

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 200904-2025

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
19/12/2025	
DATE	SIGNATURE

In the matter between:

NATIONAL HOSPITAL NETWORK

Applicant

and

MEDSCHEME HOLDINGS (PTY) LTD

First Respondent

SOUTH AFRICAN MUNICIPAL WORKERS UNION

NATIONAL MEDICAL SCHEME

Second Respondent

FEDHEALTH MEDICAL SCHEME

Third Respondent

This Judgment is handed down electronically by circulation to the applicant's legal representatives and the respondents by email, publication on Case Lines. The date for the handing down is deemed.....December 2025.

JUDGMENT

MALI J

Introduction

[1] The applicant brought an urgent application as follows:

"PART A: URGENT INTERIM INTERDICT"

1. This application is heard as one of urgency and the applicant's non-compliance with the ordinary rules of court relating to time periods, form and service is condoned in terms of Rule 6(12);
2. Pending the final determination of Part B of this application:
 - a. The respondents are interdicted from implementing the RFP outcome issued by the first respondent on 5 October 2025, by which 'SAMWUMED' and 'myFed' were introduced as sub-categories of 'tier 3' of the RFP under the acute and day network surgery networks, to the exclusion of Melomed hospitals;
 - b. The respondents are directed to implement the RFP outcome issued by the first respondent on 18 September 2025;
3. Costs of the suit in the event of opposition; and
4. Such further and/or alternative relief."

[2] The applicant, a network or group of hospitals describes itself as a non-profit company incorporated and registered in terms of the Companies Act, 2008 (as amended) ('Companies Act'), whose main object is to, inter alia, promote the interests of its private independent member hospitals, especially in negotiations with relevant stakeholders in matters of common interest.

[3] The first respondent, Medscheme is an Administrator and Managed Care Organisation in terms of Regulation 15B of the Regulations¹ and is subject to the provisions of Medical Schemes Act² ('the MSA'). It is for a profit entity that provide services such as processing beneficiary claims, designing networks and benefits, managing membership, controlling data and information, and negotiating with service providers on behalf of medical schemes, among others.

¹ Medical Schemes Act 131 of 1998 Regulations GNR.1262 of 20 October 1999.

² Act 131 of 1998.

Medscheme performs some of these and additional functions in terms of the written agreement contemplated in Regulation 18 of the Regulations.

- [4] The second respondent is a mutual non-profit entity and medical scheme registered in terms of section 24 (1) of the MSA, as read with Regulation 2 of the Regulations ('SAMWUMED'). The third respondent is a mutual non-profit entity and medical scheme registered in terms of section 24 (1) of the MSA, as read with Regulation 2 of the Regulations ('FEDHEALTH').

Common cause facts

- [5] On 28 May 2025 Medscheme issued a Request for Proposal (RFP) for the purpose of contracting, - inter alia:
- (i) common collective tariffs (Fee for Service and Alternative Reimbursement Models) for all facility types for schemes participating in the collective negotiations;
 - (ii) an acute hospital, day surgery and mental health network for the participating network options;
 - (iii) future tariff increases for the duration of the agreement for all the schemes options;
 - (iv) early settlement discount agreements; and
 - (v) radiology discounts linked to the 'relevant acute hospital network for network options.
- [6] The RFP outlines the technical requirements and measurement criteria to be used in evaluating bids, which lists the collectively participating schemes in Table 1. Likewise, it further sets out the different benefit options for which Medscheme intends to contract on behalf of the medical schemes it administers. The Registrar of the Council approves these benefit options for Medical Schemes ('CMS') in terms of section 33 of the MSA.
- [7] In terms of the RFP Medscheme aimed to contract acute; day surgery, and mental health network disciplines and would oversee the evaluation and

selection process of bidders. This process was intended to result in the appointment of identified NHN private healthcare facilities ('selection process') through its Evaluation Committee. The selection process would culminate in different 'anchor' appointment for each network discipline, which could be contracted across the various network options, as well as the appointment of 'filler' hospitals.

