantly shorter. That cannot be treated as constituting treatment of the applicant such that she comes within the definition of a voluntary patient. No other interaction has been put forward by the DDOP as constituting treatment apart from her need for treatment and the evidence of her mental state. It is clear from the decision of *RGF* that these factors cannot be relied upon to justify her detention.

33. Given the circumstances, I conclude that the approved centre was not entitled to detain her since she did not meet the requirement for the application of sections 23 and 24, i.e. that the person is a voluntary patient. This means her detention is unlawful and that she must be released.

**Form 13**

34. I must now go on to consider the alternative basis identified by the applicant as a basis for her release, i.e. that Form 13, as produced in the certification to the High Court of her detention, cannot be relied upon given its amendment, and that the detention is unlawful as there is no provision for amendments of such forms.
35. To adjudicate upon this complaint, it is necessary to describe briefly the nature and function of Form 13 and its interaction with sections 23 and 24. The Form itself is produced by the Mental Health Commission and on the front of it is a box stating: "*Form 13, Mental Health Act 2001 2018, Sections 23 and 24*". Section 23(1) is a very important section, and it provides as follows:

*"Where a person (other than a child) who is being treated in an approved centre as a voluntary patient indicates at any time that he or she wishes to leave the approved centre, then, if a consultant psychiatrist, registered medical practitioner or registered nurse on the staff of the approved centre is of the opinion that the person is suffering from a mental disorder, he or she may detain the person for a period not exceeding 24 hours or such shorter period as may be prescribed, beginning at the time aforesaid."*

36. It permits a person to be held for 24 hours before the psychiatrist certifies their detention and as such it constitutes one of the most significant powers in the 2001 Act. Ensuring compliance with it could never be treated as an administrative formality, given that it is used to curtail the liberty of the person.
37. Section 24 provides:

*"Where a person is detained pursuant to section 23, the consultant psychiatrist responsible shall either discharge the person or arrange for her to be examined by another consultant psychiatrist. If the second psychiatrist is satisfied that the person is suffering from a mental disorder, he or she shall issue a certificate in writing in a form specified by the Commission stating that he or she is of the opinion that because of such mental disorder the person should be detained in the approved centre."*

38. Section 24(3) provides:

*"Where a certificate is issued under section 24(2)(a), the consultant psychiatrist shall make an admission order in a form specified by the Commission for the reception, detention and treatment of the person in the approved centre."*



39. In other words, s.24 provides that the Commission must specify, in a form, both a certificate from the second psychiatrist and an Admission Order. That form is Form 13 and is correctly referred to by the Commission as a statutory form given the wording of s.24 identified above. The necessity for completing this Form fully and accurately derives from its statutory basis and from the need for transparency and absolute accuracy in relation to the steps being taken by a person to detain another person.
40. Because of the impact of the exercise of s.23 and s.24 upon the liberty of a person, the Commission has rightly identified with great particularity in Form 13 the information that must be identified so that the exercise of this power can be reviewed by a Tribunal under s.18 and, if necessary, by a court. During a hearing by a Tribunal, the relevant form will be carefully scrutinised. Indeed, the revocation of the previous Admission Order was, as I outlined above, because of a failure to complete the relevant section in relation to previous admissions.
41. Finally, I should add that under s.16 where an Admission Order is made, a copy of it must be sent to the Commission and notice in writing of the making of the Order given to the patient. Under s.16(2)(b), a notice shall include a statement in writing to the effect that the patient is entitled to legal representation.

**Provision of Form 13 to the Applicant's solicitor**

42. All of the above makes clear the centrality of Form 13. Two areas of serious concern have arisen in this case, both in respect of the Form relied upon by the DDOP and also its communication to the solicitor for the applicant.
43. Dealing with the latter issue first, the solicitor sought a copy of the Form as soon as it was completed on 2 April. Despite what appears to have been sustained communication with the DDOP over the weekend she did not receive it, nor did she receive it from Ms. McQuaid on Monday morning, despite Ms. McQuaid speaking to her and being aware of her request.
44. Very worryingly, it appears that staff were being told or understood that they could not release the Form. I am particularly concerned with the averment of Ms. McQuaid that the staff on duty were not comfortable releasing the Form as "*they were not familiar with such things*", and the fact that the consultant agreed to withhold the release of the Form. Even more worryingly, it appears that Ms. McQuaid herself was reluctant to release the report because the Mental Health Commission had not "*processed*" the Form 13. I do not understand what that means, but there is no basis for the withholding of the provision of the Form, which is, after all, the basis for the detention of a person. It is the approved centre and not the Mental Health Commission who is the detainer.
45. Form 13 is the legal basis upon which the applicant has been detained. An applicant is entitled to legal representation and indeed, s.16(2)(b) specifically identifies that the notice of the Order shall include a statement that the patient is entitled to legal representation. That is an empty entitlement if the patient's legal representative is not entitled to see the legal basis upon which the patient was detained.

