

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case No: 2016/33228

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
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SIGNATURE	DATE

In the matter between:

SENAMOLELE: MOHALI

obo **NGWENYA: RETHABILE**

Plaintiff

And

THE ROAD ACCIDENT FUND

Link Number: 3743250

Defendant

JUDGMENT

SHEPSTONE J

- [1] This matter came before me sitting in the Civil Trials Court as an application for default judgment.
- [2] The Plaintiff is represented by Advocate Coetzee. The defendant appointed Advocate Mhlongo on a watching brief.
- [3] I made an order separating certain issues in terms of rule 33(4) before any evidence was lead.
- [4] In terms of the separation order I am required to determine the following questions, namely whether –
- i. Rethabile Ngwenya is a minor female child who was born in South Africa on the 12th of February 2005;
 - ii. the plaintiff Mohali Senamolele is the biological mother and natural guardian of Rethabile Ngwenya; and
 - iii. the plaintiff is vested with the requisite *locus standi* to represent Rethabile Ngwenya in the above matter.
- [5] This is an application for default Judgment. The defendant, the Road Accident Fund, is 'absent' and is not opposing the relief sought by the plaintiff. In the premises I could simply have entered Judgment on the above issues on behalf of the plaintiff. The plaintiff, I must add, had furnished the Court with affidavits pertaining specifically to these issues. Nevertheless, this Court has the inherent power in terms of

section 173 of the Constitution of South Africa to determine its own process in the interests of Justice. I accordingly informed Mr. Coetzee that I wanted to hear *vive voce* evidence.

[6] The plaintiff Ms. Mohali Senamolele testified first. She is a Lesotho National, now living in South Africa.

[7] She gave evidence that she fell pregnant with the minor child Rethabile Ngwenya in 2004. However, after falling pregnant she ended her relationship with the biological father of the minor child.

[8] During her pregnancy with Rethabile she started a relationship with Joseph Vusi Ngwenya, an adult male South African. They are still in a relationship and have lived together since the 4th month of her pregnancy with Rethabile.

[9] Ms. Senamolele states that she was transported to the Lenasia South Community Health Centre by ambulance. She was accompanied by her elder sister Alice Senamolele.

[10] She delivered Rethabile by way of natural vaginal delivery at the Lenasia South Community Health Centre on the 12th of February 2005. She referred me to the minor child's "Road to Health" chart which was issued to her shortly after the birth of Rethabile. The chart records Rethabile's date of birth as 12 February 2005.

- [11] The staff at the clinic would not assist the plaintiff with the required documentation to register Rethabile's birth due to the fact that she was not in possession of a South African Identity Document.
- [12] She subsequently attended the Department of Home Affairs, and after some difficulty with securing a birth certificate due to the fact that her passport had expired, Ms. Senamolele was issued with an unabridged birth certificate. The unabridged birth certificate recorded the birth date of Rethabile as 12 February 2005, however the identification number of the minor child appearing on such birth certificate is not a valid identification number.
- [13] Ms. Senamolele applied for a corrected birth certificate for the minor child, in consequence of which she was issued with a new certificate. This certificate also contains an error in that the minor child's date of birth (and her corresponding identification number) is reflected as the 5th of February 2012 instead of the correct date of the 12th of February 2005.
- [14] The plaintiff has applied for the rectification of the aforementioned error appearing on the second birth certificate. This application was lodged with the Department of Home Affairs on or about the 14th of July 2021. This request has yet to be finalised.
- [15] She testified that Rethabile is the child who was involved in the accident and that she launched this action on her behalf.

- [16] After a question by me the plaintiff confirmed that the unabridged birth certificate contained another error and that is the details of the biological father of Rethabile.
- [17] Next to testify was the plaintiff's elder sister Maseme Alice Senamolele.
- [18] The plaintiff was living with her during 2004 when she fell pregnant with Rethabile.
- [19] The witness gave evidence that she accompanied her sister in the ambulance to the clinic in Lenasia South, where the plaintiff gave birth to her minor daughter Rethabile on 12 February 2005.
- [20] She confirmed that the plaintiff is the biological mother of Rethabile, and that the minor child was born on the 12th of February 2005.
- [21] The two witnesses corroborated each other's evidence in all material respects.
- [22] The first "Unabridged Birth Certificate" referred to by the plaintiff correctly records Rethabile's birth date, but her identity number is apparently incorrect. It also does not contain the details of the mother of the child. The second birth certificate which was issued by the Department of Home Affairs during April 2019 correctly records the details of the mother, and Mr. Ngwenya is referred to as the minor child's father. The date of birth is, however, incorrect and is shown to

be 2012-02-05. It is easy to see how such an error can be made as it is clear that the numbers comprising the birthdate have been transposed.

[23] I accept the veracity of the evidence given by the plaintiff. The plaintiff's version of the birth of her child is inherently probable and substantiated by the documentary evidence especially the 'Road to Health' chart issued shortly after the birth of Rethabile. There are discrepancies in the birth certificates, but this cannot disturb the overall probabilities of the evidence advanced at this hearing.

[24] In the circumstance I make the following order:

It is declared that: -

- i. Rethabile Ngwenya is a minor female child who was born in South Africa on the 12th of February 2005;
- ii. the plaintiff Mohali Senamolele is the biological mother and natural guardian of Rethabile Ngwenya; and
- iii. the plaintiff is vested with the requisite *locus standi* to represent Rethabile Ngwenya in the action against the Road Accident Fund under case number 2016 / 33228.

**R SHEPSTONE
ACTING JUDGE OF THE HIGH
COURT OF SOUTH AFRICA**

Heard: 04 October 2022

Judgment: 05 October 2022

For the Applicant:

Advocate D Coetzee

Instructed by Nemavhulani Attorneys Inc.

For the Respondent:

Ms Nkateko Mhlongo