

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NUMBER: 2022-062084

- 1. Reportable: No
- 2. Of interest to other judges: No
- 3. Revised

Wright J

14 March 2024

In the matter between:

MMILISI, SINDISWA PATRICIA

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

WRIGHT J

1. In this claim against the RAF, Mr W Mathebula appeared for the plaintiff. Mr L Mtshemla appeared for the defendant.
2. In about December 2022, the plaintiff's attorney issued summons on behalf of the plaintiff, claiming damages arising out of an alleged motor vehicle accident. General damages and other heads of damages are claimed.
3. The summons appears to have been served on the defendant Fund on 6 January 2023.
4. The pleaded date of the alleged accident is 18 March 2022. It is alleged that the plaintiff was a passenger.
5. The defendant pleaded. The plea is dated 8 February 2023. It raises one special plea, relating to the claim for general damages and there is a plea over. The allegation of an accident and the allegation that the plaintiff was a passenger are denied.
6. It would appear that as late as 12 March 2024, two days ago, the defendant placed on caselines a notice of intention to amend its plea. The defendant sought to raise another special plea, the point being that the claim, when lodged, was allegedly done so invalidly as the claim, the defendant alleged, did not include a certified copy of the plaintiff's ID document.
7. The matter was allocated to me for trial late yesterday afternoon. I could not commence the hearing until today, 14 March 2024. When the hearing commenced, counsel for both sides were in agreement that the matter proceed only on the question of the special plea relating to the lodgement of the claim. By agreement, I granted the amendment.

8. Mr Mtshemla, for the defendant articulated his point. He conceded that a claim had been lodged and that it contained a certified copy of the plaintiff's id. The problem, Mr Mtshemla submitted, was that the certification of the id had taken place about eighteen months before the claim had been lodged. Mr Mtshemla said that this amounted to non-compliance and accordingly the claim has never been validly lodged.
9. The recent plea did not raise the point about old certification. Mr Mtshemla conceded that the point he sought to argue had not been pleaded.
10. In the circumstances, I suggested that this matter needed to be pleaded properly so that the plaintiff's legal team and the judge to whom the matter is ultimately to be allocated can see what the question is which needs to be decided.
11. The point raised by Mr Mtshemla, if it is valid, may have implications nationwide for claimants against the Fund.
12. The present matter may possibly contain a looming prescription point.
13. The claim appears to have been lodged on 19 August 2022. The claim appears to contain a copy of the plaintiff's id, certified as a true copy on 21 January 2021. Mr Mtshemla suggested that the time gap of some nineteen months between certification of the copy of the id document as a true copy and the lodging of the claim is far too long. He suggested that about three months might be maximum. He submitted that the claim, in effect, has never been lodged.

14. Mr Mtshemla submitted further that if the driver of the insured vehicle is unidentified, the claim will prescribe two years from date of accident, that is within a few days from now, for want of timeous and valid lodgement of a claim.

15. After some debate and having heard argument from both Mr Mathebula and Mr Mtshemla as to whether or not the matter could proceed on the lodgement point without proper pleadings, both agreed, although somewhat reluctantly, that the matter needed to be postponed so that the Fund could properly plead its defence. It was agreed that the Fund be afforded until 4pm on 28 March 2024 to file its Rule 28 notice of intention to amend. Once this is done, the plaintiff may either allow the amendment or object.

16. Mr Mtshemla could offer no convincing argument why his client should not pay the wasted costs on a punitive scale.

17. I make no finding on any question relating to the claim.

ORDER

1. The matter is postponed sine die.
2. The defendant is to pay the wasted costs on the attorney and client scale.
3. The defendant is to deliver its notice of intention to amend its plea in terms of Rule 28(1) by 4pm on 28 March 2024.

WRIGHT J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Heard on: 14 March 2024

Delivered on: 14 March 2024

Appearances:

PLAINTIFF Mr Mathebula W Inc

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