



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

CASE NO: 65869/2020

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: 25 MAY 2022

SIGNATURE

In the matter between:

DELICATE DEBT COLLECTORS (PTY) LTD

Applicant

and

**THE DIRECTOR-GENERAL OF THE
DEPARTMENT OF LABOUR**

First

Respondent

THE COMPENSATION COMMISSIONER

Second Respondent

THE MINISTER OF EMPLOYMENT AND LABOUR

Third

Respondent

Reasons for Judgment

This matter has been heard in open court and is otherwise disposed of in terms of the Directives of the Judge President of this Division. The judgment and order are accordingly published and distributed electronically.

DAVIS, J

[1] Introduction

These are the reasons for an order granted against the Respondent for payment of R 4 122 675,22 together with interest and costs in respect of fees owed to medical practitioners in respect of services performed in terms of the Compensation for Occupational Injuries and Diseases Act 130 of 1993(the Compensation Act).

[2] The parties

- 2.1 The applicant is a debt collection company which represents 176 medical doctors, medical specialists and other medical practitioners registered as such in terms of the Medical, Dental and Supplementary Health Services Provisions Act, 56 of 1974.
- 2.2 The applicant's clients rendered services to employees who have sustained injuries during the course of their employment. The medical practitioners' fees are prescribed and annually published in the Government Gazette.
- 2.3 The first respondent is the Director-General of the Department of Labour and is the accounting officer for that department.
- 2.4 The second respondent is the Compensation Commissioner (the Commissioner), who assists the first respondent in terms of section 2(1) (a) read with section 6A of the Compensation Act. He receives notices of

assessments, claims for compensation, medical reports, practitioners' accounts, objections, applications, returns of earnings and administers payments and penalties. The Commissioner also determines the rules and particulars to be furnished in connexion with the payment of fees and expenses of medical practitioners on behalf of the first respondent.

2.5 The third respondent is the Minister of Labour in his capacity as such.

[3] The nature of the claims

3.1 The administration of their claims for fees and expenses places an immense burden on medical practitioners in private practice. The applicant administers these claims, submits them in the correct format to the Commissioner and deals with administrative queries, reconciliations and expediting of payments. For this, it earns a commission from the medical practitioners.

3.2 In the main application, spreadsheets of claims submitted and payments received were produced. These comprised of schedules of outstanding invoices, schedules of accepted claims, schedules of claims not accepted, schedules indicating invoices which were either only paid partially or which were paid late and therefore attracted interest, schedules of unregistered claims and a schedule of claims which fell under a previous case against the respondents (Case No 36487/17). The schedules also differentiated between the two systems used by the Commissioner for administering claims and payments, being "UMEHLUKO" and "COMPEASY". The nett result of all these schedules and computations totalled an outstanding amount of R 16 627 978,00.

3.3 It is not necessary purposes of these reasons to refer to the structure and operation of the Act. It will suffice to provide the reader with an

overview of how claims are generated, processed and paid. In practice an injured employee approaches a medical practitioner with an employer's report (a WC12 form) and a copy of his ID document. After the consultation the medical practitioner completes a first medical report (WC14) wherein the clinical evaluation of the employee and a description of the accident is recorded. The employer then submits both the WC12 and WC14 forms to the Commissioner electronically via an online portal or by hand. Upon receipt, the claim is registered and a claim number is sent to the employer as proof of successful submission of a claim. Hereafter the claim is adjudicated and either accepted or liability is denied. This function is carried out by the Commissioner. If the claim is accepted, further medical expenses are then paid by the Commissioner in terms of the Act. Invoices for services rendered in respect of accepted claims are "switched" electronically by the applicant and the respondents make bulk payments back to the applicant or the services provider. Allocation of payments to specific invoices are then made upon receipt of remittance advices which links the payments to various individual invoices.

- 3.4 The parties have a long history of interaction with each other, spanning almost a decade. Since 2013 the agreement had been reached that qualifying claims submitted by the applicant would be settled within 60 days. This agreement has been confirmed in an email from the Department's then Medical Payments Director, dated 9 May 2013.
- 3.5 Despite the above and the reasonably straightforward system of claims submission, verification, adjudication, processing and payments, the applicant had had to resort to this court on numerous occasions in order to enforce payment of claims which were mal-administered, delayed or

simply not paid. Examples of this were described in the founding affidavit as being litigation instituted under case numbers 20549/2014, 31912/2015, 25923/2016 and 36487/2017 in this Court.

