

SOUTH AFRICA / JUDGMENT

Netcare Hospitals (Pty) Ltd v Compensation Fund and Others (016469/2023) [2024] ZAGPPHC 1335 (12 December 2024)

[2024] ZAGPPHC 1335

COURT

North Gauteng High Court, Pretoria

BEFORE

Ngalwana AJ

CASE / FILE NUMBER

016469/2023

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IN THE HIGH COURT OF

SOUTH AFRICA

(GAUTENG DIVISION,

PRETORIA)

CASE NO: 016469/2023

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER

JUDGES: NO

(3) REVISED

In the matter between:

NETCARE
HOSPITALS (PTY) LTD
Applicant
and
COMMPENSATION
FUND
First Respondent
FARZANA
FAKIR N.O.
Second Respondent
MIDRED
RUITERS N.O.
Third Respondent
JOHN-ROSS
THANDO N.O.
Fourth Respondent
VUYISWAMABUDUSHA
N.O.
Fifth Respondent

THOBILE
LAMATI N.O.
Sixth Respondent

JUDGMENT

NGALWANA AJ

INTRODUCTION AND RELIEF SOUGHT

- [1] Often, the South African state rolls out regulatory and policy interventions aimed, sometimes with good intentions, at addressing what it considers to be functional imperfections in its systems. According to the First Respondent, its digital online claims billing programme is designed “to mitigate the risk of incorrectly calculated benefits, fraud and financial loss as a result of the submission of fictitious claims”. Occasionally, good intentions and the chosen intervention align to produce welcome improvements. Very often, however, there tends to be misalignment of the intervention to good intentions, and matters become worse. Good intentions on their own are scarcely a helpful measure of service delivery improvement. The results to which these interventions give birth, as experienced by the stakeholders who engage with them, are.
- [2] This is a case where regulatory intervention meets good intentions. This Court is called upon to determine whether the two are aligned to produce improvements to service delivery, or are misaligned to make matters worse. In question is the efficaciousness of the state’s digital online software programme (“the CompEasy system”) used for the digital lodgement and electronic processing of medical claims for the treatment of occupational injuries and/or diseases from private hospitals and other private medical service providers.
- [3] The Applicant (also referred to in this judgment as “Netcare”) is a private hospital group with offices in Sandton (reputedly the richest square mile in Africa). It seeks a declaratory order that the CompEasy system is “dysfunctional”. It also seeks a mandatory order directing the First Respondent – an organ of state established in terms of section 15 of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (“COIDA”) for purposes, principally, of the payment of compensation, the cost of medical aid or other pecuniary benefits to or on behalf of or in respect of employees in terms of COIDA where no other person is liable for such payment – to comply with its statutory duties including acknowledging receipt of claims, assessing claims, making decisions thereon and effecting payment of claims within a prescribed period. It lists the type of functions that the CompEasy system must be able to do before it can be certified, by an independent expert, as being suitably functional.
- [4] In its pleadings Netcare threatens, repeatedly, that if the “dysfunctionality” of the CompEasy system is not resolved urgently, its hand may be forced to stop admitting non-emergency occupational injuries or diseases at its hospitals. By this, patients who suffer work-related injuries are the ones who will be prejudiced.

