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

CASE NO: 13607/2022

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: 30/06/2025

SIGNATURE

In the matter between:

NYAWO, NOXOLO PRUDENCE

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

PIENAAR AJ

INTRODUCTION

1. The Plaintiff instituted an action against the Road Accident Fund for injuries sustained by her in a motor vehicle accident that occurred on 19 April 2021.
2. In terms of the amended particulars of claim dated 14 January 2025, on 19th of April 2021 at or near Ematshobeni area along N1 road, Pongola, a collision occurred when motor vehicle with registration numbers and letters H[...] when suddenly a motor vehicle bearing unknown registration numbers driven by insured driver encroached onto Plaintiff's lane of travel forcing her off the road.
3. The notice of set down was served on the defendant on 06 December 2024.
4. Plaintiff served a notice of bar on the defendant on 26 April 2024.
5. The Plaintiff sought to proceed on merits and quantum. The Plaintiff and a witness both testified on the merits of the case.
6. The Plaintiff's brought an application in terms of Rule 38(2) of the Uniform Rules of Court for the expert reports and affidavits to be admitted into evidence. *Havenga v Parker* 1993 (3) SA 724 (T), confirmed by the Supreme Court of Appeal in *Madibeng Local Municipality v Public Investment Corporation* 2018 (6) SA 55 (SCA), found it is permissible to place expert evidence before the Court by way of affidavits in terms of Rule 38(2). The Rule 38(2) application was granted.
7. It must be noted that even though the Rule 38(2) application was granted, this court must still be satisfied, after considering all the evidence, that the Plaintiff has a valid

claim. By admitting the expert affidavits without viva voce evidence, this Court is not bound to accept the evidence presented for the purpose of granting default judgment.

8. The Fund did not admit the RAF 4 serious injury assessment of the Plaintiff.

Therefore, the issue of General Damages is postponed sine die.

MERITS

9. The plaintiff testified that at the time of the accident she was driving from Petersburg to Mbombela. On the way to Piet Retief, there were two motor vehicles. These two motor vehicles tried to overtake. The truck drove to her side of the road. That is when I lost control and the car start rolling. Plaintiff's Counsel, Adv Leopeng asked her about the OAR report, according to her the OAR report is a lie. There was a passenger in the vehicle.

10. The witness, Ms Nomboso testified, that the accident date is 19 April 2021. She was seated in the back seat with the baby. She realized that two motor vehicles came from the opposite site of the road to their side of the road. The driver swerved and the vehicle overturned.

11. The merits evident before me is; the OAR Report, the claimant's section 19 (f) affidavit confirming the accident, and the ID copy of the claimant.

12. The Court now turns to the Plaintiff's Affidavit. The Plaintiff states in her statutory affidavit that she was a driver of a motor vehicle bearing registration numbers and letters H[...] on or about **18th October 2021**, when suddenly an insured motor vehicle encroached onto their lane of travel forcing her to go off the road. The affidavit was signed on **31st July 2021** and 'commissioned' in Pretoria. It indicates that it is signed and sworn before Luvo King Attorneys (commissioner of oaths) on 31st July 2021, and that the deponent knows and understand the contents of this affidavit and has no

objection to taking the prescribed oath and consider same to be binding upon her conscience.

13. It is evident from the preceding paragraph that the affidavit was commissioned prior to the motor vehicle accident. As such, the court cannot accept the contents of an affidavit sworn under oath before the occurrence of the event as accurate.

THE LAW

14. The State President has, in terms of section 10 of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act 16 of 1963), been pleased to make the following regulations—

1.

(1) An oath is administered by causing the deponent to utter the following words: “I swear that the contents of this declaration are true, so help me God”.

(2) An affirmation is administered by causing the deponent to utter the following words: “I truly affirm that the contents of this declaration are true”.

2.

(1) Before a commissioner of oaths administers to any person the oath or affirmation prescribed by regulation 1 he shall ask the deponent—

(a) whether he knows and understands the contents of the declaration;

(b) whether he has any objection to taking the prescribed oath; and

(c) whether he considers the prescribed oath to be binding on his conscience.

(2) If the deponent acknowledges that he knows and understands the contents of the declaration and informs the commissioner of oaths that he does not have any objection to taking the oath and that he considers it to be binding on his conscience the commissioner of oaths shall administer the oath prescribed by regulation 1(1).

(3) If the deponent acknowledges that he knows and understands the contents of the declaration but objects to taking the oath or informs the commissioner of oaths that he does not consider the oath to be binding on his conscience the commissioner of oaths shall administer the affirmation prescribed by regulation 1(2).

15. The purpose of a judge who is called upon to interpret a statute or other document, is, therefore, to ascertain the objective meaning of the words used, within the context of the document as a whole, and given the purpose of the document.

16. In light of all the above, this Court is not willing to exercise its discretion and grant default judgment against the RAF. In the circumstances, this Court, in the interests of justice, is also not prepared to dismiss the action or grant an absolution from the instance.

17. In summary, the granting of a default judgment involves an exercise of discretion.

ORDER

18. For all the above reasons, I make the following order:

1. The application for default judgment is refused.
2. There is no order as to costs.

PIENAAR, M
ACTING JUDGE OF HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of hearing : 02 April 2025

Date of judgment : 30 June 2025

For the Applicant : Adv Leopeng

Instructed by : N NKala Attorneys Inc

For the Defendant : Road Accident Fund

No appearance

Link no: RAF REF: IS2887899