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

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

[redacted]

SIGNATURE DATE: 20 February 2025

Case No. 2024-092169

In the matter between:

SIYABONGA MUSWENKOSI SHABALALA Plaintiff

and

MTHUTHUZELI MADIKANE First Defendant

PRIME MERIDIAN DIRECT Second Defendant

JUDGMENT

<u>WILSON J:</u>

1 The second defendant, Prime Meridian, excepted to particulars of claim filed on behalf of the plaintiff, Mr. Shabalala, on the basis that they fail to sustain a cause of action. Prime Meridian sought an order striking out Mr. Shabalala's claim. On 19 February 2025, I dismissed the application to strike out. These are my reasons for doing so.

2 The first defendant is Mr. Madikane. In the main action, Mr. Shabalala seeks damages he says were sustained as a result of Mr. Madikane's negligent driving of a motor vehicle. In his particulars of claim, Mr. Shabalala says that Prime Meridian is joined in its capacity as Mr. Madikane's insurer.

3 In its notice of exception, Prime Meridian complains that the case against it is advanced on the basis that it is jointly and severally liable, with Mr. Madikane, for Mr. Shabalala's loss. Since there is no allegation in the particulars that it played any role causing Mr. Shabalala's loss, Prime Meridian takes the view that the particulars sustain no cause of action against it.

4 That strikes me as a misreading of Mr. Shabalala's particulars of claim. While the conclusion that Prime Meridian is "jointly and severally liable" with Mr. Madikane for Mr. Shabalala's loss cannot be sustained on the pleaded case, it is clear from the particulars of claim read as a whole that Prime Meridian has really been joined on the basis that it is liable to Mr. Madikane in its capacity as Mr. Madikane's insurer for such damages as Mr. Shabalala may eventually prove.

5 When the particulars are read in that way, Prime Meridian's true complaint seems to me to be one of misjoinder, since Mr. Shabalala cannot claim directly against Prime Meridian for his loss. Prime Meridian's interest in the claim, if any, is as a third party. That interest will arise if and when Mr. Madikane claims on his insurance policy, if any, with it.

6 Prime Meridian did not ask me to afford Mr. Shabalala time to remove the unsustainable allegation of joint and several liability. Nor did it complain about its apparent misjoinder. It asked only that I strike the claim out. In the exercise

of my discretion (on which see *Stephens v De Wet* 1920 AD 279 at 282), I was not convinced that a striking out order is proper in circumstances where it is not clear that Prime Meridian has no interest in the case at all.

7 It seems from the notice of exception that Prime Meridian plans to deny that it was in fact Mr. Madikane's insurer at the relevant time. But, at the exception stage, I must assume that Mr. Shabalala's contrary allegation is true. In any event, the precise nature of Prime Meridian's interest in the case, if any, is yet to be established, so it seems premature to strike out any claim against it.

8 Prime Meridian remains free to except to and pursue the striking out of the allegation that it is jointly and severally liable for Mr. Shabalala's loss. Prime Meridian may also choose to pursue a special plea or a further exception based on its apparent misjoinder.

9 It was for these reasons that I dismissed the application to strike out Mr. Shabalala's claim.

[redacted]

S D J WILSON
Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 20 February 2025.

HEARD ON:	19 February 2025
DECIDED ON:	20 February 2025
For the Applicant:	T Ndaba Instructed by Fontes Inc Attorneys