- [5] While this frustration from Netcare is understandable, the casting out of indigent patients from private hospital beds is in no one's interests. Neither is the refusal by private hospitals to admit indigent patients who have suffered occupational injuries at work. It is an eventuality that a caring, responsible and accountable state in a constitutional democracy should move mountains to avert, rather than obdurately refuse to appreciate the ruinous effects of its policy choices on the welfare of its citizens. Moreover, it is not as if this is a free medical service. These employees make recurring contributions, through the employer, to the First Respondent and are, for that reason, entitled to medical cover by the state when they suffer occupational injuries.
- [6] That state hospitals are bursting at the seams and suffer from an inadequate supply of resources, resulting in spillovers to private hospitals by indigent patients who suffer occupational injuries for emergency medical treatment and diagnosis and treatment of prescribed minimum benefit conditions, is to my mind a result of state budget allocation and policy choices. Private hospitals should not have to bear the brunt of the inadequacies of state policy choices and budget allocations.
- [7] But what is to be done in these circumstances must be found within the text of the empowering statute. Either COIDA imposes duties, obligations and functions on the First Respondent of the sort demanded by Netcare, or it does not. If it does, then the First Respondent must be directed to comply with its statutory obligations. If it does not, then it would not be within a court's powers to make such an order in the absence of a constitutionality challenge to the empowering statute. Here, there is no constitutional challenge to COIDA pursuant to which the First Respondent must fulfil its duties and functions.
- [8] According to Netcare, only three percent (3%) of its patients belongs to that category of patients whose accounts are required to be paid by the First Respondent. The vast majority of its patients are members of medical schemes. In short, Netcare does not depend for its survival on payment of its claims by the First Respondent. However, the Applicant stresses that the amounts that are owed by the First Respondent to it are substantial (running into hundreds of million rand) and have a knock-on effect on its other resources. While on substantial amounts owing by the First Respondent to Netcare, it should be mentioned that there is a gazetted tariff in line with which claims are submitted and paid. So, receiving payment of a claim from the First Respondent is not exactly akin to winning a national lottery bonanza.
- [9] The Second Respondent is the Compensation Commissioner appointed in terms of section 2 of COIDA. She is cited because of her responsibility for overseeing the proper functioning of the First Respondent, and exercising the duties and functions imposed by COIDA on the First Respondent.

- [10] The Third Respondent, styled Director: Medical Benefits of the Compensation Fund, is cited by reason of her direct responsibility for the proper functioning and operation of the First Respondent insofar as relates to receipt and processing of medical expenses.
- [11] The Fourth Respondent is the First Respondent's Chief Financial Officer. His job is described as ensuring that approved claims are paid within a reasonable time. That is why he is cited.
- [12] The Fifth Respondent is the Gauteng Director of the First Respondent. She is responsible for all claims arising within the Gauteng province. She is cited because the vast majority of the Applicant's claims originate from this province.
- [13] The Sixth Respondent is the Director-General in the Department of Employment and Labour. It is said that he is cited for purposes of bringing this application to the knowledge of his office.
- [14] Throughout this judgment, the Respondents are referred to as "the Fund". The Fund opposes the application in its entirety.
- [15] I pause here to observe that at no occasion should an organ of state^[1] have to be taken to Court to comply with its statutory duties, obligations and functions in a constitutional democracy where everyone has the right to have access to healthcare services.^[2] But where the empowering statute makes no provision for, or inadequate provision for, the functions that Netcare seeks to have done by the Fund, there would be no room for a finding that the CompEasy system is "dysfunctional" by reason of it not fulfilling those functions, and imposing duties and functions on the organ of state for which the statute makes inadequate or no provision. The proper approach in such a case would be for the Applicant to challenge the constitutional validity of the empowering statute for its failure adequately to give effect to a right that is enshrined in the Constitution.^[3]
- [16] So, the starting point is to explore whether the functions on which Netcare asks this Court to measure the CompEasy system's functionality are functions for which the COIDA and its regulations make provision. If COIDA and regulations make no provision for these functions, or they do so inadequately, then it would be beyond the powers of a court to impose new functions on an organ of state that the legislature and the executive have seen fit not to provide for. Contrastingly, if COIDA does make provision for these functions, then a court must hold the organ of state to its statutory duties.
- [17] There is also a skirmish about whether the Fund should be permitted to file a fourth set of affidavits, a supplementary answering affidavit, after the Applicant had already filed its replying affidavit.
- [18] It is convenient to begin with the skirmish around the filing of a supplementary answering affidavit, and then deal with the merits of the declaratory and mandatory orders.

