



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

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Discovery Health (Pty) Ltd v Road Accident Fund and Another (372/2025) [2026] ZASCA 140 (16 October 2026)

Today the Supreme Court of Appeal (SCA) handed down judgment in which it upheld the appeal with costs.

In this matter, the appellant, Discovery Health (Pty) Ltd (Discovery), appealed against an order of the Full Court of the Gauteng Division of the High Court, Pretoria (the Full Court). By a majority, the Full Court dismissed Discovery's application to compel the first respondent, the RAF, and the second respondent, its then Chief Executive Officer (the CEO), to comply with an order of the same division dated 27 October 2022. That order interdicted the RAF from implementing its directive to reject claims for past medical expenses from road accident claimants where the claimants' medical aid schemes had paid those expenses. The appeal to the SCA was with the leave of the Full Court.

Discovery, a medical scheme administrator, challenged the RAF's refusal to pay claims for past medical expenses where those expenses had already been paid by a claimant's medical aid scheme. The rules of the Discovery Health Medical Scheme require members to reimburse the scheme for payments made to recover past medical expenses from the RAF. Historically, the RAF had compensated claimants for such expenses irrespective of whether their medical aid schemes had paid them. However, on 12 August 2022, the RAF's Acting Chief Executive Officer issued a directive (the first directive) instructing claims officers to reject claims for past medical expenses already paid by medical aid schemes, on the basis that the claimants had suffered no loss and had incurred no expenses requiring reimbursement by the RAF.

Discovery successfully challenged that directive in the Gauteng Division of the High Court, Pretoria. In its judgment of 27 October 2022, the High Court held that the RAF Act did not

exclude benefits received by claimants from private medical schemes for past medical expenses when calculating their damages. Accordingly, the fact that a medical aid scheme had paid a claimant's past medical expenses did not relieve the RAF of its statutory obligation to compensate the claimant for those expenses. The High Court declared the first directive unlawful and interdicted the RAF from implementing it. The RAF's applications for leave to appeal were subsequently dismissed by the Supreme Court of Appeal on 31 March 2023 and by the Constitutional Court on 18 October 2023.

Despite those decisions, the RAF continued rejecting claims for past medical expenses already paid by medical aid schemes. On 13 April 2023, unbeknown to Discovery and the public, the RAF's CEO issued a second directive instructing RAF claims officers not to pay claims for past medical expenses where a claimant's medical aid scheme had already paid for them, except in limited circumstances. On 2 November 2023, the CEO issued a third directive informing its claims officers that the RAF was not obliged to compensate any claimant who entered into agreements that fell foul of s 19(d)(i). The RAF relied on these directives to justify its continued refusal to pay claims, notwithstanding the earlier court order.

Discovery subsequently launched an urgent application seeking to hold the RAF and its CEO in contempt of the High Court order, on the basis that they had continued to implement the August 2022 directive by rejecting claims where the claimants' medical scheme had already paid for their medical expenses, thereby circumventing the High Court order. The RAF opposed the application and denied implementing the unlawful August 2022 order. Instead, it stated that it acted under the second and third directives. It further contended that the new directives differed from the first directive.

The application came before the Full Court, sitting as a court of first instance and specially constituted for the matter. The Full Court was not unanimous. The majority held, *inter alia*, that the issues in the interdictory application differed from those in the second and third directives. Furthermore, the majority found that the second and third directives raised issues that were not *res judicata* and that the RAF was entitled to implement them until a court set them aside in review proceedings. Ultimately, the majority held that the RAF was entitled to issue directives from time to time to aid the administration of claims. It further held that the RAF lawfully issued the second and third directives in discharge of its statutory function and in accordance with the RAF Act. Accordingly, the directives were valid. Consequently, the majority dismissed Discovery's case with costs.

The minority disagreed and held that the second and third directives fell within the scope of the interdictory order and were therefore *res judicata* in relation to the RAF. The minority reasoned that the directives were a stratagem to subvert the High Court order and that an organ of state whose conduct the courts have found unlawful cannot repeat that conduct in smaller parts by conjuring up a new justification. The minority reasoned that if this conduct was condoned, organs of state could evade compliance with court orders by repeatedly reasserting unlawful decisions and generating new justifications, thus undermining the effectiveness of the judicial system.

