

REPUBLIC OF SOUTH AFRICA



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

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED: YES/NO
<u>25 September 2025</u> DATE	 SIGNATURE

In the matter between:

In re:
NDLANGAMANDLA NELISWA PORTIA

Case Number: 54826/21
APPLICANT

AND

ROAD ACCIDENT FUND

RESPONDENT

In re:

RALIKWATHA LATANI SALPHINAH
AND

Case Number: 12935/21
APPLICANT

ROAD ACCIDENT FUND

RESPONDENT

In re:

Case Number: 28763/22

RAMAGWEDE HULISANI PERTUNIA OBO MINORS

APPLICANT

AND

ROAD ACCIDENT FUND

APPLICANT

Procedure: *Whether default judgment against RAF can be pursued without filing substantive application with effect from the 26 February 2024 contrary to the consolidated Gauteng division practice directive 1 of 2024- Whether practice directive directing filing of substantive default application on RAF matters with effect from 26 February 2024 circumvent or undermine the uniform rules of the High court, in particular rule 31(2)(a) read with rule 31(4) under the circumstances.*

JUDGMENT

RESENGA AJ:

Introduction

[1] *"No shortcuts exist to the top of a palm tree¹".*

[2] The applicants in all these matters seek default judgments against the RAF in their respective claims. These matters came before me for consideration and adjudication on the 26 June 2025. It is common cause between all parties that the applicants have decided not to file

¹ African proverb

substantive default applications. The applicants only filed the default notice in terms of rule 31(2) without filing substantive application. These notices were all filed after the practice directive came into effect on the 26 February 2024. It is prudent and necessary to dispose these three matters through this judgment as these matters raise similar legal issue to be determined by this court.

Relevant Background

[3] These matters were set down for default judgment caused by the respondents' failure to defend these claims. Upon consideration of these matters, it became evident that applicants failed to file substantive applications as provided in the consolidated practice directive 1 of 2024 of this division with effect from 26 February 2024.

[4] The consolidated practice directive among others deals with compliance for default trial date and default judgment against RAF. It basically provides conditions to be met when setting down the matters for default trials specifically in RAF matters and came into effect from 26 February 2024.

[5] The practice directive in page 113 provides under number 5 read as follows;

“A notice of motion informing the RAF of the bringing of this application together with a founding affidavit fully setting out the grounds on which application for judgment by default is being brought has been uploaded to the case file”

[6] This court during the hearing of these matters on the morning of 26 June 2025 graciously alerted counsel representing the applicants about the preposition of practice directive and its implications in these RAF matters. It appears all counsel were unaware of the provisions of the directive on this issue. The directive was for the benefit of all counsel also uploaded to the caselines on the morning of 27 June 2025.

[7] It is further common cause and accepted by all counsel that the notices for default judgment made in all these matters were made after the 26 February 2024. In the matter of **Ndlangamandla** the notice for default is dated 14 June 2024 and served on the 20 June 2024, in the matter of **Ralikwatha** the notice is dated 14 May 2024 and served on the 13 June 2024 and in the matter of **Ramagwede** the notice is dated 11 July 2024 and served on the 12 July 2024.

[8] The court further afforded all applicants' counsel sufficient opportunity to obtain instruction and to consider removing these matters from the roll as they are not properly before this court. Despite the court's position in these matters counsel surprisingly and gravely refused to remove these matters from the roll. They persisted that they are entitled to proceed with the default applications against RAF and they are rightly before court.

[9] The court stood the matters down for the following day, the 27 June 2025 for counsel to consider their preposition and to file heads of argument dealing with this aspect. The applicants all filed Heads of argument. The court further inquired on the morning of the 27 June 2025 if parties have considered the directive and whether they have not

reconsidered to remove their matters from the roll. Counsel for all the applicants further persisted and regrettably refused to see the light. They were all given audience and argued their specific matters before court on the 27 June 2025. I shall fully deal with their argument below.

