



**HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

**CASE NO: 50586/21**

**53423/21**

**61600/21**

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHERS JUDGES: YES/NO

(3) REVISED

.....  
DATE

.....  
SIGNATURE

In the matter between:

**COMPENSATION SOLUTIONS (PTY) LTD**

Applicant/Plaintiff

and

**THE COMPENSATION COMMISSIONER**

First Respondent/Defendant

**DIRECTOR-GENERAL OF THE DEPARTMENT**

**OF EMPLOYMENT AND LABOUR OF THE**

**NATIONAL GOVERNMENT OF THE REPUBLIC**

OF SOUTH AFRICA

Second Respondent/Defendant

THE MINISTER OF THE DEPARTMENT OF

EMPLOYMENT AND LABOUR OF THE

NATIONAL GOVERNMENT OF THE REPUBLIC

OF SOUTH AFRICA

Third Respondent/Defendant

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**JUDGMENT**

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**FERREIRA, AJ**

1. These are three applications for summary judgment that were argued simultaneously before me.
2. The plaintiff ("*Compensation Solutions*") conducts the business of factoring medical invoices from various medical services providers annually, that are payable by the defendants from the Compensation Fund which has been established in terms of Section 15 of the Compensation for Occupational Diseases and Injuries Act, 130 of 1993 ("*COIDA*"), after the plaintiff had taken cession of all rights, titles and interest in and to each and every invoice, in terms of written agreements concluded between *Compensations Solutions* and the relevant medical service providers.

3. Compensation Solutions submits medical invoices issued by medical service providers for services rendered and consumables dispensed by such service providers to a patient, to the First Defendant (*“the Commissioner”*) due to that patient having suffered an injury on duty (*“IOD”*) for which the Commissioner has accepted liability. The Commissioner’s duties are delegated to him by the Second Defendant (*“the Director-General”*) to process and validate the relevant invoices and to effect payment of the validated invoices to Compensation Solutions from annual contributions/premiums collected by the Commissioner from employers registered with him. In turn, the Director-General act by virtue of powers delegated or assigned to him by the Third Defendant (*“the Minister”*) in terms of Section 2(1) of COIDA.
4. COIDA does not specify the period within which invoices should be processed and paid and the Commissioner is required to perform his statutory function within a reasonable period.
5. Compensation Solutions argued that a reasonable time within which the Commissioner is to process, validate and pay or validly reject the invoices submitted to him, is 60 calendar days, from the date of submission of each invoice to the Commissioner.
6. Compensation Solutions submitted that the Commissioner has failed to make payment of admitted invoices, within the 60-day period and at the time of issuing the summonses, large amounts were outstanding to Compensation Solutions.

7. Compensation Solutions, therefore, instituted actions for the payment of the outstanding amounts against the defendants.
8. In their pleas, the defendants raised various different defences. For the reasons set out below, it is, however, not necessary to fully canvas these defences at this stage.

#### The applications for summary judgment

9. Upon receipt of the pleas, Compensation Solutions applied for summary judgment. The applications were supported by affidavits deposed to by Mr Charl van Wyk (“*Mr van Wyk*”), stated to be the Chief Executive Officer of Compensation Solutions.
10. Mr van Wyk further states that the facts fall within his personal knowledge. He further states that he can swear positively to the facts by virtue of the following:

“3.1. *I manage the Plaintiff company on a day to day and hands-on basis;*

3.2. *The operational and financial affairs of the Plaintiff, including invoices payable by the Defendants to the Plaintiff, fall under my direct control and management, and forms the crux of the Plaintiff’s business;*

3.3. *I have in my possession and under my control all the Plaintiff’s records, invoices, and other documents relevant to the cause of action and*

*amounts comprising the aggregate sum, which is due, owing, and payable to the Plaintiff by the Defendants;*

3.4. *In the ordinary course of my duties as Chief Executive Officer of the Plaintiff, and having regard to the Plaintiff's relevant records, invoices and other documents in my possession and under my control, I have first-hand knowledge (a) of the Defendant's liability towards the Plaintiff and the amounts comprising the aggregate amount which is due, owing and payable to the Plaintiff by the Defendants; and (b) of the fact that the Defendants have no bona fide defence to the Plaintiff's claims;"*

### The deponent's personal knowledge

11. Rule 32(2) provides as follows:

**"32 Summary judgment**

(2)(a) *Within 15 days after the date of delivery of the plea, the plaintiff shall deliver a notice of application for summary judgement, together with an affidavit made by the plaintiff or by any other person who can swear positively to the facts."*

12. A person's ability to swear positively to the facts is essential to the effectiveness of the affidavit as a basis for summary judgment; and the Court entertaining the application therefore must be satisfied, *prima facie*, that the deponent is such a person. Generally speaking, before a person can swear positively to facts in legal proceedings they must be within his personal knowledge. For this reason, the practice has been adopted, both in regard to

the present Rule 32 and in regard to some of its provincial predecessors of requiring that a deponent to an affidavit in support of summary judgment, other than the plaintiff himself, should state, at least, that the facts are within his personal knowledge (or make some averment to that effect), unless such direct knowledge appears from other facts stated<sup>1</sup>.

