

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 1566/2013

In the matter between:

MARIA GABRIËL ANDRADE

Applicant

versus

ROAD ACCIDENT FUND

Respondent

HEARD ON: 9 MAY 2013

JUDGMENT BY: LEKALE, J

DELIVERED ON: 16 MAY 2013

INTRODUCTION AND BACKGROUND:

[1] The applicant is the plaintiff in a defended action instituted against the respondent, as the defendant, under case number 5391/2011 which is set down for trial on 11, 12 and 14 June 2013 in this Court.

[2] On 19 November 2012 the parties held a pre-trial conference at which they, *inter alia*, agreed that the respondent shall file its discovery affidavit as well as a reply to the applicant's agenda in terms of Rule 37(4) of the Uniform Rules of Court

(the Rules) on or before 28 January 2013. The respondent, however, failed to oblige and, on 2 April 2013 the applicant, out of desperation, eventually caused a letter to be directed to the respondent's attorneys of record placing them on terms in this regard by demanding compliance on or before 8 April 2013. The letter, however, elicited no response whatsoever from the respondent's side.

- [3] The applicant now approaches this Court by way of an unopposed motion filed on 22 April 2013 for an injunction. After hearing argument for the applicant, I reserved judgment on the said motion for an order in the following terms:

- "1. Dat die respondent gelas word om binne 'n periode van vyf (5) dae na betekening van hierdie bevel aan die applikante beskikbaar te stel antwoorde tot die eiseres se Reël 37(4)-vraelys asook verweerder se blootleggingsverklaring soos aangevra in die Reël 37-notule gedateer 12 Maart 2013;**
- 2. Dat verlof verleen word aan die applikante om op dieselfde stukke behoorlik aangevul by die nie-verskaffing van die blootleggingsverklaring en die antwoorde op die eiseres se Reël 37(4)-vraelys, die hof te nader vir die deurhaling van verweerder se verweerskrif en teeneis onder saaknommer 5391/2011;**
- 3. Die koste van hierdie aansoek deur die respondent betaal word;"**

ISSUE TO BE DETERMINED:

- [4] In his submissions for the applicant, Mr Coetzer correctly and laudably draws the attention of the court to the decision in **Kriel v Bowels** 2012(2) SA 45 (ECP) and points out that, recently an application for an order similar to the one sought in the instant matter on similar grounds was dismissed in this court on the basis of that decision and on the ground that no compulsion is competent because Rule 37(4) does not prescribe time limits for compliance therewith. The issue is, therefore, whether or not, on the facts of the present application, an order compelling a party to respond to a Rule 37(4) questionnaire is competent.

APPLICANT'S CONTENTIONS:

- [5] Mr Coetzer submits that the facts in the instant matter are distinguishable from the facts in **Kriel v Bowels**, *supra*, insofar as the applicant *in casu* relies on a pre-trial minute to compel the respondent. She, in effect, seeks to enforce the terms of a Rule 37 minute.
- [6] It is, further, submitted that the option of requesting a conference before a judge is not available to the applicant because a conference has already been held and a minute been filed.

APPLICABLE LEGAL PRINCIPLES:

- [7] Rule 37(4) of the Rules facilitates a smooth and effective conference so as to enable parties to reach agreement on as many issues as possible so as to promote expeditious resolution of disputes.

(See **Paterson NO v Kelvin Park Properties CC** 1998 (2) SA 89 (E) at 104C – D.)

- [8] A pre-trial minute is effectively an agreement between litigants aimed primarily at identifying issues for determination by the court and is binding between parties thereto.

(See **MEC for Economic Affairs, Environment and Tourism, Eastern Cape v Kruizenga and Another** 2010 (4) SA 122 (SCA) at 126E – G.)

APPLICATION OF LEGAL PRINCIPLES AND FINDINGS:

- [9] As correctly submitted by Mr Coetzer, the applicant relies on the terms of a pre-trial minute to compel the respondent as opposed to the provisions of Rule 37(4) of the Rules. The instant matter is, thus, distinguishable from the facts in **Kriel v Bowels**, *supra*, insofar as no conference had been held in that matter and the relief available to the applicant in that case lay in invoking the provisions of Rule 37(8) of the Rules

by requesting the conference to be convened before a judge in chambers.

- [10] The applicant, in the instant matter, effectively moves the court to give effect to the terms of the Rule 37 agreement while in the **Kriel v Bowels** matter the court specifically found that it was not a case where a party was seeking to renege on an agreement reached during the course of pre-trial proceedings.

ORDER:

- [11] In the result an order is granted in terms of prayers 1, 2 and 3 of the Notice of Motion.

L.J. LEKALE, J

On behalf of applicant: AdvCoetzer
Instructed by:
Honey Attorneys
BLOEMFONTEIN

On behalf of respondent: N/A