



## 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

**Date:** 29 November 2022

**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***

*The Compensation Commissioner Others v Compensation Commissioner Solutions (Pty) Ltd (997/2021) and Compensation Commissioner Solutions (Pty) Ltd v The Compensation Commissioner & Others (1175/2021) [2022] ZASCA 165 (29 November 2022)*

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Today the Supreme Court of Appeal (SCA) handed down a judgment pertaining to two related appeals. The SCA was faced with two judgments from the high court that came to different conclusions. The SCA upheld the appeal in the one matter (appeal no 997/2021) with costs and dismissed the appeal in the other (appeal no 1175/2021) with costs. The cross-appeal in the last-mentioned appeal was dismissed with costs.

The issue common to both appeals was the interpretation of a settlement agreement which was made an order of court by consent on 31 July 2009. This order had become known between the parties as the 75-day order. The one high court judgment (the first judgment) – the subject of appeal no 997/2021 - held that the parties thereto ‘intended to regulate the future relationship’ between them. In the other judgment (the second judgment) – the subject of appeal no 1175/2021 - a specially constituted court sitting as a court of first instance held differently.

Compensation Solutions (Pty) Ltd (CompSol) conducts the business of factoring accounts of medical service providers (MSP’s) in order to claim in its own name payment from the Compensation Commissioner (the Commissioner) under the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (the Act). During 2009 it experienced inordinate delays in obtaining payment amounting to millions of rands. It brought an application against the Commissioner, the Director-General of the Department of Labour and the Minister of Labour (the State parties) that culminated in a settlement agreement and the 75-day order. A scheme was devised and encapsulated in the 75-day order in an attempt to solve the problem. Since then it has instituted numerous actions, relying on the 75-day order as a cause of action, to claim payment from the Commissioner and the Director-General in terms of the Act. These actions were defended by the defendants, relying on several special

pleas, but eventually most claims were settled. In the process litigation between the parties was rife and enormous legal costs have been incurred.

The SCA considered the 75-day order and held that in context the use of the word 'submitted' pointed to the past tense and held that the parties intended to deal only with medical accounts submitted before the date of the order, to wit 31 July 2009. The only businesslike and sensible construction of the 75-day order is that the arrangements in respect of weekly meetings and the submission of CD's with lists of claims were meant to deal with already extant claims and not claims in future ad infinitum. The SCA held although the State parties have been successful in both appeals, the parties agreed that the period of 75 days was a reasonable period for the Commissioner to process, validate and effect payment of medical accounts. Therefore, as the high court put its imprimatur on the agreement, that order will continue to have precedential value to which the parties are bound until a court may find in future that in the given circumstances of a particular case the Commissioner should not be held to this period.

The first issue arising from the cross-appeal is the following: did CompSol commence proceedings prematurely as it did not comply with the W.Cl.20 procedure contained in the applicable regulations which the State parties submitted was a mandatory and jurisdictional requirement for the institution of legal proceedings. The SCA rejected this argument in agreeing with the second judgment that if the legislature had such intention, it should have made it clear. It held that the special plea was correctly dismissed.

The second issue arising from the cross-appeal is whether s 32 of the Act prohibits the cession of the MSP's claims relied upon by Compsol. The section stipulates that compensation shall not be ceded or pledged, may not be attached in execution, or set off against any debts of the person entitled to the compensation. The SCA considered the section with regard to the scheme of the Act as a whole and its object and purpose and held that 'compensation' in s 32(1) did not include the cost of medical aid. The purpose of s 32 was to protect the interests of employees entitled to compensation under the Act or their dependants in the case of their death. MSP's did not require similar protection.

Finally, the SCA commented on the State parties' decision to appoint seven counsel in total, five in appeal no 1175/2021 and two in appeal no 997/2021. An explanation was sought, but the decision could not be explained. The SCA held that the State Attorney shall not be entitled to recover from its clients the fees and expenses of more than one senior and one junior counsel in appeal no 1175/2021.

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