



**BEFORE THE APPEAL COMMITTEE OF THE COUNCIL FOR MEDICAL  
SCHEMES  
INSTITUTED IN TERMS OF THE MEDICAL SCHEMES ACT, NO 131 OF  
(1998),  
HELD VIA THE MICROSOFT TEAMS VIDEO AND AUDIO CONFERENCE  
TECHNOLOGY,  
HEARD ON 04.12. 2025  
RULING PRESUMED TO HAVE BEEN ISSUED ON 22.12.2025  
BY CIRCULATION TO THE PARTIES**

**CASE NR: CMS-84839**

In the appeal of:

**M**

Appellant

and

**COUNCIL FOR MEDICAL SCHEMES**

First Respondent

**REGISTRAR OF MEDICAL SCHEMES**

Second Respondent

**GENESIS MEDICAL SCHEME**

Third Respondent

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**RULING AND REASONS  
APPELLANT'S REQUEST FOR POSTPONEMENT**

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## FACTUAL MATRIX

1. These proceedings turn on an appeal within the contemplation of s 48(1) of the Medical Schemes Act, (the Act), whereof Mr M, (the Appellant), appeals the ruling issued by the Second Respondent, the Registrar of the Council of Medical Schemes, (the Registrar), on 15 August 2024 (the "**Ruling**"),<sup>1</sup> in a s 47 complaints procedure.
2. The Registrar's ruling found that the Registrar acted lawfully by declaring that the Appellant's membership of Genesis Medical Scheme, (the Third Respondent), void *ab initio*.
3. Aggrieved by the Registrar's ruling, the Appellant noted an appeal accordingly.
4. The appeal was first enrolled on 6 August 2025 but was postponed *sine die* on account of the Appellant seeking to adduce expert evidence, this was opposed by the Third Respondent, the postponement also impinged on a dispute as to which party had the duty to begin in the s 48 proceedings.
5. Subsequently, on 29 October 2025 the matter was re enrolled for hearing on 4 December 2025, the Appellant was directed

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<sup>1</sup> Record - page 256

to deliver an indexed and paginated bundle as well as heads of argument on even date.

6. On 27 November 2025 the Appellant's attorney, Mr X (Mr X), of XXXX Attorneys, requested a postponement of the appeal hearing, which notice was served on the CMS secretariat, intimating he would be unavailable on 4 December 2025, due to his involvement in a Labour Court trial in Johannesburg, from 1 to 4 December 2025. Proof of set down for 29 July 2025, and enrollment of the matter for hearing on 1 December, 2025, was accordingly provided by MrX.
  
7. Save for the fact that the Appellant did not comply with the aforesaid directive to file a copy of its indexed and paginated bundle including its heads of argument, it is noted on the other hand, that the Third Respondent filed its Heads of Argument based on the merits of the appeal on 4 December 2025.
  
7. On 4 December, 2025 before the Committee commenced its order for the day, the Appellant served the CMS secretariat with a medical certificate disclosing that he had been examined by Dr XXX, a medical practitioner, on 2 December

2025, who certified that the Appellant was unfit for work from 2 to 5 December, 2025.

8. The Appellant had already been advised that it behoved the Appeal Committee to initiate a formal hearing in view of his intended application for postponement, so as to determine the issue fairly. The Appellant duly obliged with the appearance of Adv Z, (Adv Z, alternatively, Counsel), on the Appellant's behalf upon being briefed by Mr X
9. On even date and while the Appeal Committee's order for the day was underway, the Third Respondent served on the CMS Secretariat its heads of Argument named, '*THIRD RESPONDENT'S WRITTEN SUBMISSIONS RE APPELLANT'S APPLICATION FOR POSTPONEMENT*', amplifying its aversion against postponement of the matter.
10. The process before the Committee on 4 December 2025 was thus a precursor, it was for purpose to determine whether or not the appeal hearing be proceeded with or postponed to a future date, depending on the reasonableness of the respective arguments of the parties, and the judicial exercise of discretion.

## **ISSUE FOR DETERMINATION**

11. As alluded to, the crisp issue was to determine the reasonableness of continuing with the appeal hearing or postponing it, in view of the absence of the Appellant and his legal representative.

## **APPELLANT's SUBMISSION**

### *Unavailability of Legal Representative:*

12. Advocate Z, argued that the primary reason for the postponement was the unavailability of Mr. X, the appellant's legal representative, due to being double booked with a Labour Court trial apart from the Appellant's appeal. This conflict was known to him for at least a month prior.
13. He stated that the Labour Court matter was set down for 29 July 2025, but its enrolment was for 1 to 4 December 2025, the enrolment date emerged at a later stage.

