



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

- (1) REPORTABLE: YES
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED:

6 March 2026

DATE

SM MARITZ AJ

SIGNATURE

CASE NO: 2025/044744

In the matter between:

GODSAVE MTLHAVI

Applicant

and

**GOVERNMENT EMPLOYEES
MEDICAL SCHEME**

First Respondent

METROPOLITAN HEALTH GROUP

Second Respondent

MOMENTUM GROUP

Third Respondent

STAN MOLOABI

Fourth Respondent

KARYNA VAN LINGEN

Fifth Respondent

GREGORY PLATT

Sixth Respondent

SANDY-LEE HENDRICKS

Seventh Respondent

JUDGMENT

MARITZ AJ

A. INTRODUCTION

[1] This is an opposed application in which the applicant seeks urgent final relief in the form of a money judgment and interdictory relief against the respondents. The relief sought in the Notice of Motion includes:

- 1.1 Condonation for non-compliance with the Uniform Rules of Court and dispensing with forms and service under Rule 6(12)(a).
- 1.2 Restraining the respondents from unlawfully withholding funds in the sum of R 427,974.56 (Four Hundred and Twenty Seven Thousand Nine Hundred and Seventy Four Rand and Fifty Six Cents) due and payable to the applicant for healthcare services rendered between the 15th day of February 2025 and the 28th day of February 2025.
- 1.3 Declaring the non-payment by the respondents for healthcare services rendered within 30 days of receiving the claim from the applicant to be unlawful and in contravention of section 59 of the Medical Schemes Act.
- 1.4 Ordering the respondents to effect direct and immediate payment in the sum of R 427,974.56 (Four Hundred and Twenty Seven Thousand Nine Hundred and Seventy Four Rand and Fifty Six Cents) on receipt of this order into the applicant's specific bank account.

1.5 Interdicting and restraining the respondents from unlawfully withholding reimbursement for healthcare services rendered without leave of the Court.

1.6 Costs in the event of opposition.

[2] The respondents oppose the application and seek its dismissal with costs on the attorney and client scale, including costs of counsel on Scale C.

[3] Before addressing the merits of the application it is necessary to deal with the request for postponement by the applicant and the surrounding circumstances pertaining thereto.

B. APPLICANT'S REQUEST FOR POSTPONEMENT

[4] The matter was set down for hearing, per the Court's directive, on 17 February 2026 at 10:00. At 10:00, an initial oral request was made to stand the matter down until 12:00, citing only the applicant's primary legal representative's need to attend a medical appointment for his child. No further information was provided. At 12:00, the applicant's primary legal representative still did not appear, prompting the Court to further accommodate him by standing the matter down until 14:00. However, at 14:00, the applicant's primary legal representative remained absent, and junior counsel reiterated the request for a postponement, relying solely on the same vague grounds without additional evidence or a formal application on notice supported by an affidavit.

[5] However, junior counsel was unable to provide a full or satisfactory explanation for the default of appearance by the applicant and/or his primary legal representative. Furthermore, it emerged that junior counsel had not been properly instructed or briefed for the matter. He had received instructions under the mistaken belief that it was an unopposed motion, whereas it was in fact an opposed motion requiring substantive preparation and argument.

- [6] The Court refused the postponement, noting that no proper application was before it (as the request was oral and informal), and no satisfactory explanation had been provided to justify the indulgence. The Court's reasoning is set out below.
- [7] In *Myburgh Transport v Botha t/a SA Truck Bodies 1991 (3) SA 310 (NmS)*, the Court articulated the discretionary nature of postponements: "*A postponement will not be granted unless the court is satisfied that it is in the interests of justice to do so. In this regard the applicant must ordinarily show that there is good cause for the postponement.*" The judgment further lists factors such as "*whether the application has been timeously made*" and "*whether sufficient cause for the postponement exists.*" In this case, the request was not timeous. It arose only on the day of the hearing without prior notice, and the junior counsel's inadequate briefing underscored a lack of diligence, justifying refusal as the Court could not be satisfied that it is in the interests of justice.
- [8] The Court further held that the provided reason (a child's medical appointment) was scant, lacking corroborative evidence or details to demonstrate its *bona fide* nature and necessity. Mere personal inconvenience does not suffice. The explanation must be full, satisfactory, and substantiated. In *National Police Service Union and Others v Minister of Safety and Security and Others 2000 (4) SA 1110 (CC) at par [4]*, the Constitutional Court held: "*The postponement of a matter set down for hearing on a particular date cannot be claimed as a right. An applicant for a postponement seeks an indulgence from the court...Such indulgence will be granted if it appears to the court that it is required in the interests of justice but will be refused if it appears that it will be prejudicial in the circumstances of the case to grant it.*" The Court further stressed the need for "*a full and satisfactory explanation of the circumstances that give rise to the application.*" In this matter, the vague information failed this threshold, and the junior counsel's inability to elaborate (due to improper instructions) compounded the issue, rendering the request untenable.
- [9] Granting the postponement would have caused undue prejudice to the respondents, including additional costs, prolonged uncertainty, and denial of a

timely hearing. In *Psychological Society of South Africa v Qwelane 2017 (8) BCLR 1039 (CC)* at par [30], Nkabinde ACJ emphasized: “*Postponement is not merely for the taking. They have to be properly motivated and substantiated. And when considering an application for a postponement a court has to exercise its discretion whether to grant the application.*” The absence of good cause here justified refusal to prevent prejudice and uphold judicial efficiency.

- [10] Based on the lack of a proper application for postponement and timeous request, an insufficient explanation and absence of good cause, the fact that a postponement would have caused undue prejudice to the respondents as well as the fact that junior counsel was inadequately instructed, and the default of appearance by the applicant’s primary legal representative and/or the applicant, the Court refused the postponement.

C. MERITS

Relevant Background Facts

- [11] The applicant stated in his founding affidavit that he is a Dietitian. He submitted that his dietetics practice is managed by Ri Rothe Dietetics and that he works with other dietitians as locums. He further stated that his services are rendered at public institutions to personnel who are members of various medical aid schemes including, but not limited to, the Government Employees Medical Scheme (“GEMS”).
- [12] According to the applicant, it has been common practice that, after rendering services, he would submit claims electronically to the first respondent, whereafter he would be remunerated for the services rendered to the members of GEMS.
- [13] On 25 June 2024, he received a letter from Ms Sandy Lee Hendricks (“Ms Hendricks”) of the GEMS Claims Risk Management Division requesting his practice information. He responded by providing the required information.

