

REPUBLIC OF SOUTH AFRICA



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

Case Number: 2014/19415

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

In the matter between:

ZUMA SIPHINDILE SAMUKELISIWE

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

REASONS FOR ORDER

ERASMUS, AJ

Introduction

[1] This matter came before me on 26 March 2024 as a default judgment which I dismissed on procedural grounds. Despite the dismissal, I awarded costs to the

Plaintiff. The Plaintiff has requested in terms of Rule 49 to furnish reasons for my decision, which I now proceed to give.

[2] The sequence of events leading to the matter coming before me was as follows:

- a. The combined summons was served on 10 June 2014.
- b. The action was defended and the Defendant filed a plea on 24 July 2014.
- c. On 7 February 2023, the Defendant's defence was struck out.
- d. Default judgment was then applied for and as part of the application the attorney for the Plaintiff on 14 February 2024 filed a statement in terms of section 5.6 of the Revised Practice Directive that pleadings had closed. The averment regarding the close of pleadings is essential to securing a default date as default judgment in a defended matter cannot be sought unless pleadings are closed.
- e. On 23 February 2024, Plaintiff's attorney served, in terms of Uniform Rule 28, a notice of intention to amend the particulars of claim. The cumulative effect of the proposed amendment was to increase the value of the Plaintiff's claim from R2 571 774-53 to R5 899 984-53.
- f. No objection was received and on 11 March 2024, the amended pages were served.

[3] In *Tshepo Patricia Rallele obo Pearl Mohlala Makhudubela v Road Accident Fund* (9117/2019) [2024] ZAGPPHC (18 April 2024) ("Rallele") Davis J dealt with the situation where an amendment was brought after the striking of a defence stating that: "*Although doubt had been expressed whether an immaterial or minor*

amendment would have the same result of a “fresh litis contestation”, it must be beyond doubt that any substantial amendment would have the result that pleadings are reopened.”

- [4] Regarding whether changing the amount claimed constituted a substantial amendment Davis J referred to the judgment of *Olivier*¹ which stated that: *“It may be so that this increase in quantum did not alter the cause of action, the identity of the parties and the scope of the issues in dispute Notwithstanding, the scope of damages has been increased significantly and would without doubt require a pleading”*.
- [5] Davis J concluded that *“Once that claim had been “frozen” by the close of pleadings and the plaintiff thereafter seeks to “unfreeze” its position, there can, in my view, be no objection to allow a defendant to plead to this “unfrozen” or reopened case. To allow a defendant to plead afresh, would also be consistent with provisions of Rule 28(8) which expressly allows “any party affected by an amendment... to make... any consequential adjustment to documents filed by him”*
- [6] I agree with the principles set out by Davis J and restated by Kruger AJ² and applied to the present matter it is clear that by bringing the amendment pleading were reopened by the Plaintiff when his amended pages on 11 March 2024.

¹ *Olivier v MEC of Health, Western Cape* 2023 (2) SA 551 (WCC) at [21] (Olivier)

² *Pulane Qhamakoane v Raf*, (19131/2020) [2024] ZAGPPHC 795 (12 August 2024)

Conclusion

- [7] Therefore, when pleadings were reopened on 11 March 2014 the right to plead to the amendment accrued to the Defendant and default judgment could not be sought until they were closed again. To close pleadings the defendant either have to amend its plea or fifteen days should have elapsed after which a notice of bar would have to be served by the plaintiff on the defendant. Once the period of bar expired pleadings would have closed and only then default judgment could be sought.



D ERASMUS
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Applicant:

U. Jordaan instructed by JJ Van
Rensburg Attorneys

For the Respondent:

S Dokodela instructed by Road
Accident Fund (State Attorney)

Date of Order:

26 March 2024

Date of Reasons:

27 November 2024