

NEWS 

Sizwe Medical Fund routs CMS in curatorship battle

04 December 2020 - 10:23
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Sizwe Medical Fund, headed by principal executive officer Dr Simon Mangwatywa, scored a victory in the high court. File image
Image: Masi Losi

The registrar of the Council for Medical Schemes (CMS), Dr Siphso Kabane, has suffered a major loss in the Pretoria high court, where his attempt to place Sizwe Medical Fund under curatorship was dismissed with costs.

Justice Neil Tuchten found that there was no “rational basis for the registrar's opinion that curatorship was desirable or that good cause had been shown for the appointment of a curator”.

The judgment follows a lengthy battle between Kabane and the scheme after he scuppered the scheme's proposed amalgamation with Hosmed Medical Scheme earlier this year.

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- Justice Neil Tuchten

Kabane halted a merger of a new entity, which would have nearly 78,000 members, making it the eighth-largest open medical scheme in SA. This would have given black capital a major foothold in an industry which is seen as largely untransformed.

His reasons to halt the merger were that there had been “serious findings” and irregularities in Sizwe’s management report for the year 2019.

“Sizwe is in a sound financial position. Its members’ health and their economic investments are not at risk because of the policies or conduct of Sizwe and its board of trustees,” Tuchten said in his judgment.

“It is important in this context that where irregularities occurred and were identified, Sizwe and its board of trustees showed themselves willing and able to take corrective action.

“It was not appropriate for the registrar to use curatorship as a way of scrutinising the proposed amalgamation agreement. I therefore find that the opinion held by the registrar that curatorship was desirable is not based on reasonable grounds.”

He further found that “as to the irregularities raised by the complaints of October 2019 and the auditors’ report, those complaints, individually and cumulatively, do not form a rational basis for the registrar’s opinion that curatorship was desirable or that good cause had been shown for the appointment of a curator”.

In October last year the Competition Commission approved the Sizwe and Hosmed merger without conditions.

Tuchten said it was regrettable that he could not decide on the amalgamation as he had no jurisdiction, but that once the application for curatorship was disposed of, “there would be no reason for the registrar further to refuse confirmation”.

He said the basis for Kabane to decline the Sizwe/Hosmed amalgamation was not supported by evidence, and the registrar had conceded in court that the two schemes were better off merged.

The court said it was unfortunate that Kabane had ignored Sizwe’s requests for a meeting to explain itself regarding the concerns raised.

Instead, on June 8 Kabane wrote to the two schemes ordering them to suspend their amalgamation processes, saying he had been presented with the report of an inquiry by the council’s compliance and investigations unit.

When Sizwe declined to do so and requested more clarity, Kabane went to the courts on an urgent basis to apply for curatorship on July 9, but that application was dismissed for lack of urgency.

On November 23, Tuchten dismissed Kabane’s application to place Sizwe under curatorship with costs.