

SOUTH AFRICA / JUDGMENT

Meyerdicks v Road Accident Fund (3526/2014) [2018] ZAGPPHC 418 (4 June 2018) [2018] ZAGPPHC 418

COURT

North Gauteng High Court, Pretoria

BEFORE

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CASE / FILE NUMBER

3526/2014

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IN

THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE

NO: 3526/2014

4/6/2018

In

the matter between:

RONALD HERMANN MEYERDICKS
(Trustee
of the BP Nhlapo Inter-Vivos
Trust)
Applicant
and
THE
ROAD ACCIDENT
FUND
Respondent

JUDGMENT

DEWRANCE AJ

- [1] In this application, the applicant seeks payment in the amount of R20 912, including costs.
- [2] The applicant is the Trustee of the BP Nhlapo Inter-Vivas Trust registered under reference number IT1376/2009. The respondent's appointment was made pursuant to an order granted by Joffe J in the South Gauteng High Court, as it was then, under case number 2007/1523 ("the Joffe order"). The Joffe J order declared Basie Paulus Nhlapo ("the patient") mentally incapable of managing his own affairs and made provision for the establishment of a trust for the patient. The plaintiff was then appointed as the Trustee of the Trust.

CAUSE OF ACTION

- [3] It is common cause that on 21 July 2002, the patient was involved in a motor vehicle collision in which he sustained injuries. A claim was lodged with the respondent and the matter was adjudicated by Joffe J as aforesaid.
- [4] Joffe J ordered that the respondent furnish the patient with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act, 1996. On 17 April 2009, the respondent issued the beneficiary the undertaking. The undertaking provides thus:

" THE ROAD ACCIDENT FUND (hereinafter referred to as the Fund)

Having settled the claim for compensation under Section 17 of the Road Accident Fund Act, 1996 (Act 56 of 1996), as amended, (herein referred to as the Act) lodged with the Fund by Basie Paulus Nhlapo, Identity No: 6707275682080, (hereinafter referred to as the Injured) assisted by the duly appointed Curator ad Litem, Hermann Kriel, ... and was sued out of the South Gauteng High Court (Johannesburg) ... arising from a motor vehicle accident which occurred on 21 July 2002 ...

Places on record that it has been agreed between the parties that the element of negligence has been settled at 80% in favour of the Injured, who shall be entitled to 80% of his proven damages sustained in this collision as contemplated by Section 17 of the Act.

It is further placed on record that the following are recoverable in terms of this Undertaking:

- (i) the cost to be incurred for the establishment of a trust in accordance with the provisions of the Trust Property Control Act, No 57 of 1988 and the appointment of a trustee for the Injured;

(ii) the costs of the Trustee in administering the estate of the Injured, which includes the Undertaking, as determined by the Administration of Estates Act, No 65 of 1965, as amended, according to the prescribed tariff applicable to curators as reflected in Government Gazette Notice R1602 of 3 July

1991, and more specifically paragraphs 3(a) and 3(b) of the schedule thereof; and

(iii) the costs of furnishing annual security in terms of Section 77 of the Administration of Estates Act, No 66 of 1965, as amended, if required by the master of the high court.

The Fund further undertakes under Section 17(4)(a) of the said Act to compensate the duly appointed trustee for 80% of the costs of future accommodation of the Injured in a hospital or nursing home or treatment of or rendering of a service or the supplying of goods to the said Injured after costs have been incurred and on proof thereof

[5] The applicant submitted a claim for expenses on 24 July 2012. The applicant contends that the costs are covered by the undertaking. The costs are broken up into three periods. The first being the period ending on 28 February 2010 ("the first period"), the second period ending on 28 February 2011 ("the second period") and

the third period ending on 29 February 2012 ("the third period").

[6] The first period included the fees for H A Meyerdicks Inc for the establishment and registration of the Trust, inception fees, bank

charges, revenue stamp charges, management fee charges, disbursements and bond of security charges. The costs for the first period amount to R11 748.35.

[7] The costs for the second period included bank charges, management fee and disbursements. The costs for the second period amount to R1 648.38.

[8] The costs for the third period included bank charges, management fee, disbursements and a bond of security. The costs for the third period amount to R7 515.27.

[9] The total cost for the three periods amounts to R20 912.00.

[10] The respondent refuses to pay these amounts. The respondent's defence to the aforesaid claim can be summarised as follows:

[10.1] there has been non-compliance with the Administration of Estates Act, 66 of 1965 ("the Administration of Estates Act");

[10.2] the costs and expenses claimed by the applicant for the first period has prescribed;

[10.3] the vouchers the applicant attached in support of his claim do not represent proper accounts in that they are not itemised, "does not specify the actions stating by [sic] the applicant item by item specifically and the items are not dated".

[11] The respondent concedes in its heads of argument that the applicant's claim has not prescribed. Accordingly, the only issue before me is the applicability or otherwise of the Administration of Estates Act. and whether the account is a "proper account".

