



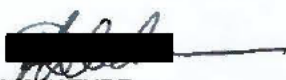
**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case number: 2011/30124

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

DATE: 16 January 2025

WEIDEMAN AJ


SIGNATURE

In the matter between:

MAKHUBELA TSUNDUKANI ALICIA

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

WEIDEMAN AJ

[1] Counsel's Heads of Argument suggested that this would be a fairly straight forward matter, albeit that the incident from which the original claim arose occurred as far back as 4 October 2009.

[2] Counsel recorded the following in paragraph 2 of his Heads of Argument:

*"The outstanding issues are merits and quantum which have not been finalised.
The Plaintiff is ready to proceed in terms of merits and quantum."*

[3] The following appeared in paragraph 1.4 of the Heads of Argument:

"1.4 The order we seek is as follows:

- *Merits 100% in favour of the Plaintiff.*
- *The claim for General Damages is R1 800 000.*
- *The claim for loss of earnings is R2 056 855.00.*
- *Medical undertaking for his future medical expenses to be furnished within 30 days.*
- *The Defendant is to pay the cost on a party and party scale."*

[4] Adams J handed down an Order on 16 July 2024, striking out defendant's defence.

[5] It was thus anticipated that the matter would proceed unopposed and without participation by the defendant. At the commencement of the proceedings a legal representative of the defendant drew my attention to the fact that the matter was more complicated than what was presented in the Heads of Argument. I was referred to a series of documents which I would not have considered in the ordinary course as they are not referred to in the Practice Note and Heads of Argument.

[6] The documents referred to above revealed the following facts not mentioned in the Practice Note or counsel's Heads of Argument:

6.1 On the 5th September 2014 Wright J handed down the following Order (CaseLines 028-83):

6.1.1 *"By agreement between the parties, the following order is granted:*

6.1.1.1 The defendant shall furnish the plaintiff with an undertaking in terms of Section 17 (4) (a) of the Road Accident Fund Act, No 56 of 1996, for 100% of the costs of the plaintiff's future accommodation in a hospital

...

6.1.1.2 The defendant shall make payment of the plaintiff's agreed or taxed High Court costs of the action to date of this order, such costs to include:

6.1.1.2.1 Costs of senior junior counsel.

6.1.1.2.2 The qualifying and reservation fees, if any, of the following experts, Dr Read, Ms Roos and Dr Ormond-Brown.

6.1.1.3 The defendant is ordered to pay the costs in respect of the curatrix ad litem.

6.1.1.4"

6.2 Correspondence between the original attorneys, who obtained the order from Wright J and the plaintiff's current attorneys of record, at CaseLines 028-88, suggest that the plaintiff's current attorneys were advised that the matter had been settled in its totality. The correspondence reads as follows:

"Judge Wright made the draft order proposed by the curator ad litem an order of court after having had signed (sic) of her report and recommendations. No aspect of quantum was postponed and the matter was therefore settled in full and final settlement. The court is in possession of the curator's signed report and same can be retrieved from the court file if you require a signed copy of the curator's report."

6.3 The report of the *curatrix ad litem* is at CaseLines 028-76. In it she considered the then available medico-legal reports and recommended that the matter be disposed of by acceptance of the defendant's offer of settlement of an undertaking only plus costs.

6.4 Mohlala Attorneys, who represented the defendant in 2013, submitted a template letter to the defendant on 1 October 2013, CaseLines 029-38. In it and under the heading "Outcome and Liability" they recorded that the matter proceeded to trial on the 1st October 2013, that the matter was settled and that the settlement was made an order of court. They further indicated that the Road Accident Fund was liable to compensate the claimant for 100% of the future medical expenses, that no capital has to be paid and that the plaintiff is entitled to party and party costs on the High Court scale.

6.5 In his second supplementary affidavit, albeit that it is not clear to which application the affidavit relates, plaintiff's attorney correctly pointed out that the date of the Mohlala letter was the same as the date of the appointment of the *curatrix ad litem*, but long before Wright J's Order confirming the settlement of the matter. This calls for an explanation, which was not proffered.

[7] What is of more concern is the plaintiff's Rule 38(2) application, which application was granted at the commencement of the hearing. This application makes provision for the plaintiff's affidavit, which does not contain a version, a portion of the OAR and the plaintiff's original hospital records. It further lists the reports of 6 experts, excluding the 3 experts referred to in the Order of Wright J.

None of the documents referred to above and relating to the earlier proceedings formed part of the application.

[8] To summarise: Neither the Practice Note, nor the Rule 38 application nor counsel's Heads of Argument contain any reference to the earlier proceedings. In fact, whereas Wright J's Order contains a confirmation that liability had been disposed of on a basis that the Plaintiff is entitled to 100% of her damages (this follows from the fact that the Undertaking is for a 100%) and that an undertaking is to be awarded, counsel, in his Heads of Argument, records that liability is still in dispute and a significant portion of his Heads purports to deal with liability. In addition, counsel maintained that the claim included a request for an undertaking in respect of future medical expenses whereas this head of damage had also been settled in terms of the Order.

[9] Conclusion: Based on the documentation that is available on CaseLines it is clear to me that the attorney who originally dealt with the matter, the *curatrix ad litem* as well as the attorney who acted on behalf of the Road Accident Fund were of the opinion that the matter had been finally settled on the basis of an offer of settlement which the *curatrix* considered and recommended to the court should be accepted. The Order of Wright J of 5 September 2014 confirms this settlement. To me it is clear that the matter was finalised in its totality on 5 September 2014 and that the subsequent proceedings by the current attorneys had been ill advised. The conduct of the plaintiff's attorney and counsel, by not taking the court into their confidence from the outset, warrants further scrutiny.

My order is therefore as follows:

1. The claim under case number 2011/30124 was settled in its totality on 5 September 2014.
2. The application for default judgment is dismissed as it relates to a claim that had already been extinguished by way of settlement.

3. The Registrar is to forward a copy of this judgment to the Legal Practice Council to consider whether the manner in which the attorney and counsel engaged with the court meets the required standard of conduct expected of officers of the court.

A handwritten signature in black ink, appearing to be 'Weideman', is written over a solid black rectangular redaction box. A horizontal line is drawn below the signature.

WEIDEMAN AJ

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines*. The date and time for hand-down is deemed to be 16 January 2025.

Heard on: 7 November 2024

Delivered on: 16 January 2025