

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 150109/2025

(1)	REPORTABLE: NO/Y
(2)	OF INTEREST TO OTHER JUDGES: NO/Y
(3)	REVISED: NO/Y
<u>09 OCTOBER 2025</u> DATE	
 SIGNATURE	

In the matter between:

THE REGISTRAR OF MEDICAL SCHEMES

Applicant

and

SIZWE HOSMED MEDICAL SCHEME

Respondent

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 09 October 2025.

JUDGMENT

- [1] On 28 August 2025, the Registrar of Medical Schemes ("Registrar") under an urgent *ex parte* application approached this court and was granted an order provisionally placing Sizwe-Hosmed Medical Scheme ("Sizwe-Hosmed" or "the Scheme" or "the Respondent") under curatorship in terms of section 56(1) of the Medical Schemes Act, 131 of 1998 ("MSA") read together with the Financial Institutions (Protection of Funds) Act No. 28 of 2001 ("FI Act").
- [2] The court also terminated the Statutory Management that had been in place in terms of an order of this court dated 06 May 2025. The Order placing Sizwe-Hosmed under provisional curatorship was granted on 03 September 2025. Lebogang Mpakati was appointed provisional curator to take control of the scheme.
- [3] The provisional order calls upon Sizwe-Hosmed to show cause on 30 October 2025 why the provisional order should not be confirmed.
- [4] For purposes of this Judgment, I will refer to the Applicant in the counter-application as Sizwe-Hosmed and the Applicant as the Registrar of Medical Scheme.
- [5] The Registrar disputes (in limine) the urgency of the proceedings, the legal standing of Sizwe-Hosmed, the Principal Officer ("PO") and the Board of Trustees to approach the court for relief (both in terms of the counter application and to oppose the confirmation of the order).
- [6] The relief in issue is the discharge of the provisional curatorship order and the relief regarding statutory management.
- [7] Counsel for Sizwe-Hosmed argued that the statutory management is therefore preferable alternative that the Registrar unreasonably jettisoned in preference to curatorship.
- [8] It is further argued that the conduct of the Registrar and provisional curatorship has led to serious and continuing adverse consequences to the Scheme, its

members and beneficiaries. These adverse consequences may prove irreversible if urgent relief is not granted.

- [9] It is submitted on behalf of Sizwe-Hosmed that the provisional curator only has a financial interest in the confirmation of the provisional order. She has no legal interest that will be affected by the order of the court.
- [10] On behalf of the Registrar it is submitted that the Scheme is in a poor financial state for various reasons.
- [11] It is further submitted on behalf of the Registrar that, based on the KPMG and the Statutory Management's reports the Registrar was of the opinion that it is in the interest of beneficiaries and it is desirable because of material irregularities and because the Scheme is not in a sound financial condition to apply for the appointment of a curator.
- [12] Counsel for the Registrar argued that based on the statutory Management's reports, the Registrar formed an opinion that the continuation of the Statutory Management was no longer practicable.
- [13] It is further argued that the material irregularities at the Scheme and the void in the administration of the Scheme necessitated the urgent placement of the Scheme under the provisional curatorship and appointment of the provisional curator.
- [14] Finally, counsel for the Registrar referred the court to the decision in *The Registrar of Medical Schemes v Keyhealth Medical Scheme and eight others Case No. 35478/2020, delivered on 25 March 2021 Gauteng Division Pretoria*.
- [15] Referring to the above decision counsel contended that the Scheme or alternatively Mr Makwabe does not have locus standi to institute or defend the application made in terms of Rule 6(12) of the Uniform Rules of Court.
- [16] Counsel finally contended that the Scheme counter application ought to be dismissed with costs payable by Mr Luyolo Makwabe de bonis propriis on attorney and client scale, such costs to include the costs consequent upon the employment of two counsel.
- [17] The court order by Manamela AJ (Caselines 007-3), in my view it is clear and unambiguous. It vests all powers of control and management of the Scheme to the provisional curator.

[18] *Keyhealth Medical Scheme* decision referred to above Kollapen J in par 18 said the following:

"[18] It is common cause that the current trustees of the respondent no longer exercise any control over the respondent, particularly in light of the order of this Court of 16 September 2020 which expressly authorises the curator to take immediate control and in the place of the board of trustees manage the business and operations of the respondent. They accordingly cannot seek to intervene as the board of the respondent as such a board does not exist for now or at the very least is not functional nor possessed of any power or authority. It is the curator who now manages the respondent and who has assumed the powers of the board."

[19] I am of the view therefore that, the board of trustees and Mr Makwabe did not have locus standi to institute or defend the application made in terms of Rule 6(12)(c).

[20] Furthermore I am of the view that the return date of the Rule Nisi was in about three weeks, it was not necessary for the Scheme to bring this application on extreme urgent basis. The matter is not urgent.

[21] Taking into account that the Scheme did not have locus standi to bring the counter application, the counter application must be dismissed.

[22] It was submitted that Mr Luyolo Makwabe must pay the costs de bonis propriis.

[23] *In Blou v Lampert and Chipkin, N.N.O and Others 1973(1) (A.D) at page 14, the court held that: "costs de bonis propriis against a trustee can only be granted when he acted in bad faith, or negligently or unreasonably."*

[24] In my view Mr Luyolo Makwabe not only did he disregard Manamela AJ'S order, he also acted unreasonably by not waiting for the return date of the Rule Nisi, which was in four weeks time, for that reason, I am of the view that he must pay costs de bonis propriis.

[25] I make the following order:

25.1. The counter-application is dismissed with de bonis propriis costs on an attorney and client scale including the costs consequent upon the employment of two counsel to be paid by the deponent of the Respondent's Affidavits, Mr Luyolo Makwabe.

25.2. The Rule Nisi is confirmed.



D. MAKHOBA J
JUDGE OF THE HIGH COURT
PRETORIA

Date of Hearing: 08 October 2025

Judgment delivered: 09 October 2025

Appearances

For Applicant: ADV J.J BRETT SC
 ADV L.A. MAKUA

For Respondent: ADV H.M. MAENETJE SC
 ADV A. NGIDI