- [8] Collective schemes reserve the right to negotiate with bidders regarding any terms and conditions, including price, discounts, and other selection criteria after the recommendations of the Evaluation Committee. One to five tiers were created for the different networks and an agreement consequent upon the RFP would be concluded to commence on 1 January 2026, for a minimum period of 3 (three) years, with the option to extend for an additional year.
- [9] The RFP stated that the schemes are 'tiered' to establish a 'common tariff file' and have the flexibility to pursue post-contract activities such as implementing additional procedural networks, centres of excellence, and/or alternative reimbursement models (ARMs) at a later stage. As expected, bids that respond to the Passage "assessed for eligibility and preferred bidder status before appointment".
- [10] Following the submission of its bid to Medscheme, the applicant received an outcome to its bid response on 18 September 2025 in terms of which, inter alia: a majority of applicant's mental health facilities were appointed to 'anchor networks' under tiers 2, 3 and 4. Several acute and day hospitals were appointed as filler facilities in the acute and day surgery network for tiers 2, 3 and 4. Of significance Melomed Mitchells Plain and Melomed Gatesville were appointed under tier 2 and 3 as Acute Hospital Network fillers. Five of the mental health facilities were excluded for inefficiency.
- [11] On 23 September 2025, the applicant wrote to the Medscheme urging it to consider the exclusion of mental health facilities and to think about greater inclusion of its acute and day hospital members under the RFP. The applicant provided reasons which are not disputed by Medscheme in support of its plea.

Amongst them, that applicant hospitals encompass an "unchallengeable and organic" bona fides to black economic empowerment.

[12] The black economic empowerment is not only in the actual ownership/management, but in the location of the applicant's hospitals located in predominantly black areas which were established long before it was not economically viable to do so. Thus, showing commitment to genuine and sincere empowerment. Therefore, overlooking those hospitals year after year would undermine the purpose of bringing health facilities to poor disadvantaged areas.

[13] On 5 October 2025, Medscheme responded to the applicant's letter of 23 September 2025 whose excerpts are referred above. The response is as follows at paragraphs 1.1, 1.2 and 1.3

"1.1. One of the key considerations of strategic purchasing is ensuring that healthcare services are procured optimally to stretch the health Rand. One of the areas of consideration is ensuring that where inefficiencies are identified they are addressed.

1.2. We note NHN's request to include the identified inefficient hospitals to the network for 2026 with a review conducted for 2027 network participation. We are amenable to include these hospitals in the network and have them on the watchlist. However, we propose that their continued participation in the networks be reviewed based on the efficiency at the end of Quarter 1 2026. This review will be conducted in Quarter 3 of 2026. Should these hospitals still be inefficient, then they will be removed from the network during 2026.

1.3. The rational for reviewing after Quarter 1 2026, is that the 12-month period reviewed will then cover the period in which the decaying per diems were implemented and therefore the effect of the new reimbursement arrangement will reflect in the report."

[14] At paragraph 1.4, nine (9) hospitals which are on the watchlist are listed. The parties continued with written exchanges until the applicant filed this application on urgent basis seeking interim relief.

[15] At paragraph 2. The following bears:

"2. Acute and Day surgery networks

2.1 Medscheme has reviewed the motivation tabled by NHN given the consideration of the principles tabled above. The revised acute and day surgery hospital networks are attached [NHN Network list]. Please note the Tier 3-day surgery network is not included as that network is still under review. The updated filler list for this tier will be shared once the review is completed."

