

SOUTH AFRICA / JUDGMENT

Khanyile v South African Social Security Agency (SASSA) and Others (8695/2017) [2019] ZAKZPHC 74 (18 November 2019)

[2019] ZAKZPHC 74

COURT

Kwazulu-Natal High Court, Pietermaritzburg

BEFORE

Chetty

CASE / FILE NUMBER

8695/2017

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IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NO. 8695/2017

In the matter between:

WILSON BUSIZWE KHANYILE

APPLICANT

And

THE SOUTH AFRICAN SOCIAL SECURITY AGENCY (SASSA) 1ST RESPONDENT

CASH PAYMASTER SERVICES (PTY) LTD

2ND RESPONDENT

GRINDROD BANK LTD

3RD RESPONDENT

REASONS

FOR JUDGMENT

CHETTY J:

1. The applicant, a disability grantee in terms of the Social Assistance Act 13 of 2004 (the Act), brought an application so that the first, second and third respondents cease making deductions from his disability grant with immediate effect, and to refrain from doing so in the future. In addition, he sought repayment of the sum of R1125.00 which he contended was unlawfully deducted from the account into which his disability grant was paid, together with the transactional fees amounting to R40,50 flowing from the deduction, which amounts were debited from his account.
2. It is not disputed that the applicant is the recipient of a disability grant, with grant number 243590772-9 allocated to him by the Department of Social Welfare and Development (the Department).

The Department engaged Cash Paymaster Services (CPS) as its agent to register grantees. CPS engaged the services of the third respondent,

Grindrod Bank, who was able to provide banking services at affordable rates to the recipients of the social welfare grants.

3. The case of the applicant is that from 1 April 2017 he noticed that instead of receiving the full payment of his grant in the amount of R1600.00 the amount which he received into his account was reduced as a result of two deductions totalling R225.00. These comprised a purchase of prepaid electricity for R200.00 and prepaid cellular phone airtime to the value of R25.00. These deductions occurred for the period April to July 2017.
4. The applicant's contention is that Regulation 26(A) to the Act provides that no deduction is permitted from the disability grant paid to a recipient except those which are made on the written instruction of the beneficiary. The only exception permitted is for a funeral policy, and this occurs where specific instruction has been given to make such deduction.
5. The applicant denies granting the respondents any such permission to effect deductions on his account and therefore contends that such deductions are unlawful and demands that he be compensated for such amounts.
6. The application was opposed by all three respondents. After receipt of the answering affidavits from the second and third respondents, the applicant's attorneys took a decision to withdraw their application against those respondents, leaving the first respondent, the South African Social Security Agency ('SASSA'), as the sole party opposing the relief before this court.
7. CPS, in its answering affidavit, confirmed that it was contracted by SASSA and its obligation was to enrol all eligible social welfare grant beneficiaries. Where an instruction is received from SASSA to process a deduction in accordance with Regulation 26A, this is done before the beneficiary's grant is paid into his or her bank account. Once this is done, according to CPS, it has no control over what is done or deducted from the beneficiary's bank account.
8. CPS categorically stated that it neither sells airtime nor

electricity to grant beneficiaries or to account holders, but that this particular service is offered by Grindrod Bank, using a platform called Manje Mobile Electronic Payment Services. When the applicant's claim came to the attention of the owners of Manje Mobile, a multinational consortium called Net1 UEPS Logistics Inc., the latter offered to reimburse the applicant whatever amounts had been deducted from his account. In this regard, a letter was addressed by NET1 on behalf of Grindrod Bank dated 10 October 2017, stating the following:

'In an attempt to resolve the matter amicably, we are prepared to reimburse Mr Khanyile the amount of R1125.00 for airtime and electricity purchases debited against his account. We make this offer without admission of liability and in a full and final settlement of any claims your client has against us.'

The company requested an affidavit from the applicant confirming that he did not purchase any prepaid airtime or electricity using his SASSA card or bank account, nor did he authorise any third parties to do so.