[12] In its heads of argument, it is contended by the applicant that its case is straightforward:

[12.1] he is the Trustee of the inter-vivos trust, established in accordance with the provisions of the Trust Property Control Act 57 of 1988, as contemplated in paragraph 6 of the Joffe J order;

[12.2] he submitted a claim to the Road Accident Fund Act, by way of a letter dated 24 July 2012 for the reasonable costs contemplated in paragraphs 4.1, 4.2 and 4.3 of the Joffe J order as incorporated in the subsequent undertaking furnished pursuant to the Joffe J order. He attached a schedule to the letter of the costs and expenses claimed, duly supported by vouchers;

[12.3] the respondent unlawfully refuses to pay the claim or any part thereof.

THE ADMINISTRATION OF ESTATES ACT

The applicant's argument

[13] The he applicant contends that, if regard is had to section 83(1)(a) and 84(1)(b) of the Administration of Estates Act, the following is evident:

[13.1] there is no suggestion on the papers that the applicant was appointed as either a curator or tutor of the beneficiary of the Trust and the applicant is not claiming in that capacity;

[13.2] the provisions of the Trust Property Control Act regulated trust and the applicant's duties;

[13.3] the court order cannot and does not change that;

[13.4] in relation to the last point, the applicant, in his heads of argument, argues that the proviso in the Joffe J order does no more than establish an upper limit of the quantum of the costs that may be recovered. It does so with reference to the “ costs equivalent ... allow to, a curator bonis ... in terms of the Administration of Estates Act”;

[13.5] the fact that an upper limit to the costs is determined with reference to what is allowable under the Act does not render the Act applicable nor require that the accounts contemplated in sub-sections 83(1)(a) and 84(1)(b) of the Administration of Estates Act must be filed and approved before the costs are recovered;

[13.6] the master has no power or duties in relation to the quantum of the costs, other than those general powers that he may exercise in terms of section 16 of the Trust Property Control Act.

[14] The applicant further argues that the undertaking, read on its own or with the court order, does not render the Administration of Estates Act, including sub-sections 83(1)(a) and 84(1)(b) thereof applicable. The undertaking incorporates, by reference, the published tariffs. Similarly, the undertaking cannot of itself render the Administration of Estates Act applicable. All that it can do is fix the manner of determining the Trustee's fees. This is done with reference to the prescribed tariffs.

The Respondent's argument

[15] The respondent's argument on the applicability of the Administration of Estates Act can be summarised as follows:

[15.1] reference in paragraph 4.3 of the Joffe J order to the Administration of Estates Act "can only be interpreted to mean that a limit was placed on the cost to be incurred and for which the respondent was liable for 80% thereof" ;

[15.2] the mechanism for establishing this limit is contained in the Joffe order, namely, that, " in the first place that it should be limited to those costs allowed to a curator bonis in terms of the Administration of Estates Act 66 of 1965 and secondly it should be reasonable";

[15.3] therefore, it follows that reference should be had to what is allowed under the Administration of Estates Act and therefore the Administration of Estates Act is " inexorably' ' applicable;

[15.4] the mechanism for the establishment of the upper limit of the costs for which the respondent is liable is found in sections 83(a)(a) and 84(1)(b) of the Administration of Estates Act.>

[16] The respondent further argues that the applicant has not "brought himself within the four corners" of the Joffe J order. Neither has the respondent, nor this court, been placed in a position to determine whether the applicant's claim is reasonable or not or that the applicant is entitled to the claim. In addition to the aforesaid, the respondent argues that the applicant has not in any way shown that the amount which he claimed was calculated according to the tariff set out in the Regulations to the Administration of Estates Act.

[17] I cannot agree with the respondent's argument that the Administration of Estates Act finds application in this matter. The Joffe J order makes it plain that the respondent must furnish the patient with an undertaking in terms of section 17(4)(a) of the Road Accident Fund and to compensate him for 80% of the costs of his future accommodation in a hospital or nursing home or for the treatment of, or rendering of, a service or the supplying of goods to him, arising from injuries sustained by him in the motor vehicle collision which occurred on 21 July 2002.

[18] The undertaking being limited to 80% includes the reasonable costs incurred in the establishment of a trust and the reasonable costs incurred in the administration of the award, the reasonable costs incurred in providing security to the satisfaction of the Master in terms of section 77 of the Administration of Estates Act.

[21] The undertaking, read on its own or with the Joffe J order, does not render the Administration of Estates Act applicable. The undertaking incorporates, by reference, the published tariffs issued under the Administration of Estates Act. All it does is to fix a manner of determining the trustee's fees.

[22] Accordingly, I am satisfied that the Administration of Estates Act, as contended by the respondent, is not applicable. Therefore, it is not necessary to determine whether the account has been framed in accordance with the provisions of the Administration of Estates Act.

[23.1] the respondent pay the applicant an amount of R20 912.00;

[23.2] the respondent is ordered to pay the costs of this application.

DEWRANCE, AJ

ACTING JUDGE OF THE HIGH COURT

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