IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: 82259/2019

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

DATE
28 March 2022

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SIGNATURE

In the matter between:

IGNE SCHREUDER Applicant
(Identity Number [….])

and

THE MINISTER OF LABOUR First Respondent

THE COMPENSATION COMMISSIONER, OCCUPATIONAL INJURIES AND DISEASES Second Respondent

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JUDGMENT

LAZARUS AJ

1. This is an application for payment in respect of medical services rendered by the applicant to various employees who sustained injuries during the course of employment.

2. The applicant is a registered anaesthetist and the services rendered qualify as professional medical services as contemplated in the Compensation for Occupational Injuries and Diseases Act 130 of 1993 ("COIDA") for which the second respondent is ordinarily liable.

3. The application was issued and served on the respondents in November 2019 and was in respect of services rendered between December 2013 and February 2019.

4. The Applicant claims that all tax invoices, statements and other relevant claim documents in respect of the aforesaid services were submitted to the second respondent. In support of its claim, the applicant attached to the founding affidavit, a spreadsheet containing, *inter alia*, the name of each patient who received medical services from the applicant and the balance due in respect of each patient.

5. Following service of the application on the respondents, the second respondent made a partial payment in respect of the amount claimed by the applicant in its notice of motion. This precipitated the applicant filing a supplementary affidavit in which the amount claimed was reduced to a total amount of R204 227.77.

6. In February 2020, the applicant concluded a discounting and administration agreement with COIDLink in terms of which COIDLink would process all injury-on-duty claims payable by the second respondent on behalf of the applicant as from July 2019.

7. The respondents deny liability to the applicant on two grounds.

   7.1. First, they deny that the applicant has the requisite *locus standi* to have instituted the application.

   7.2. Second, they deny that the amount claimed is due and payable because the applicant failed to make out a proper case in its founding affidavit for the relief sought.

8. In regard to *locus standi*, the respondents contend that the consequence of the discounting and administration agreement concluded between the applicant and COIDLink is that the applicant has ceded its right to claim from the respondents to COIDLink.

9. The respondents contend, in the heads of argument submitted on their behalf, that the conclusion of the agreement resulted in the deletion of the applicant's details from the second respondents' computer system and its replacement with COIDLink's details. According to the respondents, this system does not permit two sets of banking details belonging to one medical service provider to be added under one beneficiary. This means,

so the respondents' counsel contends, that it is "impossible" for the second respondent to pay the applicant directly for the medical services rendered.

10. There is no merit in this submission. Even if I assume that the applicant did cede its right to claim for medical services rendered to COIDLink, it is common cause that such "cession" was only in respect of claims from July 2020 onwards and thus excluded the claims forming the subject of the present application.

11. The fact that the computer system of the first respondent does not permit more than one set of banking details belonging to one medical service provider to be added under one beneficiary is a function of the second respondents own internal administrative system. It cannot shield the second respondent from liability to the applicant.

12. In regard to the respondents' second defence - that the applicant has failed to make out a proper case in its founding affidavit - the respondent draws a distinction between claims that are submitted and claims that are due and payable.

13. According to the respondents, claims for medical services rendered only become due and payable once they have been assessed, verified and approved by the second respondent. Accordingly, the spreadsheet attached to the applicant's founding affidavit, which provides the name of

each patient who received medical services from the applicant and the balance due in respect of each patient, does not prove that such amounts are due and payable as it does not demonstrate that such amounts have been assessed, verified and approved by the second respondent.

14. Furthermore, according to the respondents, the spreadsheet attached to the applicant's founding affidavit provides insufficient information for the respondents to assess, verify or approve the individual claims. In particular, the spreadsheet does not contain all the patient's compensation fund membership numbers.

15. To address this criticism, which was raised in the answering affidavit, the applicant attached to its replying affidavit, the spreadsheet attached to the founding affidavit but with all the patient's compensation fund membership numbers inserted, the submission reports in respect of each patient and every invoice submitted to the second respondent in respect of each patient.

16. The respondents' claim that the provision of this evidence in the replying affidavit is impermissible as it offends the trite principle that a founding affidavit must contain the essential averments on which the applicant's cause of action rests.[1]

[1] Mokoena v Old Mutual Life Assurance Company (JS 123/2016) [2019] ZALCJHB 54 (19 March 2019)

17. The respondents allege that they are prejudiced by the applicant's provision of this evidence in the replying affidavit in that they are denied the opportunity of responding to the evidence.

