



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

DELETE WHICHEVER IS NOT APPLICABLE

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

3 September 2024
DATE


SIGNATURE

CASE NUMBER: 017965 / 2023

In the matter between:

**NEWNET PROPERTIES PTY (LTD)
T/A SUNSHINE NEWNET**

Applicant

and

ROAD ACCIDENT FUND

Respondent

CASE NUMBER: 017845 / 2023

In the matter between:

**NEWNET PROPERTIES PTY (LTD)
T/A SUNSHINE NEWNET**

Applicant

and

ROAD ACCIDENT FUND

Respondent

CASE NUMBER: 033961 / 2023

In the matter between:

**NEWNET PROPERTIES PTY (LTD)
T/A SUNSHINE NEWNET**

Applicant

and

ROAD ACCIDENT FUND

Respondent

CASE NUMBER: 039171 / 2023

In the matter between:

**NEWNET PROPERTIES PTY (LTD)
T/A SUNSHINE NEWNET**

Applicant

and

ROAD ACCIDENT FUND

Respondent

CASE NUMBER: 048813 / 2023

In the matter between:

**NEWNET PROPERTIES PTY (LTD)
T/A SUNSHINE NEWNET**

Applicant

and

ROAD ACCIDENT FUND

Respondent

In the matter between:

**NEUNET PROPERTIES PTY (LTD)
T/A SUNSHINE NEUNET**

Applicant

and

ROAD ACCIDENT FUND

Respondent

Heard: 01-05 JULY 2024

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email. The date and time for hand-down is deemed to be 10h00 on 30 AUGUST 2024.

Summary: Summary Judgement – Uniform Rule 32 warrants the verification of the 'cause of action' which is nothing but the verification of the 'entire set of facts' which gives rise to an enforceable claim and includes every fact which is material to be proved to entitle a plaintiff to succeed in his claim.

'Supplier Claim' in terms Section 17(5) of the Road Accident Fund Act 56 of 1996 – One of the material facts which the plaintiff must allege and prove is that the Fund is liable for, and the patient entitled to, compensation in terms of section 17(1) of the Act.

JUDGEMENT

LE GRANGE, AJ:

Introduction

- [1] In the week of 1 – 5 July 2024, a total of 6 (six) applications for summary judgement (under the case numbers above) came before me, all unopposed by the respondent (**Fund**).
- [2] For convenience a consolidated judgement is delivered.
- [3] The relevant factual matrix are the same in all the matters, and as follows:
- [4] The applicant, a private hospital (**Newnet**) instituted a claim against the Fund, in terms of Section 17(5) of the Road Accident Fund Act 56 of 1996 (Act), for past medical expenses and costs incurred on behalf of a third party/patient (**patient**), arising out of a motor vehicle accident, as pleaded in the particulars of claim (**supplier claim**).
- [5] The Fund gave notice of their intention to defend the matters and also pleaded to the allegations, relevant hereto that it does not have specific knowledge of the identity of the patients, their bodily injuries and/or the facts surrounding the accident [to be proven by the Newnet].
- [6] To this 'bare' denial, Newnet seized the opportunity to apply for the summary judgements, all supported by an affidavit of **ETIENNE KEYSER (deponent)**, claiming that the Fund has not made out a defence, good in law.

Facta probanda of supplier claim

- [7] On a question of whether Newnet's claim is in any way dependent upon the patient's claim, this Court was referred to the matter of the *Free State Provincial Administration v Road Accident Fund* (Free State High Court, Bloemfontein, Appeal No: A47/07, heard on 7 December 2009, and decided on 21 January 2010) where the Court on appeal found that a supplier claim is possible prior to the finalisation of the main (or personal) action between the patient and the Fund.

- [8] I find no fault in the submission nor the judgement referred to.
- [9] However, for a supplier to be successful with such a claim it *inter alia* needs to allege and prove that the patient him-/herself is entitled to those expenses as part of his/her compensation.
- [10] In this regard, section 17(5) of the Act provides that –
- '(5) *Where a third party is entitled to compensation in terms of this section and has incurred costs in respect of accommodation of himself or herself or any other person in a Newnet or nursing home or the treatment of or any service rendered or goods supplied to himself or herself or any other person, the person who provided the accommodation or treatment or rendered the service or supplied the goods (the supplier) may, notwithstanding section 19 (c) or (d), claim an amount in accordance with the tariff contemplated...*' Emphasis added.
- [11] Musi J stated it in the Free State matter *supra* as follows, at 42:
- 'In order to be successful the supplier will have to prove that [i] the third party is (at date of summons) entitled to claim the costs as part of his/her compensation (whether or not she/he has submitted a claim); [ii] that it rendered medical services goods or accommodation to the third party; [iii] that it complied with all the formalities in the Act and [iv] that its claim does not exceed the amount which the third party could, but for section 17(5), have recovered from the Fund.'* Emphasis added.
- [12] In the premises, one of the material facts which Newnet must allege and prove in a supplier claim is that the Fund is liable for, and the patient entitled to, compensation in terms of section 17(1) – which then entail that Newnet must *inter alia* allege and prove: (i) the accident; and (ii) the negligence or other wrongful act of the driver or the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee at a place within the Republic; and (iii) the bodily injuries that were caused by or arising from the driving of the said vehicle and which warranted accommodation and/or medical services.

