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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case number: 2023-013519

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

Date 26 September 2024

Signature

In the matter between:

C[...] M[...] M[...] Applicant

and

DISCOVERY LIFE Respondent

JUDGMENT

WILLIAMS, AJ

[1] The applicant acts in her capacity as mother and guardian of her daughter, B[...] M[...] (born 26 January 2009). She claims benefits under a Group Life Policy issued by the respondent. In issue is the proof that one Mr I M M[...] (“the employee”) is B[...]’s father. He passed away on 7 May 2016.

[2] The Global Education Protector portion of the Group Life Policy concluded between the respondent and the employer, Trollip Mining Services 2000 (Pty) Ltd (“the employer”), provides indemnity cover for the education of an employee’s children.

- [3] 3.1. The respondent disputes, firstly, the applicant's *locus standi*.
- 3.2. It also argues that the respondent's decision to reject the claim is not reviewable, being rooted in contract.
- 3.3. The respondent also contends that the applicant has not met the preconditions for liability under the policy. An Unabridged Birth Certificate, which states paternity and proof that the employee actually made contributions to B[...]’s education, are required.
- 3.4. It is also contended that entitlement to benefits has prescribed.

LOCUS STANDI:

- [4] For applicant to have *locus standi* there must be privity of contract between the applicant and the respondent (or at least between the employee and the respondent). Otherwise, the applicant must show that she, B[...] or the deceased became parties to the contract, on the basis of the policy constituting *stipulatio alteri*.
- [5] The policy relied upon was concluded between the respondent and the employer. All benefits due under the policy are to be paid to the employer, in accordance with the employer's instructions. The employer paid the premiums.
- [6] LAWSA (Insurance Part 2 : (Volume 12(2), Second Edition) at 102 explains that a Group Insurance Scheme rests on an agreement between the employer and the members of the scheme (the employees). It is "*the scheme leader then contracts in his or her own name with the insurer (in casu, the respondent)*" (my parenthesis). The learned authors explain that there is no contract between the members (employees) of the scheme and the insurer (the respondent herein) "... *and consequently members do not acquire any direct or any other right against the insurer*".

[7] A number of authorities quoted by the respondent's counsel establish that employees are always non-suited in such cases on the basis of not having the necessary *locus standi* :

7.1 **Crossman v Capital Alliance Group Risk** [2022] ZAGPJHC 257 at paras 34 and 35:

“[34] In the circumstances, there is simply no basis for the conclusion that the deceased, as a member, was a contractual party to the Policy. Further, the Policy provisions are not indicative of an intention by the contracting parties that the members and/or beneficiaries should become parties to the contract. To the contrary, they indicate quite clearly that the members and/or beneficiaries are not intended to become parties to the Policy.

[35] In the circumstances, having regard to the express provisions of the Policy, I am of the view that the Policy does not constitute a stipulatio alteri in any form and no contractual privity was created at any time between Capital Alliance and Crossman. It follows, in my view that Crossman has, as a result failed to establish her locus standi to institute these proceedings.”

7.2 **Sage Life Ltd v Van der Merwe** 2001 2 SA 166 (W) at 169:

“The first principle is that it must be clear from the terms of the contract between the original parties that it is a contract meant for the benefit of a third in the sense that a third party is meant to step in, whether as an additional party or in lieu of one of the others. The clauses in the contract which indicate the contrary have already been referred to. The fact that there are express provisions requiring the scheme to make claims, requiring the excipient/defendant to pay the claims to the scheme and the express stipulation that the excipient/defendant may not claim premiums from the

plaintiff/respondent, all indicate an intention that members of the scheme or employees should not become parties to the contract.

In the circumstances, having regard to the express provisions of the contract between the scheme and between the excipient, Sage Life Ltd, I am of the view that the contract does not constitute a stipulatio alteri in any form and that there is no contractual nexus apparent from the documents which the plaintiff/respondent has placed before this Court. Even if that were the case, the excipient has argued also that a stipulatio alteri has not been pleaded and that the basic requirements for a stipulatio alteri have not been pleaded.”

7.3 Capital Alliance Life Ltd v Simonsen [2005] JOL 13913 (N):

The respondent’s counsel argues:

*“In **Capital Alliance Life Ltd v Simonsen [2005] JOL 13913 (N)**, the plaintiff was a member of a “provident fund” (essentially a Group Life scheme) offered by his employer. The plaintiff was disabled and left his employer's service. As a result, he claimed disability benefits directly from the insurance company which underwrote his employer's provident fund. The insurance company issued a certificate acknowledging the claim on which it was stated that the claim be paid out, after tax deductions, by the employer. Nevertheless, the insurance company paid the disability grant for several months and then stopped. When the plaintiff took action the insurance company, as defendant in the court a quo, delivered a special plea that the plaintiff lacked locus standi. The Court a quo dismissed the special plea. On appeal, Levinsohn found that there was no privity of contract between the plaintiff and the insurer and upheld the special plea of no locus standi.”*

