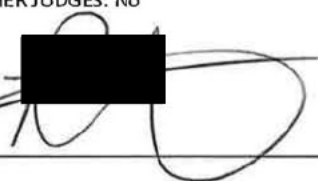


REPUBLIC OF SOUTH AFRICA



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

Case Number: 4792/2022

(1)	REPORTABLE: No
(2)	OF INTEREST TO OTHER JUDGES: No
(3)	REVISED: No
05 April 2025	
DATE	

In the matter between:

THOBEJANE KATLEGO

Applicant

and

ROAD ACCIDENT FUND

Respondent

JUDGEMENT

Ralikhuvhana AJ

INTRODUCTION

[1] In this matter, the Applicant, one Thobejane Katlego brought an application for default judgment against the Respondent, the Road Accident Fund ("Hereinafter to be

referred to as RAF"). The application emanated from the action which the Plaintiff instituted against RAF for compensation arising from the negligent driving of the insured driver in terms of section 17 of the Road Accident Fund Act¹ The Plaintiff was injured from this accident leading to the claim at hand.

[2] The action was instituted against RAF by the Plaintiff around 21 February 2022. The Defendant filed its notice of intention to defend around 06 October 2022. The Defendant did not file its plea. The Applicant did not place Defendant under bar. The Applicant proceeded to apply for a default judgment in terms of Uniform rule 31(5)(a).

[3] The matter was on my civil trial default judgment roll of 09 to 13 December 2024, and when the matter was first called, a question so different from one which was canvassed on the Applicant's heads arose. I then asked both parties to file supplementary heads dealing with a point raised by the Defendant for the first time, being that 'the matter was not properly before the default court and as such should be removed'. Ms Tivana who appeared for the Defendant argued that the Plaintiff did not place RAF under bar, consequently cannot proceed with an application for default judgment. Counsel for the Plaintiff, Ms Panther contended that the matter was properly before the court and whilst it was accepted that RAF was not placed under bar, there

¹ Act 56 of 1996

was no plea filed and as such the Plaintiff could proceed without an impediment with its default judgment application.

[4] In this judgment the parties shall be referred to as Applicant and Respondent respectively.

BRIEF RELEVANT FACTUAL BACKGROUND

[5] This Court and after hearing both parties on 12 December 2024 made a ruling determining whether the Plaintiff was entitled to proceed with the matter and or if was properly before me. The *ex-tempore* judgment was therefore necessary. A ruling was in favour of the Applicant and in the end a default judgment was granted against RAF in terms of the proposed draft court order.

[6] On these common cause facts, the following is apposite, that; since the filing of its intention to defend the action on 6 October 2022, secondly and since service of the default application both electronically and physically upon the Respondent in November 2024, thirdly and Respondent after being served with a notice of set down of the default application on November 2024, and lastly on 09 December 2024 when the application was before me for hearing, the Respondent did nothing and did not attempt to serve its plea as it was not under bar, save for opposing the application for default on the basis that it was not placed under bar, as such the application for default

was not properly before me. I must mention further that the Respondent did not ask for a postponement in order to file its plea. What Respondent did was merely to oppose the hearing of the default application from the bar and in the manner discussed herein.

[7] In the Respondent's view, a notice of bar was a precursor to a default court roll and in that regard, hearing. The Respondent was in terms of the rules of court supposed to have filed its plea around 3 November 2022. This it did not do and there is no explanation why it was not done or if it was intended on being done.

UNIFORM RULE 31(5)(a)

The rule provides thus:

[8] *"Whenever a defendant is in default of delivery of notice of intention to defend or of a plea, the plaintiff, if he or she wishes to obtain judgment by default, shall where each of the claims is for a debt or liquidated demand, file with the registrar a written application for judgment against such defendant: Provided that when a defendant is in default of delivery of a plea, the plaintiff shall give such defendant not less than 5 days' notice of his or her intention to apply for default judgment."*

[9] The Respondent passionately argued, that: "the Applicant was supposed to serve the Respondent with a notice of bar. Since the notice of bar was not served, this matter

is not properly before this court as it does not fall within the provisions which permits the Applicant to bring an application for Default Judgement. On the other hand, the Applicant argued that "as long as there was no plea before court, the Applicant was properly before Court" She further argued that the non-responsive stance adopted by the Applicant triggered the application of rule 26 of the uniform rules of Court.

Uniform rules of Court 26 provides thus:

[10] "Any party who fails to deliver a replication or subsequent pleading within the time stated in rule 25 shall *ipso facto* be barred. If any party fails to deliver any other pleading within the time laid down in these rules or within any extended time allowed in terms thereof, any other party may by notice served upon him require him to deliver such pleading within five days after the day upon which the notice is delivered. Any party failing to deliver the pleading referred to in the notice within the time therein required or within such further period as may be agreed between the parties, shall be in default of filing such pleading, and *ipso facto* barred: provided that for the purposes of this rule the days between 16 December and 15 January, both inclusive shall not be counted in the time allowed for the delivery of any pleading'.

[11] It was argued that failure to place Respondent under bar prevented the Applicant in this regard from proceeding to the default court for judgment against Respondent.