- [14] Since that correspondence, he received two further emails from Mr L Siyolo of GEMS Claims Risk Management, requested to provide proof of services rendered to four GEMS members. He responded by stating that the claims submitted were broken down in accordance with the advice received from the GEMS Medical Advisor and further provided information in respect of certain claims submitted.
- [15] On 3 March 2025, the applicant received a GEMS claims statement which provided a breakdown of all the claims he submitted for the period 15 February 2025 up to 28 February 2025. According to the applicant, the statement reflected an amount due and payable to him as R427 974.56. The applicant stated that these claims were submitted on or about 28 February 2025 in the sum of R 427 974.56, were accepted by the first respondent, and that the 30-day period as contemplated in section 59(2) of the Medical Scheme Act 131 of 1998 ("the Act) lapsed on 30 March 2025.
- [16] On 3 March 2025, a letter was sent to the applicant from GEMS Claims Risk Management, titled "*Notification of Extended Payment Cycle for Claims – Practice Number 937150*" in which it is, *inter alia*, stated that GEMS has implemented various control systems and mechanisms, as required in terms of section 57(4)(c) of the Act, to enable the scheme to verify the submission of claims by service providers, and that, during a preliminary analysis GEMS noted claims submitted by the applicant's practice which require additional assessment and validation. The applicant was further informed that, although GEMS conducted bi-weekly claims runs, it is not required to make payment to any provider on a bi-weekly basis. In terms of section 59(2) of the Act, GEMS has 30 days from the date of the submission of a claim to make payment thereof. Accordingly, although the applicant's GEMS statement indicated that claims have been "*settled*," the payment of his claims will be made 30 days from submission to enable GEMS to validate the claims submitted by the applicant's practice. It was further stated that GEMS reserve the right to delay payment to other practices linked to the applicant's practice if the scheme is of the view that such practices may be used to circumvent this mitigatory action. Furthermore, payment of claims will only be

made once GEMS is satisfied with the validity of the submitted claims and that the claims comply with the Scheme Rules.

- [17] The applicant then sent a letter to the dietitians who locum under his practice, informing them of the delayed payment and suspension of company activities. The applicant submitted that he was compelled to suspend his practice activities because, without GEMS payments, he would have no funds to continue paying for operational expenses and to pay employees' (locums and administrators) salaries, as well as other practice expenses. He referred to section 59(2) of the Act, which provides that subject to the Act and the rules of the medical scheme concerned, a medical scheme shall within 30 days after the day on which a claim in respect of such benefit was received by the medical scheme, pay the member or supplier of services.
- [18] The Respondents state that GEMS is presently investigating multiple irregular claims by the applicant, as contemplated in GEMS Rule 15.6, and that GEMS has taken the decision to suspend payment to the applicant's practice pending the outcome of the investigation. In conducting the investigation, GEMS is assisted by Metropolitan Health ("MH"). The investigation presently covers a retrospective period of 24 months.
- [19] The Respondents emphasised certain allegations involving the applicant that have emerged from the investigation thus far:
- 19.1 On 11 January 2025, a GEMS member sent two email messages reporting claims of which she was not aware, and that she did not know the applicant neither consulted with him;
 - 19.2 On 15 January 2025, another GEMS member disputed claims;
 - 19.3 On 1 February 2025, a GEMS member requested that payment of claims be reversed;
 - 19.4 On 3 February 2025, another GEMS member requested that unacceptable claims be reversed;
 - 19.5 On 3 February 2025, a further GEMS member requested that claims be rejected stating that no service was provided by the applicant;

- 19.6 On 5 February 2025, another reversal request was received by GEMS;
- 19.7 On 7 February 2025, a letter was received by GEMS to the effect that the member concerned never consulted with the applicant;
- 19.8 On 13 February 2025, a letter was received by GEMS in which the member requested that claims made without the member's knowledge be reversed with immediate effect;
- 19.9 On 28 February 2025, a GEMS member lodged a confidential complaint with the Vuvuzela fraud and ethics hotline, reporting an alleged fraudulent claim;
- 19.10 On 3 March 2025, a tip-off was received alleging that the applicant is involved in a fraudulent scheme in which members were given smart watches and Woolworths dinner sets; and
- 19.11 On 25 March 2025, a letter was received from a GEMS member, requesting that the applicant's accounts, in respect of claims submitted on 22 and 23 February 2025, be reversed, stating: *"I don't know the Dr and I don't remember me going to him."*

[20] The above allegations were substantiated by the relevant correspondence from the respective GEMS members.

[21] On 4 February 2025, Ms Hendricks, who is involved in the investigation into the applicant's practice, engaged with the applicant in respect of three of these members. She sent an email to the applicant and requested a response. On 5 February 2025, the applicant responded indicating, *inter alia*, that *"...according to our records services were rendered in full..."*, but that he had *"reversed the claims on my side."*

[22] In an email dated 5 February 2025, Ms Hendricks indicated, *inter alia*, that the members are disputing the charges rendered, as they were informed that the screening conducted at their workplace would be free, and that they were advised that only if a further assessment was required should they contact the applicant for an appointment at his consultation room, which would then be subject to a medical aid claim. It was further pointed out that they never consulted with the applicant at his consultation rooms. The members

acknowledged completing a consent form to obtain access to their GEMS medical aid details.

- [23] In an email dated 5 February 2025, the applicant indicated, *inter alia*, that he had been advised by his legal advisors to reverse the claims to avoid a dispute with the medical aid, and that he would proceed to bill the members directly.

D. PARTIES' RESPECTIVE CASES

Applicant's case

- [24] Neither the applicant nor his primary legal representative addressed the Court on the day of the hearing on the merits of the application due to default of appearance and the inadequate briefing of junior counsel. The applicant's primary submissions, as per the applicant's founding affidavit, are summarised below.
- [25] In paragraphs 12 of the applicant's founding affidavit, the applicant stated that this is an urgent mandamus application in which he seeks for an urgent hearing and an order compelling GEMS to sign, execute and do all things necessary to capture and release immediate payment of claims submitted in respect of services rendered to the members of the first respondent.
- [26] In paragraphs 23 to 27 of the founding affidavit, the applicant addressed urgency. He states, *inter alia*, that as result of the respondents' failure to pay for services rendered to members, he has been unable to generate income for approximately four weeks and is at serious risk of failing to meet his core financial commitments for the month. These include payment of the salaries of ten locum practitioners and invoices of independent contractors, vehicle finance instalments in respect of two vehicles, and rental payments for three operational vehicles. He further states that his practice has agreements with trade unions and institutions to provide services to their members and personnel, and that GEMS's failure to reimburse him places him in breach of those agreements. He alleges that he received threats of protest action from employees and

independent contractors due to non-payment and that his personal credit rating is at risk of being adversely affected. On this basis, he submits that the matter is urgent.

