

**IN THE PROCEEDINGS BEFORE THE ENFORCEMENT COMMITTEE  
HELD AT PRETORIA ON 18 MARCH 2016**

**CASE NUMBER: 20/2015**

In matter of:

**REGISTRAR OF LONG-TERM INSURANCE**

**APPLICANT**

and

**ABANGCWABI MYENDEKI FUNERAL PALOUR CC**

**RESPONDENT**

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**DETERMINATION**

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*Abangcwabi Myendeki Funeral Parlour CC  
(Ruling)*

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CHAIRPERSON: The committee has made a decision and I shall now proceed briefly to set out our reasons for doing so. This committee was entrusted with the task of considering the merits of two charges brought against the respondent, a closed corporation with the name Abangcwabi Myendeki Funeral Parlour CC. The charges  
5 were brought by the Registrar of Long-term Insurance.

The founding papers were duly and timeously served on the respondent who failed, however, to present any answering affidavits or to co-operate in any way. This morning the record shows that an  
10 application was made for a postponement and that was declined.

The evidence shows that the respondent was registered as a closed corporation on 28 March 2007. Its registration was preceded by the registration on 9 September 2004 of another closed corporation names Myendeki Funeral CC with the same address as the respondent  
15 namely 21 Main Street, Tabankulu. That CC was finally deregistered on 8 July 2008.

The members of Myendeki Funeral CC were Mrs JB Myendeki and Mr TG Myendeki. Mrs Myendeki was recorded as the sole member of the respondent. There was evidence that the two CCs co-  
20 operated as the same entity conducting business from the same premises and were both controlled by Mr Myendeki. Both these CCs conducted business as funeral parlour providers.

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The essence of the first charge is that during the period 1 November 2008 to 1 August 2013 the respondent contravened Section 7(1) of the Long-term Insurance Act No. 52 of 1998 in that it carried on a long-term insurance business without having acquired  
5 due registration in terms of the Act.

The essence of the second charge is that over the same period the respondent, in contravention of Section 8(3) of the aforementioned Act, performed acts which amounted to entering into agreements, which <sup>by their nature</sup> amounted to the conduct of a business of a long-  
10 term insurer.

The evidence presented on behalf of the applicant was that Mr JA Dixon, who was the deputy Registrar of Long-term Insurance who made use of an investigator, who operated under his supervision and control and whose activities were supervised by Mr Dixon. He also  
15 had a confirmatory affidavit by Mr T Matsietsa who operated as an inspector. He also had sight of documentary evidence adduced in the course of the interview conducted in terms of the Financial Institutions Act, and importantly, he had before him a report of the ombudsman for long-term insurance.

20 It is necessary for me to briefly summarise the evidence around the report of the ombudsman, because that revealed a disturbing feature of the funeral parlour business conducted by the respondent.

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One Mrs MS Nkangala was approached by marketeers employed by the two CCs. I should incidentally observe <sup>that</sup> both the respondent and the other CC operated at the same time. Mrs Nkangala was interested and wished to make appropriate funeral arrangements for her grandmother. She first approached Myendeki Funeral CC. She was  
5 required to sign some documents and paid monthly premiums. Later on the respondent took over and collected the premiums as though it was the other party to the initial agreement.

The grandmother passed away on 2 August 2011 and on 11  
10 August Mrs Nkangala submitted a claim with the respondent in Centane. The claim was refused on the basis that the body of the diseased was not being kept at the respondent's mortuary. A protest was lodged and an amount of R1 500.00 was paid into the account of Mrs Ndombele. That amount was very, very much only a portion of  
15 what Mrs Ndombele had paid over the years.

The evidence established that in order to become a member of the 12 schemes offered by the two CCs, an application had to be completed and an enjoining fee had to be paid. A copy of such an application form is before the committee. It provides for an election  
20 of the particular scheme category, the amount of the cover and other expenses and the premium payable. It is the opinion of the committee that the essential features of the arrangement with the members fall

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foul of the provisions of Section 7 and 8 of the Act. We particularly have in mind the definition of long-term insurance. I quote ... “*means the business of providing an undertaking to provide policy benefits with long-term policy*”.

5           Also a long-term policy is defined as meaning an assistance policy, disability policy, fund policy, health policy, life policy or sinking fund policy or a contract comprising a combination of any of these policies and includes a contract whereby such contract is varied. The committee finds that the respondent’s guilt on both counts has  
10       been established and it is found guilty as charged on both counts.

          We turn to the question of administrative penalty. We firstly have the consideration that neither of the Myendekis co-operated or responded to the letters. No mitigating factors have been established. The letters, on the contrary, indicate some sort of excuse for their  
15       conduct and a suggestion of a settlement. The offences committed by the respondent had the potential of harm to numerous people. We have again in mind the situation of the lady referred to.

          It is important in considering the quantum of an administrative penalty to bear in mind the purpose of the Long-term Insurance Act, the Financial Services Act, the Financial Service Board and the role  
20       of the Registrar of Long-term Insurance. It is to protect the public, in general, from unscrupulous persons conducting long-term insurance

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business without being regulated. Without the strict application of the provisions of the Long-term Insurance Act, the public may be left at the mercy of persons who induce the public to enter into long-term policies, but fail to honour the obligations thereof, while collecting  
5 premiums from the public. A member of the public may be left destitute when the policy benefits are not paid out when the insured event takes place, such as the death of a breadwinner or children.

The potential victims were obviously indigent persons. It is likely that the respondent profited handsomely for what was probably  
10 done on an extensive business basis. We have in mind also the message to be read into the order, which we are about to make.

We have considered all the factors and the circumstances and in view of the gravity of the situation, the time over which this was done, the potential of harm to indigent persons requires the  
15 imposition of a severe administrative penalty. We have considered all the factors relevant and ~~are~~ <sup>e</sup> concluding ~~is~~ that a proper amount is one of R2 million.

We ~~conclude~~ <sup>thus</sup> by finding the respondent guilty on both charges. For purpose of the administrative penalty, the two convictions are  
20 taken together and the penalty is fixed at R2 million. The respondent is ordered to pay the costs of the proceedings, including all legal fees and the fees of the members of the committee and all disbursements.

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Thank you. Thank you for your attendance. The committee now adjourns.

**ADJOURNMENT**

A handwritten signature in black ink, appearing to be 'E. J. M.', written in a cursive style.

1.4.2016