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

**CASE NO: 37275/19
NOT REPORTABLE
NOT OF INTEREST TO OTHER JUDGES
REVISED
17.05.23**

In the matter between: -

PHIRI, YAMIKANI

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

NEUTRAL CITATION: *Phiri Yamikani vs Road Accident Fund* (Case No: 37275/2019) [2023] ZAGP JHC 499 (17 May 2023)

JUDGMENT

This judgement was handed down electronically by circulating to the parties' legal; representatives by email and publication on Caselines. The date and time for hand down is deemed to be 17 May 2023 at 10h00.

H L ENGELBRECHT (T) AJ

INTRODUCTION

- [1] In this matter, the Plaintiff, Yamikani Phiri, an adult female, instituted an action in this Court against the Road Accident Fund (the Defendant) for compensation for the injuries she suffered as a result of a motor vehicle accident on 26 June 2018.
- [2] It should be noted that the Defendant did not admit the Plaintiff's identity in their plea and indicated that there was non-compliance with Section 24(2) of the Road Accident Fund Act as shown on page 73 of the bundle as a result of the Plaintiff's name and date of birth that differed on the hospital records. Therefore, at the outset it was requested that evidence is to be led to confirm the identity of the Plaintiff. This order is therefore only dealing with the aspect of identity of the Plaintiff.
- [2.1] Defendant also wanted to know how the Plaintiff entered the country during that time and therefore the court was referred to page 2 to the stamps on that page of the passport in which it is shown that on 04 February 2018 she entered the country through Beitbridge.
- [3] The biggest issue in this matter are the names of Tewane, Iyami and Tione Phiri and the initials of either I Phiri or T Phiri throughout the hospital records and the accident report on pages 14, 25, 34, 35, 41, 42, 44, 55 and 56 of the bundle.
- [5.1] The further issue was with regard to the Plaintiff's birthdate which is reflected on Page 1 of the bundle as 1988/15/01 but on the hospital records it is reflected as 1988/02/04 on page 34 of the bundle.
4. Two witnesses testified in the determination of the identity of the Plaintiff being [4.1] the Plaintiff herself
- [4.2] and her brother-in-law, Mr Mughogho.
- [4.3] A trial bundle was handed up marked Bundle "1".
- [5] The Plaintiff and her brother-in-law testified with the assistance of a court appointed Malawian translator, Mr. Lee Makhetsi Phiri although there is no connection between the translator and the Plaintiff. The Plaintiff provided her original passport to the court from which I could compare page 1 to 3 of

bundle 1, being copies of the passport to confirm her name being Yamikani Phiri.

[6] The Plaintiff confirmed that she was involved in a motor vehicle accident on 26 June 2018 in which she suffered a serious injury to her leg whereafter she was taken by ambulance to the Helen Joseph hospital accompanied by her brother-in-law, Innocent Mughogho.

[6.1] The Plaintiff also testified that Mr. Mughogho provided the information to the hospital and that she is not aware that he knows her birth date. The Plaintiff also testified that she is called Tione by her family and friends and that Mr. Mughogho must have provided such information to the hospital on arrival.

[6.2] The Plaintiff identified her full registered name on the Consent to operation on page 36 and her name and signature on the consent to the use of blood on page 40. The Plaintiff then also confirmed that she had an operation that evening as she suffered a traumatic amputation of her leg as a result of the motor vehicle accident.

[6.3] The Plaintiff further confirmed that her sister Emily Phiri was with her when the accident happened, but she stated that she did not know whether she was hurt and to what hospital she was taken after the accident. The fact that Emily was with her is then also reflected on page 9 of the bundle being the third-party claim form reflecting her as a witness of the accident.

[6.4] Plaintiff testified that she was staying with her sister and her brother-in-law at[...], Newlands being the address so indicated on the hospital records page 34 when the accident occurred.

[6.5] Plaintiff confirmed that she has three children which is also reflected on page 60 next to the date 27 June 2018.

[6.6] On a question from the court on how old the Plaintiff was at the date of the accident she confirmed that she was 30 years old. (1988 birth date to 2018). The age of 30 are noted and reflected throughout all the hospital records.

[6.6.1] Under cross examination on the scratched-out age of 28 on page 44 she indicated that she does not know who wrote same

and why it is scratched out as it seems that it was just a mistake. It should be noted that that was the only place on these records where the age of 28 is referred to as it is reflected as 30 throughout these records.

