IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

REPORTABLE: YES / NO

OF INTEREST TO OTHER JUDGES: YES / NO

REVISED

10/9/2024

Date

CASE NO: 056880/23

In the matter between:-

JORDAN BASDEO First Applicant

JOEL BASDEO Second Applicant

VS

DISCOVERY LIFE LIMITED Respondent

Coram: Kooverjie J

Heard on: 21 August 2024

Delivered: 10 September 2024 - This judgment was handed down electronically

by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 12h00 on 10 September 2024.

SUMMARY:

1. There is compliance with Rule 32(2)(b), in that it is permissible for the applicant to make reference to the summons and particulars of claim in the affidavit supporting the summary judgment application when setting out the basis of its claim.

2. The applicant is however required to engage sufficiently with the defence pleaded in the plea.

3. In assessing whether a deferment of payment is justified, the factors of delay, prejudice and fairness are to be balanced and assessed against the particular facts of the matter.

4. The respondent failed to follow up on the status of the investigation timeously.

5. The respondent was required to assess the claim within a reasonable time.

ORDER

It is ordered:-

1. The application for summary judgment is granted in favour of the applicant.
2. Interest on the amount of R200,000.00 at the applicable rate in terms of the Prescribed Rate of Interest Act 55 of 1975, *a tempore morae*, from 6 September 2022 to date of payment.
3. The respondent is ordered to pay the costs on an attorney and client scale.

JUDGMENT

KOOVERJIE J

THE APPLICATION

[1] In this summary judgment application, the first applicant seeks relief only for the accrued interest and costs incurred in respect of his claim. Before the hearing of this application, both applicants were paid their capital amounts. The only outstanding amount due to the first applicant were interest and costs. The summary judgment application was premised on the claim by the applicants for payment of the benefits that were due to them in terms of an insurance policy and as set out in the summons and particulars of claim. For the purposes of this judgment, the respondent would also be referred to as "Discovery".

BACKGROUND

[2] The applicants were the nominated beneficiaries in respect of their father's death benefit policy (Discovery Life Plan ("the CLP")), Mr Prem Emmanuel Basdeo. Upon his death, they proceeded with their claims. The value of the policy was R400,000.00. Hence each beneficiary was entitled to receive R200,000.00 together with interest and costs (50% of the policy amount).

[3] The undisputed events occurred as follows:

3.1 the deceased was murdered on 29 November 2020 and an investigation ensued thereafter;

3,2 on 4 December 2020 the applicants submitted their claim as beneficiaries in terms of the said policy;

3.3 on 10 December 2020 Discovery was informed by the South African Police Service ("SAPS") to "STOP ALL INSURANCE PAYMENTS" relating to the deceased;

3.4 two years later, on 6 September 2022, the applicants' attorney issued a letter of demand on Discovery requesting the payout of the benefits. In such letter, the applicants specifically set out that the claim was due and payable and that Discovery was not only in possession of sufficient information to assess the claim but had ample time to investigate the said claim;

3.5 on 5 June 2023, since no payment was forthcoming, the applicants issued summons against Discovery;

3.6 prior to the filing of the said plea it is common cause that on 14 July 2023 the second applicant's claim was fully paid together with the interest and costs;

3,7 on 10 October 2023, Discovery filed its plea and essentially pleaded that:

(i) the first applicant's claim was premature as a result of the SAPS investigation;

(ii) since an amount of R207,412.50 was already paid to the second applicant, consequently the amount of R400,000.00 was not due;

3.8 on 31 October 2023 the applicants instituted their summary judgment application which was premised on their pleaded case as per the particulars of claim;

3.9 in April 2024, after the institution of the summary judgment application, but before the hearing, Discovery paid the first applicant's capital amount.

[4] As a result, at the hearing of this matter, the first applicant proceeded only on the claim for interest and costs in respect of the first applicant. The respondent was informed that the summary judgment was pursued only in respect of the first applicant.

ISSUE FOR DETERMINATION

[5] The main issue for determination is whether or not the defences of the respondent raise triable issues which are deserving of further proceedings.

