The Minister of Social Development of the Republic of South Africa & Others v Net1 Applied Technologies South Africa (Pty) Ltd & Others;

The Black Sash Trust & others v The CEO: The South African Social Security Agency & Others

(825/2017 and 752/2017) [2018] ZASCA 129

Date of Hearing: 16 August 2018

Date of Judgment: 27 September 2018

This matter dealt with two related applications for leave to appeal before the Supreme Court of Appeal (SCA). The first application for leave to appeal concerned the question as to whether certain amendments to the Regulations promulgated under the Social Assistance Act 13 of 2004 (the Act) prohibited all electronic debits, including debit orders, stop orders or electronic fund transfers (EFTs) from the accounts of social grant beneficiaries, held with Grindrod Bank (Grindrod). The relief sought by the Applicants was in the form of a declaratory order that the Regulations did not, as contended for by the Minister of Social Development and the South African Social Security Agency (SASSA), restrict beneficiaries in the operation of their bank accounts. The Court below held in favour of the Applicants declaring that Regulations 21 and 26A did not operate to restrict beneficiaries in the operation of their bank accounts.

It was uncontested that the amendments were motivated by the concerns of the Minister, SASSA and civil society, about the alleged predatory marketing practices by vendors, intent on selling their services within the social grant payment system to social grant beneficiaries and then receiving payment by way of debit orders or by way of EFTs. There were also allegations of unauthorized deductions from bank accounts of beneficiaries, and studies revealing how elderly persons receiving grants were illiterate, struggled with technology and could easily be taken advantage of. There was therefore general agreement that social grant beneficiaries should be protected against unscrupulous vendors and corrupt activities.

The SCA decided the matter by having regard to recent events that had altered many aspects of the manner in which social grants were paid out to beneficiaries. Following the invalidation of the contract between SASSA and Cash Paymaster Services (Pty) Ltd (CPS) for the payment of social grants, SASSA concluded an agreement with SAPO for the payment of social grants on its behalf. This new contract was accompanied by new payment procedures, including those that: (a) required beneficiaries to provide written authorization to SASSA for payments to be made into the bank account with any commercial bank of their choice; or (b) that payments be made through a SASSA/SAPO card provided to beneficiaries which card is linked to the beneficiary's Special Disbursement Account (SDA) operated and held by SAPO. The SDA can only accept deposits of social grant money and does not allow any EFT debits, stop orders or any other financial transactions, apart from withdrawals, and debits for goods purchased at point of sale.

The Court reasoned that since it was common cause that where a grant beneficiary elects to have their social grant paid into a bank account held with a commercial bank of their choice, the grant beneficiary is at will to authorize any debit deductions, if he or she so wishes. There can also be no doubt that, under the new payment regime, Grindrod is to be considered a commercial bank through which beneficiaries may now receive payment. In the new payment dispensation, grant beneficiaries are entitled to receive payment of grants into a bank account of their choice, including the bank accounts held at Grindrod Bank. Unless the beneficiary account-holder elected to close his or her Grindrod account and to migrate to a SAPO account or to another bank, the Grindrod account would remain open. Those beneficiaries who continued to use these accounts are responsible (as account holders) for paying all bank charges associated with these accounts.

Thus, the Court held that an interpretation of the amended Regulations would have no practical effect as the Grindrod/SASSA accounts no longer exist under the new payment regime. Therefore, the new SAPO administered payment system has rendered the application for leave to appeal by the Minister and SASSA moot or of no practical effect.

To justify its decision, the Court relied on Section 16(2)*(a)*(i) of the Superior Courts Act 3 of 2013 which stipulates that, "when at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone".

In addition, the Court held that the appeal bore no reasonable prospect of success due to:

1. The conditions of the Grindrod account having been known to all the relevant parties. Those conditions, in clearly spelt out terms, catered for and permitted authorised debits by way of EFT and stop orders;

2. Payment into the Grindrod account constituted payment 'into the bank account of the beneficiary' and were therefore not subject to the debit restrictions imposed by the Regulations;

3. The manner in which the Minister and SASSA sought to have the regulations interpreted and applied amounted to an unwarranted interference with a social grant beneficiary's right to conduct a mainstream bank account in his or her name and to operate within the mainstream banking system; and
4. The new payment regime was successful as a measure to combat abuse, namely, ring-fencing, via the SAPO SDA accounts, which permits no deductions.

For all these reasons, the Court found no reasonable prospect of success on appeal and no other compelling reasons why the appeal should be heard. The appeal was therefore dismissed with costs.

The second application for leave to appeal related to the Black Sash Trust and six other individual beneficiaries of social grants, who all had applied for leave to intervene in the litigation culminating in the orders set out above.

The Court below refused the applications for leave to intervene and for the Black Sash to be admitted as amicus curiae.

The SCA held that a primary consideration in an application to intervene, generally, is whether a party seeking to do so 'has a direct and substantial interest in the subject matter of the litigation'. The Court over turned the Court a quo's order after having regard to the role that the Black Sash plays in relation to social grant beneficiaries and its involvement in preceding social grants litigation, which clearly indicated that the Black Sash did indeed have a direct and substantial interest in the matter and that the interests of justice dictated that the application to intervene should have been granted.

The Court held that the refusal of the application for leave to intervene was all the more peculiar in the light of the fact that the Black Sash had been permitted to address the Court below on the issues it considered pertinent. The appeal was therefore upheld and the Black Sash Trust's application to intervene was granted.