

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: 34316/2020

(1) Reportable: No

(2) Of interest to other judges: No

(3) Revised.

Date: 17 June 2025

S[...] S[...] N[...] OBO

N[...] M[...]

1ST APPLICANT

S[...] I[...]M[...]

2ND APPLICANT

And

ROAD ACCIDENT FUND

RESPONDENT

Summary: Default Judgment - Notice of intention to defend delivered in terms of Rule 19(5) more than three years after expiry of dies - No defence - The Notice constitute an abuse of court in the context of Road Accident Fund Litigation - Notice set aside in terms of the court's inherent jurisdiction.

This judgment was handed down electronically by circulation to the parties and/or their legal representatives by email and by being uploaded onto CaseLines. The hand-down date is deemed to be 17 June 2025.

JUDGMENT

MATIME AJ

INTRODUCTION

[1]. The matter was enrolled for default judgment on 29 April 2025, wherein both merits and quantum were in dispute. The applicant has procured all expert reports inclusive of an actuarial report.

[2]. The matter was lodged with the Road Accident Fund on the 09th September 2016. The Summons were issued on the 13th August 2020 and the respondent was afforded 10 days to file the notice of intention to defend. The last day to file the notice of intention to defend was on the 27th August 2020. The respondent was also given 20 days to file a plea. I must further mention that the year 2020 was a year which a new virus was reported, a mysterious pneumonia outbreak.

ISSUE BEFORE COURT

[3]. The first issue to be determined is whether the court must accept the notice of intention to defend which was filed and delivered in terms of Rule 19(5) more than three years after expiry of *dies*.

[4]. The second issue relates to the aforesaid Notice of intention to defend whether it constitute an abuse of court and may result such notice set aside.

[5]. The third issue which the court must determine is whether the applicant has made out a proper case for loss of support under default judgment.

BACKGROUND

[6]. This is a loss of support claim brought by the paternal uncle who is the 1st plaintiff in his represented capacity for the two minor children namely S[...] I[...] M[...] and

N[...] M[...] who were residing with their paternal uncle. The biological mother passed away many years ago. The minor children were residing with their father prior to the accident occurring.

[7]. On the 11th September 2013, along N12 Highway, Sundra and Eloff Turn-off near Witbank a collision occurred wherein motor vehicle bearing registration number FVF 212 MP¹ struck Mr. T[...] K[...] Ndlovu² who was a pedestrian at the time of the accident.

[8]. The insured driver was later charged with culpable homicide under Cas Sundra Mas 26/9/13 near Witbank.

[9]. The applicant attorneys³ of the record lodged the matter with the office of the respondent on the 09th September 2016. The summons was later issued on 13th August 2020. I must further mention that when the summons were issued, the children were still minors.

[10]. There were three letters which were served by the applicants attorneys which range from the 15th February 2022, followed by a letter dated the 18th July 2023 and lastly a letter dated the 02nd October 2023. All these letters had generally one essential goal mainly to requesting the respondent to file their notice of intention to defend and also to illustrate good cause on the prejudice which the applicants are suffering since the untimely death of their father which was caused by the insured driver. The letter dated the 15th February 2022, it is indispensable nature explains the matter at hand and it is also accompanied by annexures which must be taken in cognizant thereof as the summary of the entire application.

¹ Driven by the insured driver certain Simon.

² The Biological father of minor children who was killed in a motor vehicle accident.

³ In the main action is the Plaintiff.

[11]. The four years have passed since the summons were issued and no response was given to the applicant's attorneys. In pursuing justice, the applicants attorneys decided to place the matter on the roll for default judgment.

[12]. The respondent decided on the eve of default judgment date to file the notice of intention to defend in terms of Rule 19(5). The aforesaid notice was delivered more than three years after the expiry of *dies*.

THE DAY OF THE DEFAULT JUDGMENT

[13]. When the matter was called on the 29 April 2025 for default judgment, counsel for the applicant's informed the above Honourable Court of a belated notice of intention to defend which was filed and requested the court to stand the matter down for the 30th of April 2025.

[14]. Nonetheless the respondent proceeded filed the notice of the intention to defend dated the 25th April 2025 which was on Friday very late and on Monday the 28th April 2025 was a holiday.

[15]. On the 30th April 2025 when the matter was called, counsel for the applicant submitted to the court that the State Attorney office was engaging with the plaintiff's legal representatives with a view of settling the matter.

