



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

Case No: 25040/2022

Reportable: No
Of interest to other Judges: No
Revised: No

SIGNATURE

Date: 11 November 2024

In the matter between:

THE ROAD ACCIDENT FUND

Applicant

and

M MLOTHA

First Respondent

THE SHERIFF, CAPE TOWN WEST

Second Respondent

JUDGEMENT

MOOKI J

- 1 The first respondent (Mr. Mlotha) claimed damages from the Road Accident Fund (the Fund) for injuries suffered arising from a car accident. The parties settled the claim. The settlement was made an order of court on 23 August 2023.
- 2 The Fund subsequently informed Mr. Mlotha that the Fund would pay once Mr. Mlotha, a foreign national, had shown that he was lawfully in the country when he was injured.
- 3 The Fund issued a directive on 21 June 2022, essentially making it a pre-condition to payment for a claim by a foreign national that such a national show that they were lawfully in the country at the time of their injury. Mr. Mlotha had issued summons against the Fund before 21 June 2022.
- 4 Mr. Mlotha issued a writ of execution against the Fund on 12 March 2024. The Fund in turn brought an application to suspend the writ pending the outcome of review proceedings¹ before the Full Court in this Division (“the Mudawo matter”) which was set down for 5 March 2024. The Full Court was to consider the lawfulness of the directive.

¹ Mudawo and Others v Minister of Transport and Another (011795/2022) [2024] ZAGPPHC 258 (26 March 2024)

- 5 Mr. Mlotha launched a counter-application on 5 April 2024. He sought relief that the stay application be dismissed and that the Fund be ordered to comply with the order made on 23 August 2023. Mr. Mlotha also sought to have the chief executive officer of the Fund held in contempt of the 23 August 2023 order.
- 6 The Fund did not prosecute its application to stay the writ. Mr. Mlotha then set his counter application down. This matter is thus set-down for the court to consider Mr. Mlotha's counter-application.
- 7 Mr. Mlotha contended that the Full Bench had dismissed the application by the Fund in the Mudawo matter on 26 March 2023, with the result that there was no basis to stay the writ. Mr. Mlotha relied on the following two additional bases for relief. First, the stay application was defective because the Fund did not comply with Rule 6(5)(b)(iii) because the Fund's notice of motion did not specify the date for the hearing of the application. He relied on the decision in *RH Plant Hire CC v Vlok and Others*.² Second, that the directive did not apply retrospectively. He relied in the decision in *Maphosa v Road Accident Fund*³ for this contention.
- 8 It is denied on behalf of the Fund that the Fund was in contempt of the 23 August 2023 order. That was because the directive required the Fund to be satisfied that Mr. Mlotha was lawfully in the country when he got injured before the Fund could pay him.

² *RH Plant Hire CC v Vlok and Others* (2023-055592;2023-018259) [2023] ZAGPPHC 683 (14 August 2023)

³ *Maphosa v Road Accident Fund* (2022-1093) [2024] ZAGPJHC 263 (7 March 2024)

- 9 It was also averred on behalf of the Fund that the Fund had sought leave to appeal in the Mudawo matter. It was pointed out that Mr. Mlotha launched his counter-application before expiry of the period for the bringing of an application for leave to appeal.
- 10 The Fund denied that its non-compliance with Rule 6(5)(b)(iii) rendered the Fund's application defective. That was because Rule 27 permits condonation for non-compliance with the Rules of Court. The Fund also referenced the Practice Directive of this Division, which does not permit setting out a hearing date in the notice of motion before service of that notice.
- 11 The Fund denied that it was unwilling to comply with the court order. It also denied that its chief executive officer was in contempt of court of the court order.

