

REPUBLIC OF SOUTH AFRICA



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

Case No: 53352/2021

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

SIGNATURE

DATE: 20 September 2023

In the matter between:

AMPATH TRUST (PTY) LIMITED

Plaintiff

and

THE COMPENSATION COMMISSIONER

1st Defendant

THE DIRECTOR-GENERAL
IN THE DEPARTMENT OF LABOUR

2nd Defendant

THE MINISTER OF EMPLOYMENT AND LABOUR

3rd Defendant

JUDGEMENT

MOOKI AJ

- 1 The plaintiff seeks summary judgement. The Defendants filed a plea and, simultaneously, filed a notice of intention to amend. The Defendants oppose summary judgement with reference to contentions in the notice of intention to amend.
- 2 The plaintiff avers that the defendants did not amend their plea because the defendants did not deliver the amended plea. It was submitted on behalf of the defendants that the amendment was effected because the notice of intention to amend stipulated that the amendment will be effected unless the plaintiff made a written objection within 10 days of delivery of the notice. It was also submitted that there was no need to deliver the amended plea because the amendment would be the same as set out in the notice of intention to amend.
- 3 There is no amendment absent compliance with Rule 28(5) read with sub-rule (7). An amendment must be effected. The filing of a notice of intention to amend without more does not effect an amendment. That is the case even where the other party to the litigation does not respond to the notice

of intention to amend. Amended pages must be delivered to effect an amendment.¹

4 The defendants did not deliver the amended pages. There was, therefore, no amendment as required by Rule 28(5) read with sub-rule (7).

5 The affidavit opposing summary judgement must be limited to defences detailed in a plea.² The respondents are restricted to defences in their original plea.

6 The defences raised in opposing summary judgement include defences in the notice of intention to amend. Those defences are not competent for want of the defendants effecting the amendment to their plea.

7 The court therefore will not consider the opposition to summary judgement with reference to the following stated defences:

7.1 non-compliance with the W.CI.20 procedure;

7.2 non-compliance with section 73 of the Act; and

7.3 non-compliance with Rule 10.

8 The plaintiff conducts business, among others, of providing medical aid to employees injured on duty and who are entitled to compensation and or medical aid in terms of the Compensation for Occupational Diseases and Injuries Act 130 of 1993 ("COIDA"). The plaintiff submits claims for

¹ Becker v MEC for The Department of Economic Development & Environmental Affairs and Others (3366/2013) [2014] ZACPEHC 43 (24 June 2014), para 17

² Maharaj v Barclays Bank Ltd 1976 (1) SA 418 at 426A-E

payment to the first defendant to process and validate such accounts, and to pay for validated accounts.

- 9 The plaintiff initially claimed the amount of R2 036 481.53. The plaintiff seeks summary judgement in the amount of R1 765 126.80. That is because the defendants made certain payments leading to the launch of this application.
- 10 The plaintiff, in the affidavit supporting summary judgement, contends that the plaintiff complied with all the requirements in COIDA, including compliance with all statutory tariff amounts listed in the Government Gazette. The plaintiff further contends that the first defendant processed and validated the claims.
- 11 The defendants' defence on the merits is that the plaintiff had not submitted all medical accounts referred to in annexure "POC 2" to the particulars of claim and that the medical accounts had therefore not been verified; with the result that such medical accounts were not due or payable until such time as the plaintiff resubmitted the accounts.
- 12 The defendants deny that the claims comply with the statutory tariff. They also deny that the claims have been validated or are due and payable. They aver that "there are currently no matters which were rejected" at the time of the application for summary judgement.
- 13 The Full Bench of the South Gauteng Division of the High Court held that:

The purpose of a summary judgment application is to allow the court to summarily dispense with actions that ought not to proceed to trial because they do not raise a genuine triable issue, thereby conserving scarce judicial resources and improving access to justice. [...].³

- 14 The defendants do not substantiate their denial. For example, they do not explain why claims do not comply with the statutory tariff. The defendants are required, insofar as they contend that the claims did not comply with the tariff, to detail why that is the case. That was not done. They therefore failed to substantiate why the plaintiff would be entitled to its claim.
- 15 The defendants cannot, in the same breath, say the defendants had not rejected any matters at the launch of summary judgment proceedings; whilst simultaneously averring that claims had not been validated or that claims were not due or payable.
- 16 The judgment does not detail every single basis raised by the defendants for resisting summary judgment. I find that, in the whole, the issues raised by the defendants do not raise genuine triable issues. Those issues include the contention that the claim is not a liquidated amount.
- 17 The Court has previously rejected a defence that the type of claim such as that by the plaintiff is not based on a liquidated amount. At least two

³ *Raumix Aggregates (Pty) Ltd v Richter Sand CC and Another* 2020 (1) SA 623 (GJ) (4 October 2019), para 16

decisions in this Division rejected this defence in similar summary judgement proceedings against the defendants.⁴

18 I am bound by the decisions referred to above. I can only deviate from those decisions where they are clearly wrong. They are not.

19 The application for summary judgement succeeds. I make the following order:

(a) Judgement is rendered in favour of the plaintiff in the amount of R 1 765 126.00.

(b) Interest on each Medical Account set out in Annexure “POC2” to the particulars of claim at the prescribed legal rate, calculated from the date of acceptance of each claim as set out in Annexure “POC2” to the particulars of claim.

(c) Costs

Omphemetse Mooki

Judge of the High Court (Acting)

Heard on: 7 August 2023

Delivered on: 20 September 2023

⁴ Compensation Solutions (Pty) Ltd v Compensation Commissioner and Others (56219/2021 ; 49156/2021) [2023] ZAGPPHC 572 (18 July 2023), per Ally AJ, and case Case number 76034/2018 dated 13 December 2018, per Swanepoel AJ.

For the Applicant: C J Welgemoed

Instructed by: Podbielski Mhlambi Inc.

For the Respondents: M Makhubela

Instructed by: The State Attorney