14. He opined furthermore that the Labour Court set down having occurred first, this was an ethical issue that bound Mr X to attend that court first.
15. Counsel also emphasized that the appellant, Mr. M, consulted a medical practitioner and was advised to take time off due to an eye operation, rendering him unable to attend the hearing and provide instructions to his legal practitioner in case of need during the appeal proceedings.

*Prejudice to the Appellant:*

16. It was stated that proceeding without the appellant or his counsel would result in significant prejudice. Z pointed out that if Mr. M was unavailable due to medical reasons, the appeal could not effectively be represented.

*Interest of Justice:*

17. According to Adv Z, granting the postponement would serve the interest of justice, as it would allow the appellant adequate time to prepare for the case with proper representation. He indicated a willingness to proceed in January 2026, minimizing any delay.

*Legal Principles:*

18. Adv Z cited that postponements are an indulgence and are granted on the basis of *bona fide* requests, they must be timely made while considering the overall interests involved, including that of the public and the appellant.
  
19. He agreed with the case law authorities cited by the Third Respondent on the issue as the correct law on the issue, in respect thereto he placed much stock.

**THIRD RESPONDENT'S SUBMISSION**

*Lack of Strong Motive for Postponement:*

20. Mr A sought to counter Adv Z's arguments by stating that postponements should not be granted lightly and must be well substantiated, such indulgence is not for the taking. He argued that the Appellant had sufficient time to prepare and failed to do so.

*Timing and Prior Knowledge:*

21. He intimated that Mr. X had known about the scheduling conflict for a month prior and that the Appellant did not communicate this in a timely manner. Mr A highlighted that there was an absence of any substantiation as to why the matter could not proceed or why alternative arrangements had not been made. He amplified the Third Respondent's misgivings on this aspect by intimating that Mr M, to whom correspondence on the Appellant's appeal was directed, could and should have proceeded with the appeal hearing on 4 December 2025, in the absence of Mr X.

*The Appellant's application is a Tactical Manoeuvre:*

22. Mr A suggested that the request for postponement appeared to be a tactical manoeuvre by the Appellant, as a means thereby as to cause delay to the proceedings, especially considering that no heads of argument or evidence summary had been submitted by the Appellant, as required.

*Public Interest:*

23. Mr A also argued that the public interest should be considered, as unnecessary delays waste public resources, disrupt the administration of medical scheme disputes, and

reiterated that the case had already been postponed previously.

24. I pause now to turn to the legislative and constitutional framework regulating this issue,

25. Counsel for the Appellant acknowledged that he is *ad idem* with the case law authorities presented by Mr A as submitted by the latter particularly at paragraph '10' of the Third Respondent's heads of argument, which succinctly provide as follows respectively:

26. *First*, in **Rabie v Cotterell NO and Others**,<sup>2</sup>

27. The court in this case summarized important legal principles regarding applications for postponement, notably:

*Indulgence Requirement:*

- i. An applicant for a postponement is seeking an indulgence. They must provide a full and

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<sup>2</sup> [2023] ZAECELLC 1

satisfactory explanation for the circumstances leading to their application.

- ii. A postponement should not be refused if the non-readiness to proceed has been adequately explained is not due to delaying tactics, and justice requires or necessitates further time to present the case.

*Timeliness of Application:*

- iii. Applications for postponements should be made as soon as the relevant circumstances are known. However, a court may still grant a postponement even if the application was not made timeously if fundamental fairness and justice justify it.

*Bona Fides of the Application:*

- iv. The application must be *bona fide*, not merely a tactical manoeuvre to gain an unfair advantage.

*Prejudice Considerations:*

- v. The court should evaluate the prejudice that a postponement would cause to both parties.
  - vi. Prejudice to the respondent will be weighed against the prejudice to the applicant if the postponement is denied.
28. The court has discretion in considering whether any resulting prejudice can be adequately compensated, often through costs or other measures.
29. *Second*, in **Psychological Society of South Africa v Qwelane and Others**.<sup>3</sup>
30. In this case, the Constitutional Court highlighted additional principles regarding the granting of postponements:

*Proper Motivation:*

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<sup>3</sup> [2016] ZACC 48

- vii. Applications for postponement must be well-motivated and substantiated; they are not just granted upon request.

*Discretion in Granting Applications:*

- viii. The court's discretion involves considering several factors, such as:
  - a) Timeliness of the application.
  - b) Fullness and satisfaction of the explanation for the postponement.
  - c) Potential prejudice to the parties, particularly if the application is contested.
  - d) Interests of Justice:

31. The determination of whether a postponement is justified is influenced by what serves the interests of justice, which

encompasses not just the interests of the parties involved but also broader public interest considerations.

