



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, BHISHO)**

NOT REPORTABLE

Case no: 36/2022

In the matter between:

VUYISA MACANDA

Applicant

and

ROAD ACCIDENT FUND

Respondent

JUDGMENT

Govindjee J

[1] The applicant sought the following relief on motion:

- '1. That the Respondent is found to be in breach of its statutory and constitutional obligations by failing to give effect to the order of the above honourable court dated 9th February 2023 by the honourable Mr Justice Potgieter;
2. That the Respondent's non-compliance with the court order dated 9th February 2023 by the honourable Mr Justice Potgieter is a violation of the Respondent's constitutional and statutory duties;

3. That the Respondent is directed to take all the administrative and other necessary steps to ensure that it complies with the court order dated the 9th February 2023 by the honourable Mr Justice Potgieter within 10 days from the date of this order;
4. That if the Respondent should fail to comply with the order dated the 9th February 2023 by the honourable Mr Justice Potgieter within 10 days from the date of this order, the Applicant is granted leave, on the papers duly amplified, for a further hearing and determination of contempt of court proceedings against the responsible claims handler and such further relief as the Applicant might seek;
5. That Mr Gona and / or Mr Mlinganiso, or any other legal representatives of the Respondent at the offices of the State attorney, should personally serve a copy of this court order to the responsible claims handler personally;
6. That Mr Gona and / or Mr Mlinganiso, or any other legal representatives of the Respondent at the offices of the State attorney, should file an affidavit setting out compliance with this court order within five [days] after serving this court order personally to the claims handler;
7. That the Respondent is ordered to pay the costs of this application on an attorney and own client scale.'

[2] The application, which was unopposed, was dismissed with no order as to costs. The reasons for that decision follow.

[3] Potgieter J issued the following order on 9 February 2023 ('the February Order'):

- '1. The matter is postponed *sine die*;
2. The Defendant is ordered to pay the Plaintiff's costs occasioned by the postponement with interest, on appropriate scale 14 days from the date of *allocutur* to date of payment, which costs are to include: -

- 2.1 The fees of counsel, inclusive of counsel's full day fees for attending trial on Monday the 6th and Thursday the 9th February 2023, including counsel's fees and disbursements for attending consultations with the Plaintiff's expert witnesses, where applicable;
- 2.2 The reasonable qualifying expenses of obtaining medico-legal (expert) reports which have been used to date and the reasonable preparation, qualification and reservation fees of Professor Maqungo, the Plaintiff's Orthopaedic Surgeon;
3. The Defendant is ordered to make a decision whether or not the Plaintiff's injuries were correctly assessed as serious in terms of the method provided in terms of Regulations 3(3)(c) or 3(3)(d) of the Road Accident Fund Regulations, 2008 (Regulation 31249) within 5 days from the date of the order.'

[4] The applicant's attorney deposed to an affidavit explaining the relief sought and setting out background facts to a motor vehicle collision which occurred on 22 December 2020. The deponent reiterated the terms of the February order, highlighting the respondent's resultant obligation to make a decision as to seriousness, and that it had failed to do so at the time of the application. The importance of that decision for the applicant's claim for general damages, and the process to be followed to arrive at a decision on the part of the respondent, was explained. In fact, much of the founding affidavit does nothing more than explain the applicable statutory, regulatory and administrative approach to serious injuries caused by motor vehicle accidents, containing largely irrelevant material considering the order already obtained. For example, the deponent proceeds to deal with various hypothetical situations, including agreements as to seriousness, ill-advised court determinations of seriousness, judicial review of a decision by the Health Professions Council of South Africa and decisions of an Appeal Tribunal. Furthermore, two paragraphs are spent canvassing a possible objection (by the respondent) to jurisdiction by way of special plea. A further paragraph deals with Uniform Rule 22(4) and a possible stay of a claim for general damages pending pursuit of internal remedies.

[5] The founding affidavit deals briefly with alleged prejudice caused by the respondent's tardiness in making a decision as to seriousness, and with a courtesy

letter drafted on 11 May 2023 and attached to the papers. This is followed by ten paragraphs quoting from sections of the Road Accident Fund Act and two decided cases in order to explain the respondent's purpose, its powers and functions, highlighting the usual sentiments previously expressed by courts when the respondent fails to comply with its obligations.

[6] The deponent concludes with a request for punitive costs, indicating that a case has been made out for the relief sought. The above summary explains why this cannot be the case. Leaving aside the padding of the papers with unnecessary and irrelevant material, the founding affidavit completely fails to justify the relief sought considering the terms of the order already obtained. Indeed, counsel briefed to appear in motion court was unable to explain how granting the application would advance the applicant's case considering that the February order had already specified a five-day period within which the respondent was to determine whether the assessment of the applicant's injuries as serious was correct.