THE GROUNDS FOR OPPOSING THE SUMMARY JUDGMENT APPLICATION

[6] The affidavit resisting summary judgment was filed on 13 November 2023, setting out the defences, namely:

6.1 the first defence was this application had not been filed timeously and on that basis Discovery further sought a punitive cost order. There is however no merit on this legal point as the summary judgment application was timeously instituted, namely on 31 October 2023;

6.2 the second defence was that the summary judgment application constituted an abuse of process since the second applicant had already been paid the capital amount together with interest and costs. Hence the applicants failed to verify the correct amount. It further failed to verify the

true facts it relied upon for the claim. The respondent sought a *de bonis propriis* cost order against the attorney, arguing that the conduct of the attorney for the applicants was extremely negligent;

6.3 the third defence was that the applicants were at all relevant times aware that Discovery was not in a position to settle the benefits in respect of the first applicant. It was contended that Discovery was contractually bound in terms of clause 12.4 of the policy and thus had to wait for the outcome of the police investigation. At all relevant times Discovery relied on clause 12.4 of the policy which reads:

"Discovery Life reserves the right to investigate claims or await the outcome of third-party investigations (such as police investigations) or the outcome of tribunals (such as judicial inquests) or tests (such as toxicology tests) and may defer its decision to refuse or admit a claim until such investigation, tribunals or tests are completed."

ANALYSIS

[7] It is settled law that summary judgment procedures are not intended to deprive a defendant with a triable issue or sustainable defence. On the one hand, whilst a court must be cautioned to guard against the injustice that a defendant might suffer, if summary judgment is granted, and thereby depriving the defendant of its normal right to defend, on the other hand, a court is also required to assist the

plaintiff where its right to relief has been balked by the delaying tactics of a defendant who has no triable defence.[1]

[8] The rationale behind summary judgment proceedings make provisions for a court to summarily dispense with the action which ought not to proceed to trial when they do not raise a genuine triable issue.

TEST TO DETERMINE IF DEFENCE IS *BONA FIDE* AND GOOD IN LAW

[9] At this stage of the proceedings, I am merely required to determine whether the defendant has set out *bona fide* defences, thus enquiring:

(a) whether the defendant has disclosed the nature and ground of its defence; and

(b) secondly whether on the facts disclosed the defendant appears to have a defence as to either the whole or part of the claim a defence which is *bona fide* and good in law.[2]"

[10] It has been affirmed that the term "*bona fides*" cannot be given a literal meaning. It does not require of the defendant to establish *bona fides*; it is the defence which must be *bona fide* and whether it is *bona fide* or not depends on the merits of the defence as raised in the defendant's affidavit.[3] Hence if the affidavit shows that there is a reasonable possibility that the defence advanced may succeed on trial, this application should be refused. A defendant would however not succeed if it is

[1] Majola v Nitro Securitisation 1 (Pty) Ltd 2012 (1) SA 226 (SCA) at 232 F-G
[2] Maharaj vs Barclays Bank 1976 (1) SA 418 A at 426
[3] Breitenbach vs Fiat SA (Edms) Bpk 1976 (2) SA 226 T at 227

advancing a case simply to delay the obtaining of a judgment to which the defendant well know that the plaintiff is justly entitled.[4]

[11] In ***Cohen***[5] the defendant is thus required to disclose a defence that is legally cognizable in the sense that it amounts to a valid defence if proven at trial. The test is whether the facts put up by the defendant raise a triable issue, is a sustainable defence in law and deserving a day in court.

[12] On the facts it cannot be gainsaid that both applicants were entitled to the benefits in terms of the death policy. Although in the case of the first applicant the defence - deferment of the payment was raised, it is my view that it does not constitute a *bona fide* defence. I will demonstrate below that in law the first applicant was entitled to be paid timeously. It is settled law that the defence raised must be valid in law and further purely technical defences are not permitted. In ***Maharaj*** the court held the view that a court hearing a summary judgment application can be in as good a position as a trial court to consider a dispute on matters of law.

COMPLIANCE WITH RULE 32(2)(b)

[13] In terms of the amended Rule 32(2)(b) a plaintiff is required, upon the defendant filing a plea, to set out in an affidavit supporting its summary judgment application to:

13.1 verify the cause of action and the amount, if any;

[4] Skead vs Swanepoel 1949 (4) SA 763 T at 766 to 767
[5] Cohen N.O. and Others v Deans 2023 JDR 1216 (SCA)

13.2 identify any point of law relied upon;

13.3 the facts upon which a claim is based; and

13.4 explain why the defence does not raise any issue for trial.

[14] The respondent's defence was that the application was defective in that the affidavit in support of the summary judgment did not verify the amount claimed as required by Rule 32(2)(b). It was contended that an amount of R400,000.00 was incorrect and which fact the applicants were aware of. It was further argued that the applicants had not verified the facts relied upon for the claim and neither did they disclose a valid cause of action for the payment of the amount due.