[4] Debatement of accounts

- 4.1 Due to the volume of claims, the number of employers, employees, service providers and medical practitioners involved as well as the various steps to be verified before claims can be processed, the debatement of accounts featured prominently in the applicant's recovery efforts on behalf of its clients, both in and out of court. This resulted in various "debatement meetings" with various representatives of the Respondents and only when that didn't bear fruit or did not finally resolve the issues, the applicant resorted to this Court. This is the position with the current matter.
- 4.2 By the time the current matter was finally ripe for hearing, certain verification procedures had already further progressed matters and a number of payments had been made. The respondents were, however, not in a position to tell the court what portion of the originally claimed R 16 million remained outstanding and in respect of which invoices the outstanding amount was. One must appreciate that the claims vary in both nature and extent. Some are, for example between R20 000, 00 to R30 000,00 for specialist procedures but some are for as little as anything under R500,00. The schedules and spreadsheets entails literally hundreds upon hundreds of entries. I refer to two randomly chosen examples, one for a medical services provider and the second for a practitioner. The particulars are supplied in columns in the spreadsheets under the headings: Line no, Practice no, Practice Name, Patient Name, Claim, Batch, Batch date, Status, Service, Submit Date, Invoice no, Date paid,

Capital 60 days from submit, Paid, Reject, remaining Capital without interest, Remaining Capital after interest and payments. The particulars of the two examples are: 37, 0522066, Botes & Associates, Fourie SJ, 11027366, DDCWCC784, 20200722, ACCEPTED, 2019/07/15, 2019/09/23, 0071894, R 7614, 96, 2019/11/22, R 7614, 96, R 457,15, R 8 072, 07 and 11, 4208196, Abdool-Carrim ATO, Mathebula, S, 11098741, DDCWCC 785, 20200724, ACCEPTED 2018/03/05, 2018/05/14, 0020611, R 22 588, 57, 2018/07/13, R 22 588, 57, R 3 508, 96, R 26 097, 53.

- 4.3 The answering affidavit did not sufficiently clarify the debatement of the account. In particular, where allegations were made by the respondents that they had made payment of hundreds of thousands of rands, the allegation of payments were found to be only partially correct, as a large portion thereof, related to claims which did not form part of the current litigation. The initially claimed amount had been reduced, but no means extinguished.
- 4.4 The matter was to come before Strydom J on 2 September 2021 as an opposed motion. On the eve of the hearing before him, the Respondents alleged that they were, despite all the preceding processes outlined above, not in possession of the invoices and supporting documents for the balance of the applicant's claims. These claims had by that time been reduced to R 4 748 004, 00. The applicant agreed to re-furnish these documents. Consequently, Strydom J postponed the matter on 2 September 2021 and gave an order which included the following:

“2. *The Applicant is ordered to:*

- 2.1 *Submit the invoices pertaining to the capital amount of R 4 748 004,00 to the Respondents on or before Wednesday 17 September 2021.*
 - 2.2 *Supply all actual invoices or copies with supporting medical reports.*
3. *The respondents are ordered to consider all the invoices referred to herein on or before 29 September 202 and:*
 - 3.1.1 *furnish the Applicant with a list of invoices which are rejected or partially rejected on or before 13 October 2021;*
 - 3.1.2 *furnish against each rejection or partially rejected invoice a detailed reason for such rejection and if invoices are rejected by reasons of being a “duplicate”, furnish the Applicant with a payment remittance proving such duplication, before 13 October 2021.*
 - 3.2.1 *Pay all undisputed invoiced amounts or reasonable in accordance with the tariff and furnish the Applicant with a corresponding payment remittance before 13 October 2021;*
 - 3.2.2 *To quote the line number of each invoice so addressed in accordance with the document line numbers as it appears in “Annexure B updated (caselines 009-1) column 1”.*

- 4.5 The applicant has complied with its obligations in terms of the order and a nominated senior official in the respondents' "Medical Department" acknowledged receipt of the required documents on 17 September 2021 on behalf of the respondents.
- 4.6 The respondents, however, failed to comply with their agreed obligations as contained in the order and further, save for a couple of hundred thousand Rands, failed to make payment. This prompted the applicant to claim costs on a punitive scale by way of a further supplementary affidavit dated 11 November 2021.
- 4.7 The matter was set down on my opposed motion court roll for hearing on 23 November 2021. On 22 November 2021, the respondents delivered an affidavit by a director of medical claims in the Department of Labour. In the affidavit condonation was sought for non-compliance with the order of Strydom J. Despite having agreed to the order and the time-frames contained therein, the respondents proffered a litany of reasons why they could not comply therewith. In conclusion, the deponent to the affidavit stated the following" *"The respondents in this matter merely want to furnish the court with the spreadsheet of invoices which is a response to all the invoices which have been furnished by the Applicant in compliance with the court order The said spreadsheet is attached herein as annexure DDC2"*. (My underlining for emphasis).
- 4.8 Reliant on the submission made in the affidavit, echoed by the respondents' counsel, that *"the amount owed will be significantly lower and therefore the applicant ought to reconcile the spreadsheets"*, I allowed the matter to stand down until 14h00 on 25 November 2021.

4.9 Despite the time period afforded the applicant to deal with this belatedly produced spreadsheet being extremely truncated and severely restricted and curtailed by the respondents' non-compliance with a court order, the applicant's officials, its managing director and its legal team worked through the night and produced a substantive response. It dealt with a reconciliation of the newly submitted spreadsheet, the verification of the applicant's system of record keeping and, at the request of the court, a re-verification of the amounts of interest claimed. The summarised results were contained in an affidavit from which the following extracts are relevant:

“4. The gist of the Respondents' Annexure DDC2 is that the Respondents paid an amount of R 3,1 million towards the outstanding claims. This annexure is not remotely correct.

