

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 046976/2023

DATE: 2025-09-04

DELETE WHICH EVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED: YES

DATE 11/9/2025

SIGNATURE

10 In the matter between

NKOSINATHI OSTA SIBANDA

Applicant

and

AFFINITY HEALTH INSURANCE

Respondent

JUDGMENT

FISHER, J: In the matter of Nkosinathi Osta Sibanda this judgment is given ex tempore on the 4th of September 2025.

20 The application before me purports be an application in terms of rule 28 of the Uniform Rules of Court. I t represents the latest in a barrage of stillborn proceedings which have been brought by the applicant for relief, Mr Sibanda, against Affinity Health Insurance, who I will call AHI.

Mr Sibanda alleges that he was a client of AHI for its product which, *inter alia*, allows for limited insurance cover for health care. The is referred to as policy document of 2021 / 04 / 07 with policy PX 000045006 / 8306046345081 . This is allegedly the policy document in issue.

Mr Sibanda alleges he was attacked in an armed robbery which took place on 11 June 2022 and injured. The injury was to his right index finger. At the time he was employed as a security guard. He obtained treatment for
10 the injury but he alleges that there was a breach of the policy. It seems that his contention is that AHI did not give the necessary cover that his injury deserved under the policy.

This breach, it is alleged, led to a deterioration in his injury to the finger and ultimately to its amputation. This he alleges as left him unemployed and unemployable as a security guard. For this he claims on various basis and with reference to his pleadings, such as they are, it can be discerned that the damages are both contractual and
20 delictual in nature.

The procedure adopted by Mr Sibanda has involved a hybrid of the action and application procedures. The consistent feature of these pleadings is that he makes three claims.

Claim 1 is pleaded as follows:

“ The f i r s t defendant is in pure malice, breach of contract and negligent of the plaintiff, in life threatening emergency and defamatory of plaintiff name, due to unlawful action of first defendant damages by plaintiff sum of R 500 000 as a result of first defendant actions.”

Claim 2 is pleaded as follows:

10 “Due to pain and suffering I went to specialist at Cento Care Hospital and the doctor said I must be amputated because it is too late to save the finger. Due to lack of funds and unreasonable delays for hospitalisation, I went to Tembisa Public Hospital and I was told by the doctor that the damage is worse, I must be admitted on for amputation.”

The import of these allegations is that the failure of A HI to comply with the terms of the policy caused the amputation.

20 This, in turn, he appears to allege, caused his loss of employment.

The loss suffered under this claim is in amount which is variously stated to be a R1-million and a R100 000.

Claim 3 is stated as follows:

“Due to selfish greedy and self-interest to

secure profit. The second defendant fraudulently drafted a new policy document and claim that is the original contract of 2023 /01 which is totally gross fraudulent and violation of contract laws and agreement.”

Mr Sibanda then claims that he is entitled, in terms of this claim, for payment under what he contends is the original policy of R522 000 for “accident disability”.

10 AHI, has for some years been faced with this hybrid process and a lack of adherence by Mr Sibanda to even the most basic procedures and protocol. It has, it seems to me, tried its best to accommodate and navigate the processes filed.

Mr Sibanda has indiscriminately caused pleadings and notices to be removed and uploaded randomly and as his whim takes him.

20 This Court is faced with a morass of documents which run to more than 1 300 pages and in respect of which, it must be said, that not one document filed by Mr Sibanda has any cogency or legitimacy. Some of the pleadings have been uploaded no less than three times.

On 5 July 2023 AHI served a notice in terms of rules 30 and 30 (A) to remove causes of complaints. The next day, on 6 July 2023, Mr Sibanda filed, what he

described as a “supplementary founding affidavit” but failed to remove the causes for complaints. On the same day Mr Sibanda filed a second “supplementary founding affidavit”, still failing to remove the cause of complainant.

On 2 August 2023 the respondent brought an application in terms of rule 30 and 30(A) to strike out the applicant's pleadings. The application was heard in the interlocutory court roll on 21 August 2023 before Manoim J. The Court postponed the matter *sine die* for the applicant to
10 obtain the services of a legal representative and gave Mr Sibanda 30 days to do so, failing which it was indicated that AHI could enrol the matter on the unopposed roll.

This treatment of Manoim J of the matter has apparently led to Mr Sibanda reporting Manoim J for alleged misconduct. The applicant did not appoint attorneys but on
11 October he filed yet a further process which he termed:

“ Notice of removal of all plaintiff ’ s filed documents in this action”.

The notice further stated that:

20 “The summons will be correctly reissued as required by rules of this court.”

The intention of Mr Sibanda is not clear from this notice. AHI assumed that he meant that the hybrid summons/application process had been withdrawn and that the process would commence afresh by way of the issue of

a new summons. This was a reasonable assumption. However on 2 November 2023 Mr Sibanda filed further process under the heading: “Reissue of amended initiating documents.” under the same case number as the original summons.

This relaunching was similarly hybrid in that it still purports to be both an application and an action. AHI has, it appears, attempted to navigate this unwieldy process on the basis that it has sought to bring the matter to some
10 semblance of order so that the normal process can take their course.

After filing by Mr Sibanda of a process purportedly in terms of rule 34 (A), which is totally anomalous in the context of this already aberrant procedural morass adopted by Mr Sibanda and on 5 December 2023 AHI filed a notice intention to oppose Mr Sibanda’s rule 34 application together with an answering affidavit.

