

Lion of Africa Life Assurance Company Ltd v South African Social Security Agency and Another

(97973/2015) [2016] ZAGPHC 550

Date of hearing: 17 December 2015

Date of Judgement: 15 March 2016

The Applicant, Lion of Africa Life Assurance Company Ltd is a registered insurance company in terms of the Long Term Insurance Act, 1998 (Lion of Africa). The First Respondent is the South African Social Security Agency (SASSA) which has the mandate of providing social grants to beneficiaries in South Africa, and the Second Respondent is the Minister of Social Development.

On 4 December 2015, the Lion of Africa received a letter from SASSA indicating that, “in order to ensure that protection against the rights of the children is adhered to, the Agency has placed a temporary prohibition on the new funeral policy deductions from children's grants with effect from 1 January 2016”. As a result, Lion of Africa brought an urgent interdict application which sought to stop the operation of the moratorium on funeral policy deductions from children's grants, pending the finalisation of a review application. The application was opposed by SASSA.

In its founding affidavit, Lion of Africa stated that it had concluded approximately 47 000 policies with beneficiaries of children's grants together with application forms containing the request in writing by the beneficiary as required by Regulation 26 A to the Social Assistance Act. By 8 December 2015, Lion of Africa had already concluded 14 639 new funeral insurance policies, with beneficiaries of children's grants making up 75% of these policies.

The Court first disposed of the points in *limine* raised by the Respondents and found that the matter was indeed urgent and that the non-joinder of the paymasters contracted by SASSA to distribute social grants was immaterial due to the fact that these paymasters act on the instruction of SASSA and as its agent and therefore do not have a direct or substantial interest, in their own right, in the matter.

With regards to the merits, the Court opted not to make any finding in regard to the constitutional issues raised by SASSA – namely, whether the utilisation of children's grants for the purposes of paying for funeral cover was unconstitutional insofar as it deprives children of their constitutional right of access to social security. The Court found it to be inappropriate to decide a constitutional issue in the urgent court, and that the constitutional issue could be considered in due course as envisaged by Rule 16A.

Instead, the Court decided the Applicants' case based on whether it met the threshold for the granting of an interim interdict. To this end, the Court confirmed the elements required for interim interdictory relief as being a *prima facie* right; a reasonable apprehension of irreparable harm if the interim interdict is not granted and the final interdict is eventually granted; a balance of convenience in favour of the granting of the interim relief; and the unavailability of any other remedy,

In its reason for concluding that a *prima facie* right had been demonstrated by Lion of Africa, the Court firstly had regard to the judgment of Du Plessis J in the case of *Channel Life Limited and Another v South African Social Security Agency and Others* who found that “once the requirements of Regulation 26A (1), (2) and (3) have been met, the Agency is obliged to allow deductions as provided for (in) Regulation 26A¹” and secondly, the Court considered the fact that a system allowing for funeral policy deductions against children's grants was already in place and therefore a *prima facie* right had been established.

¹ Channel Life Limited and Another v South African Social Security Agency and Others (NGHC case number 79112/15) at para 6.

The judge was also satisfied that the requirement of irreparable harm had been met because of Lion of Africa's assertion that if the moratorium were to be effected, approximately 20 000 policies with monthly premiums totaling approximately R1.7 million, would be adversely affected. With regards to the requirement of a balance of convenience, the Court considered that at the time of this application, the system had allowed for the deductions of funeral policy cover from children's social grants and therefore to grant the interim relief would only be preserving the status *quo*.

Finally, the Court found that there was no alternative and satisfactory remedy available to the Applicant based on the irreparable harm that the moratorium risked causing as well as the urgency in which the application was brought.

For all of the reasons explained above, the Court exercised its discretion in favour of Lion of Africa and granted the interim relief.