- [16] Of importance is that the decision in the revised list Melomed Mitchells Plain and Melomed Gatesville are no longer on the list of acute day surgery fillers which were appointed under tier 2 and 3 according to the letter of 18 September 2025. There is no reason provided for this change of heart. On 6 October 2025, the applicant responded to the decision of 5 October 2025 stating that it would be amenable to the establishment of a watchlist and the agreeing to the assessment and hospital cost efficiencies of the hospitals on watchlist to be conducted in July 2026 based on experience between April 2025 and March 2026.
- [17] The applicant further requested that the efficiency methodology be shared with it by no later than the 21st of October and be afforded opportunity to comment on the methodology. Also requested that the prevailing efficiency results be shared with the applicant by no later than the 21st of October 2025. The applicant desired the speedy resolution as the decision of 5 October 2025 will be implemented on 1 January 2026. The applicant also requested opportunity to comment on the results and that the comments will be accounted for in subsequent assessments. The applicant further recorded amongst others that the only difference between the two tier 3 networks is the exclusion of Melomed hospitals, notably Melomed Gatesville and Melomed Mitchells Plain from tier 3 SAMWUMED.
- [18] On 14 October 2025, Medscheme responded to confirm the outcome of 5 October 2025. In part it reads:

"We confirm that the evaluation feedback that you have been provided through our letter dated 05 October 2025 stands and contrary to your assertion is aligned to the criteria stated in the RFP document. The differentiation of the networks at option or

scheme level was articulated in Section 4.2 and 4.3 of the RFP. The extracts of the RFP are attached below for ease of reference. The acute hospital networks will be differentiated in size and hospital selection in accordance with option-specific requirements, e.g. the Tier 2 network will be larger having more hospitals compared to Tiers 3 and 4; The Schemes reserve the right to customise their networks, including anchor hospitals, at the time of contracting and/or during the agreement, based on Scheme/Option specific access."

- [19] Following numerous exchanges of correspondence, it appeared that the parties were not reaching amicably resolutions, hence the applicant launched this application on urgent basis. The second and third respondents make common cause with the first respondent, Medscheme.

Urgency

- [20] The first question to be answered is whether the application meets the requirement of Rule 6 (12) of the Uniform Rules which provides as follows:

"(12) (a) In urgent applications the court or a judge may dispense with the forms and service provided for in these Rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these Rules) as to it seems meet. (b) In every affidavit or petition filed in support of any application under paragraph (a) of this subrule, the applicant shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course."

- [21] In *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others*³ the court held:

"The correct and the crucial test is whether, if the matter were to follow its normal course as laid down by the rules, an Applicant will be afforded substantial redress. If he cannot be afforded substantial redress at the hearing in due course then the matter qualifies to be enrolled and heard as an urgent application."

- [22] The timelines as gleaned from the background facts are common cause between the parties. Applicant's submission is that the case is urgent because

³ [2011] ZAGPJHC 196 at [9].

the impugned decision communicated on 5 October 2025 is intended to be implemented with effect from 1 January 2026. That date coincides with the commencement of the annual contracting cycle in which networks are fixed, benefit options are activated, and tariffs are operationalised for the forthcoming year. If the decision is implemented, the network architecture across the relevant schemes will be reconfigured immediately and for a sustained period. In practice, such reconfiguration is not susceptible to later reversal.

- [23] Furthermore, at paragraph 34 of the Founding Affidavit the applicant makes the following averment:

“This Court is faced with a decision where Medscheme is set to exclude certain NHN private Healthcare facilities from participating in contract negotiations which will begin on 1 January 2026 despite these NHN Healthcare Facilities qualifying for appointment under RFP....”

- [24] Without interim relief, the applicant will not obtain substantial redress in due course. The reason is structural rather than merely financial. Network inclusion or exclusion determines referral flows. Specialist alignment, and the viability of facilities in defined catchment areas. Once a facility is excluded for a contracting year, the effects are immediate: specialists move lists; patient flows are redirected; community expectations adjust; and reputational signals harden against the excluded facility. Those dynamics are path-dependent and persist well beyond a single cycle. A later setting-aside order cannot restore lost alignment, reconstitute referral habits, or reverse reputational attrition.

- [25] In retort to the above Medscheme argued that while the applicant contends that damages would be speculative, unquantifiable, and contested, the mere fact that damages may be difficult to quantify does not render them an inadequate remedy, nor does it justify urgent interdictory relief where the requirements for such relief are not met. Therefore, the applicant has not demonstrated that damages would be so uncertain or projected as to justify bypassing the ordinary remedies and seeking urgent interdictory relief. The law does not favour the grant of an interdict where an adequate alternative remedy exists.

