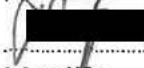




**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

(1)	REPORTABLE: YES/NO	☒
(2)	OF INTEREST TO OTHERS JUDGES: YES/NO	☒
(3)	REVISED	
		
SIGNATURE		
		DATE
		8/9/25

Case Number: 047636/2023

In the matter between:

RAND MUTUAL ASSURANCE COMPANY LIMITED

Applicant

and

CLEOPATRA NOKUTHULA SINDANE

Respondent

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

INTRODUCTION:

[1] This is an application for leave to appeal against the judgment of this Court delivered on 10 June 2025. In that judgment: (i) the Applicant's preliminary objections (relating to Rule 41A of the Uniform Rules of Court, jurisdiction, and alleged non-joinder of the Road Accident Fund ("RAF")) were dismissed; (ii) the suspension of the Respondent's monthly benefits under a Commuter Journey Policy ("CJP") was set aside; and (iii) the Applicant was ordered to restore and continue paying the benefits, with each party directed to pay its own costs.

[2] The Applicant now seeks leave to appeal to the Full Court of this Division. The grounds of appeal largely repeat the objections and arguments raised in the initial application, namely: (i) non-compliance with Rule 41A; (ii) lack of jurisdiction, including reliance on *lex loci contractus* and the so-called "15-km rule"; (iii) failure to join the RAF; and (iv) the Court's findings on clause 4.5 of the CJP and the effect of the Respondent's settlement with the RAF.

TEST FOR LEAVE TO APPEAL:

[3] The test for leave to appeal is set out in section 17(1) of the Superior Courts Act 10 of 2013. Leave may be granted only if there is a reasonable prospect that another

court would come to a different conclusion, or if there is some other compelling reason for the appeal to be heard.

[4] The test is strict. As explained in *Mont Chevaux Trust v Goosen* 2014 JDR 2325 (LCC) and reaffirmed in *Notshokovu v S* [2016] ZASCA 112, it is not enough to show that another court might come to a different view. There must be a rational basis to conclude that another court would do so. Finality in litigation remains an important consideration.

GROUND OF APPEAL:

[5] The Applicant's grounds can be summarised as follows:

[5.1] Rule 41A: The Court should have struck the matter from the roll for failure to file a Rule 41A(2)(a) notice, without requiring proof of prejudice or reliance on Rule 30.

[5.2] Jurisdiction: The Court erred in assuming jurisdiction where the contract and performance were located in Mpumalanga, and where the "15-km rule" was said to apply.

[5.3] Non-joinder of the RAF: The Court erred in finding that the RAF had no direct interest after declaratory relief against it was abandoned in court without formal amendment.

[5.4] Merits/Clause 4.5: The Court erred in holding that breach of clause 4.5 was not decisive and in relying on public policy and statutory considerations to reinstate benefits.

DISCUSSION:

A. Rule 41A

[6] Although Rule 41A(2) is couched in mandatory terms, it does not provide for automatic invalidity. In *Growthpoint Properties Ltd v Makhonya Technologies (Pty) Ltd* 2021 (1) SA 395 (GJ) the Court held that the key issue is prejudice, not formality. Similarly, *Small Enterprise Finance Agency SOC Ltd v Mbatha Transport* (GJ, 2022, unreported) noted that case management, not striking off, is the proper remedy.

[7] In this matter the Applicant filed its own Rule 41A(2)(b) notice, did not invoke Rule 30, and showed no real prejudice. The proceedings continued normally. There is no reasonable prospect that an appeal would succeed on this ground.

B. Jurisdiction

[8] The argument based on *lex loci contractus* and the “15-km rule” is misplaced. Section 21(1) of the Superior Courts Act gives this Court jurisdiction over persons residing or carrying on business in the Division and over causes arising here. The Respondent's

principal place of business is in Gauteng, and the refusal to pay benefits occurred here. The Pretoria and Johannesburg seats of this Division have concurrent jurisdiction over the whole province, as confirmed in *Standard Bank v Thobejane* 2021 (6) SA 403 (SCA).

[9] Jurisdiction was properly established

C. Non-joinder of the RAF

[10] Joinder is required where a party has a direct and substantial legal interest in the relief, as held in *Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 637 (A). While relief was initially sought against the RAF, that relief was expressly abandoned during the proceedings. The remaining relief related solely to the bilateral contract between the present parties.

[11] In *Gordon v Department of Health*, KZN 2008 (6) SA 522 (SCA), the Court held that joinder is required where a third party will be prejudiced. The RAF was not prejudiced by the order, and a formal amendment, while preferable, was unnecessary in the circumstances.

D. Merits: Clause 4.5, COIDA and the RAF Act

[12] It is undisputed that clause 4.5 was not complied with. The issue was whether this justified termination of benefits.

[13] The CJP operates within the framework of COIDA. Section 36 of COIDA provides for recourse by a mutual association, while section 18(2) of the RAF Act prevents double recovery. In *Rand Mutual Assurance Co Ltd v Road Accident Fund* 2008 (6) SA 511 (SCA), the SCA confirmed the insurer's standing to sue the RAF directly to recover compensation paid.

[14] In this matter, the RAF deducted the COIDA component, ensuring no double recovery. The Applicant's rights of recourse were unaffected. The decision to stop benefits was therefore disproportionate and contrary to the protective purpose of COIDA.

[15] Contractual sanctity remains important, as confirmed in *Mohamed's Leisure Holdings (Pty) Ltd v Southern Sun Hotel Interests (Pty) Ltd* 2018 (2) SA 314 (SCA). But in *Barkhuizen v Napier* 2007 (5) SA 323 (CC), the Constitutional Court held that contractual terms must be consistent with fairness and public policy. Enforcing clause 4.5 strictly in this case would have denied a widow her benefits without prejudice to the Applicant, which is inconsistent with public policy.

[16] On the facts, the findings on the merits cannot reasonably be faulted.

E. Compelling Reason / Novelty

[17] No conflicting judgments or novel questions of law were identified. The grounds advanced simply repeat issues already decided. No misdirection appears from the record.

CONCLUSION:

[18] Having considered the submissions, I am not persuaded that the appeal would have a reasonable prospect of success. Nor is there any other compelling reason to grant leave.

ORDER:

[19] In the result the following order is made:

1. The application for leave to appeal is dismissed.
2. The Applicant shall pay the costs of this application, including costs of counsel on scale B.



L COETZEE
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be the 8 September 2025.

Appearances:

On behalf of the Applicant:	Adv. M. Musetha
Instructed by:	Mamathuntsha Inc. Attorneys
On behalf of the Respondent:	Adv. B. Lukhele
Instructed by:	Lepule, Mokoka Inc.
Date heard:	23 July 2025
Date of judgment:	8 September 2025