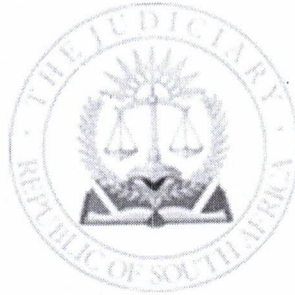


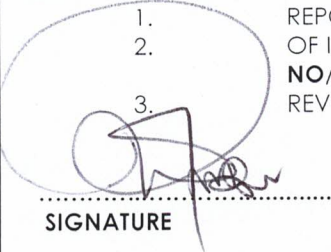
REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 88884/2016

DOH 5 MAY 2021

1.	REPORTABLE: NO /YES
2.	OF INTEREST TO OTHER JUDGES:
	NO /YES
3.	REVISED.
	17 MAY 2021
SIGNATURE	DATE

In the matter of:

JOHANNES RAMOBA

FIRST PLAINTIFF

KGAKGAMOTSO MOKOKA

SECOND PLAINTIFF

and

THE GOVERNMENT EMPLOYEES MEDICAL SCHEME

FIRST DEFENDANT

METROPOLITAN HEALTH GROUP

SECOND DEFENDANT

JUDGMENT

**THIS JUDGMENT HAS BEEN HANDED DOWN REMOTELY AND SHALL BE
CIRCULATED TO THE PARTIES BY WAY OF EMAIL. ITS DATE AND TIME OF HAND
DOWN SHALL BE DEEMED TO BE 17 MAY 2021**

Bam AJ

1. Plaintiffs filed an amended declaration (the declaration) in pursuance of a monetary judgment against first and second defendants jointly and severally, the one paying the other to be absolved, in respect of alleged supplies of pharmaceutical drugs and services to members of first defendant and the dependents of those members. Second defendant filed an exception to the declaration on the basis that it lacks the necessary averments to sustain a cause of action against it (second defendant).
2. Second defendant avers that it is an accredited administrator as set out in section 58 of the Medical Schemes Act¹, (the Act), and as the plaintiffs' claims are based on section 59 (2) of the Act, which deals with liability of a medical scheme to make payment to a supplier of services within 30 days of receipt of a valid claim, the declaration as it currently stands discloses no cause of action against it. The

¹ Act 131 of 1998 as amended

declaration fails to establish a legal nexus between the plaintiffs' claims and second defendant. Based on the aforementioned grounds, second defendant states that the plaintiffs' claims cannot succeed against it as there are no provisions in the Act that provide for the liability of an administrator for supplies and services rendered to members of the first defendant. Second defendant adds that the overall duty to ensure that the operation and administration of a medical scheme is conducted lawfully rests with the board of trustees of a scheme. Second defendant asks this court to uphold the exception with costs.

3. Before I consider the plaintiffs' response, there is some dispute between the parties as to whether this ground of exception had been previously determined. Both parties agree that it had been raised, but plaintiff suggests that it had not been determined. Owing to the view I take of the matter, I do not deal with this issue.
4. The plaintiffs submitted that their declaration must be read as a whole along with the relevant provisions of the Act as cited in the declaration. As a starting point, plaintiffs refer to the definition section of the Act which defines an administrator as: 'any person who has been accredited by the Council for Medical Schemes (the Council) in terms of section 58, **and shall where any obligation has been placed on a medical scheme in terms of this Act, also mean a medical scheme** (emphasis mine).'
5. They state that pursuant to the provisions of sections 59 (1), read with 59 (2) of the Act, the plaintiffs' pharmacies were entitled to render supplies and services to the first

defendant's members and or their beneficiaries. They also state that the second defendant has been approved by the Council to provide, *inter alia*, membership and claims management services as well as financial and operational information through its administrative agreement with the first defendant. As such, second defendant is responsible for, *inter alia*, receiving, processing and paying claims made by suppliers of relevant health services rendered to members of first defendant.

6. Plaintiffs point to the words, '**and shall, where any obligation has been placed on a medical scheme in terms of this Act, mean a medical scheme**' and submit that the plain mischief in broadening the definition of an administrator, as is apparent from the words set out in bold above, was to ensure that where an obligation is placed on a scheme in terms of the Act, the administrator shall be deemed to be a scheme, otherwise the additional words would be rendered nugatory. Plaintiffs conclude that in terms of the provisions of section 59 the Act, read with the relevant regulations, the defendants were obliged to pay the amounts claimed, subject to the schemes rules and the members' benefits, to those members to whom services were rendered. Where payment was not so made, [to the members in other words] it was to be made to the plaintiffs' pharmacies, which rendered the health services, within 30 days after the day of receipt of the claims by the first and or second defendant. They asked that this court dismiss the exception with costs.