7.4 Connolly v The Southern Life Association Ltd and Another 2000 JDR 0629 (SE):

“The Court referred to the unreported decision in **Beling v The Southern Life Association Limited (Case No. CA 151/97)** and paraphrased the ratio in that judgment as follows:

“The court was there concerned with a contract between an insurance company (incidentally, the first defendant in the present matter) and a provident fund the terms of which were, to all intents and purposes, the same as the contract in the present case. It was held that the contract did not found any cause of action against the insurance company by the plaintiff in that case, who was a member of the provident fund and who had sought relief similar to that sought by the plaintiff in the present proceedings against the first defendant. The essential ratio of the decision was that the plaintiff was not a party to the contract in question.”

[8] I have searched for authority (in respect of Group Life Insurance Schemes) which might have assisted the applicant.

8.1 **Sage Life Ltd v Van der Merwe**¹ specifically dealt with this issue. It points out – in coming to the conclusion that the member of a Group Life Insurance Scheme party may not himself or herself claim benefits directly from the insurer – that for such third party (here the employee) to have *locus standi*, there must have been an acceptance of benefits – on the basis that such third party becomes a contracting party and that one of the other parties must “*fall out of the picture*”. That cannot be said to have happened in the instant matter. The doctrine of *stipulatio alteri* cannot be deployed here to allow applicant to escape the binding authority referred to above.

¹ 2001 (2) SA 166 (WLD).

[9] Clause 1 and 2 of the Group Life Benefit Scheme makes it clear that the employee (B[...]’s alleged father) became a member of the Trollip Mining Services Scheme, not a party. Any remedies sought must be sought against the Scheme, through the auspices of the erstwhile employer.

[10] It follows that the application must fail because the applicant does not have the *locus standi*.

TERMS:

[11] The policy requires that the particular child must be the biological or legally adopted child of the employee. The stated aim of the Global Education Protector benefit is to ensure that the education of a member’s child is not affected by the employee’s death.

[12] The obvious proof would be in an official Birth Certificate which indicates the paternity. The father’s particulars, which are to be stated on the Birth Certificate which the applicant obtained from the Department of Home Affairs (G[...]), is blank. The applicant explains the difficulties that she has encountered to obtain a Birth Certificate, which also includes B[...]’s father’s particulars. This is apparently difficult to remedy when the alleged father is pre-deceased.

[13] Clause 4.19 of the “Discovery Life Group Risk Plan Guide” casts the burden of proving eligibility for the Global Education Protector on the policyholder. Here the employer is the policyholder, not the plaintiff. Much turns on this. The employer has clearly adopted the attitude that it is reliant on the deceased member’s family securing and submitting proof that the employee was B[...]’s biological or adoptive parent.

[14] The respondent specifically contracted for the right to determine what “*the information required as proof of eligibility*” should consist of. It stipulated that “*if the claim is accepted, the benefit payment will only take place when all the requested information has been received*”. It is not clear whether the claim was “*accepted*” (seemingly not), subject to further information. The

respondent has demanded that *“at least an Unabridged Birth Certificate for the child and proof of payment by the member for the child’s school fees for the 12 months before the member’s death will be required”*.

HISTORY:

- [15] The employee (B[...]’s alleged father) passed away on 7 May 2016. This application was launched in February 2023, almost 7 years later. The correspondence attached to the application reveals that already in 2016, shortly after the demise of the employee, there were attempts to lodge a claim through the auspices of the employer’s broker. That apparently floundered, because of an inability on the part of the employer and/or the applicant to obtain a Full Birth Certificate from the Department of Home Affairs, wherein the particulars of B[...]’s father are also recorded.
- [16] Correspondence exchanged during 2018 reveals that there was a change of broker. The new brokers also took the matter up and was met with the refrain that there is still no proof of paternity, specifically that an Unabridged Birth Certificate reflecting who B[...]’s father was, had not been submitted.
- [17] Neither the broker/s, nor the employer, nor the applicant have been able to satisfy the respondent as to who B[...]’s biological or adoptive father is. The erstwhile employer should have pursued this and made efforts to assist the applicant. The employer is not before Court.
- [18] On 26 August 2022 (some 5½ years after the employee’s death) the respondent formally declined to satisfy the claim for benefits under the Global Education Protector portion of the policy. The respondent could not have been expected to hold the file open forever.
- [19] This application was issued by the Registrar on 14 February 2023. I accept it was served within 6 months of the formal rejection by the respondent. Because the matter dragged, it was launched almost 7 years after the employee’s death.

RELIEF:

[20]

20.1. Prayer 1 of the Notice of Motion seeks the review and setting aside of the decision of the respondent “... *to refuse to pay the educational plan under Policy Number 8[...]*”.

