

REPUBLIC OF SOUTH AFRICA



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

3/3/15

CASE NO: 50314/2007

(1)	REPORTABLE: <u>YES</u> / NO
(2)	OF INTEREST TO OTHER JUDGES: <u>YES</u> / NO
(3)	REVISED.
23/02/2015	
DATE	SIGNATURE

In the matter between:

NETCARE PRETORIA ONE (PTY) LTD

APPLICANT

AND

MARIA ELIZABETH ROELOFSE

RESPONDENT

In Re:

MARIA ELIZABETH ROELOFSE

PLAINTIFF

AND

DR F DE V THERON

FIRST DEFENDANT

DR JM DIPPENAAR

SECOND DEFENDANT

NETCARE PRETORIA ONE (PTY) LTD

THIRD DEFENDANT

DRS MYBURG AND OOSTHUIZEN INC

FOURTH DEFENDANT

ME STELLA-MARIA BOTHA (PREVIOUSLY NEL)

FIFTH DEFENDANT

JUDGMENT

WEBSTER J

1. This application was brought on unopposed bases in the unopposed motion court. The applicant seeks an order in the following terms: 4.W.
 - "1. The respondent/plaintiff's action against the applicant/third defendant brought under the above case number be dismissed;
 2. Directing the respondent/plaintiff, alternatively the respondent's/plaintiff's attorneys of record to pay the costs of this application;
 3. Directing the respondent/plaintiff to pay the costs of the action in favour of the third defendant."
2. The respondent instituted an action against the applicant and four other defendants in the amount of R1 062 368.52 plus interest and costs during October 2007. The claim arose from injuries suffered by the respondent when she fell from a theatre bed on 5 November 2004.
3. The deponent to the founding affidavit, Sandra Sithole, stated that she is the attorney for the applicant in this application and third defendant in the main action. According to her affidavit the only progress made in the main action from date of institution until the plaintiff's attorneys of record, Groenewald van Dyk Attorneys withdrew in February 2011 was that the plaintiff applied for a trial date and was allocated 25 November 2011 as the trial date. The applicant's attorneys were informed by MacRobert Attorneys acting for the other defendants on 31 January 2011 that the plaintiff had passed away. Applicant's attorneys established that the executrix who was appointed to administer the estate of the plaintiff was Margareth Hanelore Bronkhorst. Applicant's attorneys were informed that the beneficiaries of the estate are consulting attorneys "...to obtain legal advice regarding the merits of proceeding with the claim."

4. Subsequent thereto and on 10 November 2011 Adams and Adams Attorneys informed the applicant's attorneys that "*...they had been instructed by the family of the plaintiff to advise them with regard to the continuation of the matter and requesting a removal of the matter from the trial roll of 25 November 2011*".
5. On 6 March 2012 a letter from Adams and Adams Attorneys confirmed that their "client" wished to proceed with the action. They undertook to take all the necessary steps in preparation for trial. They also made it known that they were "*...preparing a notice of amendment so as to make provision for the plaintiff's demise*". No action was seemingly taken in this regard.
6. Eight months later a pre-trial conference was convened on 6 November 2012 and on 7 November 2012 an order to compel was granted in favour of the defendants in the main action. To date there has not been compliance with this order nor has there been any progress in the matter.
7. The applicant based its request to have the plaintiff's action dismissed on the following grounds:
 - "37.1 *Non-compliance with the court order of 7 November 2012 compelling the plaintiff to discover;*
 - 37.2 *Alternatively, on the basis that there is no claim for the third defendant to answer to because the plaintiff is non-existent and there has been no notice to substitute the executor for the plaintiff since the plaintiff's death on 22 October 2010. Furthermore, the final liquidation and distribution account has been lodged and the executrix would have been discharged of her functions thus rendering her functus officio and having no locus standi to pursue the action in her capacity as the executrix of the plaintiff's estate.*"
8. On a consideration of the premises set out above, the court is of the view that the applicant is entitled to the relief set out in the Notice of Motion.
9. The following order is accordingly granted:

IT IS ORDERED:

- 1. THAT the respondent/plaintiff's action against the applicant/third defendant brought under case number 50314/2007 be and is hereby dismissed;**
- 2. THAT the respondent/plaintiff, alternatively the respondent/plaintiff's attorneys of record pay the costs of this application;**
- 3. THAT the respondent/plaintiff pay the costs of the action in favour of the third defendant.**

G. Webster

G. WEBSTER

JUDGE IN THE HIGH COURT