[12] The Applicant referred me to a matter of **Cooper, Petronella Magdalena v Road Accident Fund**², in this matter, the Respondent's legal representative submitted that the matter was not properly before court, or that it was before the wrong forum as the Respondent had not filed its plea. The contention was that Applicant should have first placed the Respondent under bar before applying for the matter to be set down for hearing, without a plea being filed, the Applicant should have applied for judgment in default and then such application should not have been set down on the civil trial roll, but placed on the default roll³.

[13] In this matter the honourable Kubushi J found that; *the contention by the Defendant's legal representative that the Plaintiff followed an incorrect process to place the matter on the civil roll, is meritorious. The court refused to deal with the matter and directed that Plaintiff follow the correct process in terms of the rules of court and practice directive to have the matter placed in the proper forum for hearing*⁴.

REVISED CONSOLIDATED PRACTICE DIRECTIVE 1 OF 2024 COURT OPERATIONS IN THE GAUTENG DIVISION, with effect from 26 february 2024 (amended on 12 June 2024) states as follows;

² [2024] JOL 64222 (GP)

³ Para 3 thereof

⁴ See para 15 thereof

Default judgment by registrar in terms of rule 31(5)

[14] Once the application and all supporting documentation have been filed/uploaded on the electronic case file, the Applicant's/plaintiff's legal representative must prepare and upload an affidavit or certificate to the effect that there is compliance with Rule 31(5)(a) and this directive, especially with regards to inviting the respondent/defendant to the electronic file on Case Lines as well as the checklist attached to this directive.

[15] The Applicant's/plaintiff's legal representative must invite the default judgment registrar to the electronic case file.

[16] The registrar is instructed to un-invite the office profile from cases where attorneys failed to upload a complete and accurate checklist. Such cases will not be regarded as a properly filed application.

[17] Default Judgment in terms of rule 31(2) must not be brought before the default judgment registrar and should be enrolled in the unopposed motion court.⁵

[18] The default judgment registrar shall invite the allocated registrar to the case file. After having considered the application, the registrar shall make a decision in terms of Rule 31 (5), endorse the electronic file with the judgment and amend the prefix to

⁵ In Pretoria, practitioners should have regard to the directive issued by DJP Ledwaba on 30/11/2023.

include the outcome; e.g. Granted Rule 31(5): *DLAMINI (PTY) LTD vs DLAMINI & SONS CC* as well as invite the typist and statistics office to the case file on the same provisions as set out above. The registrar shall immediately after endorsement of the file remove the “change case” permissions of all legal practitioners or parties (other than court staff and Case Lines support personnel).

[18] Where there are defects and / or discrepancies preventing granting of default judgment the court official processing the application must –

[19] When processing the application on Court Online set out the reasons for rejecting the application as part of the rejection notice.

[20] When processing the application on Case Lines record such defects / discrepancies on a “widely shared” note.

DISCUSSION

[21] On a proper reading of both 2024 directive, relevant rules, being 26 and 31 and the matter of Cooper to which I was referred to by the Applicant, it is crystal clear that there was nothing on the Applicant's way to approach a default court for a default judgment. This matter was characterised by inaction on the part of the Respondent. The Applicant could not be expected not proceed based on the Respondent's inaction. Again it is unfair of the respondent to expect this court to reward its inaction to the

detriment of the Applicant whose desire is to achieve speedy finalisation of the action. A censure that Applicant could have invoked rule 26 notice of bar and approach interlocutory court for a striking out is erroneous. The Applicant could only have filed a notice of bar, which it did not. Instead, Applicant proceeded to the default court and is welcomed as there is no rule against this approach by the Applicant.

[22] Rule 31 provides that whenever Defendant is in default of delivery of notice of intention to defend or of a plea, the Plaintiff who wishes to obtain judgment by default, shall file with the registrar a written application for default against such Defendant, provided that when Defendant is in default of delivery of a plea, the Plaintiff shall give such Defendant not less than 5 days' notice of his or her intention to apply for default judgment.

[23] The application for default judgment was applied in compliance with the practice directive relating to default judgment, that is a revised practice directive 1 of 2024.

[24] Again, and as Respondent was in default of serving its plea, the application was served upon it as is required by the rule. To now argue that the Applicant is not properly before court is absurd to me. The conduct of the Respondent, characterised by inaction cannot be permitted to hold the applicant at ransom, this dispute must be determined and finalised as justice delayed is justice denied. A notice of bar leading to Respondent being *ipso facto* barred cannot be regarded as a precursor to a default

judgment when there is clear election on the part of the Respondent to not participate in the process.

[25] Consequently, I find that the Applicant is properly before me and proceed to make a proposed draft court order an order of this Court.

NTUWISENI RALIKHUVHANA
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Appearances:-

For the Applicant:	Adv N Panther
Attorneys for the Applicant:	Sonya Meistre Attorneys Incorporated Johannesburg.

For the Respondent:	Ms Talenta Tivana
Attorneys for the Respondent:	State Attorney, Johannesburg

Date of hearing:	11 December 2024
Date of judgment:	08 April 2025