

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA,

(GAUTENG DIVISION, PRETORIA)

Case No: 17468/2021

Reportable: No
Of interest to other Judges: No
Revised: No
Date: 21 February 2025

SIGNATURE

In the matter between:

H BUTHELEZI

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

JUDGEMENT – APPLICATION FOR LEAVE TO APPEAL

- 1 The court dismissed the plaintiff's claim against the Road Accident Fund. The plaintiff seeks leave to appeal. The plaintiff argued three primary points as to why the court ought to grant leave.
- 2 The first basis is that another court could find that the plaintiff had proved her claim for future medical expenses. That was because experts concluded that she suffered a T-12 fracture, which will need fixation; and that the experts also postulated that there might be a need for future medical expenses as a result.
- 3 The second basis is that the court ought to have found that the reports by experts cured the plaintiff's failure to have pleaded a specific injury. The plaintiff contended that this was particularly so because the defendant was not prejudiced. The plaintiff invoked *Alberts and Others v The Minister of Justice and Correctional Services*¹ as authority in this regard.
- 4 The third basis is that the court ought to have applied contingencies in relation to the plaintiff's claim for loss of income, given the absence of collateral information by the plaintiff.
- 5 The notice to the application also raised as a ground that the court ought to have ordered the defendant to issue an undertaking to the plaintiff, and that the court ought to have postponed the issue of general damages *sine die*.

¹ [2022] ZASCA 25 (9 March 2022)

- 6 I am not persuaded that the court erred in relation to future medical expenses. The submission turns on the plaintiff having suffered a T-12 fracture. The submission did not have regard to the court's findings about the plaintiff having a pre-existing T-12 fracture, which was described as having sclerosis with callus formation.
- 7 The decision in *Alberts and Others v The Minister of Justice and Correctional Services* is not authority for excusing the plaintiff's failure to plead a specific injury. The failure to plead an injury that forms the basis for a claim is not a technicality, and a court is not being overly formal when obliging a claimant to specify, in a pleading, the type of injury that forms the basis to the relief being sought. The reports by experts on injuries suffered by the plaintiff are not a substitute for what should have been pleaded. Those reports would constitute evidence to substantiate the pleaded injury.
- 8 Counsel for the plaintiff accepted that there was no collateral information to substantiate the plaintiff's claimed loss of earnings. The plaintiff is required to establish the loss that she suffered. I am not persuaded that the court ought to have addressed the plaintiff's failure to substantiate her stated loss by the court applying contingencies. The court does not make a case for a litigant.
- 9 There were no submissions in relation to the court's finding that the experts' evidence was hearsay. There were also no submissions on the court's finding that the claims made in the reports were unsupported.

- 10 The finding by the court on the merits; which essentially was that the plaintiff failed to prove her case, resulted in there being no warrant for the court to order the defendant to give the plaintiff an undertaking. The finding also made it unnecessary for the court to postpone the issue of general damages.
- 11 The grant or otherwise of leave to appeal is stringent. I am not persuaded that the appeal has reasonable prospects of success.
- 12 This judgement is delayed. This was occasioned by a mishap in Chambers. This is regretted. Litigants are entitled to expeditious determination of disputes.
- 13 I make the following order:
- The application is dismissed.

O Mooki

Judge of the High Court

Gauteng Division, Pretoria

Heard: 10 May 2024

Decided: 21 February 2025

For the plaintiff: Mr Legoabe

Instructed by: S. Msomi Attorneys

For the defendant: no appearance