- [27] In paragraphs 28 to 30, the applicant relies on the *mandament van spolie*. He states that he was advised that the requirements are peaceful and undisturbed possession and unlawful deprivation of such possession. In paragraph 29 he states:

“Before 03 March 2025 we were in peaceful and undisturbed possession of an operational practice whereby, we were getting paid for services that we render to members of the Respondent”.

- [28] In paragraph 30 he states:

“The unlawful conduct of the respondents has deprived us of this possession. This conduct by the respondents constitutes an act of spoliation in terms of mandament van spolie.”

- [29] In paragraphs 33 to 44 of the founding affidavit, the applicant addressed the requirements for an interim interdict. In paragraph 33 he stated that, in order to be granted an interim interdict four requirements must be met, namely:

- (a) a prima facie right must be shown;
- (b) irreparable harm will follow if the interdict is not followed;
- (c) a balance of convenience must favour the granting of the interdict; and
- (d) there must be no other alternative remedy available.

- [30] In respect of the alleged *prima facie* right, the applicant submitted in paragraph 35:

“I have a right to peaceful and undisturbed possession of my practice and my rights to continue practicing with freedom has been unlawfully deprived by the Respondents’ conduct.”

- [31] In respect of the irreparable harm, the applicant submitted that as a result of the respondents' conduct, he is no longer able to practice peacefully as a dietitian because he is not remunerated for the services rendered. He alleges that this effect his ability to earn a living, to pay healthcare partitioners, and to sustain his working relationship with Ri Rothe Dietetics, trade unions, and institutions. He further states that he has failed to honour appointments arranged by Ri Rothe Dietetics, trade unions, and institutions, which will result in his practice not being invited for future work, and that this will lead to more than ten healthcare partitioners becoming unemployed.
- [32] He submits that the balance of convenience favours him and his practice and that there is no risk to the respondents should they be required to make payment of the claims submitted by his practice.
- [33] He further submits that he has no alternative remedy. He states that a small start-up business was established, but that he does not have sufficient funds to continue operations and meet his financial commitments without receiving payment from the respondents.
- [34] In his heads of argument, the applicant supplemented his founding affidavit by addressing alleged unlawful conduct with reference to section 59(2) of the Act and regulation 6(2) of the Regulations promulgated under the Act. He also refers to section 66 of the Act, dealing with offences and penalties. The applicant addresses reasonableness with reference to *Medscheme Holdings (Pty) Ltd v Ekhanyeni Pharmacy and Another* (no citation provided).
- [35] On 5 February 2026, the applicant delivered (uploaded on Caselines) supplementary heads of argument. The Court noted that these supplementary heads are replete with factual allegations which do not form part of the evidence before the Court. They are provisionally admitted and will be considered only to the extent that the admissibility thereof is dealt with below.

- [36] It is stated in paragraph 1.1 of the applicant's supplementary heads of argument that:

"This is an application for a final interdict. The Applicant initially sought urgent interim relief.

- [37] The applicant further submits in the supplementary heads that, after the institution of the proceedings, the exchange of affidavits, and the matter having been struck from the roll for lack of urgency, the respondents released the funds on 2 June 2025, which formed the subject of prayers 1 and 3 of the Notice of Motion, rendering those interim payment prayers moot.
- [38] The applicant nevertheless contends that this does not dispose of the application, and that the core dispute remains alive. He seeks a final interdict restraining the respondents from unilaterally suspending or withholding payment for services rendered without first obtaining a court order or a final decision. He sets out and addresses the requirements for a final interdict. He further alleges unlawful conduct and breach of statute by the respondents, contending that the withholding of payment violates section 59(2) of the Act and regulation 6(2), and is procedurally unfair. He alleges that the respondents perform a public function in administering a state-mandated medical scheme and that their conduct constitutes administrative action. He also relies on certain constitutional imperatives.

Respondents' case

- [39] Counsel for the respondents addressed the Court on the merits of the application and advanced submissions with reference to relevant authorities as set out below.
- [40] In terms of the GEMS Rules, read with the Act once GEMS becomes aware of possible irregular claims, it is obliged to act to prevent further loss and to mitigate risk. The overriding consideration is the protection of members' interests. Suspension of payments, termination of direct payment

arrangements and recovery mechanisms provided for in the Act and the rules are essential tools to achieve that purpose.

- [41] The relief sought improperly seeks to prevent GEMS from performing these statutory and contractual functions.
- [42] The primary contractual relationship for the provision of healthcare services is between the patient and the healthcare service provider. The patient is liable to pay the provider and may claim reimbursement from the scheme in accordance with the rules and the relevant benefit option. Alternatively, the scheme may elect, in terms of section 59(2) of the Act and the scheme rules, to pay the provider directly.
- [43] The applicant has no right to insist on direct payment by GEMS, nor to obtain a blanket court order compelling such payment without establishing an entitlement thereto. The application is, for that reason alone, fundamentally flawed.
- [44] The contractual relationship between a member and the scheme is regulated by the scheme rules. Any payment outside the rules and benefit options is unlawful and prohibited by the Act and the Regulations.
- [45] Payment of the applicant's claims at this stage would be irregular and in breach of the Act, the Regulations, the GEMS Rules, and the fiduciary duties of the GEMS Board of Trustees and would impede the implementation of section 59(3) of the Act.
- [46] Section 32 of the Act provides that the rules of a medical scheme bind the scheme, its members, officers, and any person claiming benefits under, or deriving claims from, those rules.
- [47] Section 26(4) of the Act prohibits any debit against a scheme's account other than for benefits payable under the rules, business costs or investments contemplated in section 35(7).