[16]. The court was requested an indulgence and further informed that the claim's handler was said to be on leave. The file was allocated to an intern in the respondents office with the mandate to prepare a memorandum for someone who is Senior in respondent office, to give an offer or authorise an offer as per the memorandum.

[17]. Due to the delay in appointing an intern (claim's handler), the matter had to be stood down further for the 02nd May 2025. The applicants had in the meantime

served the respondent with the application in terms of Rule 30(1) for the belated notice of intention to defend to be set aside.

[18]. The applicant's contention was that should the respondent make an offer then Rule 30(1) application falls away.

[19]. On the 02nd May 2025, the applicant's counsel informed the court that while the aforesaid memorandum was prepared and completed, an offer of settlement could not be finalised because the original file was misplaced.

[20]. This came as a shock to the applicant's counsel who at the behest of the respondent had informed the court that the file was given to an intern for a memorandum to be prepared for a possible settlement.

[21]. This phenomenon was a glaring indication that just like in many other cases against the Road Accident Fund, the belated notice of intention to defend was a delaying tactic to postpone the matter and which result to an abuse for the process of court.

THE ABUSE OF THE COURT PROCESS

[22]. The abuse of court process generally occurs when legal procedures are for the purpose other than the intended objective of pursuing truth and justice.

[23]. The High Court has discretion to regulate its own processes.⁴ The Constitutional Court referred to *Standard Credit Corporation Ltd v Bester*⁵ where at 820 A-B the court held that an abuse of process can occur when a court processes" is used by litigation for a purpose of which it was not designed or intended to prejudice or potential prejudice to the other party to the proceeding..."

⁴ Section 173 of Act 108 of 1996.

⁵ 1987 (1) SA 812 (W).

[24]. An incidence of the High Court's inherent powers, is the power and duty to prevent the abuse of its processes.⁶ The abuse occurs where the procedures permitted by Rules of the Court to facilitate the pursuit of the truth are used for a purpose of extraneous to that object or when an attempt is made to use for ulterior purpose machinery designed for administration of justice.⁷

[25]. In this present matter nothing was said about the delivery of a plea and there was no substantive application for postponement of the matter placed before these court.

THE EVALUATION

[26]. It should be noted that one needs to consider the facts that the matter of *Seronica Nathram v Road Accident Fund*, wherein my brother Davis J consider the following " As the starting point, one should bear in mind that *Section 34* of the Constitution guarantees two things. Firstly the substantive right to everyone to have any dispute that can be resolved by the application of law decided before court and secondly is a right to a fair public hearing which entails fair procedure to be considered.⁸

[27]. When the belated notice of intention to defend was filed by RAF⁹ on the eve of a hearing, with reliance on Rule 19(5), that the sub-rule gives procedural substance, not only to the *audi alterem partem principle*, which also encompasses the defendant's right in terms of Section 34 of access to court.¹⁰

⁶ *Beinash v Wixley* 1997 (3) SA 721 (SCA) at 743 D, *South African Coater (Pty) Ltd v St Paul Insurance Co (SA) Ltd* 2007 (6) SA 628 (D) at 633E-634 (A), *Chunguate v Minister of Home Affairs* 1990 (2) SA 836 (W) at 840 B-C and *Seronica Nathram v Road Accident Fund* Caseno; 46876/2020 [12].

⁷ *De klerk v Scheepers* 2005 (5) SA 244 (T) at 246 C-D.

⁸ See: *Stopforth, Swanepoel & Brevis v Royal Anthem (Pty)* 2015 (2) SA 539 (CC), *Superior Court Practice A-28 and Currie & De Waal, The Bill of Rights Handbook, Juta, 6th Ed at 31.3*

⁹ Respondent attorney [State Attorney].

¹⁰ Act 106 of 1996.

[28]. The contention of the respondent is correct to defend the matter insofar as the sub-rule but to prevent default judgment being taken against amounts to abusing the court process.¹¹

[29]. In the present matter, the respondent claims handler was on leave and an intern (claim officer) was allocated the matter to draft a memorandum for a Senior claims handler to consider the memorandum and authorise the offer. In allocating the matter to an intern (claim's handler), the respondent had an inherent duty to make an offer and present it as per the memorandum to the Applicant's attorneys.