[10] It is necessary to indicate that there are two related matters of ***Ramano M.E V RAF Case Number 35390/21 and Mosakare V RAF Case Number 24999/19*** without substantive applications. Having considered these two matters stated above it became evident that they are not affected by the practice directive and draft orders in those two matters have been made orders of court prior to this judgment. These two matters have fortunately narrowly escaped this judgment on the basis that the request for default made in those two matters was made before the practice directive came to effect on the 26 February 2024.

[11] The issue to be determined is whether the applicants are rightly before this court and whether they are entitled to their relief without compliance with the consolidated practice directive 1 of 2024 by filing substantive default applications.

The applicable legal principles

[12] The purpose of the practice directive in any court or division is essentially to deal with the daily functioning of the courts and its purpose is to supplement the rules of the court for the better administration of the court. It is through the practice directive that the Judge President provide clear practical administration of the court processes based on the lived professional experience and prevailing court administration challenges.

[13] The practice directive must be subordinate to the rules and legislation. The SCA highlighted that, In the ***The National Director of Public prosecutions (Ex parte Application***²), the court held the practice directives may not derogate from legislation, common law or rules of the court that have a binding effect.

[14] The SCA in ***The National Director of Public prosecutions (Ex parte Application) in para 31 held as follows;***

“The practice directive is subordinate to any relevant statute, the common law and the Uniform rules and it cannot be applied to restrict or undermine any piece of legislation, the Uniform Rules of Court or the common law. Practice directives deal essentially with the daily functioning of the courts and, their purpose is to supplement the rules of court. In this case, the court a quo afforded the practice directive statutory force overriding both s 38 of the POCA and rule 6(4)(a) of the Uniform rules which is impermissible. The practice directive should not negate the provisions of s 38 and rule 6(4)(a) of the Uniform rules. In my view the portion of the practice directive dealing with *ex parte* applications is not applicable to *ex parte* applications brought in terms of s 38.”

[15] In ***Izwelethu Cemforce CC v Dr Ruth Segomotsi Mompati District Municipality***³ the court in para 19 held as follows;

“The importance of compliance with these Directives and Rules cannot be overstated. Failure to adhere to these guidelines not only hampers the smooth functioning of the Court but also undermines the integrity of the judicial process. It can result in unnecessary delays, confusion, and prejudice to the parties involved in a case”

² 2021 ZASCA 142; 20229(1) SACR 1 (SCA) at para 31

³ M509/2022(20230 ZANWHC 192 (September 2023)

[16] In ***Reitmann and Janse van Resburg***⁴ Coetzee J said;

“Rules are made to be followed, and Rules are there so that rights and duties flow; in the event of non-compliance, legal results flow”

Analysis

[17] Counsel for the applicants in essence correctly argued that the default application does not in terms of rule 31(2)(a) postulate the filling of substantive application seeking default judgment as envisaged in rule 6. I fully agree with this submission. It was further argued that practice directive in requiring the substantive application to be filed undermine or circumvent rule 31(2)(a). This court disagree that the practice directive undermine or circumvent rule 31(2) (a) under the circumstances. The court was persuaded to ignore the practice directive on this aspect as if does not exist. This argument was supported by all counsel for the applicants.

[18] Rule 31(2)(a) of the uniform rules of high court read as follows;

“ Whenever in an action the claim, or if there is more than one claim, any of the claims is not for a debt or liquidated demand and a defendant is in default of delivery of notice of intention to defend or a plea, the plaintiff may set the action down as provided in subrule (4) for default judgment and the court may, after hearing evidence, grant judgment against the defendant or make such orders as deems fit”

⁴ 1984(2) SA 174 (W) at 179H

[19] Rule 31(4) of the uniform Rules of court provides as follows;

“The proceedings referred to in subrules (2) and (3) shall be set down for hearing upon not less than five days’ notice to the party in fault: provided that no notice of set down shall be given to any party in default of delivery of notice of intention to defend”

[20] The practice directive specifically provided for filing of the application in these RAF Matters. It is public knowledge that thousands of RAF matters of different higher values and types countrywide remain undefended and as result claimants through their representatives seek default judgments. This unfortunate occurrence among others necessitated the creation of default trial rolls in this division.