- [48] The respondents further relied on sections 66(1)(b) and 66(1)(e) of the Act (false claims), and section 59 of the Act, in particular section 59(2).
- [49] Reliance was also placed on GEMS Rules 15.7, 17.3 and 17.5, which preserve the scheme's election to pay either the member or the healthcare service provider.
- [50] Counsel for the respondents referred the Court to the following authorities in which the courts have confirmed this election: *Tshwane Pharmacy v Government Employees Medical Scheme* (Case No 28532/11, North Gauteng High Court, Southwood J), *T Chabalala v Government Employees Medical Scheme* (Case No 6425/2013, North Gauteng High Court, Preller J) and *MedScheme Holdings (Pty) Ltd and Another v Bhamjee* 2005 (5) SA 339 (SCA).
- [51] It was submitted that the application is misconceived, and that the claims are the subject of serious disputes and an ongoing investigation. The relief sought is inconsistent with the Act, the Regulations, and the GEMS Rules, including Rule 15.6.
- [52] Counsel for the respondents referred the Court to Rule 15.6 of the GEMS Rules which provides:
- "The Scheme may suspend payment of any claims or benefits pending the outcome of an investigation into any matter relating to the Scheme, its operations, or any claim submitted to the Scheme."*
- [53] It was submitted that once possible irregular claims are identified, the scheme is obliged to act to prevent further loss, including by suspending payments in terms of Rule 15.6.
- [54] The Court was referred to *Zurich Health Receivables v GEMS and Others* (unreported, KZN Local Division, Durban, Case No D14604/2024, 3 December 2024, Tucker AJ) at paragraph [43], where the Court held that Rule

15.6 not only confirms the right to suspend payments, but mandates such suspension unless it would not be in the best interests of the scheme.

- [55] It was submitted that the applicant has produced no evidence of the services allegedly rendered, nor of any entitlement to payment.

- [56] Counsel for the respondents further submitted that in motion proceedings, affidavits constitute both pleadings and evidence. Where essential evidence is absent from the founding affidavit, the application cannot succeed (*Hart v Pinetown Drive-In Cinema (Pty) Ltd* 1972 (1) SA 464 (D) at 469C–E; *Swissborough Diamond Mines (Pty) Ltd and Others v Government of the RSA and Others* 1999 (2) SA 279 (W) at 324E–F).

- [57] The Applicant has accordingly failed to establish any entitlement to the relief.

- [58] GEMS retains an election to pay either the member or the provider, and providers cannot compel direct payment.

- [59] The alleged urgency is unfounded. The time periods afforded to the Respondents were unreasonable and impossible to meet.

- [60] The applicant relies on self-serving allegations of financial prejudice. Financial claims do not constitute urgency.

- [61] The reliance on alleged threats of protest action and unemployment (founding affidavit, paragraphs 25 and 36.6) is contradicted by the Applicant's own papers.

- [62] The Court was referred to Annexure "GM6" (to the founding affidavit), which reflects that the relevant employees were employed by Ri Rothe Dietetics (Pty) Ltd, which is not before this Court, and that all employment was terminated on 3 March 2025.

- [63] The purported urgency is therefore contrived.

- [64] The matter was previously struck from the urgent roll on 8 April 2025 for lack of urgency, with attorney and client costs. Counsel submitted that, after the urgent court hearing, the applicant neither supplemented his papers nor enrolled the matter for final determination. Instead, the respondents' legal representative enrolled the matter for hearing on 17 February 2026.
- [65] It was further submitted that the applicant seeks final relief, including a declarator and a money judgment for R427 974.56, on an urgent basis, despite the claim being disputed and unsupported by evidence. The application is an abuse and devoid of merit.
- [66] The applicant also seeks a final interdict while relying on the requirements of the *mandament van spolie* and of an interim interdict.
- [67] Final relief on motion may be granted only if the facts stated by the respondent, together with the admitted facts in the applicant's affidavits, justify such relief (*Stellenbosch Farmers' Winery Ltd v Stellenvale Winery (Pty) Ltd* 1957 (4) SA 234 (C) at 235E–G).
- [68] The requirements for a final interdict are a clear right, injury actually committed or reasonably apprehended, and the absence of any other satisfactory remedy (*Ubuhlebezwe Municipality v Ramsunder* 2024 (5) SA 189 (SCA) at paragraph [14]).
- [69] The applicant has no clear right to payment from GEMS.
- [70] No injury has been committed or is reasonably apprehended.
- [71] An adequate alternative remedy exists in the form of action proceedings.
- [72] In any event, the balance of convenience favours GEMS (*Zurich*).

[73] The relief sought would prevent GEMS from implementing section 59(3) of the Act and GEMS Rule 17.4, which provide that:

“The Scheme may recover any amount paid in error or overpaid to any person or entity.”

[74] Reliance on the *mandament van spolie* is misconceived.

[75] The Court was informed that on 20 February 2026, the respondents objected, in supplementary heads, to the Applicant’s reliance on factual allegations, in the applicant’s supplementary heads of argument, not contained in the evidence. It was submitted that a litigant must make out his case in the founding affidavit. To substantiate this submission reference was made to *My Vote Counts NPC v Speaker of the National Assembly 2016 (1) SA 132 (CC)* at paragraph 177 and *Titty’s Bar and Bottle Store (Pty) Ltd v ABC Garage (Pty) Ltd and Others 1974 (4) SA 362 (T)* at 369A–B).

[76] The Respondents further objected to the Applicant’s attempt to change the legal basis of the case.

[77] In the founding affidavit, the alleged right was based on the *mandament van spolie*, formulated as:

“35. *Prima facie* right

I have a right to peaceful and undisturbed possession of my practice and my right to continue practicing with freedom has been unlawfully deprived by the Respondents’ conduct.”

[78] That foundation is misconceived and cannot be reformulated in supplementary heads.

[79] The reformulated case relies on administrative law principles, including procedural fairness, legitimate expectation, and the exercise of public power.

- [80] It was submitted that a medical scheme's dealings with healthcare providers do not constitute administrative action. The applicant has failed to show that the conduct complained of falls within the definition of "*administrative action*" in section 1 of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA"). Reliance was placed on *Minister of Defence and Military Veterans v Motau and Others* 2014 (5) SA 69 (CC) at paragraph [33], *Grey's Marine Hout Bay (Pty) Ltd v Minister of Public Works* 2005 (6) SA 313 (SCA) at paragraph [24], *Calibre Clinical Consultants (Pty) Ltd and Another v National Bargaining Council for the Road Freight Industry and Another* 2010 (5) SA 457 (SCA) at paragraph [42], *Ndoro v South African Football Association* 2018 (5) SA 630 (GJ) at paragraph [23], *Minister of Public Service and Administration v Ntsinde and Others* [2020] ZAGPJHC 399 at paragraphs [33] and [53], and *Pennington v Friedgood* 2002 (1) SA 251 (C) at paragraphs [35]–[42].
- [81] In *Pennington*, it was held that neither the Medical Schemes Act, the regulations nor the scheme rules require trustees to observe common-law administrative law principles. By analogy, a pension fund board's decision is not administrative action (*Gerson v Mondi Pension Fund and Others* 2013 (6) SA 162 (GSJ) at paragraph [45]).
- [82] Whether a medical scheme performs a public function or exercises public power was considered in *Government Employees Medical Scheme and Others v Public Protector and Others* 2021 (2) SA 114 (SCA). The application of these principles appears in *Dr P Skhosana v Medscheme Holdings (Pty) Ltd and Others* (unreported, Gauteng Division, Pretoria, Case No 67011/2018, 25 June 2019) at paragraphs 22–40.
- [83] For reasons stated above, it was submitted that the Applicant's reliance on administrative law is misplaced.
- [84] It was further submitted that even if the conduct were administrative action (which is denied), the applicant was required to institute review proceedings under PAJA and cannot circumvent PAJA by seeking interdictory or declaratory relief. The Court was referred to: *Famous Ideas Trading 4 (Pty) Ltd t/a Dely*

