



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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Hough and Bremner and Another v The Road Accident Fund (1024/2022) [2023] ZASCA 179 (18 December 2023)

Today the Supreme Court of Appeal (SCA) handed down judgment upholding an appeal against the decision of the Mpumalanga Division of the High Court, Mbombela (the high court) and replaced it with the following order: 'The settlement agreement concluded between the parties on 7 March 2022 is made an order of court.'

This matter involved a claim against the Road Accident Fund (RAF), where orders were made by the high court, inter alia, against the first appellant Hough & Bremner (H&B), a firm of attorneys and their client, the second appellant, Ms Chiau. H&B represented Ms Chiau in a delictual claim instituted against the RAF in the high court for damages suffered as a result of injuries sustained in a motor vehicle collision that occurred on 20 July 2015. A fee agreement was entered into on 11 September 2015, prior to the institution of the action. The action was settled between Ms Chiau and the RAF on 7 March 2022. In view of the settlement, a notice of removal from the trial roll was filed. H&B also filed the Settlement Agreement, Notice of Acceptance, and affidavits by both Ms Chiau and H&B confirming that no contingency fee agreement had been concluded. This was followed by a directive from Legodi JP in the form of a questionnaire requesting certain information from H&B, under oath, relating to the funding of the legal fees in the case. The questions revolved around whether the fee agreement between H&B and Ms Chiau constituted a contingency fee agreement (CFA) within the ambit of the Contingency Fees Act (the Act). In response to the queries, Mr Eastes of H&B set out in detail the background to his firm and Ms Chiau entering into the fee agreement stipulating that the fee agreement was not a contingency fee agreement as defined in the Act; that Ms Chiau would at all times be liable for payment of the attorney's fees and disbursements; that the accounts would be delivered to Ms Chiau in respect of disbursements as soon as they were incurred; and interim accounts would be delivered in respect of attorney's fees from time to time as well as comprehensive accounts at the conclusion of the matter; and that she would be liable upon demand by Mr Eastes to pay a deposit in respect of attorney's fees and/ or disbursements.

Despite the explanations given by H&B, on 02 of June 2022, the high court delivered judgment and ordered that the fee agreement entered between H&B and Ms Chiau be reviewed and set aside. The high court found the fee agreement to be unlawful on the basis that it was a CFA within the ambit of the Act and it did not comply with the formal requirements of the Act. It also refused to make the settlement agreement, concluded between the parties, an order of court and made orders which were not sought by any of the parties, and against H&B, which was not a party to the proceedings. It ordered the RAF to pay the agreed quantum as well as the costs directly to Ms Chiau.

Aggrieved by the high court's order, H&B applied to be joined and it and Ms Chiau applied for leave to appeal which was refused. As a result, the appellants jointly petitioned this Court, which granted leave to appeal. The RAF did not oppose the appeal and abided the decision of this Court.

The SCA disagreed with the high court's approach that any agreement, that did not provide for payment of fees by the litigant prior to the finalisation of litigation, constituted a CFA within the ambit of the Act. The SCA also held that the orders granted were not sought by any of the parties. The RAF had no obligation to pay the costs to Ms Chiau as ordered by the high court. This order was made against H&B,

when it was not a party to the proceedings and without it being given an opportunity to be heard on these issues. H&B was thus deprived, not only of their right to have claimed their fees from their client, but also of their right to have recovered the costs from the RAF. The SCA held that 'even if the fee structure agreement was an agreement that was hit by the Act, as the high court found, that in itself was not a proper basis to deprive the attorneys of the right to recover their fees for the services rendered'. The SCA further held that the high court disregarded the principle that it was for the parties to 'define the nature of their dispute and it was for the court to adjudicate upon those issues'. Based on those findings, the SCA upheld the appeal and ordered that the settlement agreement concluded between the parties on 7 March 2022 be made an order of court.

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