

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO.:1809/2022

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

Date: 14 October 2024

E van der Schyff

In the matter between:

T S Mphaka

Plaintiff

and

The Road accident Fund

Defendant

JUDGMENT

Van der Schyff J

Introduction

- [1] This matter was enrolled before me in the default judgment court on 7 October 2024. The defendant filed a notice of intention to defend in the morning before the matter

was called. Plaintiff's counsel indicated that he intends bringing an application for the setting aside of the notice of intention to defend. I stood the matter down to 11 October 2024 to allow the plaintiff the opportunity to file an application. I instructed the plaintiff to file its application on or before Tuesday 8 October 2024. The defendant, represented by the state attorney, was instructed to file an answering affidavit on or before Wednesday 9 October 2024.

- [2] When the matter was called, plaintiff's counsel drew my attention to the application filed by the plaintiff, wherein it seeks an order setting aside the defendant's notice of intention to defend.
- [3] Counsel for the defendant, however, indicated that he did not file any answering affidavit. He submitted that he did not receive the application filed by the plaintiff and pointed out that the application was emailed to an incorrect or incomplete email address. When his attention was drawn to the fact that the application was also served by hand at the address provided in the notice of intention to defend, albeit a day late in terms of the directive I granted when he was present in court on 7 October 2024, he denied having received it.
- [4] It is for a reason that the idiom 'the devil is in the detail, is well-known. I cannot ignore the fact that the defendant had, as a result of its own conduct in belatedly filing a notice of intention to defend, very little time to respond to the plaintiff's application. The emailed application did not reach him, and the application served by hand, was served a day late. If regard is had to the averments contained in the founding affidavit to the plaintiff's application and the grounds it is premised on, I am of the view that it is just and important to provide the defendant with one final opportunity to file an answering affidavit to the application filed by the plaintiff.
- [5] The defendant needs to answer to the allegation that the belated filing of the notice of intention to defend constitutes and abuse of process, if regard is had to, among others, the time that lapsed since the claim was accepted, the extent of injuries suffered by the plaintiff, the concession that the injuries sustained by the plaintiff are indeed serious, the frequent communications with the claim's handler, and the fact that the state attorney was already on October 2023 invited to the CaseLine file.

- [6] It is also trite that the court often expresses its dissatisfaction with the manner in which a party conducted itself in the litigation by granting a costs order *de bonis propriis*. Having read the plaintiff's founding affidavit, it is my *prima facie* view that this might be such a case. In order to be fair not only to the defendant, but also to the state attorney who had access to the CaseLine file a year ago, it is necessary to grant the defendant and the relevant state attorney, Mr. T. Shivambo the opportunity to respond.

ORDER

In the result, the following order is granted:

1. The default judgment application is postponed *sine die*;
2. The matter is retained by Van der Schyff J, or any other judge appointed by the Deputy Judge President, for case management;
3. The defendant, if it so wishes, is afforded the opportunity to file an answering affidavit to the application to set aside the notice of intention to defend by Friday, 18 October 2024;
4. The plaintiff may file a reply by Thursday, 24 October 2024;
5. The application to set aside the notice of intention to defend is enrolled for hearing before Van der Schyff J on Friday, 25 October 2024, unless another date is arranged with the parties;
6. The state attorney seized with this matter must file an affidavit on or before Friday, 18 October 2024, providing reasons why the wasted costs occasioned by the belated filing of the notice of intention to defend should not be paid by him on a *de bonis propriis* basis;
7. In the event that the matter is settled before Friday, 25 October 2024, the parties may approach Van der Schyff J in chambers for an appropriate order.


 E van der Schyff
 Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines.

For the plaintiff:

Adv. S Strydom

Instructed by:

SSH Mehlomakhulu & Co

For the defendant:

Mr. T Shivambo

Instructed by:

The State Attorney, Pretoria

Date of the hearing:

11 October 2024

Date of judgment:

14 October 2024