- [13] It is clear from all the matters before me that Newnet did make allegations to that effect and even that it adhered to the provisions of the procedural compliance provisions of section 24, which brings us to the summary judgement applications.

Summary judgement

- [14] Uniform rule 32(2) provide that:

'(2) (a) Within 15 days after the date of delivery of the plea, the plaintiff *shall deliver a notice of application for summary judgment, together with an affidavit made by the plaintiff or by any other person who can swear positively to the facts.*

(b) The plaintiff *shall*, in the affidavit referred to in subrule (2)(a), *verify the cause of action and the amount*, if any, claimed, and identify any point of law relied upon and the facts upon which the plaintiff's claim is based, and explain briefly why the defence as pleaded does not raise any issue for trial.' Emphasis added.

- [15] Previously, much debate centered on whether the rule required a deponent to (i) verify 'the facts' or (ii) whether it should verify 'the cause of action'¹; along with the amount claimed (if any).

- [16] Considering the Constitutional Court judgement of *Links v MEC for Health, Northern Cape*² I believe that it is now settled law that the deponent has to verify 'the cause of action' which is nothing but the verification of the 'entire set of facts' which gives rise to an enforceable claim and includes every fact which is material to be proved to entitle a plaintiff to succeed in his claim.

¹ See *Evins v Shield Insurance Co Ltd* 1980 (2) 815 AD at paras 838H-839A; *Abrahamse & Sons v SA Railways and Harbours* 1933 CPD 626; *Coetzee v SA Railways & Harbours* 1933 CPD 565 at 570-1; and *Slomowitz v Vereeniging Town Council* at 330A-F.

² 2016 (4) SA 414 (CC) at para 32.

- [17] The rule also warrants something more than the mere repetition of the allegations set out in the particulars of claim.
- [18] In this regard, subrule (2)(a) contemplates that the verification must be done by the plaintiff himself or by some other person 'who can swear positively to the facts'.
- [19] It is trite law that, such person's ability to swear positively to the facts is essential to the effectiveness of the affidavit as a basis for summary judgment; and the court entertaining the application therefore must be satisfied, *prima facie*, that the deponent is such a person³; and that the mere assertion by a deponent that he 'can swear positively to the facts' is not sufficient.⁴
- [20] This safeguard (as it has been called) will ensure that when summary relief is granted, that it was justified and that the court had been satisfied by evidence under oath (by someone who can swear to the entire set of facts) that there is indeed a true, accurate and valid claim, in fact and in law.

Does the deponent's affidavit(s) meet the requirements of rule 32?

- [21] The deponent refer to himself as being Newnet's Chief Executive Officer.
- [22] I can accept that the deponent may have the requisite knowledge of the patient's physical injuries, the extent, nature and duration thereof – which could be obtained from Newnet's records and reports under his control, but this is only some of the material facts to be proven to be successful with a supplier claim.

³ *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A) at 423A–B; *Standard Bank of SA Ltd v Secatsa Investments (Pty) Ltd* 1999 (4) SA 229 (C) at 234B; *Absa Bank Ltd v Le Roux* 2014 (1) SA 475 (WCC) at 477B–H and 478A–B.

⁴ *Fischereigesellschaft F Busse & Co KG v African Frozen Products (Pty) Ltd* 1967 (4) SA 105 (C) at 109–10; *Barclays National Bank Ltd v Love* 1975 (2) SA 514 (D) at 515–16; *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A) at 423; *Standard Bank of SA Ltd v Secatsa Investments (Pty) Ltd* 1999 (4) SA 229 (C) at 234C; *Cape Town Transitional Metropolitan Substructure v Ilco Homes Ltd* 1996 (3) SA 492 (C) at 496A–498F.

[23] In argument before me, Counsel for Newnet appropriately conceded, that it is highly unlikely that the deponent has (or would have) any knowledge of the facts surrounding the alleged motor vehicle accidents, the cause and the injuries.

[24] I find that it is inherently improbable in logic and on the information before this Court that the deponent has knowledge of all of the salient facts surrounding the patient's entitlement to be compensated by the Fund, and is therefore not in a position to verify the cause of action.

[25] The supporting affidavit therefore falls materially short of what the subrule requires.

[26] The matters being unopposed, an order as to costs would not be appropriate.

Order

[27] In the result the following order is made:-

1. The application for summary judgment in CASE NUMBER 017965/2023 is refused with no order as to costs.
2. The application for summary judgment in CASE NUMBER 017845/2023 is refused with no order as to costs.
3. The application for summary judgment in CASE NUMBER 033961/2023 is refused with no order as to costs.
4. The application for summary judgment in CASE NUMBER 039171/2023 is refused with no order as to costs.

5. The application for summary judgment in CASE NUMBER 048813/2023 is refused with no order as to costs.
6. The application for summary judgment in CASE NUMBER 029152/2023 is refused with no order as to costs.



A J LE GRANGE
ACTING JUDGE

APPEARANCES

FOR APPLICANTS: ANIKA SCHMULIAN (Attorney with right of appearance).
Instructed by PODBIELSKI MHLAMBI INC.

FOR RESPONDENT: No appearance.