[15] In principle, I find guidance in the court's reasoning in the ***Tumileng Trading CC*** matter[6]. Therein the court explained what was required by the applicant in terms of Rule 32(2)(b). The court acknowledged that a summary judgment application is instituted after a plea is delivered. Moreover the combined summons or a simple summons together with particulars of claim would also be on record. Since particulars of claim should comply with Rule 18, there should be a clear and concise statement of the material facts upon which the plaintiff relies for its claim with sufficient particularity so to enable the defendant to plead thereto.

[16] The court further proceeded to enquire whether the deponent to the supporting affidavit is required to repeat in narrative form what is already apparent from the plaintiff's pleadings or is the plaintiff expected to set out the *facta probantia* in

[6] Tumileng Trading CC v National Security and Fire (Pty) Ltd 2020 (6) SA 624 (WCC)
see also Firstrand Bank Ltd v Badenhorst N.N.O. and Others (2022/5936) [2023] ZAGPJHC 779, 10 July 2023

elaboration of the *facta probanda* alleged in the pleadings. It highlighted that the main purpose of the summary judgment proceedings was to prevent the continuation of matters to trial in instances where the defendant does not have a *bona fide* defence. There would thus be no purpose served to file an elaborate supporting affidavit concerning the merits of the plaintiff's pleaded claim, since same had already been pleaded in the particulars of claim. It is thus settled law that verification is sufficient if reference is made to the facts alleged in the summons. It is unnecessary for the applicant to repeat its cause of action as set in its particulars of claim.[7]

[17] At paragraph 20 the court stated:

"I think that it would be desirable therefore that plaintiffs were encouraged to confirm what should already be apparent from the pleaded case as succinctly as possible. No purpose will be served by a laborious repetition of what the judge and the defendant should be able to discern independently from the pleaded claim. No harm will be done by using a formulaic mode of expression if it serves a purpose; which, it seems to me, it would do in most matters."

[18] The court however emphasized that the applicant is however required to engage with the defences and explain why the pleaded defence has no merit. At paragraphs 21 and 22 the court stated:

"The requirement that the plaintiff's supporting affidavit should explain briefly why the pleaded defence does not raise an issue for trial is of more interest.

[7] Van der Bergh v Weiner 1976 (2) SA 297 T at 299 G

What the amended rule seems to do is to require of the plaintiff to consider very carefully its ability to allege the belief that the defendant does not have a bona fide defence. This is because the plaintiff's supporting affidavit now falls to be made in the context of the deponent's knowledge of the content of the delivered plea. That provides a plausible reason for the requirement of something more than a formulaic or supporting affidavit from the plaintiff. <u>The plaintiff is now required to engage with the content of the plea in order to substantiate its averments that its defence is not bona fide and has been raised merely for the purposes of the delay</u>."[8]

[19] It is settled law that a court in a summary judgment application is mainly concerned with the assessment of whether the pleaded defence is genuinely advanced, opposed to a sham defence in order to delay the resolution of the matter. A court should therefore not get involved in determining disputes of fact on the merits of the principle case.[9]

[20] *In casu,* it is evident that the applicant in its affidavit pleaded its case in accordance with the summons and particulars of claim which has been found to be permissible by our authorities.

20.1 At paragraph 4.1 of the particulars of claim it was pleaded:

"On the 14th of June 2023 the second applicant and I caused the issuing of the summons in the above honourable court under the abovementioned case number. In the summons confirmation was sought that we are

[8] my underlining
[9] Tumeleng, paragraph 23

entitled to payment of the proceeds of the Classic Life Plan with policy nr. 513[…] issued by the respondent in favour of the deceased for payment of R400,000.00 plus interest, plus costs."

20.2 At paragraphs 5.1 and 5.2 the applicant verified its cause of action as per the particulars of claim and pleaded that it was based on the policy:

"5.1 I hereby verify the cause of the applicant's action as set out in the particulars of claim and that the amount claimed in the summary judgment proceedings, which will be addressed hereinafter further below, is R400,000.00 (four hundred thousand rands and zero cents).

5.2 The applicant's cause of action is premised upon a written agreement of the insurance which consists of the application for insurance and Annexure "POC1".

[21] In ***Abrahamse & Sons v South African Railways and Harbours***[10] the court held:

"The proper legal meaning of the expression "cause of action" is the entire set of facts which give rise to an enforceable claim and includes every fact which is material to be proved to entitle the plaintiff to succeed in its claim. It includes all that the plaintiff must set out in its decision in order to disclose the cause of action."

