IN THE COURT OF APPEAL OF LESOTHO

Held at Maseru

C of A (CIV) N0.27/2013

In the matter between:

RAMETSE MPHANYA **APPELLANT**

and

METROPOLITAN LESOTHO LTD. **1ST RESPONDENT**

METROPOLITAN MEDICAL SCHEME **2RD RESPONDENT**

CORAM: SCOTT, A.P.

HOWIE, J.A.

THRING, J.A.

HEARD: 9 OCTOBER, 2013

DELIVERED: 18 OCTOBER, 2013

SUMMARY

Application for an order declaring withholding of applicants' medical aid contributions to be null and void, and other relief – Founding affidavit largely unintelligible – No proper case made out for relief sought – Terms of contract of employment not substantiated, nor terms of medical aid scheme – Application correctly dismissed by Court a quo.

JUDGMENT

THRING, J.A.

[1] The appellant brought an urgent application against the respondents in the Court a quo in which he claimed, inter alia, an order –

> "… declaring the decision of withholding applicant's medical aid money null and void."

There was also a prayer in the notice of motion that the first respondent be "restrained or interdicted from terminating applicant's policies pending the finalization of this application," but since this relief was temporary and pendente lite, it need not be considered here. A further prayer dealing with severance pay and pensions was abandoned in the Court a quo. There was also an alternative prayer that the respondents "determine and pay applicant's additional disability cover."

[2] In the Court a quo the appellant's application was dismissed, with no order as to costs. The appellant appeals against this order.

[3] The allegations contained in the appellant's founding and replying affidavits consists of a largely unintelligible, garbled mish-mash from which it is impossible to extract any rational case or relevant set of facts. For example, the following appears in his replying affidavit:

> "I aver that as a sickly consultant, it was a frightful benefit that I be 'topped up' and was paying PAYE as a result of the amount I had been 'topped up' with but still nothing was coming on my way as medical aid was not working despite contributions still being made to it.
>
> I aver it is ironical that I had been denied beneficial use of M31,518,54 as refund for August 2007 to May 2008 by

the respondent now admitting that my medical aid continued to be active in 2009" (sic).

[4] However, the following can be gleaned from the appellant's avernments, such as they are, supplemented by information contained in the respondents' opposing affidavit:

(a) The appellant was employed by the first respondent on 1 July, 2005 as an "agent consultant to recruit clients" on a purely commission basis of remuneration. As long as he was "productive," it was mandatory for the appellant to be a member of the second respondent, the first respondent's medical aid scheme. It would seem that he duly joined the second respondent medical aid scheme under its "Premier" option, and that from the month of August, 2007 monthly deductions were made by the first respondent from his remuneration in respect of his contributions to the scheme.

(b) During or about February, 2006 the appellant had been found to be HIV positive. He was required by the first respondent to register with an organisation called Qualsa's Disease Risk Management programme, which he did in June, 2007. His income thereafter declined and by November, 2007 his net remuneration had been reduced to nothing. However, the respondents (or, more correctly, probably, the first respondent) paid the appellant's medical aid contributions on his behalf by

means of what are called in the papers "top-up" payments. The total amount paid by the first respondent for the appellant's benefit by way of "top-up" payments was M31,518.54. These payments were made in respect of the period from August, 2007 to May, 2008.

(c) At some stage before 11 June, 2009, and for reasons which are not apparent on the papers, the second respondent refunded the aforesaid sum of M31,518.54, being the aggregate of the "top-up" payments, to the first respondent. This money was refunded to the first respondent rather than to the appellant because it had been paid by the former. Subsequently, the first respondent paid the appellant M6,144.48, this sum apparently being the extend of the appellant's share of the refund. It is this sum of M31,518.54 or, perhaps, this difference between this sum and M6,144.48 which seems to form the gravamen of one of the appellant's complaints against the respondents.

(d) On 25 September, 2009 the appellant resigned from his employment with the first respondent with effect from 1 October, 2009. He says that he resigned only on 6 February, 2010. In the absence of convincing evidence that the latter date is correct, that averred by the respondents must be accepted. However, nothing seems to turn on this date. Whenever it was, the appellant's

membership of the second respondent scheme ceased, at the latest, on his leaving the first respondent's employ, and in any event he withdrew from the first respondent's employee benefits scheme, it seems, with effect from 1 October, 2009.

[9] The Court a quo, in discussing the application, found that the appellant had failed to make out a case "in terms of the prayers in his notice of motion." In particular, the learned Judge a quo held that the appellant had failed to substantiate the terms of his contract of employment with the first respondent, and that it was not clear how the "top-up" payments were supposed to have worked. As regards the allegation by the appellant that they were made out of funds which had been withheld by the first respondent from the appellant's remuneration as so-called "retention," he found that there was nothing in the papers to support this averment: in particular, there is no sign in the various remuneration statements which the appellant has placed before the Court to suggest that any such retention was made. I can find no fault with any of these findings by the Court a quo.

[6] As for the alternative claim relating to the appellant's alleged additional disability cover, there is next to nothing said about it by the appellant in his founding affidavit. He merely avers that he qualifies therefor, in the form of a so-called "income continuation benefit or ICB," inasmuch as he joined the

second respondent scheme whilst he was still productive. He does not give any details of such cover, nor of its terms, nor does he even say that he has demanded it, nor that it has been refused. In reply he merely reiterates baldly that his medical aid scheme "remains active to date via Metropolitan Income Continuation Benefit or (ICB)…" These vague, flimsy and unsubstantiated statements cannot serve as a sound basis for the relief claimed in this connection by the appellant.

[7] In the premises the appeal is dismissed, with costs.

_____

W.G.THRING

JUSTICE OF APPEAL

I agree. _____

D.C. SCOTT

ACTING PRESIDENT

I agree. _____

C.T. HOWIE

JUSTICE OF APPEAL

For Appellant: C.J. Lephuthing

For Respondent: R. Setlojane