Road Courier Pharmacy v GEMS and Others [2024] ZAGPPHC 69 (5 February 2024), confirmed in Famous Ideas Trading 4 (Pty) Ltd t/a Dely Road Courier Pharmacy v Government Employees Medical Scheme and Others [2026] ZACC 5 (11 February 2026)).

[85] For reasons stated above, the respondents submitted that the applicant has failed to establish any basis for the relief sought.

[86] The Respondents requested the Court to dismiss the application with costs on the attorney and client scale, including the costs of counsel on Scale C.

E. ISSUES FOR DETERMINATION

[87] The following issues are in dispute:

87.1 Whether the matter is urgent.

87.2 Whether the applicant's claims are disputed.

87.3 Whether it is legally competent for healthcare practitioners in the position of the applicant to seek an order compelling a medical scheme such as the first respondent (GEMS) to make payment directly to the applicant.

87.4 Whether GEMS is entitled or obliged to suspend any payment to the applicant in terms of Rule 15.6 of the GEMS Rules.

87.5 Whether a case for a money judgment has been made out.

87.6 Whether a case for an interdict has been made out.

87.7 Whether a case for a *mandament van spolie* has been made out.

87.8 Whether the applicant's supplementary heads are admissible.

87.9 Costs.

[88] The Court will deal with the issues in dispute *seriatim*.

F. LEGAL PRINCIPLES AND ANALYSIS

Relevant Legal Principles

[89] Section 59 of the Act provides as follows:

“59 Charges by suppliers of service

- (1) *A supplier of a service who has rendered any service to a beneficiary in terms of which an account has been rendered, shall, notwithstanding the provisions of any other law, furnish to the member concerned an account or statement reflecting such particulars as may be prescribed.*
- (2) *A medical scheme shall, in the case where an account has been rendered **subject to** the provisions of this Act and **the rules of the medical scheme concerned, pay to a member or a supplier of service**, any benefit owing to that member or supplier of service within 30 days after the day on which the claim in respect of such benefit was received by the medical scheme. (emphasis added)*
- (3) *Notwithstanding anything to the contrary contained in any other law a medical scheme may, in the case of-*
 - (a) *any amount which has been paid bona fide in accordance with the provisions of this Act to which a member or a supplier of health service is not entitled to; or*
 - (b) *any loss which has been sustained by the medical scheme through theft, fraud, negligence, or any misconduct which come to the notice of the medical scheme.*

deduct such amount from any benefit payable to such a member or supplier of health service.”

[90] Section 59(2) grants the medical scheme an election to pay either the member or the supplier of services directly, and it is not legally competent for a healthcare providers to compel payment to themselves. In *Medscheme Holdings (Pty) Ltd and Another v Bhamjee* 2005 (5) SA (SCA) at 34G-H the

Supreme Court of Appeal has affirmed that the scheme's obligation is to discharge the member's liability to the provider, but this entails a discretion in the mode of payment, recognising the scheme's right to pay the provider of services or reimburse the member. (*vide: Tshwane Pharmacy v Government Employees Medical Schemes (Case Number: 28532/11 in the North Gauteng High Court: Southwood J)* and *T Chabalala v Government Employees Medical Scheme (Case Number: 6425/2013 in the North Gauteng High Court: Preller J)*)).

[91] GEMS Rule 15.6 provides as follows:

*“The Scheme **shall suspend** the payment of a claim to a healthcare provider **in the event of an investigation pertaining to alleged fraudulent or irregular activity**, in respect of the **Member**, any of his or her **Dependants**, **the healthcare provider or the account, statement or claim** itself, except where to do so in particular circumstances would not be in the best interests of the Scheme, in the absolute discretion of the Board. The Scheme may in accordance with Rule 17.5 make payment of the full amount of a claim or a request for reimbursement, or the valid portion thereof which is not under such investigation, directly to the Member to whom services were rendered, upon submission of a claim or a request for reimbursement in relation to those services by the Member.”* (emphasis added)

[92] It is clear from the wording of GEMS Rule 15.6 that where the scheme become aware of possible irregular claims, it is obliged to act in terms of its policies and prevent further loss, which it does *inter alia* in terms of Rule 15(6) by suspending payment pending an investigation. (*vide: Zurich Health Receivables v GEMS and Others (Case Number: D14604/2024 KZN Local Division Tucker AJ at paragraph 43)*)).

[93] GEMS Rules 15.7, 17.3 and 17.5 provides as follows:

93.1 GEMS Rule 15.7 provides that the Scheme may, at its discretion, pay benefits directly to the service provider or to the member, subject to the

provisions of the Act. This rule preserves the scheme's election to determine the recipient of payment.

93.2 GEMS Rule 17.3 stipulates that payments of benefits shall be made in accordance with the election of the scheme, emphasising that the scheme retains the right to choose whether to pay the member or the provider.

93.3 GEMS Rule 17.5 states that the scheme reserves the right to pay any benefit to the member instead of the provider, notwithstanding any prior arrangements or submissions.

[94] These rules uphold the election principle in section 59(2) of the Act, ensuring the scheme's discretion in payment methods to protect its financial integrity. This election has been upheld in judicial decisions interpreting similar schemes rules and statutory provisions, confirming that medical schemes are not obliged to pay providers directly and may elect to reimburse members (*vide: Medscheme Holdings supra, Sechaba Medical Solutions (Pty) Ltd and Others v Sekete and Others [2015] ZASCA 8 at par [23], Tshwane Pharmacy supra, T Chabalala supra & Zurich Health supra*).

[95] Regulation 6(2) requires a scheme deeming an account erroneous or unacceptable to notify the submitter within 30 days, stating reasons. This support procedural fairness, allowing correction within 60 days while permitting withholding of payment (*vide: Sechaba Medical Solutions supra and Tshwane Pharmacy supra*).