18. It is an established principle that an applicant who seeks final relief on motion must make out its case in the founding affidavit.[2] This is because in motion proceedings the affidavits serve not only to place evidence before the Court, but also to define the issues between the parties. It has been held that "*this is not only for the benefit of the Court but also, and primarily, for the parties. The parties must know the case that they must meet and in respect of which they must adduce evidence in the affidavits. … An applicant must accordingly raise the issues upon which it would seek to rely in the founding affidavit. It must do so by defining the relevant issues and by setting out the evidence upon which it relies to discharge the onus of proof resting on it in respect thereof.*[3]

19. The question that accordingly arises in this case is whether the applicant, in the founding affidavit, set out sufficient facts and evidence to inform the respondents of the case they were required to meet and to discharge the onus of proof resting on it?

20. To answer this question, it is instructive for present purposes to set out the position that applies where facts are within the peculiar knowledge of one

[2] My voted counts NPC v Speaker of the National Assembly and Other 2016 (1) SA 132 (CC) para 177.
[3] Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others 1999 (2) SA 279 (T) at 323F-I

party but are not adequately canvassed on paper. In *Wightman v Headfour (Pty) Ltd*[4], the following was stated:

> *"Recognising that the truth almost always lies beyond mere linguistic determination the Courts have said that an applicant who seeks final relief on motion, must in the event of conflict, accept the version set up by his opponent unless the latter's allegations are, in the opinion of the Court, not such as to raise a real, genuine or bona fide dispute of fact or are so far-fetched or clearly untenable that the Court is justified in rejecting them merely on the papers.*
>
> *A real, genuine and bona fide dispute of fact can exist only where the Court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the Court will generally have difficulty in finding that the test is satisfied. I say 'generally' because factual averments seldom stand apart from a broader matrix of circumstances all of which needs to be borne in mind when arriving at a decision.*

[4] 2008 (3) SA 371 (SCA)

> *There is thus a serious duty imposed upon a legal adviser who settles an answering affidavit to ascertain and engage with facts which his client disputes and to reflect such disputes fully and accurately in the answering affidavit. If that does not happen it should come as no surprise that the Court takes a robust view of the matter."*

21. As mentioned above, in support of its claim the applicant attached to the founding affidavit a spreadsheet containing the name of each patient who received medical services from the applicant and the balance due in respect of each patient. The spreadsheet also indicated the date the patient received the medical services and, in most but not all instances, the patient's compensation fund membership number.

22. As also mentioned above, the respondents' objection to the spreadsheet is that it does not prove that the claims reflected have been assessed, verified and approved by the second respondent and, accordingly, that they are due and payable.

23. Whether a claim has been assessed, verified and approved is clearly a fact that lies within the unique knowledge of the second respondent. However, instead of providing the details of which claims have been assessed, verified and approved, the respondents simply deny being indebted to the applicant for any services rendered and, accordingly, that the applicant is entitled to any payment from the respondents.

24. The hollowness of this denial is compounded by the fact that, following service of the application, the second respondent made a partial payment in respect of the amount claimed by the applicant in its notice of motion. This payment raises the obvious question of how did the second respondent determine the amount to be paid without having any knowledge of the underlying debt or whether these amounts had been assessed, verified and approved? The payment strongly suggests that the second respondent must either have received the tax invoices, statements and other relevant claim documents in respect of the services the applicant alleges were submitted to it or must have had other means of being able to assess, verify and approve the claims.

25. In light of these facts, it is difficult to accept that when confronted with the spreadsheet attached to the applicant's founding affidavit, the second respondent was unable to assess, verify or approve the claims as it alleges.

26. Since the status of the claims lies purely within the knowledge of the second respondent, it was obliged seriously and unambiguously to engage with the facts alleged and provide an answer or countervailing evidence if they were not true or accurate. In these circumstances, it was insufficient for the respondents simply to deny being indebted to the applicant for any services rendered.

27. I thus find that the respondents have failed to establish a bona fide defence to the applicant's claim.

28. In the result the following order is granted:

28.1. The respondents are ordered to make payment to the applicant in the amount of R204 227.77 (two hundred and four thousand two hundred and twenty-seven rand and seventy-seven cents together with interest thereon calculated at a rate of 10,25% per annum from 4 September 2019, until date of payment, both days inclusive.

28.2. The respondents are ordered to pay the cost of the application jointly and severally, the one paying the other to be absolved.

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Lazarus AJ
Acting Judge of the High Court, Gauteng Division Pretoria

For the Applicant: Adv SN Davis
Instructed by: Phillip Coetzer Incorporated

For the Respondents: Adv CB Kubeka-Manyelo
Instructed by: State Attorney, Pretoria

Date of hearing: 21 October 2021
Date of judgment: 28 March 2022