

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 046976/2023

DATE: 2024-08-15

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE 15 August 2024

10 In the matter between



SIGNATURE

NKOSINATHI OSTA SIBANDA

Plaintiff

and

AFFINITY HEALTH INSURANCE AND ANOTHER Defendants

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**J U D G M E N T E X T E M P O R E**

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20 WILSON, J: This is an application in terms of rule 34A of the Rules of Court for an interim payment in respect of medical costs and loss of income arising from a personal injury.

The plaintiff contends that he suffered injury as a result of the first defendant's failure or refusal to authorise medical treatment timeously. Whether or not that is true, my power under rule 34A is circumscribed. I may only order

an interim payment if the first defendant, in this case Affinity Health, has admitted in writing its liability for the plaintiff's injury or if the plaintiff has obtained judgment against the first defendant for damages to be determined at a later stage.

Neither of those conditions applies here and accordingly I have no power to order an interim payment. I have made several attempts to explore with the plaintiff, who appears in person, the circumstances under which he  
10 could bring his action and this application properly before another judge and perhaps obtain some relief.

The plaintiff has unfortunately not been open to a discussion about how that might be possible and has asked me to make an order to expedite the main action in terms of rule 34A (7). It has also appeared at points during my exchange with the plaintiff that he may want me to determine the action on its merits today. Neither of those things can be done.

First of all, I am not satisfied that the main action is  
20 in such a state as to warrant an order for an accelerated hearing under rule 34A (7). Secondly, I am of course not in a position, on the papers before me, to determine the merits of that action.

The upshot of all of this, I regret, is that no relief can be granted to the plaintiff today. I hope that he

manages to obtain professional legal advice, which on the facts of this case, seems to me to be available to him on a contingency fee basis.

Nonetheless, there is only so far a judge can go to assist a lay litigant in the prosecution of a case that may or may not have merit. I have gone as far as I can. The fundamental problem is that rule 34A has not been properly engaged because there is no written admission of liability and no judgment against the first defendant.

10           The plaintiff litigates in person and is, while misguided in much of what he has done, not obviously in bad faith. I am not inclined to make a costs order against him.

For all these reasons I make the following order:

1.    The application for an interim payment under rule 34A of the Rules of this Court is dismissed.
2.    Each party will pay their own costs.

