

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 53167/2020

and

Case Number: 54969/2020

(1)	REPORTABLE: NO/ YES
(2)	OF INTEREST TO OTHER JUDGES: NO/ YES
(3)	REVISED: NO /YES
	
19 SEPTEMBER 2025	SIGNATURE
DATE	

In the matter between:

PRISCILLA NEL

Applicant

MVULENI RICHARD MASEKO

Applicant

and

ROAD ACCIDENT FUND

Respondent

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 e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 19 September 2025.

JUDGMENT

MAKHOBABA, J

- [1] The two matters were enrolled in the unopposed roll before me on 12 and 14 August 2025 respectively.
- [2] Due to the question of law that I raised with counsel, it was agreed that both matters be heard together simultaneously on 14 August 2025. The question I raised with counsel was the same on both matters.
- [3] The Road Accident Fund did not appear on both matters. Thus, the two matters were not defended.
- [4] In both matters the court in the main action issued an order that the “Defendant is ordered to provide the Plaintiff with an undertaking to pay 100% of the Plaintiff’s costs”.
- [5] Subsequently, according to the Applicants, the RAF issued a Section 17(4)(a) undertaking which “it is plagued by a myriad of self-imposed and unilateral caveats qualifications, limitations and condition which exponentially limit the treatment that the Applicant will qualify for under the undertaking”.
- [6] The counsel for the applicants referred the court to the Judgment of Justice Van Der Westhuizen at (Caselines 0-123). I must point out that it is not a judgment per se, but a draft order signed by my brother Justice Van Der Westhuizen.

- [7] In both matters numerous requests were sent to the RAF to comply with the court orders, and not to add anything or subtract in the Section 17(4)(a) undertaking, the RAF did not comply and issue new undertakings, hence these two applications are before the unopposed motion court.
- [8] Counsel for the applicants further argued that from the onset, the parties may agree to the contents of the undertaking. In casu, there are no such agreements. The court ordered the RAF to provide an undertaking without more and without the qualifications, limitations and caveats, and the RAF, contemptuously, fails and refuse to do so, and instead delivered a rather water down and qualified or limited undertaking. Counsel asked for an order as per notice of motion in both matters.
- [9] In *marine and Trade Insurance Co Ltd v Katz* No 1974 (4) (AD), the court said the following on page 971 – 972:
- “All that strongly suggests that the trial court was not intended to have any discretion in regard to the form or contents of the undertaking either. Indeed, that is confirmed by the words “a competent court has directed him to furnish such undertaking”, i.e. the “undertaking to that effect” (my italics), which is mentioned earlier in the provision. Hence the trial court can only direct the insurer to furnish an undertaking “to that effect”. It has no discretion to direct the insurer to furnish an undertaking that differs in its contents from what is comprehended by those words, unless the insurer consents thereto. Those words in the context of the provision mean, I think, an undertaking that will give due effect to, or will duly reflect the insurer’s assumption of liability for the costs mentioned in the provision. That liability is to compensate the claimant for any costs that are incurred by or for him in the future under these broad categories: (i) his accommodation in any hospital or nursing home, (ii) treatment of him, (iii) the rendering of any service to him, or (iv) the supplying of any goods to him, on proof that such costs have been incurred. The undertaking need only simply state or record in those terms the insurer’s assumption of that liability. Without the consent of the insurer, nothing more than that can be included in the undertaking, either at the instance of the claimant or by*

the direction of the trial court. Hence, without such consent, the trial court cannot direct that the undertaking should specify or detail any particular kind of hospital accommodation, treatment, services, or goods covered by those categories. Any elaboration of that kind could well give rise to lengthy and expensive disputes between the parties at the trial, and, in any event, may still necessitate speculation or guesswork by the trial court about what hospitalisation, treatment, etc will become necessary in the future. Another purpose of the amendments is, I think, to try to avoid all that, as far as possible, by means of the simple and straightforward undertaking mentioned above".

[10] It is clear from what the Appellate Division (as it then was) said, the AD held that that a court cannot direct that the undertaking be in a particular form or content by the insurer. Therefore, in my view this court can only direct the Respondent (RAF) to furnish an undertaking. This court has no discretion or powers to instruct the RAF as to the form or contents of the undertaking, unless the RAF consent thereto.

[11] I make the following order:

11.1. the application on Case Number: 53167/2020 and Case Number: 54969/2020 is dismissed.

11.2. no order as to costs



D. MAKHOBA J
JUDGE OF THE HIGH COURT
PRETORIA

Date of Hearing: 14 August 2025

Judgment delivered: 19 September 2025

Appearances

For Applicant: Adv W. BOTHA

For Respondent: No appearance