

**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA,  
GAUTENG PROVINCIAL DIVISION, PRETORIA**

**Case Number: 40674/2018**

- (1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED. NO

**10 APRIL 2024**

.....  
DATE

.....  
SIGNATURE

**DR MAVELA AUBREY MAZIBUKO**

**APPLICANT**

and

**GOVERNMENT EMPLOYEES MEDICAL SCHEME**

**RESPONDENT**

*This judgment was handed down electronically by circulation to the parties/and or parties' representatives and uploading on CaseLines. The date and time of hand-down is deemed to be 10 April 2024 at 10h00.*

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JUDGMENT

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## **JORDAAN AJ**

### **INTRODUCTION**

[1] On 20 May 2022 this court handed down judgment dismissing the Plaintiff's claims 1, 2 and 3 against the Government Employees Medical Scheme with costs.

[2] Aggrieved with the court's judgment and order the Plaintiff lodged an application for leave to appeal the whole of this court's judgment and order on the following grounds:

*"1. The learned Judge respectfully erred in finding that the Plaintiff's polydiagnostic approach to Mrs Thobejane was in breach of Clause 4.4 of the agreement;*

*2. The learned Judge respectfully erred in applying the principles in Putco Ltd v TV and Radio Guarantee 1985 (4) SA 809 (A) under circumstances where the alleged adequate grounds were not pleaded. The learned Judge should respectfully have followed Molusi v Voges NO 2017 (7) BCLR 839 (CC) at 839 (CC) at 849 to 852C;*

*3. The learned Judge respectfully erred in allowing Defendant to ambush the Plaintiff with the evidence of Mrs Gaecite where the Defendant did not plead that the Plaintiff did not perform a sonar examination;*

*4. The learned Judge respectfully erred in finding that the Plaintiff manipulated the codes and "made diagnosis to effect payment", this was not evidence of the Plaintiff, the Plaintiff gave evidence that he made the medical diagnosis' and there was no medical evidence to contradict his diagnosis;*

5. *The learned Judge respectfully erred in finding that diagnosis' made by the Plaintiff were intentional acts with purpose under circumstances where the Plaintiff testified that there is no benefit to him whether a claim is approved or not as his account for services rendered is the same irrespective of diagnosis;*
6. *The learned Judge respectfully erred in finding that the plaintive committed "multiple acts of fraud";*
7. *The learned Judge respectfully erred in not finding that the procedures applied by the Defendant, in refusing to attend to the Plaintiff's practice and instead emailing an indecipherable excel spreadsheet containing tens of thousands of names without any meaningful context, was materially unjust alternative procedure of Regulation 6 and Rule 15.5, specifically in that the Plaintiff was not provided with specific reasons why claims were disputed and not at any time afforded the mandatory opportunity to correct any claim;*
8. *The learned Judge respectfully erred in finding that Chapter 5 of the Regulations and in particular Regulation 15 E does not apply to the agreement;*
9. *The learned Judge respectfully erred in finding that Section 59(1) of the MSA creates a defence for payment by the defendant when a health care practitioner did not also submit an account to the member notwithstanding the clear and peremptory wording of Section 59(2) and Regulation 6;*
10. *The learned Judge respectfully erred in finding that, despite the Plaintiff's evidence being the only evidence before the court that in relation to the claims in annexure "D", that the services was indeed rendered;*
11. *The learned Judge respectfully erred in not upholding claims 1, 2 and 3 together with costs in favour of the Plaintiff."*

## LEGAL POSITION

[3] The test to be applied in an application for leave to appeal is set out in section 17(1)(a) of the Superior Courts Act<sup>10</sup> of 2013 which provides that:

*“(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that-*

*(a) (i) the appeal would have a reasonable prospect of success; or*

*(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;”*

[4] This application is on the ground that the appeal has a reasonable prospect of success and there is another compelling reason why the appeal should be heard.

[5] In *Caratco (Pty) Ltd v Independent Advisory Ltd*<sup>1</sup> it was held:

*“In order to be granted leave to appeal in terms of s 17(1)(a)(i) and s 17(1)(a)(ii) of the Superior Courts Act an applicant for leave must satisfy the court that the appeal would have a reasonable prospect of success or that there is some other compelling reason why the appeal should be heard. If the court is unpersuaded of the prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. A compelling reason*

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<sup>1</sup> 3 2020 (5) SA 35 SCA

*includes an important question of law or a discrete issue of public importance that will have an effect on future disputes."*

[6] The above legal principles emphasise that the requirement for a successful leave to appeal is more than a mere possibility that another judge might come to a different conclusion, but rather whether there is a reasonable prospect of success that another judge would come to a different conclusion.

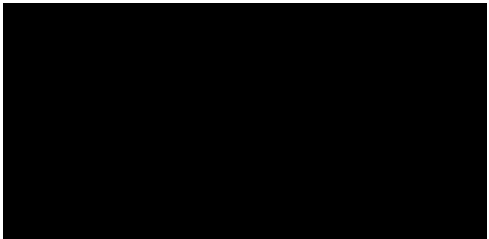
[7] This court had regard to the grounds of appeal listed and the submissions made by the parties and therefore is of the opinion that the Applicant would have reasonable prospects of success.

#### ORDER

[8] Consequently the following order is made:

- 8.1 Leave to appeal is granted to the Full Court of this Division;
- 8.2 costs to be costs in the appeal.

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M.T. JORDAAN  
ACTING JUDGE OF THE HIGH COURT

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