46. It is not the case that the legal representative is only entitled to seek the Form in the context of a s.18 review by a Tribunal of an admission or renewal Order. The remedy of *habeas corpus* under the Constitution is always available to an applicant and a legal representative is at a very distinct disadvantage if such an application has to be made, as was the position here, without the legal representative seeing the form certifying the basis for the detention.
47. In the circumstances, the failure of the approved centre to ensure that the Form 13 was provided to her legal representative on the day it was completed, i.e. 2 April, is of concern. Of even more concern is the fact that there appears to be some sort of policy in the approved centre not to provide such forms over the weekend. Of yet more concern is the fact that the Mental Health administrator appears to have a policy of not providing the form until the Mental Health Commission processes them, despite the fact that the approved centre is the detainer rather than the Mental Health Commission. The actions of the Mental Health Commission are not relevant in regard to a release of the Form to a legal representative of a person detained.

**Amendment of Form 13**

48. It appears that when the Form was originally completed on 2 April, an error was made in relation to the person who executed the s.23 hold. These matters all have now been deposed to in some detail by three affidavits from persons from the DDOP. However, all of these steps took place on 4 April, well before the first affidavit sworn by Ms. McQuaid on 7 April, and in that affidavit of 7 April no reference to the original version of the Form or the amendment of the Form on 4 April were identified. Neither of the two mistakes now put on affidavit were detailed to the Court.
49. It was very important for the Court to understand that the Form 13 that was identified in the certificate was not in fact the original certificate. That was a matter within the knowledge of the respondent and Ms. McQuaid and yet it was not put on affidavit until I asked for this to be done when it was spotted, on the morning of the hearing, that there was a discrepancy between the Form 13 that the applicant's solicitor had and the Form 13 that had been put before the Court. This is very concerning, and no explanation has been given as to why the Court was not given the full picture and why the hospital sought to rely on a Form 13 which was not in fact the original Form 13.
50. Counsel for the hospital has made submissions about the desirability of clarity and transparency and said that that is why the affidavits of today's date have been filed. Certainly, it is welcome that they have been filed now but no explanation has ever been given as to why this was not done before the hearing on 8 April.
51. Moreover, there was no attempt to explain to the applicant's solicitor that in fact Form 13 had been amended. Again, this was something that ought to have been done because this was important in the context of reviewing the legality of the applicant's detention.
52. The signing of s.9 of the Form on 4 April by Dr. Thekiso is deeply unsatisfactory, not only because it is outside the 24 hour period mandated by s.24(5), as identified by counsel for

the applicant, but also because it was Dr. Ukobo who signed the Admission Order. Under s.24(6) it is stated that reference to the responsible consultant psychiatrist includes reference to a consultant psychiatrist acting on behalf of the first mentioned consultant psychiatrist. That was what Dr. Ukobo was doing on 2 April, and that meant that the person who had signed the Admission Order was Dr. Ukobo. Yet on 4 April, Dr. Thekiso amended the Form without referring at all to Dr. Ukobo, the person who had signed the Admission Order. That is highly unsatisfactory.

53. Moreover, the situation in relation to s.23 at s.7 of the Form is of concern. As I have identified, s.23 permits the detention of a person for up to 24 hours. The Admission Order cannot be made unless s.23 has been complied with. The Admission Order is made by the responsible consultant psychiatrist. As I have noted above, the responsible consultant psychiatrist can delegate that duty. Once delegated, the only person who made the Admission Order was Dr. Ukobo. He bore the responsibility for ensuring that the entire Form was correct, including the basis upon which the person had been detained under s.23. A vital part of s.23 is the identity of the professional who detained the person. If there was to be an amendment of the Form and I am not at all satisfied that that is possible, but even assuming it is it would have to be by the person who was responsible for the completion of the Form. That person was not Ms. McQuaid nor Dr. Thekiso. There cannot be any ambiguity as to who is responsible for the accuracy of the information on the Form. That is part of the safeguards for the person detained.
54. In the circumstances, I cannot accept that there was an effective amendment of the Form either in relation to the person executing the s.23 hold, or in relation to s.9 of the Form. That means that the Form certifying the applicant's detention is not that which was identified in the certificate put before the High Court.
55. If one treats the detention as being authorised by the original Form, then it is clear that the original Form is inaccurate as it records that a psychiatrist certified the s.23 hold and it had no signature at s.9 in relation to the first stage of the s.24 process.
56. This lamentable state of affairs is not cured by an affidavit, contrary to the submissions of the respondent. There is a statutory requirement that the responsible consultant psychiatrist shall make an Admission Order in the form specified by the Commission for the reception, detention and treatment of the person in the approved centre. No such Form that accurately reflects what took place is before the Court. An affidavit cannot compensate for that. In those circumstances, I am of the opinion that the detention must also be rendered invalid by the position in relation to Form 13 as there is no valid Admission Order before me, and on that basis also I direct the release of the applicant.
57. Finally, I wish to emphasise to Ms. Cogan, the solicitor for the applicant, that when she is conveying the news of the High Court Order to the applicant she must bear in mind that the applicant is a vulnerable person who was certainly considered by all psychiatrists involved in the case on 1 April to be suffering from a mental disorder within the meaning of the Act. Therefore, I would like her to make the following matters clear to the applicant, ideally in person, if that is possible; first, that the applicant is free to go;

second, that she was strongly advised by the hospital last Friday, 1 April, that she should stay in hospital for her own benefit; and third, that the applicant should consider staying in hospital as a voluntary patient given that advice. I make those comments because I am concerned about the applicant as a vulnerable person and it seems to me that it is appropriate that she fully understands the position in relation to her situation.