

2/3/2010

IN THE HIGH COURT OF SOUTH AFRICA

~~DELETE~~ ~~NORTHERN~~ GAUTENG HIGH COURT - PRETORIA)

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

CASE NO: 40676/2008

DATE 02-03-2010

SIGNATURE

In the matter between :

MJALI ANNA SALIGWAZI

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

JUDGMENT ON THE ISSUE OF COSTS OF TWO COUNSEL

MATOJANE J

[1] The plaintiff seeks an order that defendant pays the costs of two counsel in respect of an action for damages against the fund that was settled on the day of the trial.

[2] In the main matter the plaintiff sued the defendant for payment of the sum of R1 830 000.00 being the alleged damages arising from a road accident that occurred on the 26 January 2008. The defendant in its plea denied every allegation in the particulars of claim and put the plaintiff to the proof thereof.

[3] In so far as the defendant was contesting every aspect of the case, the plaintiff requested certain particulars for trial on the 5 May 2009. The defendant failed to provide the requested particulars.

[4] At a pre-trial conference held on the 15 January 2010 the plaintiff put a series of detailed questions, enquiries and other matters it sought from the defendant. The standard response to all the questions was "*The defendant will revert by 12 February 2010*". The defendant never reverted to the plaintiff with the result that as at the date of trial, everything was still in issue.

[5] A senior counsel and a junior were briefed on behalf of the plaintiff. The defendant instructed counsel on the day of the trial to settle both the merits and quantum. The parties could not agree whether the costs should include the costs of two counsel.

[6] The issue of costs is in the discretion of the court. The court must consider whether it was proper and reasonable to brief two counsel. Rule 69 of the rules of this Court provides that:

"Save where the court authorizes fees consequent upon the employment of more than one advocate to be included in a party and party bill of costs, only such fees as are consequent upon the employment of one advocate shall be allowed as between party and party."

[7] Counsel for the defendant submitted that it was not necessary for the plaintiff to have employed two counsel as plaintiff should

have known that the matter will become settled for an amount less than what it claimed in the particulars of claim.

[8] Counsel for the plaintiff on the other hand, submitted that it had been wise and reasonable for the plaintiff to brief two counsel in this matter; relevant consideration being that the case was important to the plaintiff and she did not want to take any chances. According to expert reports, plaintiff suffered head and brain injury with prolonged loss of consciousness, extensive lacerations and multiple fractures and has to undergo four operations. She is depressed and is emotionally unable to cope with the loss of her spouse and the consequences of her physical injuries. Counsel argued that the court should not consider the settlement amount but should ask itself whether the plaintiff took a wise precaution in employing two counsel. The plaintiff was a domestic worker who earned little hence the low quantum of damages.

[9] I agree with counsel for the plaintiff. In my view, various factors attendant in this matter rendered it wise and reasonable for the plaintiff to brief two counsel. The issues in the main trial were complicated by the fact that the defendant was until the morning of the trial contesting every aspect of the case both quantum and merits. The plaintiff had to make extensive preparations for trial as there were eleven expert witnesses, nine of them were to testify on behalf of the plaintiff. The trial was going to be long and complex. For these reasons I do not agree with the submission by counsel for the defendant that there was no need to engage the services of a senior counsel as the settlement amount was going to be less. The settlement amount was definitely going to be less because the plaintiff, being a domestic worker earned less but this does not

detract from the complexity of the matter and the recalcitrance of the defendant.

[10] The matter is clearly of great importance to the plaintiff and in my view, it cannot be said that plaintiff was extravagant or overcautious to have employed two counsel when regard is had to the obstructive attitude of the defendant. I do not feel justified in saying that it is unfair to the defendant that it should be required to bear the costs incurred in the employment of two counsel as it deliberately sought to frustrate the legitimate claim of the plaintiff by not acting diligently and compelling plaintiff to incur costs to initiate litigation only to agree to settlement on the date of trial.

[11] I am satisfied on the consideration of the relevant factors, that the employment of two counsel by the plaintiff in this matter was justified.

Consequently

[12] The defendant is ordered to pay the costs incurred by the plaintiff in the above matter; such costs to include the costs of two counsel.

A handwritten signature in black ink, appearing to read 'KE MATOJANE', is written over a horizontal line.

KE MATOJANE

JUDGE OF THE HIGH COURT