[22] Regarding the contention that the incorrect amount was claimed for in summary judgment stage, is application, it is necessary to consider the pleadings in context.

[10] 1933 CPD 626

I reiterate that summary judgment proceedings are not based on a liquid claim but on a liquid document (the policy in this case).

[23] The term "liquidated amount" was defined in ***Fattis***[11]:

"A liquidated amount in money is an amount which is either agreed upon or which is capable of speedy and prompt ascertainment."

On the facts before me, it was presented that the applicants verified the cause of action and the amount as per the particulars of claim, hence the claim for R400,000.00. It was common cause that payments were eventually made. Both parties were *ad idem* that the first applicant had also been paid prior to the hearing of this matter.

[24] In fact, the applicants' attorneys had specifically responded in their letter of 8 April 2024. More particularly at paragraph 7 they recorded that the applicants would only be proceeding on the issue of interest and costs if same does not become settled. It read:

"We further submit that no further overall assessment is required and look forward to receipt the full payment of the proceeds of the policy our client is entitled to. Our client's rights are reserved in toto, but in particular, with regard to interest and costs which we will be referring to Court for determination unless settled otherwise."

[25] Furthermore regarding the amount, even though the relief insofar as the amount was not technically correct, it did not prejudice Discovery in any way. Discovery

[11] Fattis Engineering Co Ltd v Vendrick Spares (Pty) Ltd 1962 (1) SA 736 T

most certainly appreciated the nature of the case before it. Both parties were *ad idem* that the first applicant was paid before the institution of the summary judgment proceedings.

[26] In ***Standard Bank of South Africa v Roestof***[12] it was held that:

"If the papers are not technically correct, due to some obvious and manifest error which causes no prejudice to the defendant, it is difficult to justify an approach that refuses the application, especially in a case, … where a reading of the defendant's affidavit opposing summary judgment makes it clear beyond doubt that he knows and appreciates the plaintiff's case against him."

[27] The applicant had further, in terms of Rule 32(2)(b), engaged with the respondent's defence:

27.1 It pleaded at paragraph 5.4:

"The dispute however lies therein that the respondent believes that it may reserve the right to investigate claims or await the outcome of third party investigations (such as police investigations) or the outcome of tribunals (such as judicial inquests) or tests (such as toxicology tests) and may defer its decision to refuse or admit a claim until such time as investigations, tribunals or tests are completed."

27.2 At paragraph 5.5 reference was made to clause 12.4 of the policy upon which the respondent's defence is premised on;

27.3 in paragraph 6 the applicant pleads why the defence is not sustainable:

[12] 2004 (2) SA 492 (W) at 496 F-H

"6.1 It is submitted that myself, as the first applicant, is not criminally charged for the murder of the deceased.

6.2 The respondent is not entitled to withhold payment based on the first applicant allegedly being a person of interest.

6.3 Being the son of the deceased, I am also a beneficiary of my late father's CLP.

6.4 The respondent relies on a clause which affords the respondent time to evaluate a claim. A substantial amount of time has passed and there is still no outcome. There exist no basis or fact to suspend or delay my claims as the first applicant.

6.5 The second applicant is not a person of interest and there is further no fact or law to suspend or delay my claim as the second applicant's claim.

6.6 In fact, should the applicants have failed to institute the current action within the three years of the cause of action of the applicant's claim arising, the respondent would have been entitled to raise prescription as a defence and the applicants would not have been able to defeat such challenge based thereon that the claim is premature. In that the respondent alleges that it may ad infinitum await the outcome of the investigations.

6.7 Alternatively the respondent's remedy in respect of the first applicant therein that it should:

6.7.1 repudiate the claim;

6.7.2 cancel the CLP;

6.7.3 institute a private criminal prosecution against the first applicant.

6.8 Failure to do so by either the National Prosecuting Authority or the respondent constitutes a stalling tactic, predicated on the baseless refusal to make payment of the proceeds of the CLP to the applicant as beneficiary as pointed in the particulars of claim."

[28] In these circumstances I find that the applicant had sufficiently engaged with the defence on the deferment of the payment issue.

DEFERMENT OF PAYMENT DEFENCE

[29] As aforestated, the third defence is not *bona fide* nor is it good in law. The issue for determination is whether this defence raises a triable issue where the parties should be given an opportunity to ventilate in the trial proceedings?