[6.6.2] Under cross examination Plaintiff confirmed that she does not believe that her brother-in-law knows her birth date and that might be the reason why there was a mistake on the hospital records.

[6.7] Under cross examination the Plaintiff indicated that she does not know the name Iyami and that such shortened reflection of her name is a mistake as she never stated that as her name.

[7] Innocent Mughogho testified that he was contacted telephonically about the accident and rushed to the accident scene where he found the Plaintiff and his wife Emily. He also confirmed that he accompanied them to the hospital in the ambulance to Helen Joseph and that he provided the information to the hospital for their records.

[7.1] Mr. Mughogho also identified the affidavit he deposed to on page 76 in which he stated that he was with the Plaintiff at the accident, accompanied her to the hospital and that he knows the Plaintiff and that he knows the Plaintiff as Tione as stated on some hospital records as he provided the information to them.

[7.2] Mr. Mughogho confirmed that his wife is Emily Phiri, the Plaintiff's sister and that she was also hurt by bruises and swelling on her hip but that she did not lose her leg.

[7.3] Mr. Mughogho also confirmed that the telephone number on page 34 under the paragraph Next of Kin is his previous cell number.

[7.4] Mr Mughogho stated that he does not know the birth date of the Plaintiff and does not know why the date of 04/02/1988 was included on the hospital records.

DISCUSSION

[8] From the testimony provided to the court it is clear that it was not the Plaintiff who provided the information on arrival at Helen Joseph hospital, but it was her brother-in-law who knows her for the last six years as Tione Phiri.

[8.1] On an analysis of the documents provided by the Plaintiff with no documents provided by the Defendant, it is clear that:

- reference is made to Tione or Tewane which might just be a spelling of the name Tione, which is the name the family calls the Plaintiff and referred to by the witnesses as her street name;
- and Iyami which might be a shortened form of the Plaintiff's name Yamikani used by the hospital staff.
- However, where the Plaintiff had to provide her consent for the operation or to receive blood that evening, Yamikani, her full name was included.

[8.2] The Plaintiff is reflected to be a 30-year-old lady, with three children who suffered a serious injury.

[8.3] I cannot find any reason not to believe that it is the Plaintiff, which is referred to here, who was involved in this serious and traumatic accident on 26 June 2018 in which she suffered a serious injury to such an extent that her leg was amputated.

[8.4] There is no evidence placed before court that:

[8.4.1] any other member of the Phiri family was involved in an accident on 26 June 2018 which resulted in a leg being amputated,

[8.4.2] that another person was transported to hospital via ambulance than the Plaintiff as shown on page 42, her sister Emily Phiri, and her brother-in-law Mr. Mughogho as testified to by Mr Mughogho.

[8.4.3] that another person was admitted to hospital on 26 June 2018 at 20:45 as shown on page 40.

[8.4.4] that another person was discharged on 04 July 2018 as per page 41.

[8.4.5] that another person is referred to in the progress notes dating from 26 June 2018 to 04 July 2018 on pages 44 to 54.

[9] All evidence points to the fact that it is the Plaintiff who was involved in this accident on 26 June 2018, and who is referred to as Tione or Tewane or Iyami on the hospital records.

[10] It is also shown from page 4 that all these documents were sent to the Defendant already on 28 May 2019.

[11] Therefore the following order is made:

1. The issue of discrepancy of the name of the Plaintiff and the names appearing in various documents before this court, is separated for determination and the remaining issues of liability and quantum of damages are stood down before this court for determination.
2. It is declared that the Plaintiff, YAMIKANI PHIRI, is the same person who was involved in a motor vehicle collision on the 26 June 2018, and was admitted to Helen Joseph Hospital in Johannesburg under the name TIONE PHIRI and referred to as IYAMI PHIRI, with hospital file number 040288 and TEWANE PHIRI in the Police Accident Report dated 29 June 2018.
3. Costs are reserved.

H Engelbrecht
Acting Judge of the High Court

Date of hearing: 16 May 2023

Date of judgement 17 May 2023

Appearances

Plaintiff

Advocate Z Kahn

Instructed by

A Seedat Attorneys

Defendant

Ms N Mhlongo

State Attorney's Office