

Net1 Applied Technologies SA and Others v CEO, South African Social Security Agency and Others

Finbond Mutual Bank v CEO, South African Social Security Agency and Others

Smart Life Insurance Company Limited v CEO, South African Social Security Agency and Others

Information Technology Consultants (Pty) Ltd v CEO, South African Social Security Agency and Others

(43557/16; 46024/16; 46278/16; 47447/16) [2017] ZAGPPHC 150

Delivered: 09 May 2017

This judgement consolidates three different applications that were brought against the South African Social Security Agency (SASSA), its Chief Executive Officer and the erstwhile Minister of Social Development. The consolidated applications concerned the meaning of amendments to Regulations 21 and 26A of the Regulations to the Social Assistance Act 13 of 2004, that were promulgated on 6 May 2016.

SASSA is an organ of state was established primarily for the administration and payment of social grants. SASSA, its CEO and the erstwhile Minister of Social Development's interpreted the new Regulations 21 and 26A as prohibiting all electronic debits, stop orders and Electronic Fund Transactions (EFTs) on beneficiary accounts held at Grindrod Bank. This interpretation had caused SASSA to instruct Cash Paymaster Services (Pty) Ltd (CPS) and Grindrod to stop all debit orders being processed off the accounts of beneficiaries with immediate effect.

The various Applicants contested SASSA and the Minister's interpretation and resisted implementation of the said instruction. Instead, they approached the Court for a declaratory order that the amended regulations, and in particular Regulations 21 and 26A do not restrict beneficiaries in the manner in which they operate their respective bank accounts. The Black Sash Trust and 6 others brought an application to be admitted as an Applicant to the proceedings. In addition 4 applications for admission as *amici curiae* were also filed.

In reaching its decision, the Court considered the rules of interpretation and made reference to the language used in the light of the ordinary rules of grammar and syntax, the context which the provisions appear, the apparent purpose to which it is directed, and the material known to those responsible for its production.

The Court thus held that it was clear that once the grant was transferred into the recipient's account at Grindrod, it operated as any bank account at any commercial banking institution. SASSA had no control over such account with Grindrod, nor does it over any account with any other commercial bank. Therefore, the Court found that there was no merit in the submission on by SASSA, its CEO and the Minister that the Grindrod bank accounts were not bank accounts chosen by the beneficiaries, but a mere "method of payment chosen by the Agency".

In explaining its decision, the Court recalled that social grants are paid from the budget of the Department of Social Development, administered by SASSA through CPS. In this regard, SASSA pays over the total amount of

social grant payments to CPS. In turn, CPS pays the amount received from SASSA into the SASSA Funding Accounts at *inter alia*, Grindrod. From those accounts, the respective payments to the recipients are paid into their respective personal accounts held at Grindrod bank. Each of those recipients who hold the bank accounts with Grindrod in their own names, have direct client/banker relationships with Grindrod, or with any other banking institution. The grant recipients hold their accounts subject to the terms and conditions of the respective bank accounts. Furthermore, the Grindrod bank accounts operate within the ordinary and regulated banking environment of the National Payment System. No contractual relationship exists between SASSA and Grindrod.

Furthermore, SASSA does not operate the accounts held at Grindrod. Each recipient of a grant is obliged to present himself or herself every month at an ATM, CPS pay-point or other merchant's point-of-sale device to authenticate the transfer of the grant into his or her bank account. This is also true where recipients of social assistance hold bank accounts at other banking institutions. Thus, the Court held that SASSA equally has no control over such account with Grindrod as it does not have control over any account with any other commercial bank.

In addition, the Court noted that Regulation 21(1)(a) clearly provides for two scenarios: payment of the social grant into either a bank account, or a payment method determined by the Agency. The latter method envisages a specific alternative method that is not a bank account. On a purposive reading of Regulation 21(1), the Court held that it was clear that the prohibition in Regulation 21 (4) was not applicable in respect of Regulation 21(1)(a). The two categories must of necessity entail different and distinct payment methods. That much is clear from the use of the disjunctive "or" in the wording of Regulation 21(1).

The Court therefore granted the declaratory relief sought by the Applicants to the effect that the said Regulations do not operate to restrict beneficiaries in the operation of their bank accounts.

The Court found that the applications to intervene and for admission as amici curiae could not succeed because Black Sash sought relief that pertained to constitutional issues. In the Court's view, these constitutional considerations were not strictly relevant in interpreting the provisions of Regulations 21 and 26A which were the subject of the main applications, and therefore these intervention applications were refused.