[30] Discovery's main contention was that in terms of the policy, the first applicant was not entitled to his benefit payout. Discovery argued that the applicants were aware that it was not withholding the beneficiary payment because of the first applicant's personal interest, but that Discovery was contractually bound to await confirmation in respect of the investigation. Consequently its defence is *bona fide* and its conduct are not contrary to the terms of the policy. In this regard, it referred to the letter per the South African Police Service (SAPS).

[31] The applicants persisted in argument that this defence is not good in law and neither is it *bona fide.* The applicants firstly challenged the authenticity and the reliability of the SAPS letter and thereby contending that such letter does not hold evidentiary weight. A confirmatory affidavit from the author should have been filed to substantiate the letter's content. However, if the correspondence is taken into consideration, and on a proper reading, the letter does not inform Discovery, nor does it advise that an investigation is still pending.

[32] At this juncture, I find it appropriate to set out the contents of the letter which reads:

"APPLICATION TO STOP ALL INSURANCE PAYMENTS ON ATTERIDGEVILLE CAS 544-11-2020 MURDER

1. *On 2020-11-29 at around the witness and deceased person were deriving in their gold colour Volvo registration number DD 9[…] from Hartbeespoortdam R511 and turned into Church street Atteridgeville where apparently the vehicle had a flat tyre.*
2. *The witness the stopped the vehicle next to road where he and the deceased then changed the left tyre.*
3. *When they were finished changing the tyre a white VW polo Vivo stopped at the back of them. Two suspects black male approached them and one took out a firearm and demanded the keys for the Volvo and the other suspect took out the knife and grabbed the deceased around the neck. The deceased then shouted to the witness then ran and which he did. Whilst in the bush the witness heard one gunshot went off and saw the white VW Polo drove away. The witness then found the deceased*

covered in blood sitting in back of the Volvo. The deceased later died in Kalafong hospital.

4. INVESTIGATION REVEALED:

4.1 The story what witness the son of deceased JORDAN BASDEO told police does not add up. Experts revealed that the deceased were sitting at back of vehicle when he was shot where the witness told police otherwise. The son said his dad the deceased were outside the vehicle when he was shot.

4.2 Also was discovered that the son took out some policies on the life of the deceased.

4.3 The son, JORDAN BASDEO ID number 8[…] is beneficiary on all the policies. The deceased, PREM EMMANUEL BASDEO ID number is 6[…].

5. Any queries can be forwarded to Investigating Officer, D/WO VA Saunders, tell 082 […] or email S[…]V@saps.gov.za.

6. Your co-operation will be highly appreciated."

[33] Both parties referred me to two specific authorities, namely the ***Nkobe*** matter[13] and the ***Alexander*** matter[14] on this aspect.

[34] In ***Alexander***, the issue on point was whether the respondent insurer faced with an otherwise proper claim by the beneficiary could refuse to either repudiate or honour the policies until sufficient information became available from certain

[13] Nkosinathi Nkobe vs Liberty Group Case Nr. 2021/23807 Gauteng Local Division, Johannesburg.
[14] Klencovljevic Alexander vs Discovery Life Limited Case Nr. 46154/2013 and 46155/2013 ZAGPHC 191 dated 18 August 2014

unrelated third-party investigative processes at some determined point in time. Therein Discovery's case had also been that it was not prudent to pay out any claims in terms of the policies until the SAPS investigation in terms of the deceased death was finalised. The court noted that Discovery never conducted its investigation in terms of the alleged illegal activities of the deceased, nor did it undertake any independent assessment of the merits of the claim. It also emphasized that Discovery failed to make the most basic enquiries regarding the progress of the investigative findings.

[35] I pause to emphasize that even in this matter, no evidence was presented before me that Discovery followed up on the status of the SAPS investigation in the period before summary judgment proceedings was instituted. An enquiry was made only after the institution of the summary judgment proceedings. There may have been the possibility that in fact the investigation was finalized months before and the delay could have been averted by Discovery.

[36] The court in ***Alexander*** at paragraph 21 echoed that:

"I am not aware of any South African authority on the right of an insurer to defer its assessment or election pending information from third-party investigative processes which it hopes to benefit from and the limitations and requirements which the law will impose in such a situation."

[37] The court therein also appreciated the fact that although it may be necessary to await the outcome of investigative processes, there was a need to balance the fairness in respect of both the insurer and the insured under the prevailing

circumstances. The assessment of the claim has to be done within a reasonable time.

[38] Later in ***Nkobe*** (at paragraph 26 and 27), the court further affirmed that there is no rule of law which stays civil proceedings where a criminal prosecution is pending. A civil stay would only be granted if there is an element of state compulsion impacting on the accused's right to silence and further highlighted that such stay is normally only allowed in certain circumstances. More importantly it expressed that a deferment/stay can only in exceptional cases be lawful.