On appeal, in a unanimous judgment written by Makgoka JA, the SCA first considered the principle of *res judicata* and explained that a matter is *res judicata* if, in the previous proceedings, the same cause was adjudicated, between the same parties, and the same thing was demanded. The SCA held that the second and third directives sought to achieve precisely what the High Court had already declared unlawful: refusing to compensate claimants for past medical expenses because their medical aid schemes had paid those expenses. Consequently, the SCA concluded that the second and third directives raised the same issue as the High Court considered. The SCA went further to state that the enquiry in respect of *res judicata* was not whether the earlier judgment was correct, but simply whether there is a judgment. The RAF could not avoid the binding effect of that judgment by attaching a new label to the second and third directives or by advancing reasons different from those it advanced in the interdictory application. In accordance with the “once and for all” rule, the SCA held that the RAF cannot rely on one directive in litigation and, when that directive is declared unlawful, conjure up another directive with a similar purpose. The second and third directives were therefore *res judicata*.

The SCA also found that the timing and circumstances surrounding the issuance of the second and third directives demonstrated an intention to circumvent the judgment and order of 27 October 2022. The second directive was issued two days after this Court dismissed the RAF’s application for leave to appeal, and the RAF did not disclose its existence when it subsequently approached the Constitutional Court for leave to appeal. The third directive followed shortly after the Constitutional Court dismissed that application. The SCA inferred that the directives had been devised to preserve the unlawful outcome of the first directive after the RAF’s attempts to challenge the original judgment had failed. Such conduct was inconsistent with the constitutional obligation imposed on organs of state to assist and protect the courts to ensure their independence and effectiveness. The SCA found that the RAF’s conduct in this matter had the potential to undermine judicial authority.

The SCA also rejected the Full Court’s reliance on *Oudekraal Estates (Pty) Ltd v City of Cape Town*, which establishes that an unlawful administrative act may continue to have legal consequences until it is set aside by a court. The SCA held that this principle is not immutable. Citing *Merafong City Local Municipality v Anglo Gold Ashanti Ltd*, the SCA held that there is an exception to this principle, and this case falls squarely within the exception carved out by the Constitutional Court in *Merafong*. The SCA has found that the first and second directives were issued solely to circumvent the court order and therefore must be treated as invalid even though the court has not set them aside.

The SCA further addressed the Full Court majority’s application of the *res inter alios acta* and subrogation principles in the context of delictual claims under the RAF Act, and the application of s 19(1)(d)(i) thereof. The SCA found that the majority departed from well-settled common law principles on both issues. It reaffirmed that *res inter alios acta* is a well-established principle of South African law under which collateral benefits received by a claimant are excluded when calculating delictual damages. In accordance with this principle, payments made by medical aid schemes towards their members’ medical expenses must be disregarded when awarding damages. Citing *Bane and Others v D’Ambrosi*, where the SCA confirmed that

benefits paid by a medical aid scheme are *res inter alios acta*, this Court held that the long-standing common law application of the *res inter alios acta* principle to delictual claims remains in force. Turning to the issue of subrogation, which is the principle that allows an insurer, after compensating its insured for a covered loss, to recover the amount paid from the person or entity legally liable for the loss, this Court found that the majority had approached the issue incorrectly by focusing on whether the RAF and Discovery were insurers, rather than whether payments by medical aid schemes should be treated as collateral benefits for purposes of calculating damages in terms of the *res inter alios acta* principle. This Court confirmed that medical aid scheme payments are, in substance, a form of insurance and fall under *res inter alios acta*; therefore, it should extend to subrogation.

Regarding section 19(1)(d)(i) of the RAF Act, this Court held that the provision did not apply to agreements between medical aid schemes and their members requiring reimbursement of medical expenses from compensation recovered from the RAF. The provision targets agreements under which a person other than an authorised legal representative assists with or finances the prosecution of a claim in exchange for a share of the compensation. Such agreements involve both assistance or financing of the claim and an agreement to share its proceeds. This Court found that medical aid schemes do neither. The agreement between medical aid schemes and their members provides that the medical aid scheme pays the claimant's medical expenses and, when the claim is settled, the member reimburses the medical aid scheme. Reimbursement is not the same as sharing proceeds. Consequently, reimbursement agreements between medical aid schemes and their members do not fall within the exclusion contemplated by section 19(1)(d)(i). The SCA further added that although the common law might require development in an appropriate case, the RAF had not pleaded or established a proper basis for such development in the present proceedings.

The SCA accordingly upheld the appeal with costs, including the costs of two counsel, jointly and severally against the RAF and its CEO. It set aside the Full Court's order and substituted an order declaring that the RAF and its CEO had breached the High Court's judgment and their constitutional duty to obey and implement it. The RAF and its CEO were interdicted from implementing the second and third directives issued and from making deductions from compensation payable under the RAF Act on the basis that medical aid schemes had paid or would pay the claimants' medical expenses. They were further directed, within 14 days of the order from the SCA, to take all necessary steps to give effect to the judgment and to report in writing to the Registrar of the Court and Discovery's attorneys on their compliance.

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