



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 27 May 2016

STATUS Immediate

Registrar of Medical Schemes & another v Genesis Medical Scheme (238/2015)
[2016] ZASCA 75 (27 May 2016)

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

This morning, the Supreme Court of Appeal (SCA) upheld, with costs, an appeal against an order in the Western Cape High Court, Cape Town and replaced that court's order with one dismissing the application with costs. The high court had reviewed and set aside the decision by Registrar of Medical Schemes to reject the annual financial statements and returns of the Genesis Medical Scheme for the 2012 financial year.

The case turned on whether or not the contribution by members of a medical scheme to their savings accounts with that scheme constituted 'trust property' as defined in the Financial Institutions (Protection of Funds) Act 28 of 2001 (the FI Act)

and, accordingly, had to be accounted for separately in the medical scheme's annual financial statements and returns.

There have been two conflicting decisions in the country. In *Registrar of Medical Schemes v Ledwaba NO & others* in the Transvaal Provincial Division (unreported case number 18545/06, delivered on 30 January 2007, widely known as '*Omnihealth*', the North Gauteng High Court in Pretoria found that these savings were indeed 'trust property' as defined in the FI Act. In the decision in the Western Cape High Court, against which this appeal was heard, it was held that *Omnihealth* had been wrongly decided and that these savings did not constitute such 'trust property' and should not therefore be accounted for separately in the medical scheme's financial statements.

Critically relevant to the issue is the consequence that, if the savings contributions constitute 'trust property', they therefore necessarily stand beyond the reach of the *concursum creditorum* in the event of the insolvency of any medical scheme.

By a majority (Willis JA, Seriti JA and Tsoka AJA concurring), the SCA found that the *Omnihealth* was correct and that the decision in the Western Cape High Court was wrong. Accordingly, the majority held that the appeal must succeed. The minority (Cachalia and Dambuza JJA) found conversely: that the decision in the Western Cape High Court was the correct one and that *Omnihealth* was wrong.