

**IN THE CONSUMER AFFAIRS COURT FOR THE NORTH WEST PROVINCE
HELD AT MMABATHO**

Case number: NW04B/18

In the matter between:

MAVIS BOGADIBOTSILE MASENG

PLAINTIFF

and

NOM & MAGG FUNERAL SERVICES (PTY) LTD

1st DEFENDANT

Registration number: 2014/033293/07

DOVELINK FUNERAL SERVICES (PTY) LTD

2ND DEFENDANT

Registration number: 2017/150454/07

Coram: J. Nkomo(Chairperson), P.Hlahane and K.Kgomongwe.

Heard on: 15 June 2018

Decided on: 15 June 2018

Reasons delivered on: 02 July 2018

Summary: Claim arising out of an insurance contract. Defendant alleged to have failed to honour a funeral cover claim in the amount of R 10 000.00.

Result: Matter enrolled as NW4B/18. Defendant ordered to pay claim amount of R 10 000.00 as well as costs for enforcement in the competent court on scale "B"

JUDGEMENT

J.Nkomo (P.Hlahane and K.Kgomongwe concurring)

Introduction

1. The plaintiff in this matter is part of group of plaintiffs that lodged a consumer complaint against the defendants on the grounds set out in the complaints. The complaints were dealt with together under case number NW/04/18. Although the

matters are related in terms of the defendants and the facts, the dates of the occurrences and the documentary evidence differ. The case file was not a model in terms of understanding of each plaintiff's case and the supporting documentation. Ideally each complaint should have been allocated its own case number as the process of enforcement of the judgment will have to proceed on an individual plaintiff basis. This being the position and for simplicity, the court directs that the complaint in respect of the plaintiff in this matter be recorded as NW/04B/18.

2. The plaintiff, Mavis Bogadibotsile Maseng of Magogwe Koikoi Village in Mahikeng lodged a consumer complaint with the North West Consumer Affairs Court against Nom & Magg Funeral Services ("the 1st defendant") and Dovelink Funeral Services (Pty) Ltd (the 2nd defendant), legal personae with business address at 10 Tillard Street Mahikeng. This is an account of the proceedings as they took place before us.

Background facts

3. The plaintiff took a funeral policy with the defendant on an undisclosed date in terms of which she would be paid the amount of R 10 000.00 in the case that the nominated person, Mr. Moakuhi Ezekiel Racoco passes away. The inception date of the policy is 01 September 2014 and under policy number 8000 678. The premiums payable in respect of the policy were in the tune of R 285.00 per month as at the time that the nominated person passed away on 28 August 2017 in Mahikeng and due to natural causes.

4. It appears that the plaintiff followed the claims process after the death of the nominated person and was promised that payment would follow. As at the date of the lodgment of the complaint, payment of the amount of R 10 000.00 had not taken place. The defendants were served with summons on 18 April 2018. In terms of the summons, the date of appearance was scheduled for 15 May 2018.

5. On 15 May 2018 the plaintiff was in attendance but the defendant was not represented. In this regard Mr. Letsogo who acted on behalf of the plaintiff as the Consumer Protector stated that he had been furnished with a medical certificate

compiled by Dr. Motsisi which stated that the representative of the defendants was not available due to ill health. The matter was accordingly postponed to 15 June 2018.

6. On 15 June 2018 the plaintiff was once more in attendance but there was no attendance for the defendants. Mr. Letsogo indicated that he had been approached in the morning by a certain member of the public who indicated that she had come to inform that the representative of the defendants was not well. Mr. Letsogo stated that he advised the person to wait for the court to start and that she would be called in when the matter was to be called. As at the time of the calling of the matter the person was nowhere to be found.

Analysis

7. A court dealing with a claim of the sort such as presented in this matter will have to be satisfied that there existed a policy for the insured event and that the insured event took place when the policy was active and that all the requirements for lodging a claim have been met. Lastly the court will have to be satisfied that the insurer has failed, refused or neglected to pay out the claim amount. We are satisfied that all of the requirements of establishing a claim have been met and as such a case has been made out in support of the relief sought.

Judgement

8. Having considered the applicable laws as well as having considered the papers filed on record, the following judgement is issued in the absence of the defendants:-

8.1 The defendants are jointly and severally ordered to pay the amount of R 10 000.00, the one defendant paying, the other is to be absolved.

8.2 The defendants shall be jointly and severally liable to pay to the plaintiff the costs that may be incurred in the process of enforcing the judgment in the competent court. The one defendant paying the costs, the other defendant to be absolved. Such costs shall be on the party and party scale "A" of the tariff of costs applicable.

Dated at Mmabatho on the 2nd day of July 2018.

John Nkomo
Chairperson

PLAINTIFF: **C/O THE COURT MANAGER**
NORTH WEST CONSUMER AFFAIRS COURT
NWDC BUILDING
CNR UNIVERSITY DRIVE AND PROVIDENT DRIVE
MMABATHO
2735

DEFENDANTS: **NOM & MAGG FUNERAL SERVICES (PTY) LTD**
1ST DEFENDANT
MAFIKENG

DOVELINK FUNERAL SERVICES (PTY) LTD
2ND DEFENDANT
MAFIKENG