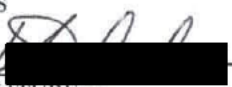


REPUBLIC OF SOUTH AFRICA



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

Case Number:2024/052535

|          |                                                                                   |
|----------|-----------------------------------------------------------------------------------|
| (1)      | REPORTABLE: NO                                                                    |
| (2)      | OF INTEREST TO OTHER JUDGES: YES                                                  |
| (3)      | REVISED: YES                                                                      |
| 8/8/2025 |  |
| DATE:    | SIGNATURE                                                                         |

In the matter between-

**Bangiwe Phikisile SITHOLE**

**Plaintiff**

**And**

**Road Accident Fund**

**Defendant**

**Summary: Rule 18(1) of the Uniform Rules of Court requires all pleadings to be signed by both an attorney and an advocate. Section 19 of the Road Accident Fund Act stipulates that a claim may only be instituted and prosecuted by an attorney and certain state employees. Advocates with trust accounts cannot sign pleadings on their own nor may they institute and prosecute Road Accident Fund claims.**

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**JUDGMENT**

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- [1] This matter was set down on the RAF default judgment roll for the 5<sup>th</sup> August 2025. Whilst preparing for the hearing of the matter it became clear that both the summons and particulars of claim were signed by adv N Sikhakhane (with a Trust Account) and that the proposed draft order that had been uploaded onto CaseLines contained the following: *"The aforesaid sum shall be paid directly into the Trust Account of Applicant's Advocate (with Trust Account) of record ADVOCATE NDLOVUKAZI SIKHAKHANE, details of which are as follows: ..."*
- [2] I caused a note to be uploaded onto CaseLines and which read as follows:
- "This matter may not be removed from the roll. Counsel to prepare written Heads of Argument why, in light of the decision in Segole v Road Accident Fund (16923/2022) [2025] ZAGPPHC (Segole) the claim should not be dismissed and adv Sikhakhane be referred to the LPC."*
- [3] The *Segole* judgment is a judgment of the Honourable Millar, J and which was handed down on the 21<sup>st</sup> July 2025.
- [4] At the time of uploading the CaseLines note there was no indication who would be appearing for the plaintiff at the hearing of the matter.
- [5] Adv Sikhakhane appeared for the plaintiff when the matter was called on Tuesday 5<sup>th</sup> August 2025 and after addressing the court on her *"displeasure"* at the tone and wording of the CaseLines note, made some submissions to the court which may be summarised as follows:

She declined to adhere to the court's directive to prepare written Heads of Argument because:

- a) by asking her to prepare and submit Heads of Argument the court had prejudged the matter and was biased;
- b) She was in possession of a letter from the Legal Practice Council (LPC) permitting her to accept instructions from the public to prosecute Road

Accident Fund (RAF) claims. Adv Sikhakhane attempted to hand up the letter from the Bar but I declined to accept it as it is not proper to proffer evidence from the Bar.

- [6] I advised her that the issues were serious and the matter could not properly be ventilated without giving her an opportunity to make considered written submissions to the query raised in the CaseLines note. Adv Sikhakhane's attitude remained that she declined to make any written submissions as this court had prejudged the matter and she had a letter from the LPC. No point would have been served to debate the matter any further and the next matter was called.
- [7] Adv Sikhakhane appears to have had a change of heart and on 6 August 2025 at 15:47 her written Heads of Argument was uploaded to CaseLines. The essence of the argument contained in these Heads of Argument is that; to the extent that Adv Sikhakhane had sought and obtained a letter from the LPC entitling her, as an advocate with a trust account to represent RAF claimants and lodge claims on their behalf, she had done nothing wrong.
- [8] In addition to the above the Heads of Argument makes out an argument that it was the intention of the Legal Practice Act that all practitioners should be equal and that, as such, she was entitled to do the work of an attorney.
- [9] The argument concludes with a submission that the Uniform Rules of Court are only Rules, which are trumped by the Legal Practice Act.
- [10] The *crux* of the *Segole* judgment appears from the following extracts thereof:
- "[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*
- (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);”*

*[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;"*<sup>1</sup>
  - "(ii) *Has notified the council thereof in terms of section 30(1)(b)(ii)"*<sup>2</sup>.

.....

[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

<sup>1</sup> 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.

<sup>2</sup> Section 30(1)(b)(ii) 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.

*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.*

*....*

*[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.*

*....*

*[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.*

[11] I agree with with the assessment of the court in the *Segole* matter.

[12] *In casu*, the letter from the Legal Practice Council, authorising Adv Sikhakhane to act on behalf of claimants against the RAF, would clearly be *ultra vires* the wording of the RAF Act and it would have been beyond the powers of the author to give it, in light of the clear wording of the RAF Act. To the extent that the Legal Practice Council had done so, it had clearly exceeded its powers.

[13] In the *Segole* matter the original summons and particulars of claim had been properly issued and it was only a later amendment to the particulars of claim which had been signed by the trust advocate alone. *In casu* the position is

different as it is the original summons and particulars of claim that had been signed by adv Sikhakhane as a trust advocate.

[14] Rule 18(1) of the Uniform Rules of Court reads as follows:

*(1) A combined summons, and every other pleading except a summons, shall be signed by both an advocate and an attorney or, in the case of an attorney who, under section 4(2) of the Right of Appearance in Courts Act, 1995 (Act 62 of 1995), has the right of appearance in the High Court, only by such attorney or, if a party sues or defends personally, by that party.*

[12] The Rule had not been amended and accordingly there is no provision in the Uniform Rules of Court for a trust account advocate to sign pleadings alone. In light of the wording of Rule 18(12) Adv Sikhakhane's signing of the summons and particulars of claim on her own would constitute an irregular step.

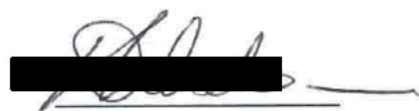
[13] The extract quoted from the *Segole* judgment confirming the division of rights and obligations between attorneys and advocates addresses the comments in the plaintiff's submissions adequately. *Ex abundanti cautela* it may be added that if the true intention was that advocates with trust accounts should be able to perform the work of attorneys, it would have been a requirement that they complete the same two years of articles of clerkship which prospective attorneys are required to do and to write the same admission exams. A legal graduate may become an advocate (without being a member of a Bar association) simply by bringing an application in the High Court. This option has never been available for legal graduates who wish to practice as attorneys.

#### *Order*

[15] Having heard counsel for the plaintiff, I grant an order which reads as follows:

- a. The application for default judgment is refused.
- b. The Registrar is ordered to transmit a copy of this judgment to the Legal Practice Council, Gauteng in light of the finding that they exceeded their

mandate and authority by issuing letters confirming that advocates with trust accounts may institute and prosecute Road Accident Fund claims.

A handwritten signature in black ink, appearing to be 'D F Weideman', is written over a solid black rectangular redaction box.

**D F Weideman**  
**ACTING JUDGE OF THE HIGH COURT**  
**JOHANNESBURG**

**Heard: 5 August 2025**

**Delivered: 8 August 2025**

**APPEARANCES:**

Applicant's counsel: Adv. N Sikhakhane

Applicant's Attorneys: None

Respondent: None