THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

South African Municipal Workers' Union National Medical Scheme (SAMWUMED) v City of Ekurhuleni and Others (1297/2022) [2023] ZASCA 182 (22 December 2023) (1297/2022) [2023] ZASCA 182 (22 December 2023)

Today, the Supreme Court of Appeal (SCA) upheld an appeal from the Gauteng Division of the High Court, Johannesburg (high court). The appeal centred around a dispute between the South African Municipal Workers' Union National Medical Scheme (appellant), a self-administered medical scheme registered in terms of s 24 of the Medical Schemes Act 131 of 1998 (the Act), and the City of Ekurhuleni (COE). In terms of a collective agreement entered into by the South African Local Government Association, the South African Local Government Bargaining Council must annually accredit medical schemes which qualified for employer contributions and the appellant had, for a number of years, been accredited in this regard.

In 2020, the appellant received a letter from COE, indicating that Alexander Forbes Health (Pty) Ltd (AFH) had been appointed as a broker to the appellant to provide services to COE and its employees. The appellant was informed that it was to rescind all its existing broker contracts. It also had to ensure that AFH was paid the requisite broker fees for services rendered. Subsequently, Moso Consulting Services (Pty) Ltd (Moso) replaced AFH as the appointed broker. The appellant declined to accede to this appointment, nor did it accept that it was required to market its scheme or render any other service through Moso. The appellant wished to continue to do so through its internal consultants employed by the appellant. In light of these developments, the appellant addressed a letter to COE, requesting it to reconsider the imposition of Moso. The appellant also wrote to Moso to inform it that it was not allowed to render services which fell outside the confines of its agreement with the appellant. That agreement confined Moso to particular territory, being, in essence, Johannesburg.

Before the high court, the appellant's claim was dismissed on the basis that the appellant was not a party to the collective agreement, and therefore enjoyed no rights under the agreement. Furthermore, the appellant efforts to restrict Moso in the territorial performance of its activities, was found to offend it the rights of employees to choose a broker. It would also offend against the Financial Advisory and Intermediary Service Act 37 of 2002 and its code of conduct.

On appeal before this Court, the appellant sought to compel COE to comply with the collective agreement and to permit the appellant to market its scheme and benefit options, as well as render services, to employees of COE. Additionally, the appellant sought to render these services and market its offerings without having Moso imposed upon it as intermediary. This Court examined the matter and confirmed that the appellant was not a party to the collective agreement, and did not have any rights under this agreement. A collective agreement, this Court found is a statutory construct. Section 23 of the Labour Relations Act 66 of 1995 (LRA) sets out who the legal effects of a collective agreement. A medical scheme is not recognized as a party to the collective agreement by the LRA, and thus the appellant could claim no rights under the collective agreement.

However, the LRA provided for the establishment of bargaining councils. The collective agreement in question deputed the South African Local Government Bargaining Council (SALGBC) to accredit medical schemes for the benefit of employees. SALGBC accredited the appellant and in so doing concluded an agreement, from which these parties derived rights and obligations.

The appellant sought to enforce what it considered its rights under the collective agreement. That claim could not prevail., But the appellant had pleaded an alternative cause of action: that the conduct of COE unlawfully and intentionally interfered with the contractual relations of the appellant. This Court found that this cause of action was good in law, and then considered the proposition whether COE's conduct constituted unlawful interference with the agreement between the appellant and SALGBC. It found that COE's conduct clearly unlawfully interfered, as it restricted the means by which the appellant could carry out its duties to its members, including its right to market its scheme. The collective agreement did not place any restraints upon the appellant of the kind COE sought to impose. COE's imposition of a broker was held to constitute intentional and unlawful interference with the contractual relationship subsisting between the appellant and SALGBC.

Additionally, the appellant sought relief against Moso. Moso contended that it was not confined to the territory set out in its broker agreement with the appellant. Moso held that the territorial restriction In the agreement offended against s 65 of the Medical Schemes Act; that it was against public policy and that the appellant had waived its rights under the agreement with Moso. However, this Court decided that the territorial restraint did not restrict the choice of brokers that the Medical Schemes Act protected; nor was the restraint against public policy; and the appellant had not waived its rights under the agreement with Moso.

In the result, the appeal was upheld and the order of the high court was substituted with orders permitting the appellant to render its services as an accredited medical scheme.

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