

SOUTH AFRICA / JUDGMENT

## T.B.S v M.M.S (64229/17) [2017] ZAGPPHC 1270 (22 December 2017) [2017] ZAGPPHC 1270

COURT

North Gauteng High Court, Pretoria

BEFORE

Van der Schyff

CASE / FILE NUMBER

64229/17

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REPUBLIC

OF SOUTH AFRICA

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THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

(1)

NOT

REPORTABLE

(2)

NOT

OF INTEREST TO OTHER JUDGES

(3)

REVISED

CASE

NO.: 64229/17

22/12/2017

In the matter between:      T B S  
                                         APPLICANT  
                                         and  
                                         M  
                                         M S  
                                         RESPONDENT

Heard:                              12 December 2017  
                                         Delivered  
                                         22 December 2017

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## JUDGMENT

VAN DER SCHYFF AJ

- [1] This is an unopposed application in terms whereof the Applicant seeks the variation of paragraph 4 of the settlement agreement concluded between the Applicant and the Respondent on 3 September 2007 which was made an order of the court on 6 September 2007 under case number 18296/2007.
- [2] Clause 4 of the settlement agreement reads: 'Die Eiseres abandoneer enige reg op onderhoud, buiten dat die Verweerder die Eiseres geregistreer hou as afhanklike op sy mediese fonds tot haar hertroue.'
- [3] The aim of the variation of paragraph 4 is to set out to achieve the removal of the Respondent from the Applicant's medical aid, whilst the Applicant still remains responsible for the contribution to the monthly premium of a medical aid selected by the Respondent.
- [4] The application has been served on the Respondent but the matter was unopposed. Although the Applicant motivated his request to amend the settlement agreement in this regard in an affidavit, I was informed from the bar, in oral argument, that the factual situation has changed since the application was launched insofar as the Respondent, on her own (but presumably prompted by the service of Applicant's application) moved to a medical aid.
- [5] From the 'Confirmation of membership' attached to the heads of argument, it is evident that the 'join date' is 1 January 2018 and the 'benefit date' 4 April 2018. It is stated that there is a 3 month waiting period WITH PMB' cover.
- [6] Since it is statutorily determined in the Medical Schemes Act, No, 131 of 1998, that no person may simultaneously belong to more than one medical scheme, I requested counsel for the applicant to prepare written heads of argument indicating how, and if, the Court must discount the waiting period provided for in the Act, and effected by Bonitas in that the date of 1 April 2018 is mentioned as the 'benefit date'.

- [7] It is apparent from the heads of argument, however, that Applicant has already notified his existing medical aid to terminate Respondent's membership. It is stated in the heads of argument (but not contained in an affidavit) that Applicant took this step to prevent Respondent from committing the offence of belonging to more than one medical aid at the same time.
- [8] In light of the fact that the Respondent, presumably out of her own accord, moved to another medical aid, it is argued on behalf of the Applicant on authority of *DH v F and Others* (6073/2000)
- [2010] ZAGPPHC 236 (9 December 2010) that an informal agreement has been reached between the parties.
- [9] It is evident from the document placed before me, albeit not on affidavit, that the status quo ante has changed and that the Applicant is essentially requesting the court to amend the settlement agreement that is an order of this Court, to reflect the current factual situation.
- [10] In making this order, I have regard to the Applicant's affidavit, the Notice of Motion served on the Respondent, the Draft Order handed up to me from the bar by Applicant's counsel on 14 December 2017, and Applicant's heads of argument.
- [11] I make this order to correspond with the factual reality of the Respondent belonging to a new medical aid fund without prejudice to any of the parties' rights pertaining to liability that might arise regarding Respondent's medical expenses during the waiting period.

ORDER:

IT IS THUS ORDERED THAT:

1. Paragraph 4 of the settlement agreement concluded between the parties on 3 September 2007, which was made an order of this court on 6 September 2007, be and is varied and amended as far as it pertains to the responsibility of the Applicant to keep the Respondent as a registered member of his medical aid scheme, to read as follows:
  - 4.1 The Applicant is responsible for the payment of the premium of the Respondents' medical aid scheme until such time that she remarries;
  - 4.2 Since the Respondent has already registered as a member of Bonitas Medical Fund's Standard Option, the Applicant is to pay the premium directly to the Respondent from 1 January 2018;
  - 4.3 The Applicant shall, against the written confirmation of any escalated premium in respect of the same or materially similar cover by the medical aid fund, or any subsequent medical aid fund of which the Respondent may become a member, be responsible for the payment of such escalated premium;

4.4 In the event that the Respondent chooses a different medical aid or a different plan at any stage after this court order, this will not affect Applicant's obligation and he will only be liable to effect payment for cover similar to and at the premium equal to that of Bonitas Medical Fund's Standard Option;

4.5 The Applicant will not be responsible for any other medical associated charges, save for the monthly premium contribution as set out hereinabove (subject to the consideration mentioned in paragraph [11] above pertaining to the waiting period that lapses on 01/04/2018).

2. The Respondent is directed to:-

2.1 Advice all her current and future medical suppliers that the Applicant is not the person responsible for the payment of her medical accounts and that she is so liable;

2.2 Refrain from holding herself out as the current wife of the Applicant when dealing with such suppliers and the Applicant's medical aid.

3. Applicant is to pay the costs of this application, as well as any 'late joiner penalties' that might be levied by Bonitas Medical Fund pertaining to the Respondent joining the Fund at this time.

E VAN DER SCHYFF

Acting Judge of the High Court

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Prepared on 10 October 2026 · Esheria