


IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG



(1) Reportable: No
(2) Of interest to other Judges: No
(3) Revised:

Date: 12/09/2023


Signature

CASE NO: 38604/2021

In the matter between:

**KQETO JOSCELINA WEZIWE obo
LULAMA PRINCESS MPUKWANA
VELAJI**

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

J U D G M E N T

MALUNGANA AJ

Introduction

[1] This matter appeared before me by way of a notice of motion in the settlement court. In the notice of motion the applicant sought the following relief:

"1. The merits are settled on 100% in favour of the Applicant;

2. That the Respondent is ordered and liable for payment in the sum of R2 950 613,62 in full and final settlement of the claim of Lulama Princes Mpukwanaa Velaji and such payment to be made into the trust account of the Applicant's Attorney of records on or before the2023;
3. That the Respondent is ordered to pay the costs of the Application on attorney and own client scale..."

[2] The background facts are contained in the founding affidavit deposed by Joscelina Weziwe Nkqeto, and amplified in the submissions made by the applicant in support of the settlement agreement. It appears from the papers that Lulama Mpukwana ('the deceased'), was injured in a motor vehicle collision which occurred on 24 December 2019. As a result the collision she instituted a delictual claim against the respondent in terms of the provisions of the Road Accident Fund Act, 56 of 1996.

[3] On 22 April 2022 the respondent (RAF), made an offer of settlement as follows:¹

a.	Loss of Earnings	R 1, 450 613.62;
b.	General Damages (Pain and Suffering, Permanent disability)	R1, 500 000.00
	Total	<u>R2, 950 613.62</u>

¹ 08-4 Case lines

- [4] On 5 May 2022 the deceased, through her attorneys of record accepted the defendant's offer of settlement.²
- [5] On 15 June 2022, Lulama passed away, and the applicant was appointed as an executrix of her estate.³
- [6] In response to the applicant's notice of motion the respondent, through the state attorney's office filed an opposing affidavit in which it inter alia raised an *in limine* point paraphrased as follows:

- a. The applicant has approached the Court in terms of the provisions of Rule 34(7) of the Uniform Rules of Court.
- b. The applicant seeks a compelling order against the respondent to pay the amount of R2 950 613.62;
- c. Contrary to the rule the applicant seeks an order to compel the court to make payment instead of the settlement an order of court.
- d. It is not competent for this Court to compel the respondent to make payment of the alleged settlement amount;
- e. Consequently the application falls short of the requirements of rule 34(7) of the Uniform Rules of Court, and ought to be dismissed with costs.

- [7] Rule 34 regulates the making of offers. In the present case the applicant has approached the court in terms of sub-rule 7, which provides as follows:

² 08-2 Case lines

³³ Para. 8 of the applicant's submissions. Case lines 30-3

“(7) In the event of a failure to pay or to perform within 10 days after delivery of the notice of acceptance of the offer or tender, the party entitled to payment or performance may be, on five days’ written notice to the party who has failed to pay or perform apply thorough the registrar to a judge for judgment in accordance with the offer or tender as well as for the costs of the application.”

[8] It is not in dispute that the respondent made an offer of settlement to the applicant on 22 April 2022, which offer was subsequently accepted by the applicant. According to the respondent after the claim was settled in May 2022, the claimant (Lulama) passed away on 15 June 2022. The respondent contends that the common law position is that the dependent or estate of the deceased is not entitled to claim loss of earnings, because the latter being a prospective patrimonial loss the deceased would no longer incur. The respondent further contends that the amount of R1 450 613.62 which constitutes future loss of earnings ought to be deducted from the original offer of settlement, leaving the balance of R1 500 000.00 in respect of the general damages.

[9] I pause to refer to the Judge President’s Revised Directive 1 of 2021. Under Chapter1 headed ‘THE SCOPE OF APPLICATION OF THIS DIRECTIVE’ specifically sub-paragraph 2.4 thereof, all trials matters in which the Defendant is the Road Accident Fund or PRASA or the. Minister of Health, Gauteng, are classified “Y” and are subject to the prescribed Judicial Management procedure set out in the Directive. The settlement or consent to draft orders of matters falling under category “Y” are regulated in terms of Chapter 9 of the Revised Directive. The relevant portions of the Judge President’s Revised Directive read:

- "46. No Settlement /Consent draft order shall be considered by a Judge unless this chapter of the directive has been fully complied.
47. Every Settlement/Consent draft Order presented shall be interrogated by a Judge who is requested to make a settlement/consent Order to determine whether or not the circumstances upon which order is premised are justified in relation to the law, the facts, and the expert reports upon which they are based.
48. Because no evidence is adduced under Oath, as might have been presented on the trial, the Court may further require that the submissions relied upon should be confirmed by affidavit or oral evidence as more fully stipulated hereunder.
49. In order to facilitate a swift but nevertheless substantive consideration of the Settlement/Consent draft Order and justification:
- 49.1 Plaintiffs' and Defendants' legal practitioners or in the case of a Defendant who has no legal representative; any official of the Defendant authorised to represent it shall, jointly, prepare and sign a document, styled **Submissions in support of settlement/consent Draft Order**. The submissions should be in appropriate detail, indexed and paginated where necessary and in which facts and opinions upon which the agreements are premised should set out and further appropriately cross-referenced to the source documentation relied upon, and lastly wherein the connection is

demonstrated between the facts and the conclusions in the opinions/reports.

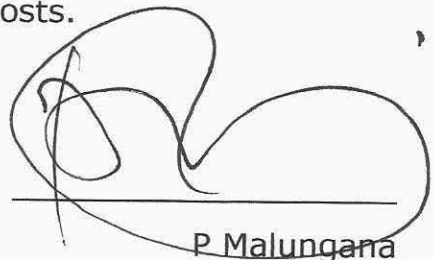
49.2 The submissions document shall, together with the draft order, and FORM 9 be presented to the Registrar, whereupon the Registrar shall set the matter down on the Roll of the Court dealing with Consent Orders, a fortnight hence.”

[10] I return to the merits of the present application. It is evident from the peremptory provisions of the directive that this matter ought not to have been enrolled in the settlement court. There is no joint submissions nor consent to draft order filed in compliance with the provisions of paragraph 49 of the directive. The provisions set out in chapter 9 of the directive clearly contemplate a situation where the parties have reached an undisputed settlement agreement, and desire to have it made an order of Court. In terms of paragraph 46 of the directive I ought not to have entertained this matter for want of compliance with the directive. In light of the conclusion which I have reached it is unnecessary for me to consider the merits of the point *in limine* raised by the respondent.

[11] In the premises it is my view that the application before me ought to be struck off from the roll.

[12] Accordingly, the following order will issue:

1.The application is struck off the roll with costs.

A handwritten signature in black ink, consisting of a large, stylized 'P' followed by a series of loops and a horizontal line at the bottom.

P Malungana

Acting Judge. Gauteng Local Division

APPEARANCES:

For the Applicant:

Adv L Matsiela

Instructed by:

Nompumza Attorneys

For the Respondent:

Mr D Sondlani

Instructed by:

State Attorney, Johannesburg