SHOULD THE FUND'S SUPPLEMENTARY AFFIDAVIT BE ALLOWED?

[19] The reasons advanced by the Fund to justify the filing of a supplementary answering affidavit are insufficient to move this Court to exercise its discretion in favour of allowing the affidavit. But before dealing with those reasons, it may be useful to set out the applicable principles on the permissibility of the filing of a fourth set of affidavits outside the sequence allowed by rule 6 of the Uniform Rules of Court.

[20] These have been pronounced by the courts over many years. It is not necessary to cite all these authorities here. It should suffice to summarise the applicable principles as adumbrated in *Hano Trading CC v JR 209 Inv (Pty) Ltd*:^[4]

[20.1] Rule 6 of the uniform rules sets out the sequence and timing for the filing of affidavits by the respective parties in motion proceedings.

[20.2] An advantage inherent in motion proceedings is that it can lead to a speedy and efficient adjudication and resolution of the disputes between parties.

[20.3] Unlike in action proceedings, in motion proceedings the affidavits constitute not only pleadings but also evidence.

[20.4] The affidavits are limited to three sets: founding, answer and reply. Because affidavits comprise also evidence, great care must be taken to set out the case of a party fully in the affidavit filed in sequence. To permit the filing of further affidavits out of sequence severely prejudices the party who has to meet a case based on those submissions.

[20.5] It is therefore not surprising that rule 6(5)(e) provides that further affidavits may only be allowed at the discretion of the court. A court has the sole discretion whether to allow the further affidavits or not. It will only exercise its discretion in this regard where there is good reason for doing so.

[20.6] This does not mean that the rule must always be rigidly applied. Some flexibility, controlled by the presiding Judge exercising his or her discretion in relation to the facts of the case, must necessarily also be permitted.

[20.7] Where an affidavit is tendered in motion proceedings both late and out of its ordinary sequence, the party tendering it is seeking not a right, but an indulgence from the Court. That party must both advance an explanation of why the affidavit is out of time sequence and satisfy the Court that, although the affidavit is late, it should, having regard to all the circumstances of the case, nevertheless be permitted.

[20.8] While there is no exhaustive list of factors to be considered, the adequacy or otherwise of the explanation for the late tendering of the affidavit out of sequence will always be an important factor in the enquiry.

[20.9] A party is simply not allowed to take it upon itself to file an additional affidavit without the leave of court.

[21] The Fund filed its supplementary affidavit – more than three months after Netcare had filed its replying affidavit – without seeking this Court’s leave to do so. Only when Netcare filed an irregular step notice in terms of rule 30 did the

Fund then file a notice of motion seeking leave and pointing to the supplementary affidavit sought to be filed out of sequence itself for support.

[22] Although the supplementary affidavit was already out of sequence, no explanation is provided for why it was filed more than three months after Netcare’s replying affidavit.

[23] Even after Netcare had filed its response affidavit to the supplementary affidavit, the Fund took another three months to file its replying affidavit.

[24] Filing a further affidavit out of sequence without leave of the Court, three months after the other party’s replying affidavit, and filing its replying affidavit also some three months after the other party had filed its affidavit in response to the further affidavit, demonstrates the Fund’s cavalier approach to the rules. This attitude defeats the advantage of relative expedition that proceeding by way of motion proceedings affords litigants.

[25] The disregard for the rules is compounded in its effect on the relatively expeditious resolution of this case by the absence of any compelling case for the admission of the further affidavit. The Fund advances five reasons, none of which justify the exercise of this Court’s discretion in favour of admitting the further affidavit:

[25.1] One ground is that it wanted to supplement the correct government gazette for the wrong gazette attached to its main answering affidavit. This is not a valid reason for filing an affidavit out of the sequence permitted by rule

6. There is no suggestion that the correct gazette was not available at the time of the filing of the main answering affidavit. The Fund simply made a mistake in attaching the wrong annexure.