[39] In ***Nkobe***, reliance was specifically placed on a specific exclusion clause (clause 7) that stipulated that no benefits will be paid if a claim arose directly or indirectly from the life assured or the policy holder's willful and material violation of any criminal law. The court affirmed the principle refore ***Nkobe*** settled the proposition that deferring payment pending the outcome of investigative processes was no defence at all. It is also noted that clause 7 was not pleaded in the papers as a defence.

[40] In argument, counsel for the respondent argued that when considering the said authorities, I should exercise caution as the facts in this matter is distinguishable. It was pointed out that in ***Nkobe*** and ***Alexander***, the insurers were not reliant on an express term contained in their policies whereas in this matter, it was expressly stipulated that an insurer had to await the outcome of the police investigation or a third-party investigation and furthermore reliance on clause 12.4 was its defence at all relevant times.

[41] The deferment of payment of a claims issue has been adjudicated by our courts and does not constitute a defence except in exceptional circumstances. I have noted that Discovery had not pleaded that exceptional circumstances exist.

[42] The fact that clause 12.4 was specifically pleaded *in casu* does not assist the respondent. Notably in ***Nkobe***, the court refused to grant the stay of proceedings, not only on the premises that the defence was not properly pleaded, but also on the basis that it did not constitute a valid defence.

[43] In principle a court is required to balance various factors, namely prejudice, delay and fairness to both parties when considering whether deferment is justified. At paragraph 53, ***Nkobe*** upheld the principle that the balance of fairness favours the insured and in those instances it is not in the interest of justice to have deferred the payment. In considering the factors of prejudice, delay and fairness, they are in favour of the applicants.

[44] On the facts in ***Nkobe*** the claim was lodged in 2017, the action was instituted in 2021 and in 2024 Liberty had still not paid. There was no doubt that the delay was unfair and caused prejudice to the insured party.

[45] I conclude that the defence is neither *bona fide* nor good in law and thus does not raise a triable issue. The first applicant was justified in pursuing the summary judgment proceedings and is therefore entitled to the interest and costs.

INTEREST AND COSTS

[46] Interest is a legal corollary to the principle of indebtedness forming a separate and distinct indebtedness of its own. In terms of Rule 32(1) this court is empowered to grant an order for interest and the ancillary claim of costs.[15] The applicant claims interest from date of the letter of demand being 6 September 2022, to date of payment.

[47] On the issue of costs, the first applicant seeks a punitive costs order. In the main, its argument was that Discovery was not *bona fide* in defending these applications. It, *inter alia*, argued that not only were the defences not *bona fide*, but Discovery was obliged to investigate the claim independently as well as followed up promptly with the investigators.

[48] In exercising my discretion, I am aware that punitive costs orders may be awarded against a party in instances where a court marks its disapproval of a litigant's conduct in the litigation process. Parties have been penalized in instances where they have litigated in bad faith and particular when there was an abuse of the process of court.[16]

[49] In my view, this one such instance where punitive costs are warranted. Despite the submission of the claims since 4 December 2020, Discovery failed to pay the benefits to the applicants. Two years later in 2022, even after the letter of

[15] All Purpose Space Healing Co of SA (Pty) ltd v Schweltzer 1970 (3) SA 560 D at 562-563
[16] Public Protector v South African Reserve Bank 2019 (6) SA 253 (CC)

demand was issued, no payment was forthcoming. A year later, in June 2023, only after the summons was issued, does Discovery settle the second applicant's claim. Simply put, it took Discovery 2½ years to pay a claim out where no issue was raised in respect of the second applicant's claim.

[50] Moreover in respect of the first applicant, Discovery withheld his benefit payout without following up on the investigation status. It appears to have only made enquiries after the institution of this application. Litigation as well as the continuation thereof could have been avoided if Discovery dealt with the claims timeously.

[51] I am of the view that Discovery's conduct was unreasonable in these circumstances. I am therefore inclined to order to pay the costs on a punitive scale, as between attorney and client.

H KOOVERJIE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances:

Counsel for the Applicants:	*Adv. J de Beer SC*
Instructed by:	*Couzyn, Hertzog & Horak Inc*
Counsel for the Respondent:	*Adv DC Ainslie*
Instructed by:	*Keith Sutcliffe & Associates*
Date heard:	*21 August 2024*
Date of Judgment:	*10 September 2024*