13. It was held in the Supreme Court of Appeal in *Rees & Another v Investec Bank Ltd*<sup>2</sup> that:

*“As stated in Maharaj, 'undue formalism in procedural matters is always to be eschewed' and must give way to commercial pragmatism. At the end of the day, whether or not to grant summary judgment is a fact-based enquiry”.*

(Emphasis provided)

14. The invoices underlying the actions and subsequent summary judgment applications default judgment were in respect of services rendered by third party medical service providers to patients.
15. There is no averment in the affidavit nor any of the facts in the papers which lend credence to the allegation that such services were, in fact, rendered, that the fees charged were reasonable and fair and that the invoices are thus payable by the defendants.
16. Only the relevant medical services providers (and/or patients) who ceded their rights to Compensation Solutions will have direct and personal

<sup>1</sup> Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A)

<sup>2</sup> 2014 (4) SA 220 (SCA)

knowledge of such facts. In my view, the facts refute the inference sought to be drawn that the deponent had personal knowledge of such facts.

17. In *Shackleton Credit Management (Pty) Ltd v Microzone Trading 88 CC and Another*, 2010(5) SA 112 (KZP), at p115 para G – p116 paras A-C, the following quote by Wallis J is applicable:

*“The requirement that the founding affidavit be deposed to by the applicant or some other person who can swear positively to the facts precludes the affidavit being deposed to by someone whose knowledge of those facts is purely a matter of hearsay. Thus a person who deposes to such an affidavit on the basis that their information comes from another source, whether another person or from documents, is not a person who can swear positively to the facts giving rise to the claim. An affidavit by an attorney based on information given to the attorney by the client does not comply with the rule because the attorney is not in a position to swear positively to the facts. Such an affidavit is nothing more than an affidavit of information and belief containing inadmissible hearsay. An application founded on such an affidavit is as a result defective.”*

18. Summary judgment remains a drastic remedy. This needs to be balanced against the considerations of not having matters ventilated at trial where no disputes are present. Irrespective of these balancing and policy considerations, summary judgment applications retain a discretionary component even if disputes to be ventilated at trial are doubtful in merit and existence. This being said, even if the merit against a summary judgment application appears to be rather thin, the principles, rules and law relating to the law of evidence ought not to be altered. This is especially so where a

deponent to the application for summary judgment clearly do not possess the necessary personal knowledge of the underlying facts of the cause of action. The present matters are clearly distinguishable from matters such as banking matters where the litigant employs administrative and electronic systems to capture its transactions and an individual having access to those systems, without having personal knowledge of the transactions, verifies the cause of action as a result of having such access from within the realm of the litigating party. In the present matter the deponent may very well have knowledge of the second or last leg of the cause of action, but can never have personal knowledge of the actual medical services rendered to patients and the value thereof that may be recovered.

19. In my view, a proper consideration of the papers as a whole, indicate that Mr van Wyk, as a fact, did not have direct knowledge of all the facts to be able to swear positively to them. Furthermore and in consequence, I am of the view that these matters are not competent and susceptible for applications for summary judgment.
20. Consequently, the applications for summary judgment are fatally defective and must fail.
21. Insofar as costs are concerned, generally, the cost ought to follow the result. However, to err on the side of caution, to provide the plaintiff with an opportunity at trial to establish the personal knowledge of Van Wyk in respect of the services rendered that would justify the bringing of the



applications for summary judgment, I reserve these costs to be determined at trial.

22. In the circumstances the following order is issued:

20.1 The applications for summary judgment are dismissed;

20.2 The defendants are granted leave to defend the actions;

20.3 The costs of the summary judgment applications shall be reserved for determination by the trial courts.

**EJ FERREIRA**

Acting Judge of the High Court  
Gauteng Division, Pretoria

Date of Hearing: 9 November 2023

Judgment delivered: 2 May 2023

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