9. In response, the applicant's attorneys undertook to release the third respondent from the application, provided Grindrod Bank attached a copy of the above letter to an affidavit.
10. During the course of argument, I enquired from Mr Moodley who appeared for the applicant, why the offer was not accepted, as to do so would have effectively disposed of the issue on which the applicant had come to court. Counsel properly pointed out however, that acceptance of the offer would have disposed of only part of the relief sought, that pertaining to the repayment of unlawful deductions. It would have provided no relief for the applicant to protect him from unlawful deductions from his account in the future. I was satisfied with the explanation provided.
11. While the applicant had withdrawn its case against the second and third respondents, it bears noting that in the affidavit of the first respondent, it is contended that SASSA, in terms of its arrangement with CPS, is obliged to pay the full amount of the grant due to a beneficiary. In turn, CPS would deposit such monies into the account of Grindrod Bank, from which beneficiaries could access their monies. SASSA however, contended that it was not responsible for any

deductions incurred by grant beneficiaries and that either CPS or Grindrod were responsible for the unlawful deductions.

12. The contention of the applicant is that SASSA, in terms of Regulation 26A(1), may only allow deductions where the deduction is authorised in writing by the beneficiary. The applicant gave no such authority and for that reason, he contended, that SASSA impermissibly carried out the deductions from his account. In the absence of any authority, in writing, neither SASSA nor its agents CPS or Grindrod, would have been in a position to give effect to this deduction.

13. Irrespective of whether there was an offer to compensate the applicant by Grindrod, SASSA is ultimately liable on the basis that it is the entity that is statutorily charged with the payment of the full amount of a beneficiary's social welfare or disability grant. SASSA was challenged to produce any proof that the applicant authorised a deduction. It did not respond to the challenge. Instead, it chose to oppose the relief sought by the applicant on the basis of a technicality - that the applicant failed to comply with the provisions of the KZN Practice Directive 30 (the Directive) which

was issued to regulate the deluge of litigation that arose around the refusal to award applicants social welfare grants. It is no secret that many unscrupulous practitioners sought to develop this into a cottage industry, running up unnecessary costs by dragging the defendant to court for matters that could easily be resolved through administrative channels. In the same way that the Directive has managed the litigation in relation to social welfare grants, so too has this Division regulated the litigation in relation to matters concerning the Road Accident Fund.

14. Flowing from the decision of Wallis J in *P. N. Cele v The South African Social Security Agency and Others*, Case No 7940/2007, delivered on 28 May 2009, the following previous directive has emerged:

'(a) Before there is any contemplation of litigation an appropriate letter of demand should be addressed either to SASSA or to the Minister of Social Development depending upon the nature of the claim. That letter of demand must set out the identity of the claimant and the basis of the claim and provide sufficient information to enable the claim to be investigated and dealt with appropriately.'

15. Mr Khuzwayo, who appeared for the first respondent, SASSA, confirmed upon my enquiry that his argument went no further than the procedural

non-compliance with the Directive. The stance of the applicant was that the said Directive did not apply to this application as,

properly interpreted, the Directive was intended for those applying for social welfare grants or who wished to appeal against the

decision of the department. The applicant's attorney wrote to all three respondents setting out precisely the basis of the

applicant's claim. There was no favourable response to that demand. The applicant's attorney was of the view that he was not bound to comply with the Directive. In this regard, it is important to have regard to the following provisions of item 30.2 of the Directive which states:

'If no satisfactory response follows from the letter of demand so that there is a need to contemplate litigation, before an applicant may issue application papers out of the Registrar's office in an application seeking relief relating to or arising from an application for a social assistance grant. . . '

16. I am in agreement with counsel for the applicant that the Directive relates to applications for grants, or appeals against a decision of the department. The present application falls into neither category. The applicant is an existing beneficiary of a social welfare grant. His complaint relates to unlawful deductions, in addition to which he is, in essence, seeking interdictory relief against the first respondent from effecting any deductions from his grant in the future, other than those which he has authorised in writing.

