



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

KeyHealth Medical Scheme v Glopin (Pty) Ltd (1265/2021) [2022] ZASCA 147 (28 October 2022)

Today, the Supreme Court of Appeal (SCA) dismissed with costs, including the costs of two counsel, an appeal against the decision of the Gauteng Division of the High Court, Pretoria, sitting as a court of appeal (the full court).

The issue in the appeal was whether the appellant, KeyHealth Medical Scheme (KeyHealth), was entitled to revoke the agreement it had with the respondent, Glopin (Pty) Ltd (Glopin), on the basis that it constituted a mandate revocable at any time by KeyHealth.

The facts of the matter were as follows. On 20 October 2004, Glopin concluded a written broking agreement (the agreement) with Munimed Medical Scheme (Munimed). In terms of the agreement, Glopin was authorised, with effect from the commencement date, to submit to Munimed, on behalf of its (Glopin's) clients, applications for the medical scheme's products, for the benefit of its clients and to provide ongoing broker services. The agreement was assigned to KeyHealth by Munimed on 24 October 2011.

On 14 February 2017, KeyHealth's attorneys sent a letter to Glopin terminating the agreement citing Glopin's failure to comply with legislation, service levels and the code of conduct as stated in clause 4.3 of the agreement, which KeyHealth viewed as constituting a serious breach. Glopin regarded this as repudiation of the agreement, which it did not accept.

On 31 March 2017, KeyHealth's attorneys addressed a letter to Glopin abandoning the notice of termination. The letter, however, also notified Glopin of KeyHealth's intended revocation of its authority under the agreement, with effect from 1 July 2017. Following this letter, Glopin instituted an action in the Gauteng Division of the High Court, Pretoria (the trial court), seeking a declarator that the agreement between the parties was of full force and effect; that the purported cancellation on 14 February 2017, as well as the subsequent purported revocation of Glopin's authority under the agreement, were unlawful and invalid.

KeyHealth contended that the agreement between the parties amounted to a contract of mandate and, as a result, either party was free to revoke it at any time. Therefore, it was entitled to revoke Glopin's mandate as it did on 31 March 2017. To advance this argument, KeyHealth contended that the services provided for in the Service Level Agreement (SLA) were provided on KeyHealth's behalf and not on behalf of the members of the medical scheme per se.

The SCA found that KeyHealth failed to show that the mandate it contended for was the kind of mandatary's authority in respect of which the irrevocability clause could not apply. KeyHealth seemed to base its argument purely on the use of the word 'authority' in the agreement and ignored other clauses, which gave rise to the context of the use of the expression. By KeyHealth's own admission, and as stated in the agreement, Glopin was not an empowered agent. It did not have authority to conclude juristic acts on KeyHealth's behalf.

The SCA further held that, even assuming that a contract of mandate existed, KeyHealth's predecessor, Munimed, had bound itself, in terms of clause 4, to the duration of the agreement and how it would have been terminated. In terms of clause 4, the parties agreed that the agreement would continue for the period of Glopin's accreditation by the Council for Medical Schemes and it could be terminated by either party in terms of the legislation. The agreement could also be automatically terminated if any of the events stipulated therein occurred. The SCA found that none of the events stipulated in clause 4 for triggering the termination of the agreement had taken place. The SCA held that KeyHealth was, therefore, not permitted to revoke the contract at will.

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