



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

Reportable:	NO
Of interest to other Judges:	YES
Circulate to Magistrates:	NO

Case no: **2402/2023**

In the matter between:

KHANYISILE MDUNJANA

Applicant

and

ROAD ACCIDENT FUND

Respondent

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 13H00 on 10 DECEMBER 2024.

REASONS

Daffue J

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

[2] The matter was set down on the unopposed motion court roll of 14 November 2024. It was number 87 out of a total of 110 unopposed motion court applications. In this division the judge on duty for a particular week is responsible to entertain all urgent applications from midnight on the Friday until midnight the following Friday. The unopposed motion court roll with the relevant files are presented to the duty judge just after 14h00 on a Friday afternoon. Our unopposed motion court sits on Thursdays. If the judge is prepared to do their work in a responsible manner, it takes the best part of a Saturday and Sunday to peruse all the files and where required, to do research as we often have to deal with matters that are not often encountered in the unopposed motion court.

[3] In some weeks, depending on the luck of the draw, the duty judge does not have to deal with many urgent applications, but more often than not, one is confronted with urgent applications, some even opposed, to the extent that it is not possible to peruse the motion court files and finalise one's preparation during court hours, or even on Monday, Tuesday or Wednesday evenings. In this specific week I had to adjudicate my first urgent application on the Saturday morning.

[4] Upon perusal of the file in the present matter I noted in my bench book that the matter should be struck from the roll with no order as to costs. I made the following notes in support of the intended order:

- a. Mr VL Nkomana, an attorney practising in East London, signed the summons and particulars of claim relating to a claim by the plaintiff against the Road Accident Fund (the RAF) where after the summons was issued on 15 May 2023;
- b. contrary to rule 17(3)(a) of the Uniform Rules of Court, Mr Nkomana failed to provide a physical address in the summons within 25 km of the Bloemfontein High Court in that he failed to appoint a local correspondent;

- c. on 26 May 2023 the summons was served by the sheriff on the RAF at its East London offices;
- d. the *dies induciae* of 21 days provided to the RAF to defend is incorrect as one month should have been allowed as is clearly indicated in s 24 of the Superior Courts Act 10 of 2013 insofar as service was effected outside the Free State Province;
- e. the plaintiff claimed damages suffered by her and her minor children in respect of loss of maintenance in the total amount of R3 057 733, relying on an actuarial report, claiming that her husband, to whom she was married in terms of customary laws, was killed on 16 September 2021 in a motor vehicle collision that occurred on the N1 highway near Verkeerdevlei in the Free State Province;
- f. nearly 18 months after service of the summons the plaintiff gave notice of intention to amend the particulars of claim by increasing the claim to R3 362 058, which notice was apparently received on 7 October 2024 by the RAF, East London and filed with this court on 22 October 2024 *ex facie* the official stamp of the registrar;
- g. Gcasamba Inc of Bloemfontein is cited in the notice as the local correspondent and on the same day, to wit on 22 October 2024, the plaintiff's East London attorney filed with the court for the first time a notice of appointment of their local correspondent attorney, dated 16 February 2024, eight months earlier;
- h. on 25 October 2024 the plaintiff filed her amended particulars of claim with the registrar, although service on the RAF, East London already occurred on 18 October 2024, which was still within the ten days within which written objection to the proposed amendment could be made as provided for in rule 28(2);
- i. the following documents were also found in the court file and insofar as these documents do not bear the registrar's official stamp, it is unclear when these were inserted in the court file although they were bound and probably filed with a document referred to as a main index, bearing the registrar's official stamp of 25 October 2024:
- an affidavit by the plaintiff in support of the application for default judgment together with the actuarial report;
 - a confirmatory affidavit by Mr Nkomana and an affidavit by the actuary, Mr Loots;
 - a checklist for setting down undefended, unliquidated claims for damages which was also served on the RAF, East London on 18 October 2024; it was made clear in the checklist that the plaintiff would seek judgment in respect of liability (*ie* the merits) as well as quantum and that no separation of issues would be sought, the plaintiff

estimating the duration of the hearing to be one day and confirming that she would rely on Mr Loots' affidavit, whilst she would be called to testify at the hearing;

j. on 29 October 2024, Mr Gcasamba, the local correspondent, sent the notice of set down by email to Ms Charlene Bornman of the RAF's Bloemfontein office which notice was, *ex facie* the documents in the file, never served on the Bloemfontein office in the normal way as provided for in the rules;

k. on 14 November 2024 Ms J Gouws of the RAF's Bloemfontein office served the RAF's notice of intention to defend on the plaintiff's East London attorney and copied my secretary in an email sent at 04h37, the early hours of 14 November 2024, which reads as follows:

'- This matter has now been allocated to me, from Ms Mkhwanazi's name.

- I served Defendant's Notice of Intention to Defend.

- **Kindly confirm that you will remove the Application for Default Judgment from the roll today.**

- **Defendant tenders the costs occasioned by the application.**

- **I note that your Summons does not disclose an address for an law firm in Bloemfontein – please assist as to which firm your local correspondent is.'**

[5] The RAF's email and the notice of intention to defend were provided to me before the start of the motion court. When the matter was called, I made it clear to the plaintiff's legal representative that, notwithstanding the offer by the RAF to tender the wasted costs, I was not prepared to saddle the RAF with such costs. I indicated that even without appearance from the RAF, I would have struck the matter from the roll with no order as to costs. Consequently, I granted the order mentioned earlier herein and I did so for the reasons set out.

[6] It is now necessary to return to the plaintiff's affidavit in support of her application for default judgment, bearing in mind also the allegations in the particulars of claim. There is no indication in her affidavit that she was an eyewitness to the motor vehicle collision. Obviously, any evidence that she might have intended to lead in this regard would be total hearsay. She did not refer in her affidavit to any other witnesses that she might call, such as one of the drivers of the vehicles involved in the collision, or any other eyewitnesses. No reference was made to the evidence of any medical personnel, or members of the South African Police Service that attended the scene.

[7] I should also mention that colleagues and I have encountered a few similar applications in the unopposed motion court during the year. In the one case I was prepared to stand the matter down to the end of the roll to hear evidence. When it was called again eventually, I ascertained that the plaintiff's attorney could not even present me with proof that the claim documents had indeed been served on the RAF in Cape Town as alleged in the particulars of claim. The matter had to be removed from the roll. The very next application on the roll of 14 November 2024, number 88, was an application by Kaylin-Lee Long against the defendant. It suffered a similar fate as the present matter, but for somewhat different reasons.

[8] Finally, it is worth mentioning that during a case flow management meeting by the judges of this division on 23 November 2024 it was resolved that these kind of default judgment applications should be set down for hearing on Fridays and not on the unopposed motion court roll. Nothing further needs to be said in this regard.



JP DAFFUE J

Appearances

For the plaintiff:	Mr Gcasamba
Instructed by:	Nkomana Attorneys Inc
	East Londen
	c/o Gcasamba Inc Attorneys
	Bloemfontein
For the respondent:	Ms J Gouws
Instructed by:	Road Accident Fund
	Bloemfontein