

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NUMBER: 2016/12450

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED:
	
P.H. MALUNGANA	
22 SEPTEMBER 2023	

In the matter between:

SENECA CIVILS (PTY) LTD

Plaintiff

and

CENTRIQ INSURANCE COMPANY LTD

Defendant

WRITTEN REASONS

MALUNGANA AJ

- [1] Pursuant to an interlocutory application brought by the plaintiff which came before me on 17 April 2023, I granted an order for the plaintiff in the following terms:
- (a) directing the defendant to cause its expert, Mr Peter Banbury to sign the joint expert' minute sent on 21 February 2020, alternatively
 - (b) to produce his own minutes of what transpired at the joint meeting on 21 February 2020.
 - (c) directing that in the event that the defendant fails to comply with the above, then the plaintiff is granted leave to re-enrol this application,

supplemented to the extent required, to seek further relief, including that the defendant's defence be struck out with costs.

- [2] I have been requested to provide reasons for the aforesaid order. Accordingly, the following reasons are hereby provided.
- [3] The plaintiff's application was predicated upon the refusal by the respondent's expert, Peter Banbury, to sign the draft minute prepared by the plaintiff's expert, Sandro Scherf, arising from the meeting held between the said experts on 21 February 2021.¹
- [4] I pause to point out that it was not in dispute that the relevant experts held a meeting on 21 February 2021.² What was apparently in dispute was the contents of the draft minute. The defendant contended that the draft minute did not correctly reflect what had been agreed upon at the meeting of the experts. In the affidavit deposed to by Mr. Andrew Boerner, the defendant's attorney, it was alleged that during the said meeting Sandro Scherf undertook to provide the defendant's expert with certain documentation and had since failed to comply with his undertaking (para. 15). The defendant further alleged that in light of the delay in pursuing the matter, the defendant wrote an email to the plaintiff on 03 February 2021 in which it suggested that another meeting of the experts be convened. Instead, the plaintiff's attorney put the defendant's attorneys on terms that it would launch the current application if the defendant did not furnish its comments by the 5th of November 2021.
- [5] By contrast the plaintiff contended that the respondent's failure to sign the minute, alternatively furnish a comment thereto was hampering its ability to approach the Registrar of the Court for certification.
- [6] Before dealing with the issue whether there is substance in the defendant's refusal to sign the minute, it is necessary to examine the relevant provisions of the Judge President's Directives. Paragraph 41 of the Revised Directive 1 of 2021 provides that:
- "Any party who, having reasons to be aggrieved by the other party's neglect, dilatoriness, failure or refusal to comply with any Rule of Court, provisions of the Practice Manual or provision of the Directive must utilize the Interlocutory Court to compel compliance from the delinquent party."
- [7] Mr Stevens for the defendant submitted in his written heads of argument³ under paragraph 3.2 as follows:

¹ Draft Joint Minutes between Sandro Scherf and Peter Banbury on 21. February 2020. Case Lines 11-32

² Defendant's Answering Affidavit, para.15. Case Lines 12-10

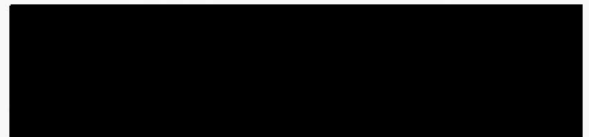
³ Respondent's Heads of Argument. Case Lines 26-4

"The Respondent has opposed the application on the basis that the Respondent's expert is in disagreement with the correctness of the contents of the expert minute and is further of the view that the meeting held by the experts was incomplete as a result of the failure of the Applicant's expert to provide documentation at the meeting. The Respondent's expert has requested a second meeting of the experts together with the documentation initially agreed to be provided."

- [8] With all respect to Mr Stevens I find his argument in this regard highly fallacious. To my mind the parties do not necessarily have to agree on every aspect canvassed at the meeting in order to execute the minute. They can record their opposing views in the minute, even if there are outstanding issues. As long as the issues are defined according to their perspectives.
- [9] During the course of argument, I was referred to the practice manual of this Court relied upon by counsel for the plaintiff. I shall now examine this question more closely in the context of the practice manual.
- [10] As set out in Chapter 6 of the Practice Manual, in particular paragraph 6.5 thereof:
- "5. In all trials in which the parties have opposing expert witness, such opposing expert witnesses must meet and reduce their agreements and disagreements to writing in joint expert minutes, signed by them and which minutes must be compliant with the prescripts of paragraph 6.15.11 of this manual."
- [11] In the circumstances, and having regard to the provisions of the new Rule 36(9A)⁴ of the Uniform Rules I conclude that there is no legal nor factual foundation upon which the defendant can refuse to sign the draft minute or furnish his own minute. The parties have attended a meeting and have reached certain consensus that ought to be reduced to writing. It terms of the contention that the plaintiff's expert was supposed to furnish the defendant's expert with particular documents that can be recorded in a minute. It is no bar to concluding the joint minute. If parties were allowed not to file minute of the meeting on the grounds advanced by the defendant, that would have dire consequences on the case management process.
- [12] In the result I granted the order as follows:
1. Within 10 days of the order, the defendant is directed to cause its expert, Mr Peter Banbury, to:

⁴ Rule 36(9A) provides: "The parties shall- (a) endeavour, as far as possible, to appoint a single joint expert on any one or more or all issues in the case: and
(b) file a joint minute of experts relating to the same area of expertise within 20 days of the date of the last filing of such expert report."

- 1.1. Sign the joint expert's minute sent to the Defendant by the Plaintiff on 21 February 2020; or
- 1.2. Produce his own minute of what occurred at the joint expert's meeting of 21 February 2020.
2. Directing that in the event that the Defendant fails to comply with paragraph 1, then the Plaintiff is granted to leave to re-enrol this application, supplemented to the extent required, to seek further relief, including that the Defendant's Plea be struck-out with costs.
3. The Defendant is to pay the costs of this application on an attorney and client scale.



P.H. MALUNGANA
Acting Judge of the High Court
Gauteng Division, Johannesburg

Heard:	17 April 2023
<i>Ex Tempore</i> Judgment:	17 April 2023
Written Reasons Requested:	09 May 2023
Written Reasons Delivered:	22 September 2023

Appearances

For Plaintiff:	D Watson
Instructed by:	Tugendhaft Wapnick Banchetti & Partners
For Defendant:	BD Stevens
Instructed by:	Jurgens Bekker Attorneys