REPUBLIC OF SOUTH AFRICA

IN THE HGH COURT OF SOUTH AFRICA
HELD AT PRETORIA

CASE NO: A317/2023
DOH: 16 April 2025

1) REPORTABLE: NO
2) OF INTEREST TO OTHER JUDGES: NO
3) REVISED.

.......[redacted]

SIGNATURE

30 April 2025
DATE

THOKO CLEO PEARL TSHABANGU	**First Appellant**
M F MAHLANGU N.O. AND OTHERS	**Second Appellant**
A C MUHLOVU obo GA MUHLOVU	**Third Appellant**
B S MANZINI obo LM MASHEGO & OTHERS	**Fourth Appellant**

And

THE ROAD ACCIDENT FUND	**Respondent**

In the matter between:
This judgment has been handed down remotely and shall be circulated to the parties by way of email / uploading on Caselines. The date of hand down shall be deemed to be 30 April 2025.

JUDGMENT

ORDER

1. The appeal is upheld with costs, including the costs of two counsel.
2. The orders granted by the court *a quo* under case numbers 32939/2014, 71734/2010, 89737/2018 and 20097/2014 are amended by inserting the following paragraph:

   'The defendant must pay the reasonable preparation costs of expert witnesses, including the costs of the reports, the updated reports, and calculations by the expert witnesses.'

THE COURT

CORAM: Bam J (Van der Schyff and Moshoana JJ concurring)

Introduction

1. Before this court is a single question covering all four matters which were heard in the Default Judgment Court, Mokose J, sitting as court of first instance. The court subsequently granted leave to appeal to this court. The question concerns the correctness of the order made in respect of preparation costs for expert witnesses. All four matters concern delictual claims lodged against the respondent, the Road Accident Fund, arising from individual and

unrelated motor vehicle accidents. The respondent played no role in the proceedings.

2. The plaintiffs, in whose favour the court found, had all sought costs, including the necessary preparation costs of expert witnesses.[1] In granting costs, the court ordered the defendant to pay the plaintiff's,

> 'taxed or agreed party and party costs on a High Court scale ..., subject to the discretion of the Taxing Master.'

Appellants' case

3. In its reasons, the court expressed the view that it was not prepared to shackle the Taxing Master's discretion. The appellants demur. They submit that, with regard to costs of experts, absent a court order or consent between the parties, the Taxing Master has no discretion to exercise. This is true.

4. Clarity in this regard is to be found in the reasoning of the court in *Transnet Ltd. t/a Metrorail and Another* v *Witter*. There, the Supreme Court of Appeal stated:

> '[15] There appears to be some confusion underlying the order made by the court *a quo* and counsel's submission. An expert witness's qualifying fees (now more appropriately termed 'preparation fees' in the Uniform Rules) will only be allowed on taxation if authorised by the court or with the consent of all interested parties. The proviso to item 5 of section D of the schedule to Uniform Rule 70 makes this clear:

[1] This is a summary, the orders sought in respect of expert witnesses are more detailed in the draft orders.

'Provided that the preparation fees of a witness shall not be allowed without an order of the court or the consent of all interested parties.'[2]

5. The court further stated that although the allowances payable in respect of any witness may be claimed only where they were reasonably incurred, and although preparation fees in the case of an expert have to be allowed by order of court or by consent, a declaration by a court that a witness (whether lay or expert) was a necessary witness is not required before the allowances can be awarded on taxation. Importantly, the question whether preparation fees or allowances should be claimable on taxation depends on whether they were reasonably necessary and that question is to be answered not with the benefit of hindsight, but when the fees or expenses were incurred[3].

6. Preparation fees, as the court pronounced in *Ras* v *Land en Landbou*[4], include the drafting of an expert's report to be used by the expert at the main hearing.

7. Returning to the facts of this matter, in granting the orders in all four matters, the court was of the view that the matter of preparation costs of an expert witness should be left to discretion of the Taxing Master. This is not so. Without a court order or consent between the parties, the Taxing Master has no discretion to exercise. The appeal must succeed.

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[2] (517/2007) [2008] ZASCA 95; 2008 (6) SA 549 (SCA) ; [2009] 1 All SA 164 (SCA) (16 September 2008, paragraph 15; *Ras v Land en Landbou Ontwikkelingsbank van Suid Afrika* (2360/2010) [2012] ZANWHC 63 (8 November 2012), paragraph 10.

[3] Witter, supra, paragraph 18.

[4] Note 2 supra, paragraph 25.

Costs

8. The appellants sought the costs of two counsel, one of whom is senior. We agree that this was necessary.

Order

In the result, the following order is granted:

1. The appeal is upheld with costs, including the costs of two counsel
2. The orders granted by the court *a quo* relating case numbers 32939/2014, 71734/2010, 89737/2018 and 20097/2014 are amended by inserting the following order line:

   'The Defendant must pay the reasonable preparation costs of expert witnesses, including the costs of the reports, the updated reports, and calculations by the expert witnesses.'

[redacted]

BAM J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA, GAUTENG DIVISION, PRETORIA

I agree, and it is so ordered

[redacted]

VAN DER SCHYFF J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA, GAUTENG DIVISION, PRETORIA

I agree.

[redacted]

MOSHOANA J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA, GAUTENG DIVISION, PRETORIA

Appearances:

Counsel for the Appellant	**Adv B Geach SC and Adv D Keet**
Instructed by:	Van Dyk Steenkamp Attorneys Inc.