## **EVALUATION**

32. It is to be noted that the Committee's evaluation takes judicial notice of the common cause issue between the parties, that is, the legal principles enunciated in the **Rabie v Cotterell NO and Others** as well as the, **Psychological Society of South Africa v Qwelane and Others**, *supra*.
33. The Committee is in agreement with the imperatives set out in the aforementioned case law authorities and posits that the submissions of the parties are on the whole grounded and characterized on the same. In any event, Counsel for the Appellant made that much clear.
34. It bears mention that there is a further dimension implicit in the determination whether or not to grant a postponement as will become apparent later in the reasons proffered.
35. Harking back to the submissions so clearly articulated by the parties, and the written submissions in support of their respective arguments.

*The set down and enrollment of Mr X's Labour court case:*

36. It is submitted that Counsel for the Appellant made bold that Mr X's Labour Court trial was set down for 29 July 2025, this date predates the CMS set down date of 4 December 2025. All things fairly considered, it can be accepted ordinarily that the administration of set down dates and enrolment of cases, is intrinsically within the remit of the Registrar of a Court. This case was by no means an exception to that accepted norm.
  
37. With that in mind, in this hearing, Adv Z ventured the proposition that the fact of the set down of the earlier date for Mr X's Labour Court case, (*viz*, 29 July 2024), was of binding effect ethically to Mr X. Thus, Mr X was plainly bound to the dates of the enrolment of his Labour Court case being 1 to 4 December 2025.
  
38. Save for the foregoing, Counsel's proposition was not met with a countervailing argument by the Third Respondent, alternatively, it was not argued with any discernable force, and lacked heft. Thus, it went uncontested by the Third Respondent.

39. The corollary to the foregoing point is that Mr X's absence has been substantiated and objective reasons were proffered which were full and satisfactory. In that regard, the Committee was favoured with proof of the enrollment date of Mr Craford's Labour Court case, there was no good reason to second guess that documentary evidence.

*X Attorneys ought to have deployed an alternative attorney to proceed with the case:*

40. The Third Respondent argued in favour of the privity of contracts, asserting that, in the absence of Mr X, another attorney, Mr M from the same firm, should have been deployed by the firm to proceed with the appeal hearing in Mr X's absence. While the principle of privity of contracts is to be upheld, to the extent that the contractual agreement to be represented in this appeal hearing may have been by and between the Appellant and X Attorneys, the Committee throws caution to the wind, given the possibility of a *caveat* attaching to these agreements of mandate, which may provide that the agreement is specifically between the Appellant and a specific attorney, in this case Mr X. It is submitted that the Third Respondent opined that the agreement was between the Appellant and X Attorneys. This appeared speculative

because no direct evidence was led to substantiate this conclusion. As alluded, the Committee would rather err on the side of caution, taking cue that fair trial rights enshrined in the Constitution,<sup>4</sup> extend the right to a person, (an accused person), to choose a legal representative of their choice.

*The absence of the Appellant in the hearing, due to medical incapacity:*

41. It is apposite to deal with the Appellant's production of a medical certificate manifestly as a request for indulgence for the postponement of appeal hearing on account of ill health.
  
42. The medical certificate was not objected to by the Third Respondent notwithstanding the fact that it was not accompanied by an affidavit to perfect and validate it beyond the threshold of hearsay evidence. Be that as it may, the Appellant was made aware that he files the attending doctor's medical affidavit. The import of the medical certificate validating that the Appellant was indisposed was generally accepted. The Third Respondent argued that the fact of Mr X's unavailability to appear in the proceedings and the production of the medical certificate by the Appellant were a tactical manoeuvre calculated at delaying the proceedings. The

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<sup>4</sup> S 35 of the Constitution of the Republic of South Africa, 1996

Committee is inclined to be slow at arriving at such an unsupported conclusion which at face value, appear to be changing issues of fact into issues of motive.

43. At the heart of the absence of the Appellant, took issue with the appeal hearing proceeding in the absence of the Appellant, and called into question how his legal representative will obtain instructions, if needs be, during the course of the hearing. This argument is attractive and ought to have been ventilated by the Third Respondent.
44. It is accepted that the application must be *bona fide*, not merely a tactical manoeuvre to gain an unfair advantage. However in the absence of evidence rebutting the evidentiary material on which the Appellant and his legal representative rely upon for the postponement, it would be arbitrary to reject such evidence and its probative value. Nothing more turns on this issue which is not only countenanced by notions of fairness but by procedural fairness imperatives as well.
45. In **Hlophe v JSC**,<sup>5</sup> the Court held that the JSC acted unreasonably and capriciously by proceeding with the hearing despite evidence of JP Hlophe's, (Judge President

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<sup>5</sup> 2009 ZAGPJHC 19

Hlophe), as he then was), medical incapacity, following Hlophe's absence due to medical grounds.

