

**IN THE HIGH COURT OF SOUTH AFRICA**  
**FREE STATE DIVISION, BLOEMFONTEIN**

Reportable: NO

Of Interest to other Judges: NO

Circulate to Magistrates: NO

Case no: **2671/2023**

In the matter between:

**KAYLIN-LEE LONG**

Plaintiff

Identity number: 01[...]

L452

And

**ROAD ACCIDENT FUND**

Defendant

Link: 5268516

Claim: 560/1288079729/1063/0

**Coram:** JP DAFFUE J

**Heard and order granted:** 14 NOVEMBER 2024

**Reasons delivered:** 10 DECEMBER 2024

Reasons were handed down electronically by circulation to the parties' representatives by email and release to SAFLII. The date and time for hand-down is deemed to be 15H00 on 10 DECEMBER 2024.

REASONS

**Daffue J**

[1] On 14 November 2024 I struck the plaintiff's application for default judgment from the roll with no order as to costs. I stated that my reasons would follow in due course. These are my reasons.

[2] On 30 May 2023 the plaintiff issued a combined summons under case number 2671/2023 against the defendant. The plaintiff's attorney apparently intended to serve the summons on the defendant at an address in Pretoria North, Gauteng, allegedly the defendant's principal place of business.

[3] The plaintiff set the matter down on the unopposed motion court roll of 14 November 2024 for default judgment. Upon perusal of the file contents, I found only the following documents in the court file:

- a. the aforesaid combined summons and attached thereto as annexure X, a notice in terms of rule 41A(2)(c);
- b. a request for default judgment in terms of rule 31(2)(a) issued on 28 October 2024 set down for hearing on 14 November 2024.

[4] The plaintiff claimed the following in the request for default judgment which I quote *verbatim*:

- '1. That the quantum pertaining to damages suffered by the Applicant be separated in terms of Rule 33(4).
2. That default judgment in the action be granted in terms of Rule 31(2)(a) on 100% of the merits in favour of the Applicant and that the Respondent be ordered to compensate the Applicant for all proven and/or agreed damages that the Applicant sustained in a motor vehicle collision that occurred on 21 June 2020.
3. Costs of the action to date hereof and the costs of the application.'

[5] No return of service forms part of the documents presented to the court. This probably explain why the defendant did not defend the action, but it is unnecessary to make any finding in this regard. Upon perusal of the file contents over the weekend in preparation for motion court I noted in my bench book that the matter

ought to be struck from the roll with no order as to costs. At that stage I was still unaware what would come.

[6] On the motion court day, to wit 14 November 2024, I was placed in possession of the defendant's notice of intention to defend as well as its notice in terms of rule 36(4) of the Uniform Rules Court. These documents were sent electronically to the plaintiff's Bloemfontein attorneys and copied to my secretary just after 04h00 that same morning. Consequently, the matter became defended.

[7] It is the first time that I have come across a litigant applying for default judgment who seeks leave from the court to hear the matter piece-meal. In conclusion, I had no other option than striking the matter from the roll in view of the failure to prove service of the summons. Although the defendant filed its notice of intention to defend belatedly, there was no reason to grant costs against it. The matter should never have been enrolled in the first place.

JP DAFFUE J

#### Appearances

|                    |                                         |
|--------------------|-----------------------------------------|
| For the plaintiff: | Mr JMA Venter                           |
| Instructed by:     | Kruger Venter Attorneys<br>Bloemfontein |

|                |                                    |
|----------------|------------------------------------|
| For defendant: | Ms J Gouws                         |
| Instructed by: | Road Accident Fund<br>Bloemfontein |