

REPUBLIC OF SOUTH AFRICA**IN THE HIGH COURT OF SOUTH AFRICA****(GAUTENG DIVISION, PRETORIA)**

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

20 September 2023
DATE


SIGNATURE

CASE NO: 22243/2022

In the matter between:

LIVONA ROLLS

Applicant

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

(This matter was heard in open court and after hearing arguments obo plaintiff, the draft order was made an order of court. the later request for reasons was received and reasons are given and uploaded onto CaseLines to

the electronically file of this matter. The date of uploading onto CaseLines is deemed to be the date when reasons were given)

BEFORE: HOLLAND-MUTER J:

[1 This matter served before me in the Road Accident Fund Default Court on 15 August 2023. The proposed draft order presented to court by counsel after submissions were made, contained a clause that there was a valid contingency fee agreement in terms of the Contingency Fees Act, 66 of 1997 (the “Act”), entered into between the plaintiff and her attorney.

[2] When scrutinising the agreement on CaseLines and a hard copy thereof, I was not satisfied that the agreement was valid in terms of the Act. Counsel agreed that the contingency agreement was not in accordance with the Act.

[3] Before dissecting the purported agreement, it is necessary to briefly refer to the purpose of the Act. It is clear from the decision in **South African Association of Personal Injury Lawyers v Minister of Justice and Constitutional Development (Road Accident Fund, intervening party) 2013(2) SA 583 South Gauteng High Court, Johannesburg,(referred to as SAAPIL)** that *“the Act seeks to strike a balance between the vices of contingency fee agreements, on the one hand, and their virtue, on the other, and of making justice accessible to poor people who might otherwise not have access to justice”*, par[20] supra.

[4] The Act must be read in its full context and parties, when entering into a purported contingency fee agreement, cannot by choice elect that only certain sections of the Act applies to the agreement. From the heading of the alleged contingency agreement before the court is it reasonable to infer that the drafter of the agreement wanted only section 2(1)(a) of the Act to apply to the agreement. This amounts to a mere repetition of what the Act embodies namely that a legal representative will only be entitled to any fees if successful.

In my view it is not necessary to head the agreement as such because that is the sole purpose of the Act.

[5] The agreement then provides in clause 5.4 that should the claim be successful (or partially successful), the attorney shall be entitled to fees equal to the attorney's normal fees (in par 6.2 in the agreement). In par 6.2 the agreement provides for normal fees **without** any reference to the limitation provisions of section 2 (2) of the Act.

[6] It is stated in section 2(2) of the Act that the purpose of the Act is to restrict any fees to exceed 25% of the total of any such fees or normal fees charged by more than 100 per cent. It is trite that the Act is applied that the maximum fees on success will be either 25 per cent of the total awarded **or** double the normal fees charged **which amount is the least**.

[7] It was held in **SAAPIL supra para [26]** that effect of the Act is twofold: First, it permits contingency fees agreements in terms of section 2(1) of the Act and not in terms of only section 2(1)(a) of the Act. Second, it makes all contingency fees agreements subject to the limitations and requirements of sections 2(2) to section 5 of the Act. To try and circumvent the limitations as done in the agreement before me (the heading referring only to section 2(1)(a)), implies that the drafter wanted to exclude the rest of the Act. This renders the agreement unlawful and invalid.

[8] It was further held in **SAAPIL para [50] and [59-60]** that the limitations are constitutional and it promotes access to justice which would be nullified if unlimited contingency fees agreements were allowed.

[9] I have no reason to believe that the current agreement does not comply with the Act and therefore reiterate that the agreement is not a valid

contingency fees agreement, and the deleting thereof in the draft order remains in force.



J HOLLAND-MUTER

JUDGE OF THE PRETORIA HIGH COURT

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AND TO: The Registrar of the Pretoria High Court
Attention: Z Msimanga