46. The court decided this was a breach of the principle of procedural fairness under s 33 of the Constitution. This was also found to be an unlawful exercise of public power because the JSC ignored relevant considerations, ie, the medical certificate, the decision to proceed in the absence of JP Hlophe was irrational, it compromised JP Hlophe's right to be heard.

47. To the extent of the request by Mr X for indulgence to postpone, in **Rabie v Cotterell NO and Others, supra**, the Court provided in respect of the timeliness of the application that, applications for postponements should be made as soon as the relevant circumstances are known. however, a court may still grant a postponement even if the application was not made timeously if fundamental fairness and justice justify it. This is one such case.

#### *Prejudice to the Third Respondent*

48. Counsel for the Appellant asserted that no prejudice would be visited on the Third Respondent should postponement be granted. He proposed that a short postponement was

requested for the appeal to be heard in the course of January 2026, to ameliorate prejudice, if any. Mr A expressed a view of the prejudice to be caused by the postponement in terms of the preparations made by the Third Respondent, this inevitably did not find traction in view of the proposal of a short postponement as proposed, and the matter being heard in the last two weeks of January 2026.

## **FINDINGS AND CONCLUSIONS**

49. The effort made by the Third Respondent in providing case law authority on the issue is commendable, which Adv Z graciously admitted to be the correct applicable law, assisted in the determination of this postponement issue. The Committee extends its appreciation to both legal representatives for the collegial yet robust manner in which they presented their respective arguments and their display of decorum in this issue, where the stakes were indeed high for the parties.

50. The conspectus of evidence before the Committee and case law authority referred to, favours the grant of the decision to

postpone, as embedded on fair reasons to postpone the appeal hearing to a later date.

51. Applicable provisions of the Constitution including the right to just administrative action and its offshoot being the Promotion of Administrative Justice Act, have been suffused into the provisions of the Medical Schemes Act 131 of 1998.

52. Thus, in addition to the case law authorities applied to the facts alleged by the parties respectively, implicit in the reasons proffered by the Committee is that, refusal of postponement stood to offend:

a) s 33 of the Constitution which guarantees everyone the right to administrative action that is lawful, reasonable and procedurally fair;

b) Succinctly, PAJA requires a fair hearing and an opportunity to make representations.

c) Section 34 of the Constitution guarantees the right to fair public hearing.

53. The presiding officer exercised discretion by weighing the merits of the Appellant's arguments against the Third Respondent's objections. The need for a fair hearing and

adequate representation for the Appellant were deemed to be not only significant but sacrosanct.

## **CONCLUSION**

1. The ruling of the CMS Registrar in the s 47 complaints process, which found in favour of the Third Respondent subsists and is of binding effect. The parties are directed to disclose a date by agreement, such date to fall due in the last two weeks of January 2026. The short postponement compensates for the eventuality of prejudice being cause. It warrants mention that the appeals committee is not statutorily competent to levy costs orders.
  
54. In the end, granting the postponement is consonant with the interests of justice.
  
55. Although the following issue was not before us in the hearing of 4 December 2025, to expedite the impending appeal hearing and avoid let or hindrance, the parties are directed to narrow issues and draw up a joint minute for filing to the CMS Secretariat, within a reasonable date before the eventual set down date.

## **Ruling and Reasons.**

- 1) The postponement is granted;
- 2) The Appellant and Third Respondent to propose a date for the hearing of the appeal and inform the CMS Secretariat within 7 ordinary days of the hearing of 4 December 2025;
- 3) Such date as agreed to between the Appellant and the Third Respondent, to fall due in the last two (2) weeks of January 2026;
- 4) The Appellant and the Third Respondent are directed to narrow the issues for consideration and determination in the impending appeal hearing and agree on a joint minute, to expedite the hearing and for the avoidance of undue let and hindrance to the upcoming process;
- 5) Such joint minute to be filed with the CMS Secretariat within a reasonable time ahead of the agreed to set down date.

**Adv T Maphike**  
**Member: Appeals Committee**

**Dr X Ngobese, Dr T Mabeba and Dr H Mokhari, Concurring**

**Date of Hearing:** 04 December 2025

**Date of Ruling:** 22 December 2025

**APPEARANCES:**

**Counsel for Appellant:** Adv Z  
Instructed by:  
X Attorneys, Rivonia.

**Third Respondent's Attorney:** Mr J A:  
XX Attorneys, XXX.