

**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 374/2025

In the matter between

MONAHENG DAVID MOKOENA

APPLICANT

(Identity Number 5[...])

And

**DEPARTMENT OF HEALTH
BOPHELO HOUSE**

FIRST RESPONDENT

ROAD ACCIDENT FUND

SECOND RESPONDENT

Neutral citation: *Mokoena v Department of Health, Free State and Another*
(374/2025) [2025] ZAFSHC 214 (14 July 2025)

Coram: Molitsoane J

Heard: 12 JUNE 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 11h30 on 14 July 2025

Summary: Declaratory order – Non-joinder of a party that has substantial interest in proceedings.

ORDER

1 The point in limine of non - joinder is upheld with costs.

2 The applicant is ordered to join the Department of Home Affairs to these proceedings.

JUDGMENT

Molitsoane, J

[1] The applicant seeks an order that this court, first declare that his identity number 5[...] be declared to be correct and valid, and second, that the first respondent (the Department) be ordered to amend its records to reflect that same number.

[2] The facts surrounding this dispute are common cause or are not seriously in dispute. The applicant was involved in a motor vehicle accident on 14 October 2017 and allegedly sustained bodily injuries. He was admitted to Pelonomi hospital in Bloemfontein, a medical facility under the scope of the first respondent. On the version of the applicant, upon his admission, he supplied a wrong date of birth to the hospital personnel. In his affidavit, he does not disclose the date of birth he supplied.

[3] In *Elegant Line Trading 257 CC v MEC for Transport, Eastern Cape*¹ the court held that '[i]n motion proceedings the affidavits constitute both pleadings and the evidence and the issues and averments in support of the parties' cases should appear clearly therefrom. It is trite that an applicant must make out its case in the founding affidavit which must contain sufficient facts upon which a court may find in the applicant's favor.' The date of birth is at the heart of this application. It is difficult to understand why the applicant chose not to play open cards with the court and disclose the date of birth he supplied to the hospital. This date of birth, is what he wants the court to, inter alia, recognize as his date of birth.

[4] After his discharge from the hospital, he lodged a claim with the second defendant for the injuries allegedly sustained during the motor vehicle accident. This was a direct claim lodged without the assistance of an attorney. This claim was acknowledged by the second respondent. It appears that there was no progress in the finalization of the claim. This prompted the applicant to instruct his current

¹ *Elegant Line Trading 257 CC v MEC for Transport, Eastern Cape* [2022] ZAECHC 45 para 2.

attorneys to assist him further.

[5] After instructing an attorney, the Department was approached to rectify its medical records pertaining to the identity number of the applicant. This proved to be an exercise in futility as the first respondent refused to do so despite various written correspondence.

[6] The Department is opposed to the relief and raises the issue of non-joinder of the Department of Home Affairs(Home Affairs), whom according to them, has a substantial interest in the outcome of this matter. This is based on their assertion that Home Affairs is the only authority which can verify the validity of the applicant's identity number. In the absence thereof, so it is submitted, the court cannot conduct an inquiry into the correctness or validity of the identity number as this responsibility remains with Home Affairs. The Department submitted that section 17 of the National Health Act 61 of 2003 prohibits tampering or altering of the records of the Department. According to the Department, the information, if it is incorrect, was provided by the applicant. It thus stands to reason that if there was any error in the identity number or date of birth, same cannot be attributed to the personnel of the Department. In my view, the only issue to be determined is whether the Home Affairs ought to have been joined in these proceedings.

[7] In *Judicial Service Commission and Another v Cape Bar Council and Another*², Brand JA held that the joinder of a party is only required as a matter of necessity as opposed to a matter of convenience if that party has a direct and substantial interest which may be prejudicially affected by the judgement of a court.³ This test was confirmed more recently in *MV Smart: Minmetals Logistics Zhejiang Co Ltd v Owners and Underwriters of MV Smart and Another*.⁴

[8] Counsel for the applicant argued that it is unnecessary to join Home Affairs to these proceedings as they seek no relief against them and moreover, they do not

² *Judicial Service Commission and Another v Cape Bar Council and Another* [2012] ZASCA 115; 2013 (1) SA 170 (SCA).