5.1 Which claims were/were not considered by Respondents since 2 September 2021; all the claims marked as “N/A” (no value is available) were not considered. I extracted the “N/A”- claims and compiled Annexure “JUB 5 – not considered by CF”. I also reconcile all the N/A's with the Applicant's system and found that 2127 claims to the value of R 2 372 084.45 are still unpaid. The interest component on the claims not considered amounts to R 950 994.97.

5.2 Which claims were rejected or partially rejected by the Respondent with detailed reasons; I attached hereto Annexure “JUB 6 – rejected – no reasons furnished” which amounts to 107 claims to the value of R 169 242 66. Not a single reason is advanced for the rejections. The interest component amounts to R 52, 917.47.

- 5.3 *Which payments were returned to the Respondents due to payments made to outdated or closed bank accounts. The Applicant made the Respondents aware of this and tried to rectify their mistake, but to no avail. I humbly refer the Honourable Court to “Annexure JUB 7 – Bank Account Error – payment returned”. The capital on this component amounts to R 31 223.53 and the interest thereon amounts to R 14, 787.64.*
- 5.4 *Which claims are shown in annexure “DDC2” as being paid. The payments do not relate to the amounts currently in dispute. It reflects to historic payments which is irrelevant. I humbly refer the Honourable Court to Annexure “JUB8 – paid historically – not part of the court order”. The capital amounts to R 823 177.80 and the interest amounts of R 526 081.21.*
- 5.5 *Which claims were paid by the Respondents with corresponding payment remittances and which amount is no longer payable. I humbly refer the Honourable Court to “Annexure JUB 9 – Common cause payments”. On the amounts so paid, the Respondent paid short in the capital amount of R 144, 206.38 and the interest thereon amounts to R 75 572.68.*

6 *Interest calculated on short payments and late payments*

I confirm that I included interest on outstanding amounts in the “annexure JUB 10 – interest on historic payments” according to the following principles:

- 6.1 *All interest were calculated at 7% per annum in accordance with the applicable Government Gazette;*
- 6.2 *Only simple interest was charged;*
- 6.3 *Interest was calculated from day 61 after submission of invoices in accordance with the agreement reached with the Respondent;*
- 6.4 *All payments were firstly allocated towards interest and lastly towards capital;*
- 6.5 *I adhered to the in duplum principle i.e interest never exceeds the capital amount;*
- 6.6 *The interest component is calculated on the capital amount of R 582 740.40, as well as on multiple other accounts which were previously long overdue;*
- 6.7 *The calculated interest amounts to R 5 013 304.22 and it appears at the top of columns 5 (4 275 787.76), 7 (697 125.47) and 8 (40 391.00) of “Annexure JUB 10 – interest on historic payments”. In order to reimburse the service providers for losses occasioned by the time value of money, I humbly request the Honourable Court to give judgment in favour of the Applicant as requested”.*

4.10 From the above and further examples in the affidavit of how individual line items were treated in the applicant’s spreadsheets which were either ignored by the respondents or in response to which only partial payments

were made, I was satisfied that the applicant's calculations were the correct reflections of the status of the claims. This includes the interest calculation on both present and previous unpaid claims. The respondent's belated recalculations were wholly too unsatisfactory for a court to rely thereon with any reasonable measure of certainty or probability of correctness. The deficiencies of aforementioned "Annexure DDC2" and the non-compliance with the particularity required in the previous order, resulted that no "real or genuine" dispute had been raised by the respondent in respect of the balance of claims. See: *Wightman t/a JW Construction v Headfour (Pty) Ltd* 2008 (3) SA 371 (SCA). The lack of compliance with a court order also justified a punitive costs order being made against the respondents.

- [5] In the premises, and after hearing further argument on 25 November 2021, I made the order which is repeated here for sake of completeness:
1. The Respondents are ordered to pay the capital amount of R 4 122 675.22 to the Applicant into the trust account of Izak J. Croukamp Attorneys Inc., Absa, Account no. 4047552537, Branch Kolonnade, Cheque Account, Ref: CD0111;
 2. The Respondents are ordered to pay the interest amount of R 6 633 658.19 to the Applicant into the trust account of Izak J. Croukamp Attorneys Inc., Absa, Account no. 4047552537, Branch Kolonnade, Cheque Account, Ref: CD0111;
 3. The Respondents are ordered to pay interest on the amount of R 10 756 333.41 at 7% per annum from 25 November 2021 until date of payment;

4. Respondents are hereby ordered to pay the cost of the application incurred by the Applicant since 3 September 2021 on an attorney-and-client scale.

N DAVIS
Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 25 November 2021

Date of Order: 25 November 2021

Reasons furnished: 25 May 2022

APPEARANCES:

For Applicant:	Adv N van der Walt
Attorney for Applicant:	Izak J. Croukamp Attorneys, Pretoria
For Respondents:	Adv K Mashaba
Attorneys for Respondents:	The State Attorneys, Pretoria