[25.2] Another reason is that copies of claims received from Netcare and the accompanying spreadsheet had not been annexed to the original answering affidavit because they are voluminous and had not yet been received from the printers. But there is no explanation why the printers had not been approached earlier. After all, the Fund had requested, and were granted, an extension by Netcare to file its answering affidavit late. It then sought a further extension. There is no explanation why the printing could not have been done over this extended period and have the documents in question ready by the time the answering affidavit was finally filed.

[25.3] It is also alleged that a spreadsheet containing turnaround times for all 9 provinces is now included which was not included in the original answering affidavit. It is not permissible for a party to supplement its case in a further affidavit in this way. A court’s discretion does not, to my mind, extend to permitting the supplementing of a case in a further affidavit that a party failed to make in its answering papers.

[25.4] The Fund also seeks to remedy an “oversight” by attaching minutes of a meeting that it failed to annex to the original answering affidavit. This is not a valid reason for admitting a further affidavit under rule 6(5)(e).

[25.5] It is suggested, lastly, that the reason for the further affidavit is to enable the Court “to have all relevant conspectus regarding the performance of the System”. Conspicuously absent is an explanation of why this could not have been done in the original answering affidavit.

[26] These are woefully inadequate reasons for the admission of a further affidavit. I cannot admit the further affidavit. Consequentially, Netcare’s response to it will not be considered.

[27] But even if I am wrong or injudicious in the exercise of my discretion against allowing the further affidavit, disallowing it has no material effect on the outcome of this case on the merits. It is to those merits that I now turn.

THE MERITS

[28] Netcare seeks declaratory and mandatory relief. For its declaratory relief, Netcare contends that the CompEasy system is “dysfunctional” for the following reasons:

[28.1] The system does not enable Netcare and the Fund to identify which claims have been accepted or adjudicated as constituting claims for occupational injuries, which claims have been approved for payment or paid, and which claims are yet to be adjudicated or approved for payment. For example, says Netcare, the amount of outstanding Netcare claims as announced by the Fund falls some R280 million short of the amount that Netcare says is owed to it.

[28.2] Remittance advices do not accurately reflect which claims have been short paid and reasons for such short payments.

[28.3] The employer often fails to report an occupational injury as work-related to the Fund, even though COIDA makes failure to do so a criminal offence. It is only after the employer has reported the occupational injury as such, and after it has been so adjudicated by the Fund, that a claim may be paid.

[28.4] Although Netcare may notify the Fund of the occupational injury, and from that be able to recover its fees and other charges, this is not possible under the CompEasy system as only an employer’s report triggers adjudication and acceptance of liability by the Fund.

[28.5] The CompEasy system does not interact with the Netcare digital system.

[28.6] The CompEasy system does not reflect what further documents, information, records or reports are required where a claim has been rejected.

[28.7] The system does not reflect whether these further documents have been uploaded on the system.

[28.8] The system does not use the accepted business to business communication protocol that is industry standard.

[29] The Fund says the non-payment of Netcare's claims has more to do with numerous other factors than dysfunctionality of the CompEasy system. These include:

[29.1] the employers not registering or reporting an incident as a work-related occupational injury;

[29.2] the Fund justifiably rejecting or repudiating liability for the claims;

[29.3] lack of training of Netcare's staff on how the system works, even though the Fund's personnel has previously trained them;

[29.4] Netcare refusing to comply with the prescribed billing procedure;

[29.5] claims being registered outside the period stipulated in COIDA;[5]

[30] The Fund disputes Netcare's allegation that the CompEasy system is dysfunctional. In this regard, it says:

[30.1] The status of invoices or claims can be viewed on the Fund's claim system through the "Medical View Invoices" functionality.

[30.2] If a claim is not paid after 50 days of submission, or is paid only in part without any reason being provided, the claimant is required to complete and submit a WCL 20 inquiry form. Where a claim is paid in part without reason, the inquiry form must be submitted together with the original claim or invoices with unpaid services clearly indicated.