20.2. Prayer 2 seeks an order that the respondent be directed to pay the Educational Plan Policy in accordance with the policy within 30 days of the Court’s Order.

20.3. In the founding affidavit the case for review is formulated on the basis that the requirement that a claimant must submit an Unabridged Birth Certificate (which includes detail of the father), is irrational, arbitrary and exclusionary (and prejudicial to deserving children).

[21] The respondent’s rejection of the claim (allegedly) because of non-availability of an Unabridged Birth Certificate evidencing paternity, is, in similar vein, said to be irrational, arbitrary, exclusionary and prejudicial to B[...].

[22] It is alleged that the respondent failed to appreciate the prevailing known difficulties that arises in such cases. Most children do not have (or so it is implied) or cannot obtain an Unabridged Birth Certificate that establishes paternity.

[23] It is alleged that the respondent should have appreciated that proof of paternity (or of adoption) should also be able to be established by other evidence, not only by submitting an Unabridged Birth Certificate. I agree – but such evidence must establish on a reasonably acceptable basis, who the father is. What is required is not a document, but rather facts which enable the respondent to be satisfied of biological paternity or adoption.

[24] The applicant has attached to her application, affidavits by the deceased’s brother (M[...] S[...] M[...]) and the deceased’s sister (D[...] G[...] M[...]). The

affidavits “confirm” that the deceased, I[...] M[...] M[...], was the biological father of B[...].

[25] No proof is attached that the deceased (B[...]’s alleged father) actually paid for B[...]’s education or paid maintenance for a year before his demise. (The “*Global Education Claim*”-form, attached to an email on 12 January 2018 (see annexure “AA3” to the founding affidavit) requires proof that the member was paying school fees or Maintenance Orders and proof of maintenance payments is only required for “*6 months prior to the member’s passing*”.) Nothing at present turns on this.

[26] To be entitled to an order directing the respondent to pay benefits in accordance with the Educational Plan under Policy Number 8[...], the applicant must advance facts that drive one not only to the conclusion that the respondent ought to have been reasonably satisfied of paternity, but also that the other pre-requisites in the contract are established.

REVIEWABLE:

[27] If it be assumed that the applicant does have *locus standi*, be it in personal and/or her representative capacity, the question arises if the decision by the respondent to reject the claim, is contractual (i.e. not in the domain of public law and thus not subject to review).

[28] In my view, the respondent was quite entitled to stipulate as contractual pre-condition for payment of benefits under the policy, that it be provided with an Unabridged Birth Certificate that establishes paternity. The difficulties allegedly encountered with the Department of Home Affairs in this regard, are to be resolved with the Department. The respondent is not on record as stating that it is unamenable to proof of paternity by means other than the Unabridged Birth Certificate.

[29] The “decision” of the respondent not to provide the benefits of the policy until proved by an Unabridged Birth Certificate, was the stipulation of a private party

in contract – not subject to a judicial review. The **Multichoice Support Services (Pty) Ltd** case finds application.²

SPECIFIC PERFORMANCE/PAYMENT:

[30] If the relief sought in prayer 2 of the Notice of Motion is regarded as unrelated and separate to the purported review application (i.e. be seen as a demand for payment/specific performance), the applicant has failed to establish the paternity of B[...]. The affidavits submitted do not pass muster. They are in my view too sketchy. There is moreover no proof that the employee, before his demise, actually paid (be it for 12 months or for 6 months) for the education or actually contributed to the maintenance of B[...].

POSTPONEMENT:

[31] The appellant's counsel appealed to my sympathies to let the matter stand – to give the applicant chance to prove to respondent the paternity. In view of the problem as to *locus standi*, I decline to do so.

RESULT:

[32] In the result the application falls to be dismissed. The applicant, acting on behalf of her minor daughter, has seemingly not been assisted, as one would expect, by the erstwhile employer (nor by its broker/s). She elected to attempt to secure benefits under the policy on her own bat. I am not inclined to grant any costs order against her. Hopefully the situation can still be salvaged, but that is not possible in these proceedings.

[33] The application is thus dismissed. No order is made as to costs.

² **Multichoice Support Services (Pty) Ltd MultiChoice Support Services (Pty) Ltd v Calvin Electronics t/a Batavia Trading and Another (case no 296/2020 and 226/2021)** [2021] ZASCA 143 at paras 14 to 17 – see further **Greys Marine Hout Bay (Pty) Ltd and Others v Minister of Public Works and Others**; 2005 (6) SA 313 (SCA); 2005 (10) BCLR 931 (SCA) (13 May 2005)

**WILLIAMS AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

Date heard : 15 April 2024

Date of judgment : 26 September 2024

Representation for the applicant : Mr Matsobane Elias Makgopa
Instructed by Shapiro & Ledwaba Inc.

Representation for the respondent : Adv L M Spiller
Instructed by Keith Sutcliffe & Associates
Inc.