- [26] Medscheme does not seriously dispute that the damages will be unquantifiable in due course. Medscheme also does not dispute that the damages may be difficult to quantify. The exclusion of Mitchells Plain and Gatesville is immediate and obvious, Medscheme does not propose any redress of any kind in due course, except that there shall be reviews in April, July and October 2026. Same do not address the past losses when and if they get proven.
- [27] For the fact that damages would be difficult to quantify and the decision is implementable as "of yesterday" as of 1 January 2026 this matter deserves to be heard on urgent basis.

Interim relief

- [28] The requirements for interim interdict are as follows:

(i) Prima facie right, (ii) well-grounded apprehension of harm, (iii) balance of convenience must favour the applicant and (iv) the applicant must have no other remedy.

Prima facie right

- [29] The applicant's submission is that it has prima facie right to the relief, as the outcome of the 5 October 2025 decision contravenes Regulation 15E (2) of Medical Schemes Act of 1998 (MSA). Regulation 15E (2) of MSA provides for "selection of participating health care providers is based upon a clearly defined and reasonable policy which furthers the objectives of affordability, cost-effectiveness, quality of care and member access to health services."
- [30] Thus, the unexplained basis for the 5 October 2025 outcome; and the irrational deviation from the 18 September 2025 outcome by Medscheme; all have a direct impact on the contract to be concluded on 1 January 2026 at the instance of Medscheme. The prima facie right arises from three interlocking sources: (a) the statutory and regulatory framework governing managed care contracting under the MSA and its Regulations; (b) the public-law duties imposed on administrators such as Medscheme by Regulation 15E (2); and (c) the constitutional rights of access to healthcare and to lawful, reasonable and procedurally fair administrative action as guaranteed in sections 27 (1) and 33 of the Constitution.

- [31] Medscheme's impugned decision of 5 October 2025 was taken in direct breach of the above requirements. It introduced new sub-tiers within the Tier 3 network, excluded the Melomed hospitals without notice or justification and reconfigured the collective tariff structure contrary to the express terms of the RFP. Medscheme breached the protective purpose of Regulation 15E (2), which is to secure equality of treatment and transparent selection among healthcare providers.

Well-grounded apprehension of harm

- [32] Melomed Mitchells Plain is the only acute hospital located in Mitchells Plain. By excluding the applicant's hospitals from network participation, patients, scheme beneficiaries and members would be compelled to seek care at acute hospitals outside of Mitchells Plain. The nearest hospitals are a significant distance away, especially for persons with limited economic means who would typically be reliant on public transport. These hospitals are Mediclinic Louis Leipoldt in Bellville West. The travelling distance between Melomed Mitchells Plain and Louis Loipoldt are at least 20 kilometers. Life Kingsbury is in Claremont. The travelling distance between Melomed Mitchells Plains and Life Kingsbury is at least 21 kilometers; and the decision of Medscheme to exclude Melomed from network participation and tier 3 has a direct adverse effect. It is far reaching, which neither the NHN nor Melomed will be able to mitigate, given that the RFP has no 'revision' clause, scope, or provision in relation to an outcome.
- [33] Secondly, patients, beneficiaries and members residing in the catchment area where Melomed facilities are located will be severely affected as they may have to make co-payments for hospital services and treatment because of the exclusion, which limits patient access. This increases the out-of-pocket expenses for financially constrained patients, scheme members and beneficiaries. These patients, scheme members and beneficiaries would also be at a disadvantage as they must travel long distances by public transport and put themselves at extra financial burden. Medscheme did not dispute these facts except to state that the applicant was making assumptions.

Whether balance of convenience favours the applicant

- [34] The balance of convenience favours the applicant; there is no harm to be suffered the Medscheme. As stated above the medical aid members must travel long distances at a cost to get medical assistance for the services available at excluded hospitals of the applicant's network of hospitals. If the decision of Medscheme which is meant to endure for a period of 3 years is left unchallenged that will be a travesty of justice.

