

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: 5066/2022

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO THE JUDGES: YES/NO
(3) REVISED.

DATE: 30 April 2025

SIGNATURE

In the matter between:

ROAD ACCIDENT FUND

LINK NO:5196264

RAF REF:546/12637996/10/10

APPLICANT/DEFENDANT

AND

MATHAKE MOLOGADI MARIA

RESPONDENT/PLAINTIFF

JUDGMENT

MANGENA AJ

- [1] Plaintiff in the main action, **Ms Maria Mathake** sustained injuries arising out of a motor vehicle accident which occurred on **28 March 2021**.
- [2] Assisted by her legal representatives, she lodged a claim with the **Road Accident Fund** and when that claim was not settled within the **120 days** as prescribed by the Act, she instituted legal proceedings claiming a total amount of **R3 700 000.00** comprised by various head of damages excluding future medical expenses to which she prayed for an undertaking.
- [3] The Defendant failed to defend the proceedings and the matter was set down for trial on **07 August 2023**. A notice of set-down issued by the Registrar on **22 May 2022** was served upon the Defendant on **08 December 2022**.
- [4] When the matter was called on **07 August 2023**, the defendant did not appear and the matter was rolled over for hearing on **10 August 2023**. The court granted judgment in favour of the plaintiff in the amount of **R3 469 376.25**. I must mention that plaintiff had during **February 2023** served a notice of amendment which was neither objected to or subsequently effected.
- [5] Subsequent to the granting of the judgment, the defendant filed an application for rescission of judgment on the ground that it was erroneously granted.
- [6] In support of the submission that there was an error in the granting of the judgment, defendant relies on the failure to effect an amendment to the particulars of claim relating to the quantum claimed as well as non-compliance with Rule 29(2) of the Uniform Rules regarding the time within which a notice of set-down should be served once it is received from the Registrar.
- [7] The principles governing rescission of judgment are trite and no purpose will be served by regurgitating them here, save to state that a judgment granted in the absence of the

other party can only be rescinded if it was either erroneously sought or erroneously granted. A judgment to which a party is procedurally entitled cannot be considered to have been granted erroneously by reason of facts of which the judge who granted the judgment as he was entitled to so, was unaware. See ***Lodhi 2 Properties Investments CC v Bondev Developments (Pty) Ltd, 2007(6) SA 87, (SCA) at par 25.***

- [8] The defendant avers in the founding affidavit that had the Judge who granted the judgment known that there was non-compliance with Rule 29(2), he would not have granted the order. This contention is without merit. The defendant was notified of the court date through a notice of set-down served almost 7 months before the actual date of hearing. That the plaintiff's attorneys delayed to have it served cannot be the basis upon which to rescind a judgment plaintiff was procedurally entitled to. The defendant by failing to attend court, authored his own misfortune and the court in fulfilment of its obligations towards the litigants (including plaintiff) gave an order bringing finality to the litigation.
- [9] The other error relied upon relates to the quantum awarded in respect of the proven damages. The argument as I understand it is that the court cannot award an amount more than what is claimed in the summons. There is no merit to this contention. The court makes its findings based on the evidence presented to prove the facts. The court is therefore not bound by what is stated in the summons when it considers an amount to be awarded as damages. Counsel for the applicant was not able to point out what error did the Judge commit when he awarded an amount of R 3 469 376,25.
- [10] In ***Freedom Stationary v Hassam, 2019 (4) SA 459 (SCA)*** at **paragraph 25**, the court expressed the position on Rule 42(1)(a) as follows:-
- “..... when an affected party invokes Rule 42(1)(a) the question is whether the party that obtained the order was procedurally entitled thereto. If so, the order cannot be said to have been erroneously granted in the absence of the affected party. An applicant or plaintiff would be

procedurally entitled to an order when all affected parties were adequately notified of the relief that may be granted in their absence..... The failure of an affected litigant to take steps to protect his interests by joining the fray ought to count against him. A party who did not oppose or participate in the proceedings (despite being notified) would not be entitled to relief under rule 42(1)(a). This is not only logical and fair but accords with the fundamental principle of finality of litigation.”

- [11] Consequently there was no error committed in the granting of the default judgment.
- [12] The Application for rescission of judgment is dismissed with costs on a party and party scale B of the High Court.


M. MANGENA AJ
ACTING JUDGE OF THE HIGH COURT
LIMPOPO DIVISION, POLOKWANE

APPEARANCES

FOR APPLICANT/DEFENDANT : MR. MOSHABANE MAFIRI (Attorney)
STATE ATTORNEYS
POLOKWANE

FOR RESPONDENTS/PLAINTIFF : ADV S. MOHLAKA

**MABUZA MAGADINE INC
POLOKWANE**

HEARD ON : 30 APRIL 2025
DELIVERED ON : 30 APRIL 2025

POLOKWANE HIGH COURT