

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 1621/2022

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



Date: 27 February 2024

In the matter between:

V RIBOMBO

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT

DE VOS AJ

- [1] On 28 November 2023 I struck out the RAF's defence. The RAF requested reasons for this decision. I set out the reasons below.
- [2] The plaintiff, a 49 year old assembler of parts at Ford, claims a speeding driver knocked him down causing serious long term impairment, disfigurement and long-term mental and behavioural disturbance and disorder. He claims damages from the RAF for these injuries. On 12 August 2021 he lodged a claim with the RAF and served his summons on 14 January 2022. The RAF did not respond. It failed to file a notice of intention to defend, its plea or to take any steps to move Mr Ribombo's claim forward. In response, in September 2022, the plaintiff launched an application for default judgment. Again, the RAF did not respond. The plaintiff then set down the default hearing and served the set down on the RAF on 19 January 2023.
- [3] After almost two years of inaction, the RAF filed a notice of intention to defend and a plea. In response, the plaintiff launched an application to strike out the RAF's defence. The plaintiff relied for this relief on Rules 30(1) and 30A(1)(b). I will refer to this as the striking out application. The RAF did not oppose the striking out application, it filed neither a notice of intention to oppose nor an opposing affidavit. The application to strike out was, essentially, unopposed. It was this striking out application which was set down before this Court for consideration on 13 November 2023.

Court order of 14 November 2023

- [4] On 13 November 2023, the RAF attended court, represented by Mr Shimange from the State Attorney. As there was an appearance, the Court stood the matter down for a day for the parties to discuss the matter. On 14 November 2023 the parties returned to Court and the RAF sought a postponement of the matter to respond to the striking out application. The RAF had not filed anything in support of such a postponement and relied on submissions made from the bar.
- [5] Had there been no striking out application the matter would have been removed from the roll as the filing of a notice of intention to defend does away with the hearing of the matter by default. However, the Court was faced with a striking out application for the RAF's non-compliance with notices in terms of rule 37, as well as non-compliance with Rules 21 and 35, none of which had been cured by the RAF.

- [6] The response from the RAF was a request that it be provided with an opportunity to respond to the striking out application. As the parties wished to argue the striking out application, the Court was willing to grant the necessary orders to allow the matter to proceed in this way.
- [7] The Court permitted the RAF the opportunity it sought to respond to the striking out application, but on timeframes that would alleviate the prejudice of a lengthy postponement to the plaintiff.
- [8] I therefore granted an order that would permit the RAF an opportunity to place the necessary facts before the Court, particularly in relation to the striking out application. The process and the substance of the order was in response to a request for an opportunity by the RAF to place a version before the Court in relation to the striking out application.

RAF's non-compliance with the order of 14 November 2023

- [9] The order granted provided the RAF with an opportunity to file a notice of intention to oppose; an answering affidavit and a condonation application.
- [10] The RAF did not file a notice of intention to oppose or an affidavit opposing the striking out application. It also did not file an affidavit explaining why it had not sought to oppose the striking out application timeously.
- [11] The order of 14 November 2023 provided an additional opportunity for the RAF to oppose the striking out application. It was also an order granted in response to the RAF's request to place its version before the Court. This opportunity, requested by the RAF, was not utilised.

The hearing of the striking out application

- [12] On 23 November 2023, the striking out proceedings was then heard with the RAF having not filed any pleadings – despite an additional court order affording it an opportunity to do so.
- [13] At the hearing of the irregular step proceedings, the RAF also did not appear at court. The matter was stood down so that counsel for the plaintiff could deal with a technical issue, and only after the matter was recalled did the RAF attend at court.

- [14] It appears that in-between these events, the RAF had uploaded an affidavit opposing the irregular step proceedings. The caselines audit shows that the affidavit was uploaded at 10:57 on 23 November 2023 – being the day the matter was heard. The affidavit was filed not only without complying with the rules, but also in conflict with the court order, without a condonation application and after court had commenced.
- [15] The Court engaged Mr Shimange from the State Attorney representing the RAF on what the basis would be for the court to have regard to an affidavit filed out time of a court order granted.
- [16] Having already once provided the RAF with a postponement to file an affidavit explaining its non-compliance with the Rules of Court, the RAF would have to provide a basis for again not complying, this time with a court order. A party who does not comply with a court order may have good reasons to do so. However, they must tell the Court what those reasons are. If not, a court must hold a party to a court order. I was provided with no basis to permit this affidavit.
- [17] For these reasons, I indicated to Mr Shimange that I was not convinced that the affidavit opposing the striking out application is properly before Court.

