



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)**

REPUBLIC OF SOUTH AFRICA

CASE NO: 8880/2019

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED: NO
- (4) DATE: 25 MAY 2023
- (5) SIGNATURE: **ML SENYATSI**

In the matter between:

KAYISE SIBONISE

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

(Claim number: 560/12445005/1051/0 [3984550])

Neutral Citation: *Kayise Sibonise v The Road Accident Fund* (Case No: 8880/2019)

[2023] ZAGPJHC 571 (25 May 2023)

JUDGMENT

SENYATSI J:

- [1] This is an application for default judgment in terms of Rule 39(1) of the Uniform Rules of Court. The application relates to the loss of support and proceeds on merits and quantum of the claim. On the 14th of November 2015 at about 17h40 on the R550 Road, Eikenhof, Johannesburg, a collision occurred between motor vehicle bearing registration number ~~[...] BB-63-DG~~ GP (the insured vehicle) and Mr Mthokozisi Mpofu ("the deceased") who was cycling at the time.
- [2] The deceased was 26 years old when he passed away and left behind his life partner, the plaintiff in this matter, and two children of which one is from another relationship. The pleadings between the parties were exchanged which, included the plea by the defendant. The defendant's plea was struck off by the Court on 24 February 2022 due to non-compliance with the rules of the Court.
- [3] On the date of hearing of this application, Mr Matimu Madasele from the State Attorney's office appeared for the defendant. He pleaded that the Court should give him audience and asked that the case should stand down in order to grant the defendant an opportunity to procure the deceased 's passport showing the entry and exit into South Africa presumably from Zimbabwe. He

contended that this was in accordance with the new regulations that were promulgated in July 2022.

[4] When confronted with the reality that his request was misplaced. Firstly, the regulations would not be retrospectively applied. Secondly, the point about the passport was never pleaded. Thirdly, in any event the plea had been struck from the pleadings. Mr Madasele conceded that there was no valid reason for the defendant to be given audience and that does matter must proceed on the default basis.

[5] Having considered the papers filed of record together with the heads of arguments submitted on behalf of the plaintiff by Advocate Smith, the Court is satisfied that the plaintiff has made a proper case in her application for default judgment. Accordingly, the relief sought in terms of the motion application must succeed.

ORDER

[6] The order is therefore made in the following terms:

6.1. **The Defendant shall pay to the Plaintiff the sum of R769 248.00 (Seven hundred and sixty nine thousand two hundred and forty eight rand) within 180 (one hundred and eighty) days hereof, in full and final settlement of the Plaintiff's claim against the Defendant.**

6.2. **In the event of the aforesaid amount not being paid timeously, the Defendant shall be liable for interest, a *tempore morae*, at the prevailing rate per annum, calculated**

from the 181st calendar day after the date of this Order to date of payment.

6.3. The Defendant shall pay the Plaintiff's taxed or agreed party and party costs on the High Court scale in respect of both liability and quantum, up to and including 24 May 2023, and notwithstanding, and over and above the costs referred to in paragraph 3.2.1 below, subject thereto that:

6.4. In the event that the costs are not agreed:

6.4.1. The Plaintiff shall serve a Notice of Taxation on the Defendant's attorney of record;

6.4.2. The Plaintiff shall allow the Defendant 180 (*one hundred and eighty*) days from date of allocatur to make payment of the taxed costs; and

6.4.3. Should payment not be effected timeously, the Plaintiff will be entitled to recover interest, *a tempore morae*, at the prevailing rate per annum on the taxed or agreed costs from 181 (*one hundred and eighty one*) days from date of allocatur to date of final payment.

6.5. Such costs shall include, as allowed by the Taxing Master:

6.5.1. The costs incurred in obtaining payment of the amounts mentioned in paragraphs 1 and 3.1 above;

6.5.2. The costs of and consequent to the appointment of counsel for the Default Judgment trial, **Adv A E Smit**, including, but not limited to counsel's fee for the costs of drafting the Default Judgment Application and affidavits, as well counsel's Practice Note and Heads of Argument;

6.5.3. The costs of and consequent to the appointment of counsel, **Adv B D Molojoa**, for the Interlocutory Court Application on **25 November 2020**;

6.5.4. The costs of and consequent to the appointment of counsel, **Adv B D Molojoa**, for the Interlocutory Court Application on **24 February 2022**;

6.5.5. The costs of the expert reports as indicated below and/or forms obtained, as well as such reports and/or forms furnished to the Defendant, as well as all reports and/or forms in its possession and all reports and/or forms contained in the Plaintiff's bundles, including, but not limited to the following:

6.5.5.1. Ms C Williams, Industrial Psychologist; and

6.5.5.2. Mr G W Jacobson, Actuary.

6.5.6. One set of bundles as uploaded on Case lines.

7. The amounts referred to in paragraphs 1 and 3 will be paid to the Plaintiff's attorneys, A Wolmarans Incorporated, by direct transfer into their trust account, details of which are the following:

NAME OF ACCOUNT HOLDER: A WOLMARANS INC

NAME OF BANK & BRANCH: ABSA BANK, NORTHCLIFF

ACCOUNT NUMBER: [...]~~406-680-3929~~

BRANCH CODE: 632 005

TYPE OF ACCOUNT: CHEQUE (TRUST)

REFERENCE: MR J MURRAY/MAT7954

8. There is no contingency fee agreement between the Plaintiff and her attorney.

ML SENYATSI
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

DATE APPLICATION HEARD: 24 May 2023

DATE JUDGMENT HANDED DOWN: 25 May 2023

APPEARANCES

Counsel for the Applicant : Adv A E Smit

Instructed by: A Wolmarans Inc

Counsel for the Defendant: Mr. M Madasele

Instructed by: The State Attorney

