



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

CASE NO: 40814/2017

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: 9 JULY 2024

SIGNATURE

In the matter between:

ROAD ACCIDENT FUND

Applicant

and

OLIVIA JACKSON

First Respondent

DAVIS FILMS/IMPACT PICTURES

(RES 6) PTY LIMITED

Second Respondent

HULLY GRANT

Third Respondent

PYRANHA STUNTS (PTY) LTD

Fourth Respondent

MELVILLE RONALD HILTON

Fifth Respondent

MARAIS GUSTAV

Sixth Respondent

BICKETS ACTION SOUTH AFRICA (PTY) LTD

Seventh Respondent

Summary: *Application for leave to appeal – filed under the guise of a “reinstatement – application” more than 4 years after judgment – no application for condonation – no prospects of success – peremption by conduct – application dismissed together with a punitive costs order.*

ORDER

On 19 June 2024 the following order was granted:

1. The application for leave to appeal dated 17 May 2024 is dismissed with costs, such costs to be on an attorney and client scale and to include the costs of two counsel, including that of senior counsel, where so employed respectively.
2. Reasons shall be furnished in due course.

REASONS FOR THE ORDER

This matter has been heard virtually and is otherwise disposed of in terms of the Directives of the Judge President of this Division. The judgment and order are accordingly published and distributed electronically with the effective date of the reasons being 9 July 2024.

DAVIS, J

Introduction

[1] The first respondent has sued the Road Accident Fund (the RAF) for damages suffered as a result of a motor vehicle accident that had occurred on 5 September 2015. The first respondent was a stuntwoman at the time, riding a motorcycle when a camera attached to a boom affixed to a motor vehicle struck her. She sustained serious injuries as a result thereof.

[2] The first respondent has also instituted a separate action against various other parties, which included the filmmaker of the movie in which the first respondent was to appear, as well as other related parties.

[3] The two actions were consolidated.

[4] The consolidated trials proceeded on the separated issue as to whether the motor vehicle accident was one envisioned by sections 17(1) and 21 of the Road Accident Fund Act¹. On 5 March 2019, after the hearing of evidence on the issue, this court found that it was.

[5] Almost a year later, the matter proceeded against the RAF in respect of the issue of liability and a possible apportionment of damages. On 1 April 2020 this court found the RAF 100% liable for the first respondent's proven or agreed damages.

[6] Although not marked as reportable, the judgment was indeed reported in 2021².

¹ 56 of 1996 (the RAF Act).

² *Jackson v RAF* 2021 (4) SA 244 (GP).

[7] The RAF now seeks leave to appeal both the aforementioned judgments of 19 March 2019 and 1 April 2020.

Peremption of the appeals?

[8] Peremption of an appeal takes place when a party waives its rights to appeal “... *in a way that leaves no shred of reasonable doubt about the losing party’s self-resignation to the unfavourable order that could otherwise be appealed against*”³.

[9] Although peremption is, like waiver, not lightly presumed, it serves to safeguard the integrity of the judicial process “... *by preventing litigants from oscillating between contrary positions, ensuring judicial consistency and fairness. It ensures finality and stability in legal proceedings – which is essential for maintaining public trust in the justice system*”⁴.

[10] In proceeding with the trial on the merits in March 2020 (which resulted in the order of liability on 1 April 2020), the RAF had clearly and unequivocally resigned itself to the earlier judgment delivered a year before on 5 March 2019 which rendered the liability issue justiciable in terms of the RAF Act.

[11] Despite this, the RAF, way out of time, on 14 September 2020, delivered an application for leave to appeal, not only the 1 April 2020 judgment, but also the 5 March 2019 judgment.

³ *SARS v CCMA* 2017 (1) SA 549 (CC) as recently referred to in *Mhlontlo Local Municipality v Ngcangula* (case no 1154/2022) [2024] ZASCA 5 (January 2024)

⁴ Op uit at [13] and *Zuma v Secretary of the Judicial Enquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State* [2021] ZACC 28; 2021 (1) BCLR 1263(CC).

[12] On 20 November 2020 however, just before the application for leave to appeal was to be heard by this court (together with an opposed application for condonation), the RAF withdrew its application and tendered the costs thereof.

[13] On 3 March 2021 the parties met each other at a pre-trial conference regarding the issue of quantum. Both parties were represented by their respective counsel and attorneys. The minutes of the meeting, signed by the parties' respective attorneys, inter alia referred to this court's judgment of 1 April 2020 and recorded that the RAF would provide an undertaking "to the extent of their liability" in accordance with section 17(4)(a) of the RAF Act, and that the parties would proceed to call a large number of experts (at least 8 for the first respondent and 6 of the RAF) to testify in respect of the issue of the extent of the first respondent's damages. The parties agreed to obtain joint minutes of the various experts' meetings by 30 April 2021. The parties also agreed that no prejudice had been suffered by either of them at that stage.