Discussion

7. A cursory glance at chapter 6 of the relevant regulations², which deals with administrators, read with section 58 of the Act, conveys the rigorous and intrusive nature of the process that aspirant administrators of medical schemes must subject themselves to. By way of example, in terms of regulation 17, an application for accreditation as administrator must be accompanied by, *inter alia*, a report prepared by the auditor indicating whether or not the administrator's system of financial control is adequate for the size and complexity of the medical scheme to be administered. The application must also include a copy of the proposed administration agreement between the administrator and the medical scheme concerned. The council must satisfy itself that the applicant administrator meets the requirements of fit and proper and whether it has the resources, systems, skills and capacity to render the administration services. The administrator must further be financially sound. In terms of regulation 18, prior to commencing activities as administrator, the medical scheme must enter into a written agreement with the administrator in which the terms and conditions of the administration of the medical scheme are recorded. The agreement must provide for, *inter alia*, the scope and duties of the administrator. It must further provide that the administrator, on behalf of the medical scheme, must administer the business of a medical scheme in accordance with the Act and the rules of the medical scheme. It should also provide for the basis on which the administrator is to be remunerated. As is apparent from chapter 6, administrators must continue to meet these stringent requirements each time they apply for accreditation after 24 months.

² GNR.1262 of 20 October 1999, as amended

8. The real nature and extent of the relationship between a medical scheme and an administrator is elegantly captured in this extract of the SCA in *Sechaba Medical Solutions & Others v Sekete & Others*³:

‘The relationship between a scheme and its administrator is usually so close that without its administrator, the scheme cannot fulfil its obligations to its members or in any other manner conduct business as a scheme. In practice, it is the administrator that conducts the daily affairs of a scheme and the acts or omissions of the administrator are the acts and omissions of the scheme. A medical scheme does not have its own employees to pay claims and process membership applications and changes in beneficiaries. It does not have its own information technology systems, financial reporting and management systems and human resources ... Most medical schemes are little more than paper entities with a principal officer, a board of trustees and a bank account, and therefore they are literally dependent on their administrators for their daily operations.’

9. It is true that, apart from those schemes where a decision has been made to handle the administration internally, undoubtedly informed not only by the schemes’ financial muscle but the know- how, and the ability to skillfully manage risk, the daily fulfillment of the legal obligations of a medical scheme is achieved through independent administrators such as the second defendant and a few others. Ordinarily, and this the court can take judicial notice of, as the information is publicly available in the case of those schemes that are administered through intermediaries, it is the administrator that discharges the obligations of a medical scheme, including those set out in regulations 5 and 6 and in section 59.

³ (216/2014) [2015] ZASCA 8 (11 March 2015) at paragraph 6

10.I note the submissions by second respondent that overall, the duty to ensure that the operation and administration of the medical scheme is conducted lawfully rests with the scheme's board of trustees. It is true that the board of trustees of a medical scheme is accountable for the overall governance of a scheme, but two points must be born in mind. First, trustees are not day to day employees of a scheme and neither do they interact with providers and pay claims. Second, the submission cannot take away the reality that administrators are the heartbeat of many schemes that are managed through intermediaries as mentioned by the court in Sechaba, to the extent that if one were to take away the administrator, it would spell disaster for most schemes. These comments should not be read to mean the presence of an administrator makes the conduct of a medical scheme's business perfect. For further insight, into the role of administrators, one need not go further than the records of the Section 59 Investigation, including the Commission's Interim Report which was produced for and on behalf of the Council⁴.

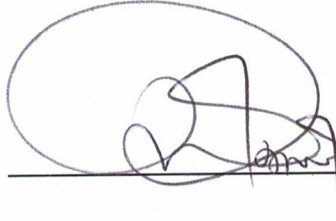
Conclusion

11.I accordingly conclude that the exception must fail.

Order

12.The exception is dismissed with costs.

⁴<https://cmsinvestigation.org.za>



NN BAM

**ACTING JUDGE OF THE HIGH COURT,
PRETORIA**

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DATE OF HEARING: 5 MAY 2021

DATE OF JUDGMENT: 17 MAY 2021