

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

CASE NO : **2023/082674**

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE YES/NO
- (2) OF INTEREST TO OTHER JUDGES YES/NO
- (3) REVISED

.....
SIGNATURE

DATE 20 November 2024

In the matter between:

**CROSS-MED HEALTH CENTRE (PTY)
LIMITED**

Applicant

and

**BOARD OF HEALTHCARE FUNDERS NPC
COUNCIL FOR MEDICAL SCHEMES
MEDSCHEME HOLDINGS (PTY) LIMITED
AFROCENTRIC INVESTMENTS
CORPORATION LIMITED
BARLOWORLD MEDICAL SCHEME
BONITAS MEDICAL SCHEME**

First Respondent
Second Respondent
Third Respondent
Fourth Respondent
Fifth Respondent
Sixth Respondent

FEDHEALTH MEDICAL SCHEME	Seventh Respondent
SABC MEDICAL SCHEME	Eighth Respondent
SOUTH AFRICAN POLICE SERVICE MEDICAL SCHEME (POLMED)	Ninth Respondent
SOUTH AFRICAN MUNICIPAL WORKERS' UNION NATIONAL MEDICAL SCHEME (SAMWU MED)	Tenth Respondent
MEDSHIELD MEDICAL SCHEME	Eleventh Respondent
CHWAYITA OMGANA YONGAMA YAKO	Thirteenth Respondent
MUSTAFA MOHAMED N.O. (cited in his capacity as liquidator of CROSS- MED MTHATHA PRIVATE HOSPITAL (PTY) LIMITED (IN LIQUIDATION))	Fourteenth Respondent
GONASAGREE GOVENDER N.O. (cited in her capacity as liquidator of CROSS- MED MTHATHA PRIVATE HOSPITAL (PTY) LIMITED (IN LIQUIDATION))	Fifteenth Respondent

JUDGMENT

THERON AJ:

- [1] This is an application for a money judgment against the First to Twelfth Respondents by the Applicant, Cross-Med Health Centre (Pty) Limited (“Cross-Med”).
- [2] The Thirteenth Respondent is a medical doctor whom I shall refer to in this judgment as “Dr Yako”.

- [3] No relief is sought in the application against Dr Yako (hereinafter “the main application”).
- [4] The main application has become settled between Cross-Med and the First to Twelfth Respondents.
- [5] Remaining before me is a counter-application by Dr Yako.
- [6] Dr Yako purports to join as the Sixteenth and Seventeenth Respondents, Cross-Med Mthatha Private Hospital (Pty) Limited (“Mthatha”) and the Government Employees Medical Aid Scheme (“GEMS”) by mere inclusion of their names in the heading of his counter-application.
- [7] Mthatha must not be confused with Cross-Med.
- [8] Mthatha is in liquidation and its liquidators, in their capacities as such, are the Fourteenth and Fifteenth Respondents in the main application.
- [9] The purported joinder is incompetent.
- [10] Dr Yako is an unrehabilitated insolvent and therefore disqualified to be

a director of a company.¹

[11] Dr Yako seeks his reinstatement as a director of the Applicant in prayer 3 of the notice of motion. The prayer seeking this relief is to be dismissed for this reason alone.

[12] Dr Yako was also removed as a director of the Applicant by order of Roberson J on 29 March 2018 on application brought by Cross-Med against him and Mthatha (“the Roberson order”).

[13] Dr Yako, in his personal capacity, is neither a shareholder nor a creditor of the Applicant.

[14] He therefore does not have *locus standi* to seek the relief sought in prayers 1 and 2 of the counter-application.

[15] The Board of Healthcare Funders (the First Respondent in the main application) assigns a practice code number (“PCN”) on its practice code numbering system (“PCNS”).

[16] It is clear that a PCN enables service providers to claim from medical aids who are members of the First Respondent.

¹ Section 69(8)(b)(i)

[17] It is further clear that the number inures in the case of a class A private hospital to services at an approved and inspected premises.

[18] The First Respondent, in the main application, who was a Respondent together with Dr Yako in an application brought by Cross-Med before Smith J, filed an affidavit in those proceedings saying *inter alia* the following:

“19. The reason for explaining this briefly is to demonstrate that the Practice Number allocated follow the registration and verification process by the BHF whilst for a status A, being the Mthatha Private Hospital, and not to Yako in his personal capacity.

20. I submit and confirm that the BHF embarked on an independent verification and found that the holder and/or user of the Practice Number 0570010553506 issued in August 2014 in Mthatha Private Hospital. The independent verification is confirmed by the scope of practice number, the practice of registration provided in 2014 with registration number 2007/006442/07. ...”

[19] The company registration number belongs to the Applicant in the main application.

[20] Smith J granted final interdictory relief against Dr Yako and I quote certain paragraphs from his order:

- “2. The First Respondent be and is hereby interdicted from, in any way, communicating with the Second and Third Respondents relating to the Applicant and/or relating to payments to be made to the Applicant.*
- 3. The First Respondent be and is hereby interdicted from, in any way and to any entity or individual, claiming any entitlement to any licence currently held by the Applicant.*
- 4. The First Respondent be and is hereby interdicted from registering as a healthcare service provider, with the Third Respondent; insofar as it pertains to the Applicants’ practice at 59 Nelson Mandela Drive, Mthatha.*
- 5. It is declared that the payment and banking particulars as communicated to the Third Respondent by the Applicant is valid and correct particulars and are to be utilised by the Second Respondent for purpose of making payment relating to claims submitted by the Applicant.*

6. *The First Respondent be and is hereby interdicted from making any attempt to amend or change, with the Second Respondent, or any medical aid societies, the particulars of the Applicant including banking and payment particulars.*

7. *The First Respondent be and is hereby interdicted from, in any way, making any claim relating to the Applicant, and/or the Applicant's practice and/or hospital licence."*

[21] The Applicant referred to in the order is Cross-Med, the First Respondent Dr Yako and the Third Respondent the Board of Healthcare Funders.

[22] After analysing the issues traversed and decided between the parties before Roberson J and Smith J, it is my considered view that because of the working of *res judicata* and issue estoppel, the relief sought in prayers 4 to 7 of the notice of motion cannot be granted.²

[23] Dr Yako attacks the authority of the board of the Applicant to have instituted the main application.

² *AON South Africa (Pty) Limited v Van den Heever and Others* 2018 (6) SA 38 (SCA) at paragraphs [22] and [23] and *Smith v Porritt* 2008 (6) SA 303 (SCA) at paragraph [10]

[24] The main application created no *lis* between the Applicant and Dr Yako and therefore he does not have the necessary *locus standi* to raise the lack of authority.

[25] Confusingly, in the light of the challenge to authority, Dr Yako seeks relief directly against the Applicant in a counter-application served on the Applicants' attorneys.

[26] It seems to me that Dr Yako can't have it both ways.

[27] The counter-application therefore falls to be dismissed.

I make the following order:

1. The counter-application brought by the Thirteenth Respondent in the main application is dismissed with costs on scale C.



THERON AJ
Acting Judge of the High Court

Date of hearing: 6 November 2024

Date of judgment: 20 November

Appearances:

Counsel for Applicant: W B Pye SC
Instructed by: Shaheed Dollie Incorporated

Counsel for the Thirteenth Respondent: In person