[30.3] Between October 2019 and March 2023, 74% of Netcare's claims in Gauteng (where most of its claims originate) were adjudicated as occupational injuries within 30 days. In the Western Cape that number is 83% and in KwaZulu-Natal 78%. This is evidence of a functional system.

[30.4] Of the 14 309 claims submitted by Netcare over this period, 4 411 were rejected owing to insufficient supporting information, 3 218 were accepted and 2 353 were being processed as at the date of the original answering affidavit in May 2023.

[30.5] Where claims are rejected, rejection letters are sent to the employer (as "policyholder") who registered the claims, with reasons. Where claims are accepted, acceptance letters are similarly sent to employers who registered the claims.

[30.6] The 30-day turnaround period prescribed in the PFMA for the payment of claims can only run from the date of submission of a complete claim with complete supporting documentation and information.

[30.7] With every payment of a claim that is made, a remittance advice is issued to the medical service provider detailing the amounts paid and the billing code to which such payments relate.

[30.8] Netcare is the only group of service providers that seems to be experiencing the "bubble problem" (where accepted claims are not paid). Other groups that comply with the system do not have this problem.

[30.9] Part of the reason for short payments, rejections and “bubble problems” in relation to Netcare’s claims is that it insists on using “fee for service” codes, which are not recognised by the CompEasy system, while the system uses “per diem” codes.

[30.10] Because officials check for duplicate claims or invoices, if a claim was submitted electronically and manually in hard copy, the manually submitted copies are not captured because they are considered duplicates. That is why Netcare’s lawyers found the hard copy claims where they had left them at the offices of the Fund.

[30.11] The Fund has monthly and ad hoc engagements with Netcare during which it provides Netcare with probable solutions to its problems with the system.

[31] Netcare’s pushback is that:

[31.1] The Fund’s statistics regarding claims that have been adjudicated over the stated period are incorrect and are, in any event, unreliable as they are extracted from a dysfunctional system.

[31.2] The system does not require the submission of outstanding documents or information when rejecting a claim that does not have sufficient supporting documentation.

[31.3] Since the Fund claims to have in place the functionality that is sought in prayers 2.3 and 3 of its notice of motion, the Fund should have no objection to the granting of an order in those terms. In this regard, the Fund says, in paragraph 96 of its answering affidavit: “Communication is done by IVR, remittance and rejection letters. The Fund avers that it has in place built-in the System outgoing notifications for acknowledgement of invoices and payment remittance advice”.

[31.4] The “Medical View Invoices” functionality does not permit a medical service provider to access the detail that is reasonably required as now provided for in the notice of motion.

[31.5] Where employers fail to comply (eg, report an occupational injury within the prescribed period), the Fund should compel them to comply and not “turn a blind eye” to a claim made by employees, on their behalf or by medical service providers.

[31.6] While there is a statutory obligation on employers to report work-related injuries, claims may also be lodged by medical service providers under section 43 of COIDA[6] irrespective of whether the employer has fulfilled its statutory duty of reporting the accident as work-related.

[31.7] Labelling the employer as a “policyholder” is incorrect and a misnomer.

[31.8] The CompEasy system is not able to integrate with other systems.

[31.9] Netcare is not the only service provider experiencing problems with the CompEasy system. The Chief Executive of the Hospital Association of South Africa has deposed to an affidavit to this effect.

[31.10] The “bubble problem” is unique only to patients who suffer burn wounds. In all other claims, Netcare uses the Funds’s “per diem” codes.

