REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 2025-249710

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

10/2/26 [redacted]
DATE SIGNATURE

In the interpleader of:

EMMANUEL CHOLA MWABA Applicant

and

STANDARD BANK INSURANCE BROKERS,
LIBERTY GROUP Respondent

JUDGMENT

WENTZEL-THOMPSON J

Introduction

[1] This matter was brought by way of urgency by the applicant who appeared in person.

[2] The basis for the application and the urgency arose from a fundamental misunderstanding by the applicant of the nature of the Personal Loan Protection Policy which he concluded with Standard Bank Insurance Brokers to secure his

indebtedness on his overdraft to the Standard Bank; it was not, as he had imagined, a wealth policy. This is readily apparent from the terms of the policy.

[3] What the applicant sought, by way of urgency, was that he be granted an advance of the benefits under the policy pending the outcome of the action instituted by him against the respondent for return of all his premiums from inception, payment of the total value of the policy in the amount of R300 000 and damages. Urgency was based on the fact that the funds were urgently required to settle the outstanding school fees for his minor children who were due to commence the new school year but could not do so as a final notice had been issued by the school indicating that the children could not attend school unless the outstanding fees were paid.

[4] With little prospects of success in the main action, there is no authority in law that I am aware of that would permit the applicant to the advance payment sought to pay the outstanding school fees. There are a number of reasons for this, which will be outlined briefly below.

Background

[5] This application was preceded by three urgent applications by the applicant on substantially similar grounds. The first was instituted on 11 July 2025 and was heard by Malungana AJ on 22 July 2025 and struck from the roll for lack of urgency.

[6] One week later, on 29 July 2025 the applicant brought a second urgent application under a different case number which was heard by Dippenaar J on 5 August 2025. On this occasion, the parties entered into an agreement of settlement in terms of which it was agreed that the respondent would repay all the premiums paid by the applicant under the policy in the total amount of R69 000 (rounded off). There was some dispute as to whether this amount included interest. Be that as it may, in signing the agreement of settlement, the applicant agreed that it was in full and final settlement of any and all claims which he had against the respondent. This included all claims in the main action.

[15] Senyatsi J found that the applicant had not made any payments to the school for the entire 2025 school year and even on receipt of the payment of R69 000 following the agreement of settlement concluded by him with the respondent, had not used this payment to reduce the outstanding school fees.

[16] In my view, the fact that the bursary had been refused in no way detracted from the finding already made by Senyatsi J that the matter was not urgent.

[17] As such, the matter fell to be struck off the roll by me for lack of urgency with costs. I nevertheless entertained the applicant's case and allowed him a full hearing, only because he was an unrepresented litigant. I had my misgivings about this which I expressed during the hearing as the applicant's papers appeared on the face of them to have been drafted with some degree of legal knowledge or assistance

Res judicate/issue estoppel

[18] The respondent argued that the current application had on essentially the same facts already been decided by Senyatsi J and was thus *res judicata*.

[19] A distinguishing feature the applicant argued between the current application and that which was before Senyatsi J was that in the current proceedings, the relief sought was different and he no longer sought payment to himself personally, but rather that the amount of the outstanding school fees (in excess of the maximum capital sum on the policy) be paid directly to the school concerned.

[20] The relief sought, however, was in reality no different as it was predicated both before me and before Senyatsi J and Dippenaar J on the basis that an advance payment of the monetary judgment sought by him in the main claim was urgently required to settle his children's school fees and prevent them being excluded from school.

[21] A further difficulty experienced by the applicant was that, albeit obiter, Senyatsi had found that the late payment of the agreed amount of R69 000 pursuant to the settlement agreement did not constitute a material breach of the settlement agreement entitling the applicant to resile from it. He stated:

"[14] Even if I were wrong on urgency, the Applicant faces an insultuntable hurdle in the Consent Order. His case depends on establishing tag"" Respondents' late payment was a material breach that entitled him to cancel the settlement and revive all claims.

[14] (sic) The Consent Order stated that the Respondents would "pay out" the amount by 12h00. The Respondents provided proof that a payment instruction was issued before the deadline, albeit the funds only cleared the next day due to inter-bank processing times. The Applicant demanded, but the Respondents did not provide, a bank-generated timestamped proof of the exact debit time from their account.

[15] I am not persuaded that a delay in clearance of one day, where a payment instruction was issued, constitutes a repudiation or material breach of a settlement agreement that was expressly in "full and final settlement" of all claims. The obligation was to "pay out". In modern banking, initiating a payment instruction to the beneficiary's nominated account is the act of payment; the time of reflection is subject to systemic processes beyond the payer's absolute control. The Respondents took reasonable steps to comply."

[22] Although this was obiter, it remains persuasive authority. I accept that the payment instruction itself was 25 minutes late, but I am in agreement with my brother that the minimal delay in payment was not material and did not entitle the applicant to resile from the settlement agreement; all the more so when he retained the R69 000 paid to him pursuant to that agreement.

[23] This has as an inevitable consequence that the applicant had settled his main action and it fell to be dismissed on this basis. In these circumstances there could be no basis for granting the applicant an advance payment against the amount claimed.by him in the action.

