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

Case Number: 11652/2021

(1) REPORTABLE: YES / NO.

(2) OF INTEREST TO OTHER JUDGES: YES / NO.

(3) REVISED.

DATE: 2023-11-09

SIGNATURE

In the matter between:

LEBOGANG LEONARD TOBIAS

Plaintiff

Identity Number: 8[...]

and

THE ROAD ACCIDENT FUND

Defendant

Claim Number: 5[...]

Link no: 4954887

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 9 November 2023.

REASONS FOR JUDGMENT

KRUGER-VAN STADEN AJ

BACKGROUND

[1] The claim documents were lodged on 12 February 2020.

[2] The Plaintiff issued Summons against the Defendant on 05 March 2021. The summons was served on the Defendant as per Return of Service of the Sheriff on 09 March 2021.

[3] As per the issued and served Particulars of Claim, the Plaintiff claims for the following:

- Payment in the amount of R905 000.00 consisting of the following:
- Plaintiff's Future Medical Expenses Undertaking i.t.o. Section 17(4)(a)
- Past loss of income R85 000.00
- Future loss of income R420 000.00
- General Damages R400 000.00

[4] On 24 August 2022 the Plaintiff brought an application to apply for a Trials Interlocutory Court date in order to apply for Judgment by Default as no Notice of Intention to Defend was served and filed by the Defendant.

[5] The application for Default Judgment was set down for 27 September 2023 on the Default Trial Roll. The notice of set down was served on the Defendant by way of email on 12 June 2023 and physically on 13 June 2023 as confirmed by the stamp of the Defendant.

[6] On 22 September 2023 the Plaintiff served upon the Defendant a notice of intention to amend at Trial and their amended pages. According to the amended pages it is averred that the Plaintiff suffered damages in the sum of R3 219 724.00 calculated as follows;

- Future Medical expenses Undertaking i.t.o. Section 17(4)(a)

- Loss of earnings R2 419 724.00
- General Damages R800 000.00

[7] On 27 September 2023 the matter was Set down before myself on the Trial Default Judgment Roll.

[8] Upon calling the matter, I was informed by Adv. J.F. Grobler SC, representing the Plaintiff that there was representation on behalf of the Defendant present and that the Defendant has intention to defend the matter.

[9] Mr. K Phokwane, representing the Defendant, confirmed the Defendant's intention to defend the matter and that a notice of intention to defend was served upon the Plaintiff's Attorney of record on 26 September 2023.

[10] Adv J.F. Grobler SC, on behalf of the Plaintiff confirmed receipt of the Notice of intention to Defend by the Defendant.

[11] Verbal arguments by Adv J.F. Grobler SC for the Default application to proceed was heard and verbal arguments by Mr. K Phokwane arguing that matter could not proceed on Default as a notice of intention to defend was given by the Defendant was heard. Matter stood down for consideration in chambers and were to resume at 11:15 on the same day.

[12] In the matter of *Phangwa v Road Accident Fund* (27552/2022) [2022] ZAGPPHC 998 (16 November 2023) Kashane Manamela AJ states as follows:

"[10] On matters of substance, the plaintiff's attorneys begrudge the conduct of the defendant, including generally in other matters. It is said that the defendant has the tendency to file notices to defend belatedly in order to delay judgment or determination of the matter whilst not harbouring serious intention to defend the material matters. But this, in my view, does not detract from the need to comply with the practice directives

and the Uniform Rules guiding proceedings before this Court by any litigant, including plaintiffs in matters where the Road Accident Fund may be guilty of the alleged conduct. For the letter and spirit of our law, as borne in this instance by the rules of practice of this Court, are very clear in this regard.

[11] *The underlying rule in this matter is Uniform Rule 19 which reads in the material part:*

(1) Subject to the provisions of section 24 of the Act, the defendant in every civil action shall be allowed 10 days, after service of summons on such defendant, within which to deliver a notice of intention to defend ...

...

(5) Notwithstanding the provisions of subrules (1) and (2) a notice of intention to defend may be delivered even after expiration of the period specified in the summons or the period specified in subrule (2), before default judgment has been granted: Provided that the plaintiff shall be entitled to costs if the notice of intention to defend was delivered after the plaintiff had lodged the application for judgment by default.

[underlining added for emphasis]

[12] *And this Court's Judge President Revised Practice Directive 1 of 2021 of 8 July 2021 is applicable to the current circumstances of this matter, including in the following part:*

Where the Defendant is the RAF and fails or refuses to file a notice of intention to defend, a plaintiff must apply to the registrar for a date in the Special Interlocutory Court in terms of chapter 8 of this directive, to make

application to obtain a referral by that court to seek Judgment by default as contemplated in Chapter 6 of this directive ...

...

17. This chapter requires, from a Plaintiff, full compliance with the duty of disclosure as would be expected in an ex parte application and any failure shall imperil an Order being granted and may also result in punitive costs Orders against practitioners, a referral of the infraction to the Legal Practice Council and the professional representative Societies/Associations.

[13] It is clear from both Uniform Rule 19(5) and the extracts from the Judge President Revised Practice Directive 1 of 2021, appearing above, that the horse does not bolt, so to speak, upon failure of a defendant, such as the Road Accident Fund, to deliver a notice of intention to defend a claim within the timeframe stipulated in Uniform Rule 19(1). There is a clear objective why this is so. The sword of justice cuts both ways in this regard in protection of the rights or interests of both the plaintiff and the defendant."

CONCLUSION

[13] Default Judgment cannot be granted in this matter. As per the Uniform Rule 19(5) a Notice of intention to Defend may be delivered even after the expiration of the period specified in the summons or the period specified in subrule (2), before default judgment has been granted. Provided that the Plaintiff shall be entitled to cost if the notice of intention to defend was delivered after the Plaintiff had lodged the application for judgment by default.

[14] When matter resumed at 11:15 on 27 September 2023 matter was removed from the roll with the Defendant to pay the wasted cost as per the above reasons provided.

A. KRUGER-VAN STADEN

ACTING JUDGE OF THE HIGH COURT

CASE NO: 11652/2021

HEARD ON: 27 September 2023

FOR THE PLAINTIFF: ADV. J.F. GROBLER SC

INSTRUCTED BY: Wehmeyers Attorneys

FOR THE DEFENDANT: MR. K. PHOKWANE

INSTRUCTED BY: State Attorney

DATE OF REASONS FOR JUDGMENT: 9 November 2023