[14] On 6 June 2023 this court granted an interim payment order against the RAF. Non-payment of this order resulted in a writ being issued on 5 December 2023.

[15] In the minute of yet another pre-trial conference, held on 17 January 2024, the RAF for the first time hinted at an intention to bring an application for condonation and "re-instatement of the appeal". By that time an order to compel the RAF to deliver its outstanding medico-legal reports had already been granted on 12 May 2023, which had also not been adhered to, resulting in the RAF's defence being struck out on 23 February 2024.

[16] Four months later, when nothing had been forthcoming from the RAF, a sale in execution of some of the RAF's movables due to non-payment of the interim payment order was scheduled to take place on 17 May 2024.

[17] This scheduled sale in execution resulted in a fresh application for leave to appeal the judgments of 5 March 2019 and 1 April 2020 to be delivered by the RAF on 17 May 2024. This application was uploaded on Caselines under the heading “application for reinstatement of leave to appeal”, but without any such application or any application for condonation.

Evaluation

[18] The RAF could only have proceeded with the trial on the merits in 2020 on the basis of having accepted the determination in 2019 that the first respondent’s claim fell within the RAF Act. There can be no reasonable doubt about that fact at the time. This finding is fortified by the fact that a year had passed since the first judgment without any application for leave to appeal having been filed. The right to appeal the first judgment had therefore then already become preempted.

[19] Similarly, almost a year had elapsed since the second judgment (of 1 April 2020) by the time the pre-trial conference had been held between the parties on 3 March 2021, again without any fresh application for leave having been delivered. The application which had been delivered had formally been withdrawn on 20 November 2020. If this was not a sufficient indication of the waiver of the right to appeal, the discussions and agreements which proceeded in order to facilitate the quantification of the damages, leaves one in no reasonable doubt that any right to further dispute or appeal the determination of liability, had been waived. The right to appeal the second judgment had therefore also become preempted.

[20] Both the aforesaid conclusions are further fortified by the fact that the RAF had not opposed the granting of the interim order, in which application reliance had been placed on both the 2019 and 2020 orders and judgments.

[21] The application for leave to appeal should therefore be dismissed on this substantive ground.

Procedural aspect

[22] The belated attempted “reinstatement” of the application for leave to appeal, had been delivered without any such application and without any application for condonation. It therefore suffers from a fatal procedural defect as well.

Costs

[23] There is no reason why costs should not follow the event.

[24] The conduct of the RAF however, deserves censure. By allowing the appeals to have become preempted and by attempting, more than three years later to revive a previously abandoned right, the RAF brought itself into the exact oscillating position against which the principle of preemption acts as a safeguard (as referred to in par [9] above). The RAF’s conduct therefore, if tolerated, would undermine the integrity of the legal process. A court should display its displeasure at such conduct.

[25] The further consequence of the RAF’s conduct, is that it had roped in the other parties against which action had been instituted (as referred to in par [2] above), but which parties have since been excluded from further litigation. The RAF should therefore be liable for the costs occasioned by those parties.

[26] It is furthermore patently clear that the eventual timing of the application for leave to appeal, was prompted by the final attempt to coerce the RAF to comply with a payment order from this court and not by a genuine desire to appeal, which would otherwise have been pursued either timeously or at least much earlier (such as after the judgment had been reported).

[27] I therefore find that the RAF should be liable for the costs of all other parties and that such costs should be on punitive scale.

[28] It is for the above reason that the order of 19 June 2024 was granted.


N DAVIS
 Judge of the High Court
 Gauteng Division, Pretoria

Date of Hearing: 19 June 2024

Judgment delivered: 9 July 2024

APPEARANCES:

For the Applicant:

Advocate C P J Strydom

Attorney for the Applicant:

The State Attorney, Pretoria.

For the 1st Respondent:

Adv J J Wessels SC together with
 Adv H Schouten

Attorney for the 1st Respondent:

Munro Flowers & Vermaak,
 Rosebank
 c/o Friedland Hart, Solomon &
 Nicolson, Pretoria

For the 2nd Respondent:

Adv M H van Heerden SC

Attorney for the 2nd Respondent:

Cliffe Dekker Hofmeyr Inc, Cape
 Town

c/o Geldenhuys Malatji Attorney,
Pretoria

For the 5th, 6th & 7th Respondents:

Adv D Claassens

Attorney for the 5th, 6th & 7th Respondents:

Michalowsky, Geldenhuys &
Humphries, Cape Town

c/o Hack, Stupel & Ross, Pretoria