



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
DATE 25 November 2011
STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

Council for Medical Schemes v Bester
(561/2010) [2011] ZASCA 207 (25 November 2011)

Media Statement

Today the Supreme Court of Appeal (SCA) delivered judgment upholding the appeal by the Council and Registrar of Medical Schemes against the judgment of the North Gauteng High Court in which the respondents, Selfmed Medical Scheme and Leon Bester, were each awarded R200 000 in damages following an action for damages for defamation instituted by them. Bester was at the time litigation commenced the chairperson of the Board of Trustees of Selfmed as well as Chief Executive Officer of the Scheme.

In 2005 the Council published its *Annual Report 2004/2005* as it is statutorily obliged to do. In it, under the heading 'Governance of Medical Schemes', a passage dealing with Selfmed mentioned the ostensible self-appointment by the chairperson as the scheme's principal officer and CEO as well as 'dubious appointments' of family members to the scheme's executive management. The passage commenced by indicating that several issues concerning governance were being questioned and concluded with the statement that these matters had not yet been resolved. The respondents instituted action against the Council and Registrar claiming that both had wrongfully defamed each of them by publishing the abovementioned passages.

Regarding the claim by Selfmed, the SCA held that the statements did not refer to Selfmed as a corporate entity. They referred to the scheme's chairperson and dubious appointments of family members to the scheme's executive management. The statements reflected on the officers of Selfmed, and not on Selfmed as an entity. Selfmed's claim was thus dismissed on this ground.

The SCA held that in this matter the ordinary reader, who was not just any member of the public, but rather a relatively restricted audience of persons such as brokers, medical scheme administrators, Ministers and members of medical schemes, would look at the content of the

statement in the context of the whole document and not only those parts complained of, excised and standing alone. This ordinary reader, in the view of the court, would have understood the statements to mean that the appointment of Selfmed's chairperson as the principal officer and CEO as well as the dubious appointments of family members to executive management were matters of governance being questioned and investigated without any final conclusion having been reached. These statements, far from being likely to lower the plaintiff in the estimation of the reader and of members of society, rather would be understood as a regulator raising concerns for debate, discussion and resolution with the medical scheme concerned.

The appeal was upheld and the order of the high court amended to one which dismissed the claims.

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