

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: **2024-006593**

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|-----------|---|
| (1) | REPORTABLE: YES /NO |
| (2) | OF INTEREST TO OTHER JUDGES: YES /NO |
| (3) | REVISED: YES /NO |
| 15/6/2026 | |
| DATE | SIGNATURE |

In the matter between:

REGISTRAR OF MEDICAL SCHEMES

Applicant

and

COUNCIL FOR MEDICAL SCHEMES

First Respondent

SOUTH AFRICAN POLICE SERVICE MEDICAL

Second Respondent

SCHEME (POLMED)

MINISTER OF HEALTH

Third Respondent

JUDGMENT

MBONGWE, J:

INTRODUCTION

- [1] This matter concerns a review brought by the Registrar of Medical Schemes (“the Registrar”) seeking to set aside the ruling of the Appeal Committee of the Council for Medical Schemes (“CMS”) dated 7 February 2023, alternatively 11 May 2023. The Appeal Committee held that the Registrar’s invocation of section 43 of the Medical Schemes Act 131 of 1998 (“MSA”) deprived Polmed of its rights under section 47 of the Act, and that complaints must be dealt with strictly in accordance with section 47.
- [2] The Registrar challenges the ruling on the basis of legality and common law review. Polmed, supported by the CMS, opposes the application, contending inter alia that the Registrar lacks locus standi, that the application is fatally delayed, moot, and procedurally defective.

FACTUAL BACKGROUND

- [3] Following Polmed’s Annual General Meeting in September 2021, a complaint was lodged by Mr Gous alleging governance irregularities. The Registrar, instead of processing the complaint under section 47, invoked section 43 and addressed enquiries to Polmed. Polmed responded but later objected, contending that section 43 was ultra vires.
- [4] Polmed appealed under section 49(1). The Appeal Committee upheld the appeal, directing that complaints must be processed under section 47. The Registrar subsequently complied with the ruling, processed the complaint under section 47, and dismissed it. That dismissal was upheld on appeal in November 2024.

ISSUES

- [5] The following issues arise:
- a) Whether the Registrar has locus standi to challenge the ruling of the Appeal Committee;
 - b) Whether the application is fatally delayed;
 - c) Whether the matter is moot or preempted;
 - d) Whether internal remedies were exhausted;
 - e) Whether the Registrar's reliance on legality/common law review is correct;
 - f) Whether section 43 may lawfully be invoked to process complaints.

LOCUS STANDI

- [6] Section 18(3) of the MSA obliges the Registrar to act in accordance with the provisions of the Act and the directions of the CMS. The Registrar is the executive officer of the CMS, not an adversary.
- [7] In *Registrar of Pension Funds v Howie NO*,¹ the Court held that a registrar cannot adopt an adversarial position against an appeal tribunal, as this undermines public confidence and upsets statutory design. The principle was reaffirmed in *MEC for Transport v Transport Appeal Tribunal*² and *Ombud for Financial Services Providers v Harms NO*.³

¹ [2016] 1 All SA 694 (SCA).

² [2016] ZAKZPHC 90.

³ [2017] ZAGPPHC 812.

- [8] Applying these authorities, the Registrar lacks locus standi to challenge the Appeal Committee's ruling. His role is regulatory and impartial, not adversarial.

DELAY

- [9] The ruling was delivered on 7 February 2023. The Registrar instituted review proceedings almost a year later, without explanation.

- [10] In *Buffalo City Metropolitan Municipality v ASLA Construction*,⁴ the Constitutional Court held that unexplained delay renders a review unreasonable. Similarly, in *Altech Radio Holdings v Tshwane City*,⁵ legality reviews must be brought without undue delay.

- [11] The Registrar's unexplained delay is unreasonable and fatal.

MOOTNESS AND PEREMPTION

- [12] The Registrar complied with the ruling, processed the complaint under section 47, and dismissed it. That dismissal was upheld on appeal. The relief sought is therefore academic. Courts do not issue advisory opinions on abstract disputes.⁶

- [13] By complying with the ruling, the Registrar acquiesced. The doctrine of peremption, explained in *Hlatshwayo v Mare & Deas*⁷ and reaffirmed in *SARS v*

⁴ 2019 (4) SA 331 (CC).

⁵ 2021 (3) SA 25 (SCA).

⁶ *Legal Aid SA v Magidiwana* 2015 (2) SA 568 (SCA).

⁷ 1912 AD 242.

CCMA⁸ prevents a litigant from approbating and reprobating. The Registrar, having abided by the ruling, cannot now contest it.

FAILURE TO EXHAUST REMEDIES

[14] Section 50 of the MSA provides an internal appeal mechanism. The Registrar did not pursue this remedy. In *Koyabe v Minister of Home Affairs*⁹ the Court emphasised that internal remedies must be exhausted before approaching court.

[15] The Registrar's failure to exhaust remedies further undermines the application.

REVIEW PATHWAY

[16] The Registrar deliberately avoided PAJA, invoking legality/common law review. Yet PAJA is the primary pathway for administrative reviews. In *Genesis Medical Scheme v Ngalwana*¹⁰, the Court held that the Registrar cannot bypass PAJA to avoid its requirements.

[17] The application is procedurally defective.

SECTION 43 vs SECTION 47

[18] The Registrar argues that section 43 empowers him to investigate "any matter" connected with a scheme's business, including complaints. He likens section

⁸ 2017 (1) SA 549 (CC).

⁹ 2010 (4) SA 327 (CC).

¹⁰ NO [2013] ZAGPPHC 546.

43 enquiries to section 44 inspections, which are investigative and not appealable.¹¹

[19] Polmed counters that section 47 is peremptory for complaints, affording procedural safeguards. The Appeal Committee agreed.

[20] While section 43 is broad, its purpose is investigative, not adjudicative. Section 47 specifically governs complaints, ensuring audi alteram partem. To allow section 43 to supplant section 47 would undermine statutory safeguards. The Appeal Committee's interpretation is correct.

CONCLUSION

[21] The Registrar lacks locus standi, delayed unreasonably, failed to exhaust remedies, and rendered the matter moot by complying with the ruling. Even on the merits, section 47 governs complaints, not section 43.

ORDER

1. The application is dismissed.
2. The Applicant is ordered to pay the costs of the Second Respondent, including the costs of two counsel.


MPN MBONGWE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION

¹¹ *Bonitas Medical Fund v CMS* [2016] 4 All SA 684 (SCA).

PRETORIA

APPEARANCES

For the Applicants:

M RIP (SC)

With:

MATLATLE

Instructed by:

For the First Respondent:

JH DREYER (SC)

With:

JW SCHABORT

Instructed by:

Date of Hearing:**07 May 2026****Date of Judgment:****15 June 2026**

THIS JUDGMENT WAS ELECTRONICALLY TRANSMITTED TO THE PARTIES' LEGAL REPRESENTATIVES AND UPLOADED ONTO CASELINES ON 15 JUNE 2026.