

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 2017/22763

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

  
SIGNATURE

DATE: 17 February 2022

In the matter between:

**BANDA, GRACE**

Plaintiff

And

**ROAD ACCIDENT FUND**

Defendant

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JUDGMENT – LEAVE TO APPEAL

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SIWENDU J

[1] The applicant seeks the courts leave to appeal against its judgment handed on 2 December 2020. Even though the respondent, (the RAF) was not represented during the hearing, it instructed Counsel to oppose the application for leave to appeal.

- [2] I am compelled to make some observations about the inordinate delay in hearing the application. The leave to appeal was noted on 23 December 2020. An endorsement on the Case Lines system reveals that the application was referred to the court's then registrar on 21 May 2021 to allocate a date for hearing.
- [3] It was only on 3 January 2022 that the Court was made aware of the pending application, hence why it was only heard on 28 January 2022.
- [4] I have considered the issues raised together with submissions made by Mr Rudi Kok (for the Plaintiff/ Applicant). I pause to note that the observations made about the offer by the RAF, the late exchange of emails and the like are *orbiter* comments about the conduct of the matter. They did not go to the *ratio* for the decision pertaining to the claim for loss of support. They may or may not be considered by the LPC if the matter is finally referred for investigation as ordered. The observations are not appealable.
- [5] The only material issue in the applicant's complaint is that the court ought to have rendered a judgment in the matter in respect of the loss of support claimed.
- [6] Materially, it is evident from the judgment that the plaintiff's case was heard by default in the absence of the RAF. In my view, the role of the Court is amplified in such circumstances, requiring it to take account of all the available facts before it, and not solely rely on the unchallenged evidence and version advanced by the applicant.
- [7] In this instance, the applicant's claim for loss of support is linked inextricably with the existence of other dependents which were not disclosed or taken into account in the reports prepared by the experts to calculate the quantum due.
- [8] I agree with Mr Tshavhungwe (for the RAF) that the court is empowered to make the order it did in terms of Uniform Rule 39 (20) which states that:  
"If it appears convenient to do so, the court may at any time make any order with regard to the conduct of the trial as to it seems meet, and thereby vary any procedure laid down by this rule".

[9] I am minded that as stated by the court in *City of Tshwane Metropolitan Municipality v Afriforum and Another* 2016 (6) SA 279 (CC) paras 40- 41 where the court held that:

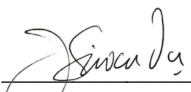
“Unlike before [referring to *Zweni v Minister of Law and Order* 1993 (1) SA 523 (A)] appealability no longer depends largely on whether the interim order appealed against has final effect or is dispositive of a substantial portion of the relief claimed in the main application. All this is now subsumed under the constitutional interests of justice standard. The overarching role of interests of justice has relativised the final effect of the order or the disposition of the substantial portion of what is pending before the review court, in determining appealability.”

[10] Even with this test in mind, I find it is not in the interest of justice to determine the claim on a piece meal basis. An order for absolution from the instance was not an appropriate order to make given that the matter involves a claim on behalf of a minor. What is more, the interest of justice will be best served by determining the applicant’s entitlement to the loss of support in conjunction with the claims of other claimants. The court retained supervision of the matter for this reason.

[11] In addition to the above, I find that the order is as it stands not appealable. It still open to the applicant to pursue its claim before this court by following the directions in the judgment.

Accordingly, I make the following order:

- a. The application for leave to appeal is dismissed with costs

  
**T. SIWENDU J**

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|------------------------|--------------------------------|
| Applicant’s Attorney:  | Mr Rudie Kok                   |
| Instructed by:         | Leon JJ Van Rensburg Attorneys |
| Counsel for Defendant: | Adv P Tshavhungwe              |
| Instructed by:         | Ramulifho Attorneys            |