- [32] None of the orders sought by Netcare can competently be granted. Here is why.
- [33] Firstly, as is apparent from the exposition above, the factual disputes as regards what the system can or cannot do are too many, varied and material for a motion court to resolve on the papers before it. The nature and degree of these factual disputes is such that they must have been foreseen by Netcare when deciding to launch these proceedings in motion court. Even if I were inclined to refer them for oral evidence or trial, the case would meet with an insurmountable obstacle, which constitutes the second reason why the relief sought by Netcare cannot competently be granted: judicial overreach.
- [34] Short of an order of constitutional invalidity of a statute that does not adequately (or at all) give effect to a right in the Bill of Rights chapter of the Constitution, a court does not have the power to impose obligations or functions or duties on an organ of state that the legislature has seen fit not to impose. Nowhere in COIDA, or in the regulations and rules promulgated pursuant to it, is there an obligation on the Fund or any of the Respondents to perform the functions listed by Netcare in prayers 2 and 3 of its draft order that was handed up during the first day of argument. Netcare itself cannot point to any single provision that imposes such duties or functions or obligations on the Fund. Its authority comes in the form of billing systems used by medical schemes. That is not an appropriate approach. The proper approach, it seems to me, where a litigant – as in this case – takes the view that the system by which an organ of state purports to give effect to a constitutional right (s 27 of the Constitution) falls short of the required standard, is for such litigant to challenge the constitutional validity of the empowering statute for its failure adequately to give effect to a right that is enshrined in the Constitution.[7] In this case, the litigant would challenge COIDA (and/or the regulations) for the inadequacies pointed out by Netcare. So, this is the second reason why Netcare’s application cannot succeed.
- [35] Sensibly, Netcare removed the prayer by which it sought to move this Court to interdict the Fund from “insisting” on using the CompEasy system until it had been certified as functional by Netcare. Such an order would plainly have been unfathomable as it would mean that claims reporting, assessments, adjudication and payment would have come to an abrupt halt. Consequently – depending on how long the system is brought up to the standard acceptable to Netcare – there would have been a real risk of claims prescribing if not reported within the period prescribed in sections 43 and 9 of COIDA. Employees, other medical service providers, employers and other stakeholders would have been prejudiced as a result. Such an interdict would have meant the Fund failing to fulfil its statutory function of paying claims in relation to occupational injuries and diseases, and failing to fulfil its constitutional function of providing access to health care service as enshrined in section 27 of the Constitution.
- [36] The third reason is that, on a conspectus of all the facts as alleged by Netcare alone, one cannot reasonably conclude that the CompEasy system is dysfunctional. For example, on its own version, much of the functionality of the system that it wants to impose is already built

into the system. Netcare does not deny that the Fund “has in place built-in the System outgoing notifications for acknowledgement of invoices and payment remittance advice”. Instead, Netcare submits that this means the Fund should have no difficulty with prayers 2.3 and 3 of its notice of motion being granted. These are now prayers 2 and 3 in Netcare’s draft order.[8] They form the bulk of the elaborate 11-page relief that it seeks. But that would simply have the effect of confirming that which is already in place. If a functionality is already in place, then one cannot reasonably say the system is dysfunctional in that specific respect.

- [37] The fourth reason is this: In essence, what Netcare is challenging is the manner in which the officials of the Compensation Fund are implementing policy in giving effect to the section 27 right. This can sensibly and responsibly be done on a case-by-case basis and not in blanket fashion because there are other service providers (not party to these proceedings) who may not be confronted with the difficulties that Netcare says it confronts.[9]
- [38] Fifth, employing the CompEasy system is a policy choice geared at eliminating fraudulent or fictitious claims. It is not itself policy; rather it is the measure that the Fund has chosen to implement policy. It seems to me that the proper way to go about it in these circumstances – in the absence of a frontal constitutional challenge to the legislation as discussed earlier – is to challenge the conduct of the officials in their implementation of the system, rather than the system itself.
- [39] Sixth, the preference of one group of service providers, owed substantial amounts of money by an organ of state, cannot be a sufficient basis for an organ of state migrating to a billing system of that service provider’s choosing. The tail would be wagging the dog in that scenario.
- [40] Seventh, as the relief sought by Netcare is in the form of an interim interdict pending improvement of the system to meet Netcare’s standard, it has to show that there is no satisfactory alternative relief. As demonstrated above, there are numerous other options that are reasonably open to Netcare, including suing the Fund for payment of its accepted claims by way of provisional sentence summons.
- [41] There may be other reasons why Netcare’s application cannot succeed but these seven should suffice. In light of these reasons, it is not necessary to embark on the interpretative exercise in which the parties have engaged.
- [42] Having said all that, this case cries out for mediation in my view. This is not a matter that is incapable of amicable resolution between the parties in good faith. Had rule 41A empowered a court to direct a referral to mediation after judgment, I would have done so. Nevertheless, I would urge the parties to consider mediation in the best interests of all concerned, especially the employees who suffer workplace injuries or diseases, and for whose benefit the Fund was primarily established.
- [43] As regards costs, I can think of no reason why costs should not follow the cause.