Absence of another remedy

- [35] The applicant stated that it has no other remedy. Medscheme's submitted that the applicant's remedy is found in sections 47 and 48 of the MSA. The preamble to the MSA provides:

"To consolidate the laws relating to registered medical schemes; to provide for the establishment of the Council for Medical Schemes as a juristic person; to provide for the appointment of the Registrar of Medical Schemes; to make provision for the registration and control of certain activities of medical schemes; to protect the interests of members of medical schemes; to provide for measures for the co-ordination of medical schemes; and to provide for incidental matters."

- [36] Medscheme argued that the applicant's remedy is to return to the negotiating table. What Medscheme refuses to accept is that its decision of 5 October 2025 excluded the two hospitals of the applicant. Medscheme's contention is not correct, that the order sought by the applicant is not pragmatic. Should the October Decision translate into a contractual arrangement by way of its implementation on 1 January 2026, SAMWUMED members in the Gatesville and Mitchells Plain communities will be deprived of access to the Melomed hospitals in those areas, as the medical scheme to which they are contracted will not be able to purchase medical services from those hospitals for those beneficiaries.
- [37] This is obvious from the fact that SAMWUMED members reside within this area, and generally the inclusion of a hospital in a medical scheme's network is crucial to ensure that those hospitals are accessible to the members of the

community who without assistance from the medical schemes, would not ordinarily be able to access medical assistance from those hospitals.

[38] Further submissions made on behalf of the applicants are as follows: the loss of patients from these hospitals will automatically translate to a loss for the medical practitioners who are located within the Melomed hospitals. This, too, is an obvious conclusion, because in any competitive market, the loss of a customer base that previously existed in respect of a particular hospital for a three-year period will inevitably result in attrition from that hospital.

[39] Similarly, the fact that the Melomed hospitals are not included in the SAMWUMED network may result in the loss of opportunity in that new medical practitioners would opt not to start their practices in these hospitals, as certain patients would not be able to access their services due to the exclusion of the hospitals from the SAMWUMED network.

[40] In addition, Medscheme submitted that the applicant must lodge a complaint in terms of sections 47 and 48 the MSA. Section 47 (1) of MSA reads as follows:

"The Registrar shall, where a written complaint in relation to any matter provided for in this Act has been lodged with the Council, furnish the party complained against with full particulars of the complaint and request such party to furnish the Registrar with his or her written comments thereon within 30 days or such further period as the Registrar may allow."

[41] Section 47(2) of the MSA reads as follows:

"The Registrar shall, as soon as possible after receipt of any comments furnished to him or her as contemplated in subsection (1), either resolve the matter or submit the complaint together with such comments, if any, to the Council, and the Council shall thereupon take all such steps as it may deem necessary to resolve the complaint."

[42] Section 48 (1) of the MSA makes provision for an appeal against a decision made under section 47. It reads as follows:

"Any person who is aggrieved by any decision relating to the settlement of a complaint or dispute may appeal against such decision to the Council."

Discussion

- [43] The decision is challenged under the RFP on the assumption that it is purely a private contractual power, alternatively under PAJA and or principle of legality. The decision under the RFP constitutes the exercise of public power. As a result, this application also constitutes a review application in terms of PAJA and, in the alternative, a review in terms of the principle of legality in terms of which the applicant seeks to vindicate the constitutional right to just and fair administrative action as contemplated in section 33 of the Constitution.
- [44] Medscheme's argument is that there is nothing to interdict because the applicant had rejected both decisions, i.e., that of 18 September 2025 and that of 5 October 2025. The applicant's response on 23 September 2025 to the letter/ award of 18 September 2025 was a plea for additional hospitals in the applicant's network of hospitals, not a rejection at all. Secondly the 5th October 2025 letter which without reasons changed the decisions of 18 September 2025 was never rejected too. Instead, the applicants addressed a letter on 6 October 2025 to Medscheme requesting it to share tools as early as 21 October 2025 to avoid delays leading to 1 January 2026, the date of implementation.
- [45] The practicality of the interdict is to restore Melomed Mitchells Plain and Melomed Gatesville to the tier 2 and/or 3 as fillers as was the position on 18 September 2025. There is nowhere in the letter of 23 September 2023 where applicant is rejecting the appointment of these two hospitals. Also, in the applicant's letter of 6 October 2026, there is nowhere the applicant is rejecting anything except to reiterate its commitment to the assessment and watchlist policies of Medscheme.
- [46] Medscheme's interpretation of the letters of the applicant is flawed in all respects. Section 33 of the Constitution guarantees the right to just administrative action, meaning that everyone is entitled to action that is lawful, reasonable, and procedurally fair. It also ensures that anyone whose rights are affected by administrative action has the right to receive written reasons for that decision. The bottom line is that when the applicant pleaded for the appointment