Analysis

- 12 The parties mentioned when the matter came for a hearing that the Full Bench dismissed the Fund's application for leave to appeal, and that the Fund had since petitioned the Supreme Court of Appeal. The parties agreed that the issues in the Mudawo matter remain live because of the petition to the Supreme Court of Appeal.
- 13 The resolution of Mr. Mlotha's application is linked to the determination of the issues in the Mudawo matter. This court cannot determine whether the directive is a bar to the Fund paying Mr. Mlotha before Mr. Mlotha had satisfied the Fund that he was lawfully in the country when he got injured

before the petition to the Supreme Court of Appeal has been resolved. Courts are required to aim for coherence in their determinations. It would not be coherent or make for an efficient administration of justice for this court to determine an application when there is a pending matter before a superior court dealing with the very same subject. This court cannot anticipate, and should not seek to anticipate, the outcome of the petition to the Supreme Court of Appeal.

- 14 Mr. Jacobs, counsel for Mr. Mlotha, agreed that the status of the Mudawo matter renders it pre-mature for this court to make a finding in relation to the relief sought in prayer 1 of the Fund's application, namely:

"suspending the operation and execution of the court order dated the 23rd day of August 2023, pending the outcome of the matter under Case No:11795/2022 heard before a Full Court of the Pretoria High Court on the 5th day of March 2024."

- 15 Mr. Jacobs submitted, however, that Mr. Mlotha had two other independent bases for his relief.
- 16 Mr. Jacobs initially submitted that the stay application stood to be dismissed, for non-compliance with Rule 6(5)(b)(iii). Mr. Jacobs accepted, on the questioning by the court, that a court can dismiss a matter only after considering the merits. This was in relation to Mr. Mlotha's contention that the stay application was not properly before court and ought to be dismissed on that account. The court, in substance, enquired whether the court can dismiss a matter that was not properly before court, as opposed

to a court striking such a matter from the roll. Mr. Jacobs conceded that such a matter ought to be struck from the roll, and not dismissed.

17 Mr. Mlotha did not persist with his contentions that the chief executive officer of the Fund be found to be in contempt of court.

18 I am not persuaded that the stay application is defective only for non-compliance with Rule 6(5)(b)(iii). The court in *RH Plant Hire CC v Vlok and Others* did not declare the law for the ages on this aspect. I agree that non-compliance with the rules of court does not, without more, render an application fatally defective. The law reports are replete with instances of matters being heard on the merit notwithstanding non-compliance with the rules of court.

19 The court in *RH Plant Hire CC* was not addressing the failure to detail a date in a notice of motion as a general statement. The importance of a date arose in the unique confines of that application, which the court detailed as follows:

*Can it be said that an application is made if an application is issued but a hearing date is not reflected in the notice of motion, served on the company and the CIPC, if the application remains unopposed?*⁴

20 The in court in *RH Plant Hire CC* was, in substance, dealing with whether the requirements for the “the making” of an application in business rescue proceedings had been met. This is made clear when considering the statement by the court that:

⁴ See para 18 of the judgement.

*“An omission to set out a stated date is fatal to the application in question, and a subsequent notice of set down cannot cure the defect. As a result, the omission to include a stated date in the notice of motion pertaining to the business rescue application renders the application, as it stands, of no-consequence.”*⁵

21 The court in *RH Plant Hire CC* was thus primarily dealing with the absence of a date for a hearing in the context of business rescue proceedings, where the question of “the making” of an application is unique to those proceedings.

22 Both parties contended that their respective applications were urgent. It is unnecessary to consider urgency. That is because the matter was given a special allocation.

23 The counter-application must fail. I make the following order:

(i) The counter-application in matter number 25040/2022 is dismissed.

(ii) The applicant in the counter-application is ordered to pay costs, including costs at Scale B in terms of Rule 67A.



O Mooki

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearance:

Counsel for the applicant:

G Jacobs

⁵ See para 22 of the judgement (internal footnotes omitted)

(in the counter-application):

Instructed by:

Campbell Attorneys

Counsel for the respondent:

R B Mphela

(in the counter-application):

Instructed by:

Mpoyana Ledwaba Inc.

Date heard:

22 August 2024

Date of Judgement:

11 November 2024