³ *Ibid* para 12

⁴ *Minmetals Logistics Zhejiang Co Ltd v The Owners and Underwriters of the MV Smart and Another* [2024] ZASCA 129; 2025 (1) SA 392 (SCA) paras 14-15.

have a substantial interest in the outcome of these proceedings. This was based on their belief that section 14 of the Act empowered the first respondent to alter its records to reflect the correct identity number of the applicant which was provided when he was in a daze before he underwent a medical procedure.

[9] This, according to the applicant, can be done as the Department never disputed that the applicant received medical attention at its facility until his discharge and this court is empowered in terms of section 14 of the Act to not only correct the medical records where the identity number is concerned but the Department is in terms of section 17 permitted to change the records provided the court gives the Department the authority to do so. They argued that should the court not be inclined to grant the declaratory order, prayer 2 of its notice of motion allowed the court to direct the first respondent to alter its records and insert the correct identity number.

[10] On the other hand, counsel for the first respondent argued that the failure of the applicant to join Home Affairs to these proceedings is prejudicial to it and fatal to the applicant's case. This argument was largely based on the fact that the said Home Affairs is enjoined to verify both identity numbers provided by the applicant. Without the said verification, the court cannot delve into an inquiry to ascertain which of the identity numbers is correct and whether fraud was at play.

[11] The Department argues that without proper verification from Home Affairs, it could be saddled with damages claims against it and this had the potential also to create an opportunity for fraud, hence the necessity for its joinder. The Department thus argued that the application ought to be dismissed with costs. In the alternative, they argued that should the court not dismiss the application, it may order the joinder of Home Affairs as a party to the proceedings. To assist the court not only to verify the identity of the applicant but to assist the court in coming to just decision pertaining to the relief sought.

[12] The crux of the applicant's case is to have the alleged defective identity number that he provided be declared as correct and for the Department to be ordered to amend it to align with his identity number displayed in his identity card. A copy thereof was not annexed to the founding affidavit, but to the replying affidavit.

[13] The applicant provided the first respondent with an identity number that was allegedly incorrect and which was eventually noted and recorded in his medical records. This ordinarily would not present a problem but the second respondent requires the medical records to align with the person who was actually treated inside the hospital which gave rise to the claim for damages against the second respondent. This strict insistence has merits as it has one of its aims to prevent lodgment of fraudulent claims.

[14] Home Affairs is the custodian, protector and verifier of identity and status of all citizens and other persons in the Republic of South Africa. This effectively entails that it is the only institution in the Republic that can verify the identity number of the applicant as correct. Although the applicant asserts that the first defendant can alter its records with a court order, same cannot be done in a vacuum and without the said department being joined to these proceedings. As I understand the contention of the Department, it is not necessarily opposed to the amendment of its records. Its opposition stems from the fact that it is not in a position to know which identity number provided by the applicant is correct, hence it holds the view that Home Affairs, as the statutorily obligated department, must first do such verification. If this had been done, the first respondent may in all likelihood not opposed the relief sought.

[15] It would have better suited the applicant's case if this issue had been clarified with Home affairs prior to instituting its application. As matters stand now, should the court order this amendment, it would be taking over the role of Home Affairs and effectively stating that the identity number provided was wrong and the new one provided is correct. In doing so, the court would by default be passing judgment on the correctness of the full name, date of birth and fingerprints accounted for when an identity card and or identity number was initially sought. Verification and rectification of identity documents cannot be usurped by the court.

[16] The non – joinder of Home Affairs effectively bars this court from granting any relief as sought in the applicant's notice of motion as at this stage of the proceedings it is not known if the applicant is the person that would have been admitted to the

medical facility of the first respondent. Nor is it known what his correct identity number is and if it correlates with what Home Affairs has on their file together with his fingerprints. It follows that the applicant ought to have joined the department of Home Affairs to enable the court to grant the relief sought. In the absence thereof, the court cannot grant the relief sought.

[17] On the issue of costs, the general rule is that costs follow the cause. I am not persuaded to deviate from this established practice.

[18] Accordingly, it is ordered:

1 The point in limine is upheld with costs, which costs shall include costs of two counsel on scale A.

2 The applicant is ordered to join the Department of Home Affairs to these proceedings.

P.E MOLITSOANE, J

Appearances

For the Applicant: Adv. P.G Chaka
Instructed by: Mokhomo Attorneys
Bloemfontein.

For the First Respondent: Adv. NM Phakama
Instructed by: State Attorney
Bloemfontein.