of additional hospitals on its 23 September 2025, the applicant was met with an unfair, arbitrary reasonless decision.

- [47] Furthermore, Medscheme's argument that the applicant's remedy is to return to the negotiating table is contrary to Medscheme's argument that the RFP was not a tender, thus no contract or contractual relationship had come into existence. Medscheme further submits contractual relationship can only arise once (and if) the negotiated outcome has been reduced to writing in a formal contract signed by both parties. This is not correct; it is trite that contracts can be binding even if not reduced in writing except for few, i.e. alienation of land, suretyship etc.⁴
- [48] The argument also ignores that the two hospitals will not be part of that negotiation and there will be nothing stopping Medscheme from implementing its decision of 5 October 2025. Should the October Decision translate into a contractual arrangement by way of its implementation on 1 January 2026, SAMWUMED in the Gatesville and Mitchells Plain communities will be deprived of access to the Melomed hospitals in those areas.
- [49] Medscheme did not dispute that SAMWUMED patients are being actively ferried away with the transport organised by SAMWUMED from the Melomed hospitals to other network hospitals in the Cape Metro area. This is exactly the applicant's fear. That once these patients develop relationships with the medical professionals at those network hospitals over the three year -contract period, the possibility of these patients ever returning to the Melomed hospitals is slim.
- [50] Finally, Medscheme's submission that the applicant must comply with sections 47 and 48 of MSA disregards the urgency created by Medscheme. This considers the times lines prescribed or not in these sections. In terms of section 47 the earliest the complaint can be attended to is within a period of 30 days. In terms of section 48 there is no prescribed time against the outcomes of the

⁴ See *Imbuko Wines (Pty) Ltd v Reference Audio CC* [2022] ZASCA 110.

appeal against section 47. By all accounts at that time the applicant is tied up in all these processes the 1st of January 2026 would have come and gone.

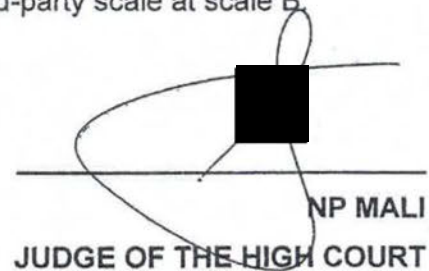
Conclusion

[51] The 5 October 2025 decision was an amendment to the 18 September 2025 decision. It was made in violation of Regulation 15E of the MSA Regulations. It is a decision meant to endure for a period of 3 years, if left unchallenged that will be a travesty of justice. Therefore, it must be set aside.

Order

[52] In the result, the following order is granted:

1. This application is heard as one of urgency and the applicant's non-compliance with the ordinary rules of court relating to time periods, form and service is condoned in terms of Rule 6(12).
2. Pending the final determination of Part B of this application, the respondents are interdicted from implementing the RFP outcome issued by Medscheme on 5 October 2025, which excluded the Melomed Gatesville and Mitchell's Plain hospitals from the SAMWUMED sub-tier under tier 3.
3. The respondents are liable for the costs of this application, including the costs of two counsel, taxed on a party-and-party scale at scale B.



NP MALI
JUDGE OF THE HIGH COURT
JOHANNESBURG

Heard on: 27 November 2025

Delivered on: December 2025

Appearances:

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