



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 17 August 2020

STATUS Immediate

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

*Compcare Wellness Medical Scheme v Registrar of Medical Schemes & others
(267/2020) [2020] ZASCA 91 (17 August 2020)*

MEDIA STATEMENT

The Supreme Court of Appeal (SCA) today dismissed the appeal of Compcare Wellness Medical Scheme (Compcare) against the Registrar of Medical Schemes (the Registrar) and the Council of Medical Schemes (the Council). Compcare had applied to the Registrar for approval of a change of its name from Compcare to Universal Medical Scheme. It was administered by Universal Health Care Administrators, a part of the Universal group of companies, and wanted to take advantage of the Universal brand, which it considered to be stronger than its own brand. The Registrar, in terms of s 23(1)(c) of the Medical Schemes Act 31 of 1998 (the Act) refused the application because he considered the new name to be likely to mislead the public.

Compcare appealed successfully to the Appeal Board created by s 50 of the Act. The Appeal Board found that the new name was indeed likely to mislead the public but imposed conditions proposed by Compcare to mitigate the misleading effect. It ordered the Registrar to give effect to the name-change subject to the conditions. The Registrar and the Council took this decision on review. Fabricius J, in the Gauteng Division of the High Court, Pretoria upheld their application and set aside the Appeal Board's decision.

In Compcare's appeal against that decision two issues required resolution. The first was whether the court's review jurisdiction arose from the principle of legality or the Promotion of Administrative Justice Act 3 of 2000 (the PAJA). The Constitutional Court has decided that the PAJA does not apply when an organ of state, acting in its own interest, reviews its own decision because an organ of state is not a bearer of administrative justice rights. In this case, however, the Registrar and the Council brought the application in the public interest (in terms of s 38(d) of the Constitution). In so doing they, in effect, stepped into the shoes of the members of the public who they represented and who were bearers of administrative justice rights. As a result, the PAJA applied.

The second issue concerned the merits of the Appeal Board's decision. That in turn, required an analysis of the Registrar's powers in terms of s 23(1) of the Act. The section gave him no discretion to allow a change of name if it was likely to mislead the public. He was bound to refuse it. And the section did not empower him to impose conditions. That being so, because the Registrar had no power to approve Compcare's change of name, the Appeal Board exceeded its powers by purporting to order the Registrar to do so.