17. Mr Khuzwayo contended that the Directive applies to any and all applications

associated with a social welfare grant. In this regard, he relied on provision 30(b)(vii) of the Directive, which provides for the details of a notice to be submitted to the office of the State Attorney prior to embarking on any litigation, and in particular the words ‘or any other complaint’. It states:

‘the nature of the applicant’s complaint, such as that an application has been made and not processed; an application has been refused and the grounds of the refusal or an appeal (or both) are sought; or that a grant originally made has been withdrawn and the applicant seeks reasons for the withdrawal or the reinstatement of the grant (or both) or any other complaints’ (My underlining)

18. I am not persuaded by the argument that the words ‘or any other complaint’ is a panacea or a catch-all for any and all disputes relating to social welfare grants to have to comply with the Directive. In my view, those words are read out of context. It would have been impossible for the Directive to have considered every conceivable issue that would stem from an applicant encountering problems with his or her application for a social welfare grant. It is for that reason, in my view, that the words ‘or any other complaint’ were used. If the Directive intended to apply to each and every application associated with social welfare grants, it would be expressly stated. I am unable to agree with Mr Khuzwayo that a judgment declaring that this particular type of application, pertaining as it does to unlawful deductions from social welfare grants, will ‘open the flood gates’ to litigants, by-passing the provisions of the Directive. Apart from the obvious

cases falling within the reach of the Directive, there will be those cases in which the court will have to scrutinise the facts and the relief sought to determine whether the nature of the claim warrants that it comply with the Directive. In the result, the opposition of the first respondent, relying on a procedural point, had failed.

19. In so far as costs are concerned, the general rule that costs should follow the result should apply. I enquired from Mr Moodley why this matter did not belong in the Magistrate’s Court as the claim is for an amount under R2000. The reason for the need to litigate out of this court lay in the applicant’s relief in seeking an interdict against the first respondent that it would not, in the future, permit unlawful deductions from the applicant bank account. I am satisfied that the matter was properly before this court and I see no reason why the applicant should not be entitled to his costs on a party and party scale. I should add that the applicant initially sought attorney and client scale. In light of SASSA’s opposition to the applicant’s

claim, I did consider granting costs on an attorney-client scale, on further reflection and in my discretion I saw sought no need to make a punitive cost order. Organs of state are duty bound to uphold the constitution and protect the poor and vulnerable in our society. The amount claimed by the applicant may be considered trifling to some officials. It is, however, an amount that allows a fellow human being and citizen to survive for a month, with dignity. The manner in which the officials treated the applicant at the Hammersdale pay-point when he attempted to establish the basis for these unlawful deductions, displays their scant disregard for his rights. It is not surprising that SASSA has no record of a complaint having been filed by the applicant with regard to these deductions. As Ackerman J in *Fose v Minister of Safety & Security* [1997] ZACC 6; 1997 (3) SA 786 (CC), stated:

‘Particularly in a country where so few have the means to enforce their rights through the courts, it is essential that on those occasions when the legal process does establish that an infringement of an entrenched right has occurred, it be effectively vindicated’.

20. For these reasons, on 13 November 2019 I issued the order below:

20.1 That the First Respondent is ordered to cease making, or allowing to be made, deductions from the Disability Grant of the Applicant with immediate effect, and to refrain from doing so until such time as the Applicant, in writing, requests a deduction to be made;

20.2 That the First Respondent is ordered to repay to the Applicant the sum of R1 125-00, which amount includes the total of all deductions made against the Applicant’s Disability Grant to date, with interest to be added thereon at the prescribed rate from date of deduction to date of payment;

20.3 That the First Respondent is ordered to repay to the Applicant the sum of R40- 50, which amount includes the total of all transaction fees charged against the Applicant’s grant to date, with interest to be added thereon at the prescribed rate from date of deduction to date of payment;

20.4 That the First Respondent is ordered to pay the costs of this Application, on the Scale as between Party and Party.

CHETTY J

Appearance

For the Applicant: Mr S Moodley

Instructed by:

Narain Naidoo & Associates

Address:

307 Prince Alfred Street

Pietermaritzburg

Email:

narain@narinnaidoo-assoc.co.za

For the Respondent: Mr T Khuzwayo

Instructed by:

The State Attorney

c/o

Cajee Setsubi Chetty Inc

Address:

195 Boshoff Street

Ref:

527/000060/17/K/P39

Date of Judgment:

13 November 2019

Date of Reasons:

18 November 2019

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