

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 39299/2020

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

A handwritten signature in cursive script, appearing to read 'De Vos'.

Date: 29 January 2024

In the matter between:

UNATHI DOLLY BALENI

APPLICANT

and

THE ROAD ACCIDENT FUND

RESPONDENT

JUDGMENT

[1] DE VOS AJ

[1] The plaintiff claims R 14.5 million against the RAF for general damages, medical expenses and loss of earnings. The matter was set down on the default trial roll and counsel for the plaintiff assured the Court that the directives had been complied with

and that the RAF had been barred from proceeding with the matter. The Court, based on these submissions, believed the matter was ready to commence and to proceed by default. The Court then heard arguments on the merits of the matter. The Court reserved judgment as it wanted to calmly consider a claim of this magnitude, particularly where it consisted largely of future loss of earnings where the plaintiff was in her forties and the injuries did not, on first blush, seem commensurate with claims of this size.

- [2] In preparing the judgment the Court discovered that the claim was originally for R 2.1 million but that the plaintiff sought to amend the particulars of claim by delivering a notice of intention to amend on 15 November 2023, three court days before the trial. No final amended particulars were served and the notice of intention to amend was short-served on the RAF. The expert notice which underpins this amendment was served on the state attorney on 20 November 2023, the day before the trial. The filing of this notice, also does not comply with the requirements of the rules of court.
- [3] None of the requirements for this type of amendment had been met, nor had the RAF received sufficient notice of the expert witness' report. This non-compliance must be seen in circumstances where the claim had grown by R 10 million. Had this been brought to the attention of the Court at the hearing of the matter, the Court would have required the removal of the matter for non-compliance with the rules of court. However, the Court had been assured that all requirements had been met.
- [4] The Court also notes that whilst the RAF had been placed under bar in July 2022, the RAF had filed a plea subsequent to being placed under bar. The plaintiff had engaged with the plea as if it were valid and even in a pre-trial minute requested admissions based on the plea. The submission to Court that the matter must proceed by default as the RAF had been placed under bar is therefore selective. Again, had the Court been made aware of the subsequent engagements with the plea filed by the RAF – rather than relying on the submission made in court that the RAF was under bar – the Court would have not been satisfied to proceed on a default basis.

[5] In these circumstances the Court had reserved judgment on the merits, but when considering the non-compliance with the rules of Court and the position this places the RAF in, the Court is not willing to make a determination on the merits.

[6] It is unfortunate that the plaintiff had to wait for the Court to remove the matter from the roll. It is not something the Court wishes to visit on the plaintiff. However, the Court must protect its process. It also weighs with the Court that a decision, in these circumstances would attract a rescission application and ultimately delay the finalisation of the matter more and increase the costs for the parties involved. Had the true state of the litigation been disclosed to the Court the matter could have been dealt with sooner.

Order

[7] As a result, the following order is granted:

- a) The matter is removed from the roll.



I de Vos
Acting Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email.

Counsel for the plaintiff:

PM Leopeng

Instructed by:

Godi Attorneys

Date of the hearing:

21, 23 and 24 November 2023

Date of reasons:

29 January 2024