Order

In the result, I make the following order:

The application is dismissed with costs consequent upon the employment of two counsel, one of whom being senior counsel.

V NGALWANA

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 12 December 2024.

Date of hearing: 12 & 13 November 2024

Date of judgment: 12 December 2024

Appearances:

Attorneys for the Applicant:

Whaley & Van Der Lith Inc

Counsel for the Applicant:

R Stockwell SC

Attorneys for Respondents:

State Attorney, Pretoria

Counsel for First Respondent:

M D Mohlamonyane SC

P Managa

[1] Defined in section 239 of the Constitution as follows: ““organ of state” means – (a) any department of state or administration in the national, provincial or local sphere of government; or (b) any other functionary or institution – (i)

... (ii)

exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer”

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(i)

...

(ii)

exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer”

[2] See section 27 of the Constitution of South Africa which reads as follows: “27. Health care, food, water and social security (1) Everyone has the right to have access to – (a)

health care services, including reproductive health care; (b)

sufficient food and water; and (c)

social security, including, if they are unable to support themselves and their dependants, appropriate social assistance. (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights. No one may be refused emergency medical treatment.”

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(1) Everyone has the right to have access to –

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social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.

No one may be refused emergency medical treatment.”

[3] See *My Vote Count NPC v Speaker of the National Assembly and Others* 2016

(1) SA 132 (CC), para 66.

[4] 2013

(1) SA 161 (SCA), paras 10 to 14

[5] In this regard, section 43(1) of COIDA reads as follows: “43 Claim for compensation

(1) (a) A claim for compensation in terms of this Act shall be lodged by or on behalf of the claimant in the prescribed manner with the commissioner or the employer or the mutual association concerned, as the case may be, within 12 months after the date of the accident or, in the case of death, within 12 months after the date of death.

(b) If a claim for compensation is not lodged as prescribed in paragraph (a), such claim for compensation shall not be considered in terms of this Act, except where the accident concerned has been reported in terms of section 39.” Section 39(1) requires the employer to report an occupational accident to the Fund within seven days of receiving notification of such accident.

[5] In this regard, section 43(1) of COIDA reads as follows: “43 Claim for compensation

(1) (a) A claim for compensation in terms of this Act shall be lodged by or on behalf of the claimant in the prescribed manner with the commissioner or the employer or the mutual association concerned, as the case may be, within 12 months after the date of the accident or, in the case of death, within 12 months after the date of death.

(b) If a claim for compensation is not lodged as prescribed in paragraph (a), such claim for compensation shall not be considered in terms of this Act, except where the accident concerned has been reported in terms of section 39.”

Section 39(1) requires the employer to report an occupational accident to the Fund within seven days of receiving notification of such accident.

[6] See footnote 5 supra.

[7] Cf. *My Vote Count NPC v Speaker of the National Assembly and Others* 2016

(1) SA 132 (CC), para 66.

[8] I do not reproduce them here. They appear on CaseLines 21-2 to 21-10

[9] I agree with the Fund that putting up an affidavit by the chief executive of the South African Hospital Association citing what he may have been told by officials in other hospital groups is classic hearsay matter that is inadmissible.

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