[96] For final relief in motion proceedings, where facts are disputed, it should only be granted if the respondent's version (plus admitted facts) justified the order. Undeniable facts are treated as admitted (*vide Stellenbosch Farmers' Winery Ltd v Stellenvale Winery (Pty) Ltd 1957 (4) SA 234 at 235E-G*).

[97] In motion proceedings, a party's case must be fully set out in the founding or answering affidavits. Heads of argument summarise legal points based on the

existing factual matrix in the papers. They cannot introduce new facts, evidence, or a new case, as this prejudices the opponent by denying them an opportunity to respond adequately, contravening principles of fairness and procedural justice. (*vide: My Vote Counts NPC v President of the Republic of South Africa and Others 2018 (2) SACR 644 (WCC) and Minister of Land Affairs and Agriculture and Others v D & F Wevell Trust and Others (SCA 488/05) [2007] ZASCA 158; 2008 (2) SA 184 (SCA)*).

Analysis of Disputed Issues

(a) Whether the matter is urgent

[98] The applicant seeks urgent final relief. In his founding affidavit (paragraphs 23–27 *supra*), he asserted that the non-payment by GEMS for approximately four weeks placed him at serious risk of failing to meet various financial commitments. These included salaries for ten locum practitioners, invoices from independent contractors, vehicle finance instalments, and rental payments for operational vehicles. He further alleged breaches of agreements with trade unions and institutions, threats of protest action by employees and contractors, and potential adverse effects on his personal credit rating. These allegations were advanced to demonstrate that the urgency was self-created, arising from financial prejudice.

[99] However, the facts reveal that the matter was previously struck from the urgent roll on 8 April 2025 for lack of urgency, with costs awarded on the attorney and client scale in favour of the respondents. Thereafter, the applicant neither supplemented his papers nor enrolled the matter for final determination. Instead, the respondents enrolled it for hearing on 17 February 2026. Under these circumstances, the urgency prayer is moot. But even if it is not moot then the applicant's assertions of urgency are further contradicted by his own evidence. Annexure "GM6" to the founding affidavit demonstrates that the relevant employees (locums) were employed by Ri Rothe Dietetics (Pty) Ltd (which is not a party to these proceedings) and that their employment was terminated on 3 March 2025, prior to the institution of these proceedings. This

clearly contradicts the applicant's averment that the employees were employed by him, and because of the non-payment of the respondents would be unemployed. Furthermore, there is accordingly no evidence to substantiate any ongoing threat of protest action or unemployment directly attributable to the respondents' alleged non-payment. Moreover, the respondents were afforded unreasonably short time periods within which to respond, which further exacerbates the contrived nature of the alleged urgency.

[100] In law, urgency in motion proceedings requires an applicant to demonstrate that he or she will not obtain substantial redress at a hearing in due course (vide: *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers) 1977 (4) SA 135 (W) at 137F*). Financial prejudice alone does not constitute urgency, as such prejudice can ordinarily be addressed through ordinary proceedings. (vide: *Twentieth Century Fox Film Corporation and Another v Anthony Black Films (Pty) Ltd 1982 (3) SA 582 (W) at 586G–H*). Furthermore, self-created urgency or culpable delay disentitles an applicant to urgent relief (vide: *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others [2011] ZAGPJHC 196 at para [6]*). Applying these established principles, the applicant's allegations are self-serving and unsupported by the evidence. The matter is accordingly not urgent, a conclusion further reinforced by the fact that the application was previously struck from the urgent roll for lack of urgency.

(b) Whether the applicant's claims are disputed

[101] The applicant submitted claims totalling R427,974.56 on or about 28 February 2025, as reflected in the GEMS claims statement dated 3 March 2025. He contends that these claims were accepted by GEMS and that the 30-day payment period under section 59(2) of the Act lapsed on 30 March 2025. However, the facts reveal multiple disputes. Between 11 January 2025 and 25 March 2025, eleven GEMS members lodged complaints disputing the claims as unauthorised, fraudulent, or not rendered (paragraphs [19]– [20] *supra*). These complaints were supported by correspondence, including emails and letters in which members stated that they had never consulted the applicant

or had been promised free screenings. On or about 4 to 6 February 2025, Ms Hendricks engaged the applicant regarding three such disputes, which resulted in the applicant reversing those claims and indicating an intention to bill the members directly (paragraphs [21]– [23] *supra*). GEMS thereafter initiated an investigation in terms of Rule 15.6, assisted by Metropolitan Health, covering a 24-month retrospective period. The letter of 3 March 2025 informed the applicant of an extended payment cycle for validation purposes and expressly reserved GEMS's rights to delay payments to linked practices. The respondents accordingly contend that the claims are irregular and potentially fraudulent, and that payment thereof would be inconsistent with their fiduciary duties.

[102] In terms of section 59(2) of the Act, payment is due within 30 days of receipt of the claim, subject to the provisions of the Act and the rules of the scheme. Regulation 6(2) of the Regulations promulgated under the Act requires a medical scheme to notify a service provider within 30 days if a claim is regarded as erroneous or unacceptable, and to provide reasons therefor while allowing the provider 60 days to correct the claim. In the present matter, GEMS notified the applicant on 3 March 2025, within the prescribed period, and requested a response in compliance with Regulation 6(2). It is well established that genuine disputes arise where claims are contested based on validity (*vide Medscheme Holdings (Pty) Ltd and Another v Bhamjee 2005 (5) SA 339 (SCA) at para [34]*). The members' complaints and the ongoing investigation demonstrate that the claims are genuinely disputed, which precludes automatic payment. The applicant's failure to produce supporting evidence of services rendered, such as consultation records, further reinforces the disputed nature of the claims (*vide: Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others 1999 (2) SA 279 (T) at 324E–F*).

[103] In addition, under the Plascon-Evans rule (*vide: Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A)*), final relief in motion proceedings is not appropriate where material disputes of fact cannot be resolved on the affidavits. That is the position in the present matter. The applicant ought to have instituted action proceedings, as the disputed nature of

the claims was reasonably foreseeable. On this basis alone, the application falls to be dismissed.

(c) Whether it is legally competent for healthcare practitioners in the position of the applicant to seek an order compelling a medical scheme such as the first respondent (GEMS) to make payment directly to the applicant

[104] The applicant, a dietitian who renders services to GEMS members at public institutions, seeks an order compelling direct payment in respect of the claims submitted. He relies on the prior practice of electronic submission and reimbursement (paragraph [12] *supra*). However, the primary contractual relationship exists between the member and the scheme, with the provider's claim deriving from services rendered to the member (paragraph [42]). GEMS has elected to suspend direct payments pending the outcome of the investigation.