Misconception of the terms of the policy and the basis for the main action

[24] In any event, the applicant has fundamentally misconceived the fundamental basis upon which the main action is founded. In truth and in fact, the applicant was not in law entitled to return of all of the premiums under the policy, at least

not those prior to the alleged cancellation of his policy (which had been conveyed to the applicant when he sought to submit a claim under the policy for retrenchment- which was rather belatedly disputed by the respondent who alleged that the reflection of the policy as cancelled was a system error).

[25] As I have said, and explained to the applicant during the course of the hearing, the policy was not a wealth policy or "*nest egg*" as he said he believed it was. Indeed he submitted a claim under the policy on the grounds of his retrenchment which was repudiated on the basis that he was self-employed and thus not entitled to claim for retrenchment. This is what sparked the current litigation.

[26] The policy provided for payment of amounts owing to the bank in the event of the applicant's death, dreaded disease and permanent disability. During 2019 the policy holders were informed that the cover under the policy had been extended to include retrenchment. This prompted the applicant to make a claim under the policy based upon retrenchment to be told that he did not qualify for this as he was self-employed. This caused the applicant to object to his being charged premiums for a policy for which he was not covered. What he did not understand was that the extension for retrenchment was added at no additional premium as a result of the large amounts of retrenchment following the COVID-19 pandemic. This was not a benefit for which he had paid premiums from inception and he at all times retained the benefits in the event of his death or permanent disability for which he had paid premiums from inception.

[27] The respondent maintained that the applicant's policy had not been cancelled, and thus it ought not properly to have agreed to return his premiums from inception to the date of the alleged cancellation. However, the fact remained is that the applicant had been informed that his policy was cancelled and had relied on this to his.detriment and the respondent were estopped from denying the policies cancellation. This would have entitled the applicant to return of all his premiums debited from his account from the date of the alleged cancellation. However, this would not have entitled him to repayment of all his premiums from inception prior to the date of cancellation. The fact of the matter is that no premiums were deducted from his policy for a retrenchment benefit as not benefit

existed from inception and when it was added, it was added at no extra charge to him.

[28] This was the basis of the applicant's fundamental misunderstanding of the alleged wrong done to him which he believed entitled him not only to a claim for all of his premiums plus interest, but also to substantial damages. This, the applicant believed he was entitled to on the basis that had he known that he had paid premiums for retrenchment benefits to which he was not entitled, he would have invested the monies in a wealth creation policy and by now would have accumulated substantial savings. But as I have said, this was premised on a premise which was in fact not correct; he was charged for and paid premiums for a debt protection policy for which he continued to receive the death, permanent disability and dreaded disease benefits.

[29] This fundamental premise being flawed puts paid to the applicant's main action for damages and, in my view, indicates that he has no prospects of success in the main action. That being the case there is no basis upon which the court could provide the applicant with any advance payments against the strength of his main action; there would appear not to even be prospects that the applicant could recover his premiums, let alone establish damages. There would thus be no guarantee that should the court grant the applicant an advance payment, he would recover that amount in the main action which he proposed be set off against the money judgment he hoped to receive in his favour in the main action. The applicant's precarious financial circumstances meant that the respondents would have no prospect of recovering any advance payment made to the applicant in the event that he failed to establish his claims in the main action.

[30] I explained this fully to the applicant, who finally accepted that there was no basis upon which I could grant him any advance payment towards his children's school fees.

Costs

[31] The respondent insisted that the matter was an abuse of process of the court and stressed that Senyati J had warned him that should the abuse persist, this may ground a punitive order of costs against him. The respondent was clearly an educated man who was able to formulate his various applications without the assistance of an attorney and was thus not the sort of layman who warranted the court's indulgence.

[32] The applicant pleaded with me to consider that his application had been motivated by the interests of his children, their Constitutional right to education and his Constitutional right to access to the courts. These rights did not entitle the applicant to continue to abuse the court process and seek persistent re-hearings on the same facts in the urgent court. His actions in this regard certainly entitles the respondent to a cost award in their favour.

[33] However, I am prepared to be lenient to the respondent and not award punitive costs against him as I accept that he *bona fide* and genuinely misunderstood the nature of the policy for which he had been paying premiums and believed that the policy he had been sold from inception was solely for retrenchment benefits to which he was not entitled. This caused him to believe he had a good claim against the respondent for repayment of his premiums plus interest as well as to damages. He also believed that his claim was so good in law that he should be entitled to advance payments to cover his children's school fees which could ultimately be deducted from the monetary award which he was sure would be made in his favour in the main action.

[34] The applicant accepted that his claim for advance payments was not a good one and undertook not to burden the urgent court on the same basis ever again. He accepted that his children would not be able to be enrolled at their school due to non-payment of their school fees and he would have to make alternative schooling arrangements for them. On this basis, I have decided not to make a punitive cost award against the applicant.

Order

[35] It has already been found by Senyatsi J that this matter on the same facts is not urgent.

[36] Even if I had been prepared to find that the matter was, on the face of it, urgent as the re-opening of the applicant's children's schools was imminent, I find that the applicant's application for an advance payment falls to be dismissed with costs.

[37] I thus make an order as follows:

a. The application is dismissed.

b. The applicant is directed to pay the respondent's costs of the application.

WENTZEL AJ
JUDGE OF THE HIGH COURT
JOHANNESBURG

Date of the hearing:

For the Applicant:	In person
For the Respondent:	X instructed by Y