On 15 August 2024 the rule 34(A) application, such as it was, was heard before Wilson J. The application was
20 dismissed by Wilson J and the Court made the following observation in his judgment:

“The upshot of all of this, I regret, is that no relief can be granted to the plaintiff today. I hope that he manages to obtain professional legal advice, which, on the

facts of this case, seem to me to be available to him on a contingency basis. Nonetheless, there is only so far a judge can go to assist a lay litigant in the prosecution of a case that may or may have..., may not have merits. I have gone as far as I can.”

AHI makes the point that Mr Sibanda litigates from the EFF’s head office in Marshalltown and that he states the
10 following in all the affidavits filed by him:

“ Where and whenever I make legal submissions, I do so on the advice of my legal team, which advice I accept as correct.”

That is the history of the proceedings thus far as they emerge from the records before me.

I move now to the application which serves before me which as I have said is an application in terms of rule 28.

20 It has been difficult for me to come to grips with this matter due to the copious filings by Mr Sibanda over the years and in view of his refusal to file a practice note in the matter, which was his obligation.

The respondents describe in their unilateral practice note the difficulties which have been experienced

by them in obtaining his cooperation for this and other processes which have been brought against them.

It is indicated in AHI's practice note that was filed for these proceedings that when, on the occasion of a previous hearing, the attorneys initiated a pre-trial meeting with Mr Sibanda at which he presented as extremely belligerent and subsequently addressed an email to the attorneys with various accusations being made against them.

Mr Sibanda has furthermore failed to cooperate in
10 the drawing of the practice notes in these proceedings which has resulted in AHI having to file a unilateral note.

During my hearing Mr Sibanda yesterday, he indicated that he wished to hand up documents which he said would make the arguing of the process clearer. I adjourned the proceedings until today (the following day) and facilitated, through my registrar, the uploading of the documents on Case Lines for a full hearing, including the documents which were handed in.

I expressed during argument that I would try to
20 make sense of the papers overnight on the basis that I would try to render the unruly processes filed into a workable process, working from the platform of the rule 28 process which served before me and my discretion under that rule. Alas, the state of the filings is such that this is impossible.

I am thus faced with the rule 28 application to be determined on its terms.

Mr Sibanda purportedly seeks to amend his particulars of claim in the reinstated process which he has unilaterally sought to bring into procedural being. In the notice of intention to amend, Mr Sibanda indicates that he wishes to amend his particulars of claim in the following manner:

10 “Take notice further that, the plaintiff in these action proceedings is here to amend his particulars of claim by removing claim 1 and put claim 2 as the main claim 1 and claim 1 to be claim 3 and claim 3 to be claim 2.”

 This application to amend is perplexing. Why the swapping round of the claims would be of any assistance to a procedural and substantive complex which seems, on the
20 face of it, to be hopelessly and fundamentally irregular, is not explained by Mr Sibanda.

 He addressed me at some length today on the fact that he wished that I accept the documents which he placed on record and which were uploaded with the assistance of my registrar yesterday, to be taken to be his summons.

I explained to him that this was not a competent and that I was duty bound to deal with the application before me.

Mr Sibanda was given every indulgence by this Court as he was in the courts before this court which have heard him and which are mentioned above.

It appears also that AHI and its legal representatives have, in the past, sought to lend some form to the processes which are devised by Mr Sibanda on the basis that he is entitled to institute irregular proceedings as and how he
10 sees fit.

This is clearly an impossible state of affairs. He has demanded to be heard in these proceedings before me, notwithstanding, by his own admission, he has not complied with even the most rudimentary practice requirements which entitle him to a hearing.

This application purportedly brought under rule 28 has no prospects of success and is irregular on its face. Counsel for AHI makes the point that Mr Sibanda seems to believe he can operate with impunity. I agree. He has
20 brought and continues to bring outlandish applications, even up until yesterday where he sought to place documents before me with no form or substance.

The fact that Mr Sibanda has been met in successive hearings with a measure of accommodation due to his being a litigant in person, has apparently contributed

to his sense of impunity and entitlement.

Whilst it is a laudatory feature of our constitutional democracy, and one jealously guarded by these courts, that persons who are unrepresented are encouraged to seek audience, largesse in accommodating unrepresented litigants cannot be without all reason and on the basis that the judicial processes are allowed to be abused.

AHI says this cannot go on. It is called upon repeatedly to deal with irregular proceeding upon irregular proceedings to its own prejudice and significant cost. This is apparent from the copious record in this matter which is on CaseLines.

Mr Sibanda has reached the end of his accommodation by this court. The application is without any basis or any purpose and falls to be dismissed.

As to costs, I agree with counsel for AHI that if Mr Sibanda is not dissuaded from the course which he has embarked upon, at least with adverse cost implications, he will continue to launch proceedings which are devoid of any merit and on the face of them abusive of this court's processes to the prejudice of AHI.

In these circumstances I make the following order:

1. The application to amend is dismissed.
2. Mr Sibanda is to pay the costs of the application on scale B.

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JUDGMENT

A handwritten signature in black ink, appearing to be 'J. Fisher', written over a dotted line.

FISHER, J

JUDGE OF THE HIGH COURT

DATE: 11 September 2025