[105] Section 59(2) of the Act provides that a scheme “*shall... pay to a member or a supplier of service*” within 30 days, thereby granting the scheme a discretion to pay either party, subject to the Act and its rules. This discretion was affirmed in *Medscheme Holdings v Bhamjee supra at 344G–H*, where the SCA held that schemes are not obliged to pay providers directly but may instead reimburse members. In *Tshwane Pharmacy (Pty) Ltd v Government Employees Medical Scheme (Case No 28532/11, North Gauteng High Court, Southwood J)* and *T Chabalala v Government Employees Medical Scheme (Case No 6425/2013, North Gauteng High Court, Preller J)*, the courts confirmed that providers cannot compel direct payment, particularly in circumstances involving irregular claims. GEMS Rules 15.7, 17.3, and 17.5 preserve this election and permit payment to members instead.

[106] On the facts, no contractual right entitles the applicant to direct payment. His reliance on past practice does not override the scheme's discretion, particularly during an active investigation. An order compelling direct payment would therefore be legally incompetent, as it would undermine the scheme's fiduciary

duties under sections 26(4) and 57(4)(c) of the Act to verify claims and to protect the interests of members.

(d) Whether GEMS is entitled or obliged to suspend any payment to the applicant in terms of Rule 15.6 of the GEMS Rules

[107] GEMS suspended payments by way of the letter dated 3 March 2025, citing an investigation into irregular claims under Rule 15.6 (paragraphs [16], [18] *supra*). The investigation was triggered by members complaints alleging unauthorised claims, fraud, and consultations that allegedly did not occur (paragraphs [19]–[23] *supra*).

[108] Rule 15.6 mandates suspension pending investigation of alleged irregular activity, unless such suspension would not be in the scheme's best interests. In *Zurich Health Receivables v GEMS and Others (Case No D14604/2024, KZN Local Division, Durban, Tucker AJ)* at para [43], the court held that this rule not only permits but obliges the suspension of payments in order to prevent loss, consistent with section 57(4)(c) of the Act, which requires schemes to maintain appropriate control mechanisms for the verification of claims. Section 59(3) further authorises deductions for overpayments or fraud, thereby supporting suspension as a measure to mitigate risk.

[109] On the facts before this Court, the suspension is justified. Multiple substantiated complaints indicate potential fraud, thereby obliging GEMS to act in accordance with its rules and fiduciary duties (section 32 of the Act, which binds schemes to their rules). Although the applicant reversed certain claims, he has provided no evidence to rebut the alleged irregularities. GEMS is therefore both entitled, and indeed obliged, to suspend payments pending the outcome of the investigation.

(e) Whether a case for a money judgment has been made out

[110] The applicant seeks a money judgment in the amount of R427,974.56, relying on alleged acceptance of the claims and the lapse of the 30-day period

contemplated in section 59(2) of the Act (paragraph [15] *supra*). However, no evidence of services allegedly rendered such as patient records, consultation notes, or detailed invoices are contained in the founding affidavit. The claims remain disputed in circumstances where allegations of fraud have been raised (paragraphs [19]– [23] *supra*). Furthermore, in terms of section 59(2) of the Act, the scheme retains an election whether to effect payment directly to the healthcare provider or to the member. In *Tshwane Pharmacy supra* and *T Chabalala supra*, the courts confirmed that healthcare providers cannot compel direct payment, particularly where the claims are irregular, as is alleged in the present matter.

[111] In motion proceedings, affidavits constitute both the pleadings and the evidence. In the absence of essential factual averments, relief cannot be granted (*vide Hart v Pinetown Drive-In Cinema (Pty) Ltd 1972 (1) SA 464 (D) at 469C–E*). Final relief requires undisputed facts that justify the order sought (*vide: Stellenbosch Farmers' Winery Ltd v Stellenvale Winery (Pty) Ltd 1957 (4) SA 234 (C) at 235E–G*). The existence of material disputes of fact, coupled with the absence of supporting documentary evidence, precludes the granting of judgment. Any payment in these circumstances would potentially contravene sections 26(4) and 66(1) of the Act, which prohibit irregular or unauthorised payments from scheme funds. No case has therefore been made out for the granting of a money judgment in favour of the applicant.

(f) Whether a case for an interdict has been made out

[112] The applicant seeks final interdictory relief yet addressed the requirements for an interim interdict in his founding affidavit. He subsequently attempted to reframe both the requirements and the relief in his heads of argument and supplementary heads of argument by addressing the requirements for a final interdict. In the founding affidavit he alleges a *prima facie* right to the undisturbed conduct of his practice, irreparable harm in the form of financial and income loss, a balance of convenience in his favour, and the absence of any alternative remedy (paragraphs [29]– [38] *supra*). These are, however, the requirements for an interim interdict, notwithstanding that final interdictory relief

was sought. Furthermore, the supplementary heads introduce additional facts and administrative law grounds that were not previously pleaded in the founding papers.

- [113] In order to obtain a final interdict, an applicant must establish a clear right, an actual or reasonably apprehended injury, and the absence of any alternative remedy (*vide: Ubuhlebezwe Municipality v Ramsunder 2024 (5) SA 189 (SCA) at para [14]*). No clear right exists in the present matter, as direct payment remains discretionary under section 59(2) of the Act, as confirmed in *Medscheme supra*. The alleged harm is purely financial and therefore remediable by way of action proceedings - it is accordingly not irreparable. Alternative remedies are available, including the billing of members directly or the institution of action proceedings. The balance of convenience favours GEMS, particularly considering its obligation to protect scheme funds (*Zurich supra*). The administrative law grounds likewise cannot succeed, as the actions of GEMS arise from contractual and regulatory relationships rather than the exercise of public administrative power (*vide: Minister of Defence and Military Veterans v Motau 2014 (5) SA 69 (CC) at para [33]; Pennington v Friedgood 2002 (1) SA 251 (C) at paras [35]–[42]*). No case has been made out for the granting of a final interdict.

(g) Whether a case for a *mandament van spolie* has been made out

- [114] The applicant alleges spoliation of the “*peaceful and undisturbed possession*” of his operational practice prior to 3 March 2025, arising from the non-payment of claims (paragraphs [27]– [28], [30] *supra*). The applicant’s alleged right, founded on the *mandament van spolie* as the basis for the final interdictory relief sought, was formulated in the founding papers as follows:

“35. *Prima facie right*

I have a right to peaceful and undisturbed possession of my practice and my right to continue practicing with freedom has been unlawfully deprived by the Respondents’ conduct.”

