



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

Case number: 522/2007

In the matter between

AFRISURE CC
ETTIENNE DE VILLIERS

FIRST APPELLANT
SECOND APPELLANT

and

BRIAN JAMES WATSON NO
PUBLISERVE HEALTHCARE SCHEME
(IN LIQUIDATION)

FIRST RESPONDENT

SECOND RESPONDENT

From: The Registrar, Supreme Court of Appeal
Date: 2008-09-11
Status: Immediate

On 11 September 2008 the judgment of the Cape High Court in this matter was upheld by the SCA. The first respondent on appeal was the liquidator of the second respondent, a medical scheme called Publiserve which was liquidated during May 2001. They instituted action against the appellants in the Cape High Court for payment of about R5,5 million.

The first appellant, Afrisure CC, was an insurance broker while the second appellant, Mr Ettienne de Villiers, was cited in his capacity as former trustee of Publiserve. Prior to its liquidation, Publiserve made five payments to Afrisure in the total amount claimed. Respondents' contention was that these payments were made in contravention of the Medical Schemes Act 131 of 1998 and were thus illegal.

The claim against Afrisure was brought on the basis that it had been unjustifiably enriched at the expense of Publiserve by receiving these illegal payments. The basis of the claim against De Villiers, on the other hand, was that he had breached his fiduciary duty as trustee of Publiserve by allowing these payments to be made, well-knowing that they were illegal.

Both claims were upheld by the High Court and it is the appeal against that judgment which was dismissed by the SCA, which found that the agreement to make the payment was an attempt to evade the provisions of the Medical Schemes Act, in that the essence of the transaction was to disguise broker's fees as payment for service rendered by Afrisure. In consequence the agreement was held to be illegal.