[7] In effect, the relief sought is little more than an underline to the point that court orders must be respected. That this is the position is trite. What the application fails to address is why it was necessary to launch the application to make the point, as opposed to proceeding directly with the initiation of contempt proceedings. Counsel for the applicant was also unable to address this concern.

[8] In motion proceedings, the affidavits constitute both the pleadings and the evidence and the issues and averments in support of the parties' cases should appear clearly therefrom.¹ The applicant stands or falls by its petition and the facts alleged therein.² Considering the existence of the February order, and what is contained in the founding affidavit, it is clear that the applicant has failed to make out a case for the relief sought.³ Section 165(5) of the Constitution provides that an order or decision issued by a court binds all persons to whom and organs of state to which it applies. It follows axiomatically that non-compliance of a court order is impermissible. There is

¹ *Minister of Land Affairs and Agriculture v D & F Wevell Trust* 2008 (2) SA 184 (SCA) at 200D.

² *SA Railways Recreation Club and Another v Gordonias Liquor Licensing Board* 1953 (3) SA 256 (C) at 260A-D.

³ *My Vote Counts NPC v Speaker of the National Assembly* 2016 (1) SA 132 (CC) para 177.

no explanation advanced, in the present application, as to why it is necessary to apply to court for confirmation of these principles, as an additional or intermediate step en route to a contempt of court application. It begs the question whether such applications are always necessary, or advisable, as a precursor to contempt proceedings, and why the present circumstances justify an additional order laying the foundation for a contempt application. It is unnecessary to address these broader considerations. It suffices to note that those matters are left unexplained in the present application.

[9] As Rugunanan J remarked in *Elegant Line Trading 257 CC v Member of the Executive Council for Transport – Eastern Cape*,⁴ the applicant's difficulty is the inadequate conceptualisation of the founding affidavit, which is deserving of censure. To amplify, the application fails to explain why the court should make an order that reflects the legal position that non-compliance of a court order is a violation of a constitutional duty, or why a further order is necessary to direct compliance with the terms of a previous order, as a precursor to possible contempt proceedings. Why a further order and an additional ten days is appropriate when the respondent was ordered to make its decision on seriousness within five days from the order is also omitted. There is also no explanation as to why the applicant requires an order granting her leave to bring subsequent contempt proceedings and the related relief as to service.

[10] While the judiciary is expected to uphold, protect and apply the Constitution of the Republic of South Africa, 1996, and the law, the corollary duty borne by all members of South African society is to respect and abide by the law, including court orders issued in terms of it.⁵ The rule of law is a foundational constitutional value that requires that the dignity and authority of the courts be upheld.⁶ Disobedience towards court orders or decisions risks rendering our justice system nugatory.⁷

⁴ *Elegant Line Trading 257 CC v Member of the Executive Council for Transport – Eastern Cape* [2022] ZAECHC 45 para 26.

⁵ *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others* [2021] ZACC 18 ('Zuma') para 1.

⁶ Section 1 of the Constitution.

⁷ See *Pheko v Ekurhuleni City* [2015] ZACC 10; 2015 (5) SA 600 (CC) ('Pheko') paras 1-2.

[11] For this reason, courts have the power to ensure that their decisions or orders are complied with, also by organs of state, by acting as guardians of the Constitution and by asserting their authority in the public interest.⁸ The vehicle for doing so is not through duplication of orders, requesting one court to confirm and highlight what another has, in essence, already said. Instead, it is contempt of court proceedings that exist to protect the rule of law and the authority of the judiciary.⁹ Contempt jurisdiction now also involves the vindication of the Constitution.¹⁰ It is the object of contempt proceedings to impose a penalty that will vindicate the court's honour, consequent upon the disregard of its previous order, and to compel performance in accordance with the previous order.¹¹

[12] For these reasons the application was dismissed. In the absence of opposition there was no order as to costs.

A GOVINDJEE
JUDGE OF THE HIGH COURT

Heard: 25 July 2023

Date of order: 25 July 2023

Reasons delivered: 16 August 2023

⁸ Ibid.

⁹ *Zuma* above n 5 para 27.

¹⁰ Ibid.

¹¹ Ibid para 28. Once it is proven that an order exists and was served on a litigant who did not comply therewith, contempt will have been established beyond reasonable doubt unless the respondent establishes a reasonable doubt relating to wilfulness and mala fides: *Fakie NO v CCII Systems (Pty) Ltd* [2006] ZASCA 52; 2006 (4) SA 326 (SCA).

Appearances:

For the Applicant:

Mr Mati
Cinga Nohaji Inc.
36 Chamberlain Road
Berea
East London

For the Respondent:

No appearance