[30]. While waiting for the offer, the applicant attorneys were served the *Rule 30* Application to the respondent.

[31]. It should be pointed out that for the intern claims handler to allude to the applicants attorney on the 02nd May 2025 that the file is missing, it is a clear indication that the memorandum was neither drafted, whatever was mentioned to the applicant's attorney was to delay the court process and also to cause further prejudice to the applicants.

[32]. From a recent Judgment¹², it appears that the RAF harbours the expectation that the delivery of late notice to defend would automatically lead to a postponement of the matter giving the RAF the time it seeks.

[33]. In the present matter the court accepted the submission of the applicants counsel when he illustrated to the court, that an intern was appointed to draft a memorandum and submit it to the Senior claims handler to authorise the offer.

¹¹ See the Judgment of Davis J (*supra*).

¹² *Khumalo v RAF (13659/20222) [2023] ZAGPJHC 1418 (22 November 2023) per Kgomongwe AJ at par [19]*.

[34]. The Court acted within its own discretion when the applicant requested such time and the opportunity for the intern to draft the memorandum. The general impression that was given to the court was that, the matter will be finalised and to put an end to the prejudice which the applicants had duly endured for so long.

[35]. It begun that the notice of intention to defend which was filed on the eve was attempted to engineer for a postponement or to benefit time by way of halting proceeding.¹³

[36]. I therefore find that respondent actions are very condescending in following respect: firstly by filing the belated notice of intention to defend on the eve, secondly giving an impression that the drafted memorandum will be submitted by an intern to the Senior claims handler and thirdly to inform the applicants attorneys that the file is missing on the day when the court was expecting the outcome in particular the offer, all these actions tantamount to the abuse of court process.

[37]. The Rule 19(5) envisage that any prejudice caused by the late delivery of notice to defend, can be met with cost order. The respondent has displayed no interest in having the matter settled.

[38]. Firstly, the respondent has ignored all the letters which the applicant attorneys has written, secondly the summons which were issued since 2020 have not been attended to, thirdly the notice of intention to defend was filed in *malafide* on the eve of default judgment date and fourthly the intern misplacing the file. The only reasonable inference which can be drawn is that respondent was not interested in finalising this matter since from the onset.

CONCLUSION

¹³ Delaying tactics to buy time without considering the prejudice applicants suffered.

[39]. In the light of the above, I find that the respondent¹⁴ belated delivery of notice of intention to defend delivered on the 25th April 2025, constitutes an abuse of the process of this court and it is for this reason to be set aside. This opens the door to the consideration of the plaintiff's¹⁵ application for default judgment.

DEFAULT JUDGMENT

[40]. The first applicant is N[...] L[...] M[...], an adult female South African citizen with identity number 0[...] who sues herein in her personal capacity for the recovery of delictual damages for loss of support which was occasioned by the death of her father, namely, T[...] K[...] N[...] with identity number 6[...] who died on 11 September 2013 from bodily injuries sustained in a motor vehicle accident.

[41]. The second applicant is S[...] I[...]M[...], an adult male South African citizen with identity number 000317 6258 089 who sues herein in his personal capacity for the recovery of delictual damages for loss of support occasioned by the death of his father referred herein the paragraph above.

[42]. Initially the summons were issued and served on the 13th August 2020, by their paternal uncle S[...] S[...] M[...]¹⁶. Both first and the second applicant were still minors, when their uncle instituted a claim for loss of support. The minor children have since attained age majority and also substituted their uncle.

'THE LIABILITY AND RULE 38(2) APPLICATION

[43]. The applicants have served and filed an application in terms of Rule 38(2) in which they seek an order permitting their evidence as to the collision, the cause of death, proof of earnings and calculations be tendered through affidavits and their respective attachments.

¹⁴ Road Accident Fund.

¹⁵ Applicants in this matter.

¹⁶ In his representative capacity for Nomphumelo M[...].

[44]. The counsel submitted that the collision was solely caused by the negligence driving of the insured motor vehicle in one or more of the following respect:

- 44.1. He failed to keep a proper lookout;
- 44.2. He drove the vehicle without due regard to the rights and safety of other road users and more particularly of the pedestrian;
- 44.3. He travelled at a speed which was excessive in the circumstances;
- 44.4. He failed to apply brakes of the insured motor vehicle at, alternatively, timeously or sufficiently;
- 44.5. He failed to avoid the collision when, by taking reasonable and proper care;
- 44.6. He failed to maintain any, alternatively sufficient, control over the insured vehicle.

