



**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2021/28851

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO

28/7/2023
DATE

J Moorcroft
SIGNATURE

In the application by

KGAGARA, MPHO DONALD

Applicant

and

THE ROAD ACCIDENT FUND

Respondent

JUDGMENT

MOORCROFT AJ:

Summary

Court orders are suspended pending the outcome of an appeal or application for leave to appeal, unless otherwise ordered by the Court

Road Accident Fund – liability for compensation in respect of amounts compensated by medical scheme - subrogation

Order

[1] In this matter I make the following order:

1. *The application is postponed sine die;*
2. *Each party is to pay his or its own costs.*

[2] The reasons for the order follow below.

Introduction

[3] The applicant as plaintiff instituted an action against the Road Accident Fund (“the Fund”) for compensation for injuries sustained by the applicant in a motor vehicle accident that took place in October 2020. The Fund is a juristic person established to administer the claims of individuals injured in motor vehicle accidents in accordance with the provisions the Road Accident Fund Act, 56 of 1996 (“the Act”).

[4] The merits were settled on 11 October 2021 on the basis that the Fund would be liable for 80% of the applicant’s proven claim.

[5] The applicant claimed *inter alia* compensation for past hospital and medical expenses.

[6] In this application the applicant seeks an interim payment¹ of R85 993.51 in respect of the past hospital and medical expenses for which the applicant was compensated by a medical scheme of which he is a beneficiary.

[7] The amount of the claim is not in dispute and the opposition is based solely² on the averment that it would be '*prudent*' to await the outcome of an application for leave to appeal to the Constitutional Court in the matter of *Discovery Health (Pty) Ltd v Road Accident Fund & Another*.³ It was common cause between the parties that such an application was pending.

[8] The Fund issued a directive on 12 August 2022 in terms of which it announced its immediate intention to reject all claims for past medical expenses made by claimants for damages arising out of motor vehicle accidents in instances where these expenses had been paid by medical schemes. Prior to the directive, medical schemes would make payment of the past medical expenses of their members and beneficiaries arising from motor vehicle accidents falling within the ambit of the Act, and then by way of subrogation claim the amount of the payment from the Fund. In this way the medical schemes fulfilled their obligations to beneficiaries of the schemes but were compensated by the Fund established by law to pay these medical expenses arising from motor vehicle accidents.

[9] The applicant in the *Discovery* case ("Discovery Health") successfully challenged the directive in the Gauteng Division of the High Court in Pretoria. The application came before Mbongwe J who declared the directive to be unlawful, reviewed and set it aside, and interdicted the Fund from implementing it.

[10] An application for leave to appeal to the Supreme Court of Appeal was dismissed and the Supreme Court of Appeal also refused leave to appeal. The Fund then applied to the Constitutional Court for leave to appeal.

[11] The pending⁴ application for leave to appeal to the Constitutional Court meant that

¹ Interim payments are dealt with in section 17(6) of the Act and in Rule 34A(1) of the Uniform Rules of Court.

² The Fund actually concedes in heads of argument filed on its behalf that "*the Applicant has made out a proper case and is entitled to the relieve [sic] prayed for in the notice of motion.*"

³ *Discovery Health (Pty) Ltd v Road Accident Fund & Another* 2023 (2) SA 212 (GP).

⁴ See also the decision of the Western Cape High Court in *Watkins v Road Accident Fund* [2023] ZAWCHC 14 that was granted at a point of time when there was no pending application for leave to appeal.

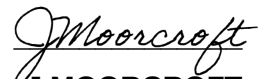
the operation and execution of the interdicts are suspended in terms of Section 18(1) and (3) of the Superior Courts Act, 10 of 2013. The argument advanced on behalf of the applicant that the directive has been set aside by the Court in Pretoria fails to take cognisance of the principle that court orders are suspended pending appeals or applications for leave to appeal, unless otherwise ordered by the Court.

[12] In a more recent judgment handed down on 23 June 2023 and also cited as *Discovery Health (Pty) Ltd v The Road Accident Fund & Another*,⁵ Discovery Health sought an order in terms of Section 18(1) and (3) of the Superior Courts Act declaring that the operation of the interdicts granted by Mbongwe J not be suspended pending the application to the Constitutional Court. The application was dismissed.

[13] The order granted in the Pretoria High Court on 26 June 2023 confirms that the earlier order by Mbongwe J remains suspended pending the outcome of the proceedings in the Constitutional Court and for this reason the order now sought cannot be granted. The directive referred to above that is subject to attack still stands pending the outcome of the application to the Constitutional Court.

[14] The proper course therefore is to postpone these proceedings *sine die* until the Constitutional Court has disposed of the matter. No cost order will be made in respect of the proceedings in the motion court in the week of 24 July 2023.

[15] For the reasons set out above I make the order in paragraph 1.


J MOORCROFT

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name

⁵ *Discovery Health (Pty) Ltd v The Road Accident Fund & Another* [2023] ZAGPPHC 523.

is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **28 JULY 2023**.

COUNSEL FOR THE APPLICANTS:

R V MUDAU

INSTRUCTED BY:

A WOLMERANS INC

COUNSEL FOR THE RESPONDENT:

MS M B MORE

INSTRUCTED BY:

STATE ATTORNEY

DATE OF ARGUMENT:

24 JULY 2023

DATE OF JUDGMENT:

28 JULY 2023