

REPUBLIC OF SOUTH AFRICA

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

CASE NO: 20802/2020

(1)	<u>REPORTABLE: NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES: NO</u>
(3)	<u>REVISED.</u>
..... DATE	 SIGNATURE

In the matter between:

TSHIAMO LUNGA MABUNDA

Plaintiff/Applicant

and

ROAD ACCIDENT FUND

Defendant/Respondent

JUDGEMENT

PIENAAR (AJ)

1. This matter came before me on the default judgment roll on 3rd October 2024. This is a claim for injuries sustained by the Plaintiff as a result of the motor vehicle accident on 21 August 2015.
2. The issue of merits has been previously settled at 100% in favour of the Plaintiff and General Damages for the amount of R500 000,00. **[1]**
3. The Plaintiff served the notice of set down on 6 September 2024 on the Defendant. **[2]**. The notice of motion application was served on the Defendant on 14 December 2022, which is already two years before the date of hearing of 3rd October 2024.
4. The court heard arguments on the Loss of Earnings of the matter. The Court reserved judgment as it wanted to consider a claim of this amount of R4,2 million rands, particularly where it consisted largely of future loss of earnings.
5. In preparing the judgment the Court discovered that the claim for loss of earnings was originally for R2 million but according to the Heads of Argument, Counsel argued an amount of R4, 2 million for Loss of Earnings.
6. There is no amendment filed in terms of Rule 28 by the Plaintiff. Notice of Bar was served on the Defendant on 21st October 2022.
7. In *Nkala v Harmony Gold Mining Co Ltd* it was stated that—

“The issue as to when the stage of *litis contestatio* is reached in the modern-day law is a complicated one. It is reached when pleadings are closed. But this is no simple matter. Guidance as to when pleadings are closed can be found in Rule 29 of the Uniform Rules of Court. It advises that pleadings are closed if all parties to the case have joined issue and there are no longer any new or further pleadings, or the time period for the filing of a replication has expired, or the parties have agreed in writing that the pleadings have closed and have filed their agreement with the registrar of

the court, or the court, on application, has declared that the pleadings are closed. At that point the pleadings are treated as being closed and the proceedings are said to have reached the stage of *litis contestatio*. In everyday practice, they are normally closed as soon as the period for the filing of the replication has expired, for at that stage the issues have become identified and parties are able to commence preparation for battle. Pleadings, though closed, will be re-opened should an amendment be effected, or should the parties agree to alter the pleadings. Amendments to pleadings can be brought by any party any time before judgment is delivered.”

8. In these circumstances the Court had reserved judgment on the quantum, but when considering the non-compliance with the rules of Court and the position this places the RAF in, the Court is not willing to make a determination on the issue of loss of earnings.
9. It is unfortunate that the Plaintiff had to wait for the Court to remove the matter from the roll. It is not something the Court wishes to visit on the plaintiff. However, the Court must protect its process. It also weighs with the Court that a decision, in these circumstances would attract a rescission application and ultimately delay the finalization of the matter more and increase the costs for the parties involved.

Order

10. As result the following order is granted:

The matter is removed from the roll.

No order as to costs.



PIENAAR M

**ACTING JUDGE OF THE HIGH
COURT GAUTENG DIVISION, PRETORIA**

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.

Counsel for the Plaintiff : Adv B J Nodada
Instructed by : Mashiyi S Attorneys
Date of hearing : 03rd October 2024
Date of judgment : 31 December 2024

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1. Caselines, item 2 : RAF Settlement documents, item 1, pg 02-1
 2. Caselines 12 : Notice of Set down, item 3