[45]. A further submission was made that the deceased was born on the 04th December 1963 and was employed at the time of the accident. Mr T[...] K[...] N[...] sustained bodily injuries from the accident and he died out rightly. The deceased had a legal duty to maintain the minor children which he contributed until the untimely death.

[46]. The court was also requested to accept the Rule 38 application into the record as evidence inclusive of all affidavits confirming the applicant's paternity, the accident report and as well as the death certificate. The court has accepted all the documents as exhibits.

AD EARNINGS AND ACTUARIAL CALCULATION

[47]. Mr. T[...] K[...] N[...] was employed at EnviroServe Waste Management PTY Ltd. His last reported or documented net pay was R 7 823.00. The actuary has used his annual earnings of R8 8512 as the basis for the calculation of the amount for loss of support.

[48]. The total calculated loss of support for the two applicants were calculated as follows: with the contingencies 5% for the past and 10% for the future loss.

48.1. S[...] – R149 471,00

48.2. N[...] - R243 609.00

THE COURTS ANALYSIS

[49]. Taken cognizant of the facts that the matter which was presented, the court needs to determine whether one (1%) of negligence exists.

[50]. The Applicants father who was a pedestrian at the time of the accident, was struck and killed as a result of motor vehicle on the Sundra off ramp near Witbank. It is expected that the insured driver must keep a proper look out at all material times and reduce speed as he approaches the off ramp. A reasonable person would have foreseen that by keeping a proper lookout and reducing the speed by applying brakes timeously would have avoided such an accident occurring. The insured driver would have taken steps to guard against such occurrence.¹⁷ Unfortunately in the present case the insured driver failed to take such precautionary measures or reasonable steps to avoid such collision.

[51]. The insured driver was later charged with culpable homicide.

[52]. The Court draws the reasonable inference on the fact that the Applicant has proven 1% of negligence, which emanates from the insured driver not adhering to the rules of the road.

[53]. I therefore make an order in respect of liability of the matter, the Respondent is 100% liable for the merits in this matter.

¹⁷ Kruger v Coetzee [1966]2 ALL SA 490 (A), 1966 (2) SA 428 (A), Minister of Safety and Security v Van Duivenboden [2002] 3 ALL SA 741 (SCA), 2002 (6) SA 431 (SCA).

In premises, the following orders are made:

1. The defendant's notice of intention to defend delivered in terms of Rule 19(5) on 25th April 2025, is set aside.
2. The Respondent is held liable 100% in respect of the merits for the accident that took place on the 13th September 2013, wherein T[...] K[...] N[...] died as a result of a motor vehicle accident.
3. The Respondent¹⁸ is ordered to pay the Applicants the sum of R 393 080.00 (Three Hundred and Ninety-Three Thousand and Eighty Rands) in respect of the Applicant's loss of support. The amount comprises as follows:-
 - 3.1. S[...] M[: R149 471,00.
 - 3.2. N[...] M[: R243 609,00
4. In Order for the time period referred to in paragraph 6 hereunder to commence, this Order is to be served on the Defendant together with the particulars of the Applicants attorney's Trust details.¹⁹
5. The Respondent²⁰ is Ordered to pay the Applicant's taxed or agreed party and party cost on the High Court Scale, which payment shall be effected no later than 14 days following when agreement relating to the aforementioned cost is reached between the parties or the stamped allocator (following taxation) is served on the Respondent, whichever comes earlier.
6. Interest shall accrue on the capital after the expiration of 180 days from the order is provided to the Defendant as contemplated in paragraph 4 above.

M.J MATIME
Acting Judge of the High Court
Gauteng Division, Pretoria

Date of Default Judgment 29th April 2025 and the matter was stood down for the 30th April 2025.

Date of Hearing: 02nd May 2025

¹⁸ In the main action the Defendant (Road Accident Fund).

¹⁹ Lepule Mokoka Inc.

²⁰ Supra.

Judgment delivered: 17th June 2025.

APPEARANCES:

For the Applicant:	Advocate V Magwane
Attorney for the Applicant:	Lepule Mokoka Incorporated, Pretoria
For the Respondent:	Non appearance
Attorney for Respondent:	State Attorney, Pretoria