[115] The *mandament van spolie* is a possessory remedy designed to restore possession that has been unlawfully deprived. In appropriate circumstances it may extend to the quasi-possession of certain incorporeal rights (vide: *Yeko v Qana* 1973 (4) SA 735 (A) at 739H). However, the remedy does not extend to the enforcement of purely personal or contractual rights, nor to claims sounding in money (vide: *Impala Water Users Association v Lourens NO and Others* 2008 (2) SA 495 (SCA) at para [9]).

[116] The “*possession*” asserted by the applicant does not relate to a possessory interest capable of protection by the *mandament*, but rather to the continued operational functioning of his professional practice and the receipt of payment for services rendered. The alleged deprivation arises from the respondents’ suspension or non-payment of claims, which is contractual in nature and does not establish dispossession. Moreover, the facts reveal that the applicant himself suspended certain activities (paragraph [17] *supra*). In these circumstances no act of unlawful dispossession has been demonstrated, and the essential requirements of the *mandament van spolie* have not been established. Accordingly, no case has been made out for relief in terms of the *mandament van spolie*.

(h) **Admissibility of the Supplementary Heads of Argument**

[117] The applicant delivered supplementary heads of argument on 5 February 2026. These heads contain factual allegations that do not form part of the evidentiary record before the Court, including references to events occurring after the institution of the application (for example, the alleged release of funds on 2 June 2025) and a reformulation of the relief sought by introducing administrative-law grounds (paragraphs [35]–[38] *supra*). The respondents objected on 20 February 2026, contending that a litigant is required to make out his case in the founding affidavit and may not introduce new facts or alter the legal basis of the claim through heads of argument (paragraphs [75]–[80] *supra*).

[118] It is well established that in motion proceedings the founding affidavit serves both as the pleading and the evidence. An applicant must therefore set out the

entire factual and legal basis of the case in the founding papers (*Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others* 1999 (2) SA 279 (T) at 324E–F; *Director of Hospital Services v Mistry* 1979 (1) SA 626 (A) at 635H–636B; *Hart v Pinetown Drive-In Cinema (Pty) Ltd* 1972 (1) SA 464 (D) at 469C–E). Heads of argument, including supplementary heads, are confined to the presentation of legal submissions based on the factual matrix already contained in the affidavits. They may not introduce new facts, evidence, or a new cause of action, as this would prejudice the opposing party by depriving it of the opportunity to respond (vide: *My Vote Counts NPC v Speaker of the National Assembly and Others* 2016 (1) SA 132 (CC) at para [177]; *Titty's Bar and Bottle Store (Pty) Ltd v ABC Garage (Pty) Ltd and Others* 1974 (4) SA 362 (T) at 369A–B; *Minister of Land Affairs and Agriculture and Others v D & F Wevell Trust and Others* [2007] ZASCA 158; 2008 (2) SA 184 (SCA) at para [43]; *My Vote Counts NPC v President of the Republic of South Africa and Others* 2018 (2) SACR 644 (WCC) at para [30]).

[119] Applying these principles to the facts of the present matter, the supplementary heads of argument impermissibly seek to expand the applicant's case beyond the scope pleaded in the founding affidavit. The founding papers rest primarily on the *mandament van spolie* and the requirements for interdictory relief. They contain no averments grounded in administrative law (see paragraphs [27]–[33] and [77] *supra*). The new factual allegations introduced in the supplementary heads—including those concerning the alleged mootness of certain prayers due to subsequent payment—are not foreshadowed in any affidavit and lack supporting evidence under oath. Such allegations are therefore inadmissible. Even if provisionally considered (as noted in paragraph [35] above), they must be disregarded. The application falls to be determined solely on the founding papers and the admissible material properly placed before the Court.

[120] Even if the Court were to entertain the applicant's submissions in the supplementary heads regarding administrative law principles—specifically, the contention that the respondents' conduct constitutes administrative action—the outcome would remain the same. Were the respondents' conduct to qualify as

administrative action, the applicant was obliged to institute review proceedings under the Promotion of Administrative Justice Act 3 of 2000 (“PAJA”). It is impermissible to circumvent PAJA by seeking interdictory or declaratory relief in its stead. This principle is affirmed in *Famous Idea Trading 4 (Pty) Ltd t/a Dely Road Courier Pharmacy v Government Employees Medical Scheme and Others* [2024] ZAGPPHC 69 (5 February 2024), where the High Court held that challenges to such decisions must follow the prescribed review route under PAJA rather than alternative common-law or interdictory remedies. That approach was confirmed by the Constitutional Court in *Famous Idea Trading 4 (Pty) Ltd t/a Dely Road Courier Pharmacy v Government Employees Medical Scheme and Others* [2026] ZACC 5 (11 February 2026). As no review application under PAJA is before this Court, the applicant’s case must fail on this basis as well.

COSTS

[121] The application lacks merit and constitutes an abuse of the court process. The applicant pursues urgent final relief in respect of disputed claims that were foreseeable, unsupported by proper evidence, and bolstered by inadmissible material introduced via supplementary heads of argument. Furthermore, the unexplained failure of the applicant and/or his primary legal representative to appear at the hearing aggravates the position and warrants a punitive costs order.

[122] In all the circumstances, a costs order on the attorney and client scale is justified, inclusive of the costs of counsel on Scale C.

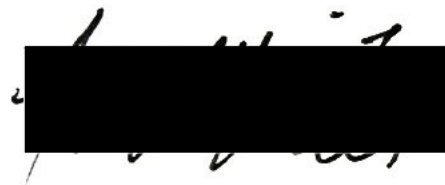
G. ORDER

WHEREFORE the following order is granted:

1. The application is dismissed.
2. The applicant is ordered to pay the costs of the respondents on the attorney and client scale, including costs of counsel on scale C.

SIGNED ON THIS 6TH DAY OF MARCH 2026.

BY ORDER



MARITZ AJ (SM)

ACTING JUDGE OF THE HIGH COURT

Representation on behalf of parties:

Attorneys for Applicant:	Musingwini & Mukondeleli Inc
Counsel for Applicant:	Adv EDL Jacobus

Attorneys for Respondents:	GMI Attorneys (Gildenhuys Malatsi Inc)
Counsel for Respondents:	Adv Ernest Kromhout

Date of Hearing:	17 February 2026
Date of Judgment:	6 March 2026