

***Nohdumiso Zalisa and Others v South African Social Security Agency and Others***

**(82073/2018) [2019] ZAGPPHC 4**

**Date of Hearing: 28 November 2018**

**Date of Judgment: 21 January 2019**

This matter deals with an application for urgent relief against brought by 14 individual applicants and Moneyline Financial Services (Pty) Ltd (Moneyline) against the South African Social Security Agency (SASSA), its CEO, the Minister of Social Development, the South African Post Office SOC Limited (SAPO) and Grindrod Bank Limited. The relief pertained to a direction by SASSA and its interpretation of the amended Regulation 21(1)(a) to the Social Assistance Act, whereby all valid and authorised prior elections made by social grant beneficiaries as to where their social grants ought to be paid would be invalid as of 31 January 2019. The Regulation required social grant beneficiaries to either submit a form authorizing the payment of their grants in their private bank account (Annexure C Form) or by default receive their social grants at SAPO.

The Court granted the interim relief on the date of hearing in November 2018 pending the handing down of judgment on 31 January 2019.

In its judgment, the Court reasoned that it had granted the interim relief on the grounds of urgency and the irreparable harm that would befall Applicants and two million other social grants beneficiaries in similar positions. The first category of Applicants includes those who made the choice, or election, to have their social grants paid into private bank accounts before the change to the Regulations in issue took place on 6 May 2016. The second category of Applicant includes those who elected to have their social grants paid into private bank accounts in the period after 6 May 2016, and up to 1 January 2018. The third category includes those who, after 1 January 2018, elected to have their grants paid into private bank accounts, and conveyed their election to SASSA by submitting an Annexure C Form referred to above.

The first and second categories of beneficiaries would not be paid their social grants into their chosen private bank accounts which were operated by Moneyline. As a result, Applicants would also forfeit and lose their free funeral cover worth R2 500 each, a perk of the bank account. These beneficiaries would then have to go to a SASSA office to find out what happened to their grant payment for the month, and then go to a SAPO branch to withdraw the grant. The Court considered the inconvenience, confusion, distress, time wasted and transport costs — particularly in rural areas — if transport be available when required, would cause the elderly, the disabled and those entrusted with the care of young children (i.e. social grant recipients), harm which is not remediable in due course. Moreover, the loss of some two million clients would be a devastating blow to the Moneyline's business, the damage to its goodwill would be irreparable, and it would be unable to obtain substantive redress in the ordinary course.

In light of these reasons, the Court granted Moneyline the relief it sought.

However, when deciding whether to grant the Applicants a final interdict, the Court had to be satisfied of: (a) the existence of a clear right; (b) that an injury was actually committed or there was a reasonable apprehension that an injury would be committed; and (c) that there was an absence of similar protection by any other ordinary remedy.

On a balancing of these factors, the Court held that the granting of a final interdict was not appropriate in the circumstances. The reasons for this decision was firstly that the Applicants were unable to prove the existence of a clear right to have their social grants paid within a bank account of their choice and secondly, that the Applicants by bringing their application in the form of an interdict, failed to follow the correct procedure for the

review of administrative decisions as provided for in the Promotion of Administrative Action Act ('PAJA'). In its reasoning, the Court explained that, on the facts, Moneyline was indeed aware of the fact that a review in terms of PAJA was the only remedy available for the relief they sought. The Court referred to the established principle that, "a litigant cannot avoid the provisions of PAJA by going behind it, and seeking to rely on either s33(1) of the Constitution or the common law or indeed the rule of law"<sup>1</sup>. In the circumstance, and in light of the Applicants failure to follow the provisions of PAJA, the relief sought by Moneyline was refused.

In addition, the Court held that it was satisfied that a statutory system, properly authorised, had been put in place for sound reasons by SASSA. These reasons were to prevent various abuses that occurred with regards to unlawful deductions off of the accounts of social grant beneficiaries. Moreover, there was no reason to disbelieve the undertaking by SASSA that social grants beneficiaries are being paid and will be paid.

Ultimately the Court found that it was inappropriate for it to substitute SASSA's grant payment system with its own or go against the clear wishes of a statutory authority in the absence of illegality.

The Application was accordingly dismissed and the interim order that the Court had previously granted accordingly lapsed.

---

<sup>1</sup> *Minister of Health and Another N.O. v New Clicks South Africa (Pty) Ltd and Others* 2006 (2) SA 311 (CC)