



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

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/~~NO~~

(2) OF INTEREST TO OTHER JUDGES: YES/~~NO~~

(3) REVISED

DATE: 21 July 2025

SIGNATURE: 

Case No. 16923/2022

In the matter between:

SEGOLE, KGADI JOSEPHINE

APPLICANT

And

ROAD ACCIDENT FUND

RESPONDENT

Coram: Millar J

Heard on: 21 July 2025

Delivered: 21 July 2025 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded

to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 13H00 on 21 July 2025.

Summary: Default judgment — loss of support — two minor children — death of father — injuries sustained in a motor vehicle collision — application refused.

Service — notice of amendment of particulars of claim served one day before hearing — not properly brought to the attention of the respondent.

Trust account advocates — Non-compliance with the Road Accident Fund Act 56 of 1998 and Legal Practice Act 28 of 2014 — Section 34(2)(b) of the LPA Act prohibits trust account advocates from doing the work previously done by an attorney as provided for in section 19(c)(i) of the RAF Act.

Expert reports — based on 'income affidavit' — no evidence of employment of deceased placed before court — expert reports inadmissible.

ORDER

It is Ordered:

[1] The Application for default judgment is refused.

JUDGMENT

MILLAR J

- [1] This is an application for default judgment. The claim preferred by the applicant is one for loss of support suffered by her two minor children arising out of the death of their father as a result of injuries sustained in a motor vehicle collision on 2 March 2019.
- [2] It is alleged in the particulars of claim that the deceased, while driving a motorcycle, was involved in a head on collision when another motor vehicle drove into his path of travel on his side of the road.
- [3] A claim was lodged with the respondent by the applicant herself on 30 May 2019, although there is nothing in the court file to corroborate this.¹ At some stage thereafter, the applicant appointed Chaza Incorporated to act as her attorneys in the matter and a summons was then served on the respondent on 23 March 2022. An application for default judgment was subsequently made and enrolled for hearing on 4 October 2022. This application was removed from the roll by notice on 19 September 2022. The notice does not indicate any reason why the application was removed. A new date was subsequently applied for on 30 May 2024.
- [4] Nothing appears to have happened in the matter for some two years until 3 September 2024 when the applicant's current representative of record (Advocate Jones T Zitha), delivered a notice of termination of the mandate of Chaza Incorporated. On 10 October 2024, he then filed a notice of appointment as "legal representative of record" which was served on the respondent on the same day.

¹ In an affidavit deposed to for purposes of an application for default judgment on 25 April 2022, the applicant stated "On or about 30 May 2019, I personally lodged the claim against the respondent. Subsequent to that I was unhappy/dissatisfied with respondent's services as they left my file dormant, as a result I terminated my mandate with them. I have now appointed Chaza Incorporated as my new attorneys of record."

- [5] On 18 March 2025, a notice of set down for the hearing on 21 July 2025, was served. Although this notice was dated 18 March 2025, it appears that it was only served on the respondent on 25 April 2025.
- [6] When this application was called for hearing, I drew to the attention of Advocate Zitha, various aspects which were of concern to me. They were the following:
- [6.1] Whether or not there was compliance with the Road Accident Fund Act² (the RAF Act) and Legal Practice Act³ (the LPA) insofar as Advocate Zitha's representation of the applicant was concerned.
- [6.2] Whether or not it was permissible to effect an amendment of the particulars of claim, one court day before the application was to be heard.
- [6.3] Whether the expert reports sought to be admitted are of assistance in establishing or proving the quantum of the claim.
- [7] I intend to deal with each of these issues in turn.
- [8] Firstly, section 19 of the RAF Act provides that liability on the part of the respondent is excluded in certain cases. Section 19(c) and (d) provide that the respondent is not liable:

“(c) if the claim concerned has not been instituted and prosecuted by the third party, or on behalf of the third party by-

(i) any person entitled to practice as an attorney within the Republic; or

² 56 of 1996.

³ 28 of 2014.

(ii) *any person who is in the service, or who is a representative of the state or government or a provincial, territorial or local authority; or*

(d) *where the third party has entered into an agreement with any person other than the one referred to in paragraph (c)(i) or (ii) in accordance with which the third party has undertaken to pay such person after settlement of the claim-*

(i) *a portion of the compensation in respect of the claim; or*

(ii) *any amount in respect of an investigation or of a service rendered in respect of the handling of the claim otherwise than on instruction from the person contemplated in paragraph (c)(i) or (ii);" (my underlining)*

[9] Since the LPA came into operation on 1 November 2018, there are three categories within which a legal practitioner may be admitted and practice. The first and second being an attorney and a referral advocate. The third is a category introduced by the LPA – is that of a trust account advocate.

[10] Section 34 of the LPA describes each of the three categories:

"(1) An attorney may render legal services in expectation of any fee, commission, gain, or reward as contemplated in this Act or any other applicable law, upon receipt of a request directly from the public for that service.

(2)(a) An advocate may render legal services in expectation of a fee, commission, gain or reward as contemplated in this Act or any other applicable law –

(i) upon receipt of a brief from an attorney; or

(ii) upon receipt of a request directly from a member of the public or from a justice centre for that service, subject to paragraph (b).

