



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 3 October 2016

Status: Immediate

BONITAS MEDICAL FUND v THE COUNCIL FOR MEDICAL SCHEMES

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

1. The Registrar of Medical Schemes (the registrar) ordered an inspection into the affairs of the Bonitas Medical Scheme (the scheme) in terms of s 44(4)(a) of the Medical Schemes Act 131 of 1998 (the MSA). This section provides that the registrar may order an inspection of the affairs of a medical scheme if he or she is of the opinion that such an inspection will provide evidence of any irregularity or non-compliance with the MSA. The scheme lodged an appeal in terms of s 49(1) of the MSA to the Council for Medical Schemes (the council) against the registrar's decision to order the inspection. The council took the view that a decision to order an inspection is not appealable in terms of the MSA and, together with the registrar, approached the Gauteng Division of the High Court for declaratory relief to that effect. The Gauteng Division granted the declarator. However, it made no order as to costs, on the ground that the scheme raised a constitutional issue in the litigation. The scheme appealed to the Supreme Court of Appeal (SCA) against the declarator and the council and the registrar cross-appealed for a cost order.

2. Today the SCA dismissed the appeal of the scheme with costs and allowed the cross-appeal with costs. The SCA had regard to the context of these statutory provisions, especially the purpose of the MSA, namely the protection of the interests of members and beneficiaries of medical schemes. The SCA held that the power to order an inspection in terms of s 44(4)(a) is intended to be an effective regulatory mechanism, and that the registrar ought to be able to exercise the power with expedition and without notice. The SCA held that to allow an appeal against a decision to order an inspection, would be subversive of the intended effective intervention in the public interest. The SCA held that on a contextual interpretation of the MSA, a decision to order an inspection is not appealable.

3. The SCA further held that the scheme did not raise a genuine and substantive constitutional issue in the litigation. It therefore held that the scheme should bear the costs of the application in the Gauteng Division.

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