Merits of the striking out

- [18] The plaintiff's case, in the striking out application, is that the RAF has not responded to the summons or any notices served on it for almost two years. Specifically, the plaintiff relies on the fact that the RAF ignored the plaintiff's Rule 37(2)(a) notice, as well as a Rule 37(1) and Rule 37(4) notice. The plaintiff refers to the fact that the RAF has been entirely inactive for years, and then shortly before the hearing files a plea knowing that the result is that the plaintiff will have to wait between "two to four years for the next court date".
- [19] The RAF's position is that the impact of Rule 19(5) is that it is permitted to file a notice of intention to defend at any stage of the proceedings. The purpose of this Rule, argues the RAF, is that there is no need for condonation and that Rule 19(5) negates the functions of Rules 30, Rule 30A and 27 of the Uniform Rules of Court. The RAF's position is that all its non-compliance is swept away by the provisions of Rule 19(5).
- [20] The RAF is, of course, on good ground when it submits that Rule 19(5) permits it to file a notice of intention to defend at any stage and that in so doing it defeats the

default judgment application. This the Court accepts is the functioning of Rule 19(5): it prevents the matter from proceeding by way of default. However, the RAF's reliance on Rule 19(5) can only defeat the granting of default judgment. But no default judgment was sought or granted. The relief sought was for the striking out of the RAF's defence for non-compliance with court rules – being those in rules 35, 37 and 21.

[21] In addition, if the irregular step proceedings were limited to the late filing of the notice of intention to defend, solely, then Rule 19(5) would be determinative. However, the non-compliance with the Rules of court, on which the plaintiff relies is also the RAF's failure to comply with Rules 37(1); 37(2)(a) and 37(4). The RAF has also not responded to a Rule 21(4) notice, a Rule 35(1) notice; nor the notices in terms of rule 35(6), 35(8) and 35(10). The RAF also failed to discovery timeously. It is not disputed that the RAF received these notices and did not respond to them. The RAF also does not dispute that it has complied with the rules. Its defence, made in oral submissions, rely solely on Rule 19(5). As no default judgment was granted, this defence does not assist.

[22] The RAF therefore did not comply with these rules. Nor did it respond to the plaintiff's striking out application or the court order allowing it a further opportunity to respond to the striking out application.

[23] In addition, the order of 14 November was drafted in language which made it clear that unless the RAF provided a response to the striking out application, the Court would strike out the defence on the return day. The order clearly provided the RAF with an opportunity to dispel the plaintiff's accusations that the RAF's notice of intention to defend was not bona fide and filed to postpone the matter, resulting in a consequent delay of the finalisation of the plaintiff's claims for several years.

Costs

[24] The plaintiff was successful in his application to strike out. It was an application necessitated by inaction by the RAF. The plaintiff is entitled to his costs. The plaintiff has requested that a punitive costs order be granted. I have considered such a costs order to be appropriate as the delays in the finalisation of this matter were caused by the RAF. Despite an opportunity to explain this delay, the RAF has not advised this

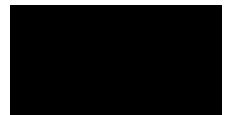
Court of what the reasons for this delay are. Nor has it explained its non-compliance with the Rules.

[25] I also consider that the RAF did not comply with an order, which was granted at its instance and as an indulgence. No explanation for the non-compliance was provided. These, viewed cumulatively, renders the award of a punitive costs order appropriate.

Order

[26] As a result, the following order was granted:

- a) The RAF's defence is struck out and the plaintiff is permitted to enroll the matter on the default trial roll.
- b) The plaintiff may approach the Registrar for a preferential trial date.
- c) There RAF is to pay the plaintiff's costs on an attorney and client scale.



I de Vos
Acting Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email.

Counsel for the applicant:	Advocate Van der Schyff
Instructed by:	Slabbert & Slabbert Attorneys
For the respondent	M Shimange
Instructed by:	State Attorney
Date of the hearing:	16 November 2023
Request for reasons	28 November 2023
Date of judgment:	27 February 2024