(b) An advocate contemplated in paragraph (a)(ii) may only render those legal services, rendered by advocates before the commencement of this Act as determined by the council in the rules, if he or she –

(i) is in possession of a Fidelity Fund certificate and conducts his or her practice in accordance with the relevant provisions of chapter 7, with particular reference to sections 84, 85, 86 and 87;⁴

“(ii) Has notified the council thereof in terms of section 30(1)(b)(ii)”⁵.

[11] There is a clear delineation between the different types of legal practitioner. Initially, the claim was said to have been submitted to the respondent by the applicant herself (acting personally) and prosecuted by her, a situation which the RAF Act regards as permissible. Similarly, when Chaza Incorporated, a firm of attorneys, were appointed by the applicant, they too were entitled in terms of the RAF Act to prosecute her claim.

[12] However, the appointment of Advocate Zitha changed the position with regards to the prosecution of the claim materially.

⁴ Sections 84 to 87 set out the obligations of legal practitioners relating to the handling of trust monies, applications for and the issue of fidelity fund certificates, the operation of trust accounts and accounting in respect of such accounts.

⁵ This section requires the practitioner to notify both the court and the legal practice council whether there is the intention, in the case of an advocate, to practice with or without a Fidelity Fund certificate.

- [13] From the time of the termination of Chaza Incorporated's mandate, any steps taken in the prosecution of the claim and in which Advocate Zitha acted as an attorney, which includes setting the application for default judgment down, is in breach of both the provisions of section 19(c)(i) of the RAF Act as well as the Uniform Rules of Court (the Rules).
- [14] The role of an attorney is clearly defined in the Rules, and these set out and maintain the traditional separation of roles that existed before the LPA came into operation. If one has regard to the definitions contained in rule 1, it is readily apparent that the traditional separation of roles is maintained and is in harmony with section 34(2)(b). There is simply no room to argue that a trust account advocate is entitled to assume the role of both an attorney and an advocate. Both the LPA and the Rules unequivocally prohibit such a course of conduct.
- [15] In consequence of the fact that the further steps in the prosecution of the claim have not been taken by either the applicant or an attorney, no liability can attach to the respondent in consequence of such steps. Advocate Zitha is not an attorney. Section 34(2)(b) of the LPA Act specifically prohibits trust account advocates in his position from doing the work previously done by an attorney as provided for in section 19(c)(i) of the RAF Act.
- [16] While the appearance before this court by Advocate Zitha, in and of itself, does not fall foul of the provisions of section 34(2)(b) of the LPA Act or section 19(c)(i) of the RAF Act, the steps taken by him in the prosecution of the action, which include taking a mandate to act as though he were an attorney, do fall foul of both sections.
- [17] Since the liability of the respondent is excluded in the event of a non-compliance with section 19(c)(i) of the RAF Act, the application for default judgment must in consequence of that non-compliance be refused.

- [18] This does not mean that the underlying validity of the applicant's claim is affected. On the facts set out above, it is only the prosecution of the claim from the time of the termination of Chaza Incorporated's mandate, that is in issue.
- [19] Secondly, regarding the amendment of the particulars of claim. Besides the fact that Advocate Zitha purported to act an attorney; by nominating his address for service of all process and signed notices in terms of the rules of court, he also caused a notice of intention to amend the particulars of claim to be delivered to the respondent on 1 July 2025 together with the amended pages.
- [20] Advocate Zitha does not appear to have considered the provisions of rule 18(1) which requires that particulars of claim are to be signed by both an attorney and an advocate and simply signed the amended particulars off himself. It bears mentioning that the original particulars of claim were correctly signed.
- [21] This amendment increased the quantum of the claim to R6 million from the original R1.5 million claimed. The amendment together with the amended pages was delivered on 1 July 2025. For almost 3 years the respondent has had before it a claim for R1,5 million and it would be improper were the rules to be interpreted to allow a situation where they had not entered an appearance to defend such as in the present case, on 3 weeks' notice they could be subjected to the grant of judgment for an amount substantially higher than they had originally been informed was being sought against them.
- [22] Service of the intention to amend was not effected by the sheriff and neither was the notice of set down for the application for default judgment. In such circumstances it cannot be said that either were properly brought to the attention of the respondent so that it could have acted to protect its interests should it have wished to do so.

[23] Lastly, regarding the evidence in of the quantum of the claim, an application was made in terms of rule 38(2) to place several medico-legal reports which included an industrial psychologist's report and actuarial report before the court as evidence. The deponent to the affidavit in this application was Advocate Zitha himself. I refused the application because the report of the industrial psychologist and subsequent calculations by the actuary, was predicated upon the statement made by the industrial psychologist that "*The writer accepts that at the time of the accident, the deceased was earning R30 000.00 (per month 2019 terms) / R360 000.00 (per annum 2019 terms).*" The source of this was stated to be an "income affidavit" by the applicant which was not placed before the court. There was no evidence at all of what the deceased did to earn a living, what he did, for whom he did it and what he was paid for doing so. There is simply no admissible evidence before this court upon which any finding whatsoever can be made.

[24] For the reasons set out above, the application for default judgment is refused.

ORDER:

1. Application for default judgment refused.



A MILLAR

**JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

HEARD ON:

21 JULY 2025

JUDGMENT DELIVERED ON:

21 JULY 2025

COUNSEL FOR THE APPLICANT:

ADV. JONES T ZITHA

INSTRUCTED BY:

ADV. JONES T ZITHA

REFERENCE:

T/JTZ/MVA/0083/2024

NO APPEARANCE FOR THE RESPONDENT