

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 23339/2022

DATE: 09-05-2024

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE 05/08/2024

SIGNATURE [REDACTED]

10 In the matter between

MOHOMI MP obo MOHOMI MD

Plaintiff

and

MEC FOR HEALTH, GAUTENG

Defendant

J U D G M E N T

YACOOB, J: This matter was set down for trial on 8 May 2024. The plaintiff was notified of the trial date in
20 September 2023 and the notice of set-down was duly served on the defendant's then attorneys of record, that is, the State Attorney, in October 2023. The matter has now been allocated to me for trial, and the defendant, for the first time, raises two procedural points: firstly that the defendant was not properly served with the notice of set-down, and,

secondly, that the matter is not ripe for hearing.

The defendant is now represented by different attorneys. There is a notice of withdrawal filed by the State Attorney dated 16 January 2024, which is after the date on which the notice of set-down was served on the State Attorney. The defendant's new attorney came on record on the same day. The letter of instruction that is uploaded in response one of the rule 7 notices filed by the plaintiff, who has filed a plethora of interim applications, shows that the
10 new attorneys were instructed in December 2023 and they were explicitly instructed to retrieve the file from the State Attorney. There is therefore no basis on which this Court can accept that the defendant not only received proper service of the notice of set-down, through the State Attorney, but also must therefore have been aware that the matter was set down for 8 May. There is a served notice of set down and no evidence to support the defendant's contention.

In addition, there are emails from the attorney of
20 the defendant which show that the attorney arrogantly assumed that the matter is set down for the hearing of the merits which have already been conceded rather than the quantum, even though there are expert reports which clearly deal with quantum which have been uploaded on CaseLines. This demonstrates that the defendants were well aware that

the matter was set down. The first point must fail.

The plaintiff has implored this Court not to allow the matter to be delayed any further because the defendant ought to have known and ought to have prepared. The plaintiff also complains of the conduct of the attorney of the defendant. I am not satisfied that it would be in the interests of justice to proceed with the matter in the absence of the expert reports which the defendant has undertaken to file. The defendant informs the court that the
10 appointments have already been attended to.

According to the defendant, the reports will be ready on or before the 15 August. Joint minutes would then have to be prepared. The plaintiff has requested that if the matter is not to proceed that in any event it be stood down to tomorrow to enable the parties to negotiate. I do not see any point in standing the matter down for the parties to negotiate. However I do believe that it is imperative that the parties have a meaningful engagement with one another. Taking into account that the request for a stand down to
20 tomorrow implies necessarily that the counsel is available tomorrow, and having determined that the defendant's representatives are available tomorrow, I am going to direct in my order that the parties hold a pretrial conference tomorrow to try and narrow the issues and to negotiate as much of a settlement as is possible.

The question of medical expenses, in particular, should be negotiated, since the plea of the defendant makes it clear that the defendant is going to rely on the so-called public health defence, and I have not seen that the plaintiff meaningfully engages with this defence.

The quantum of the general damages and the loss of earnings claim can also be negotiated between the parties. I will direct them to hold a pretrial conference tomorrow and to upload the minutes of that pre-trial
10 conference within the course of next week.

I am not going to make any order regarding the conduct of the parties to one another but it seems to me that neither side has been particularly considerate or civil to one another and this is a matter for some concern because legal professionals ought to treat each other with the civility due to colleagues.

The defendant attempted to persuade me that no costs order should be made against it for the delay, however it is my view that the defendant ought to have
20 known the matter was on the roll for today and ought to either have prepared itself or to have brought a formal application for the removal or the postponement of the matter, which it failed to do. The plaintiff has done the correct thing which is serve the notice of set down on the attorneys of record. They have uploaded all their expert

reports and done everything necessary to prepare for trial,
and the plaintiff is being prejudiced by this delay.

I therefore make the following order:

1. The matter is removed from the roll.
2. The defendant is to pay the plaintiffs taxed wasted costs on an attorney and client scale.
3. The parties are to hold a pre-trial conference tomorrow, that is, 10 May 2024,
10 at which they will endeavour to narrow the issues and to negotiate settlements on each of the heads of damages.
4. Minutes of that pre-trial conference are to be uploaded on CaseLines by the end of next week, that is, by 17 May 2024.
5. Should the pre-trial conference not take place tomorrow, that is on 10 May, as ordered the plaintiff shall bring a substantive application explaining why this
20 did not happen and why it should be allowed to set the matter down again on the trial roll.
6. The defendant's expert notices and summaries must be filed on or before the 20th August 2024.

7. Parties are to ensure that joint minutes are filed within six weeks of the reports of the experts being filed.
8. Should any party fail to comply with this order the other party shall takes steps in accordance with the rules to remedy the situation.

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YACOOB, J

JUDGE OF THE HIGH COURT

DATE: ...05/09/2024