[21] The directive with effect from 26 February 2024 requires that such default applications be brought under notice of motion and founding affidavit. It specifically provides that grounds of application by default must be fully set out in the founding affidavit accompanying such notice of motion. The applicant as result of the practice directive is provided an opportunity to fully set out evidence in an affidavit in support of his/her grounds of application by default.

[22] Counsel for the applicants failed to demonstrate to the effect that the required substantive application for default negatively override or undermine rule 31(2)(a). They further failed to demonstrate that the directive is to the disadvantage or detriment of the applicants. There is no prejudice demonstrated whatsoever by the applicants for being required to file substantive application for default judgment.

[23] The substantive application required as provided by the practice directive 1 of 2024 in essence supplement rule 31(2)(a) to ensure the effective and convenient functioning of the court in fully assessing these RAF matters. The substantive application essentially ensures the default of the RAF is confirmed under oath by the applicant. The founding affidavit further provides an opportunity for the court to fully assess relevant steps taken by the applicant before approaching court seeking default judgment. The steps taken by the applicant are therefore placed under oath through an affidavit as evidence and assessed by the court accordingly. The court was not told why this can be prejudicial to the applicant.

[24] It is evident that some of these RAF claims are substantial in value and important to the claimants. As a result, these matters require diligent and meticulous consideration by court. It is necessary for the applicant seeking default judgment to place all relevant evidence under oath and in one founding affidavit. If anything, good or bad may arise at any stage the evidence placed before court through the founding affidavit may be easily revisited or referred.

[25] There is no legal basis laid by counsel to justify refusal of the compliance with the practice directive whatsoever under the circumstances. The requirements laid down by the SCA in **the Director of National public prosecutions** (*ex parte*) are not met and no attempts were made in argument by counsel to meet the requirements.

[26] This court is not persuaded that the practice directive should simply be ignored because applicants' legal representatives do not like it or for whatever convenient reason. The practice directive is provided for a reason and must be complied with. There is no prejudice to be suffered or demonstrated by the applicants by filing the substantive application. The applicants failed to demonstrate that the practice directive undermine or negatively affect their rights as provided in rule 31(2)(a). The mechanism provided under rule 31(2)(a) still remain intact and is not undermined by the practice directive in any form.

[27] The required substantive application in my view is basically to the advantage of the applicant than the respondent in many ways in that the respondent's default is through grounds set out in the founding affidavit fully placed before court under oath. The refusal by the applicants to comply with the practice directive is unfounded and misplaced.

[28] The court was referred by counsel for the applicants to the Eastern Cape full court judgment case of **Dlodlo and others v Omega Construction and Buidling (pty) Ltd**⁵ which in para 14 read as follows;

"There is, however, a further matter of concern which arises from the papers. As I have said the application for default judgment proceeded in terms of rule 31(2). In terms of the rule, where a defendant is in default of the delivery of a plea, as in this case, a plaintiff is entitled to "set the action down" for default judgment. It does not postulate the filing of an application, as envisaged in rule 6, supported by affidavits. In the present matter the plaintiff brought its application for default judgment on notice of motion supported by a founding affidavit and annexures running to more than 40 pages. The approach reflects a tendency that appears to be gaining momentum in this court and that constitutes an abuse of the process of court. The proceedings had been

⁵ (CA85/2022) (2022) ZAWCMKHC 1 (1 March 2022)

commenced by way of action. Where there is no notice of intention to defend, or a plea, filed the factual averments contained in the particulars of claim are deemed to be admitted. However, where a claim is made for unliquidated damages, as in this case, the court is required to hear evidence in order to properly assess the issue and to make an appropriate order. In ***Economic Freedom Fighters***⁶ the SCA explained that application proceedings are inappropriate for this purpose. Generally, in action proceedings, evidence must be presented *viva voce*. In exceptional cases evidence may, with the leave of the trial court, be received on affidavit. Thus, a plaintiff seeking default judgment in terms of rule 31 cannot seek to bolster his case by an extensive affidavit nor is it necessary to repeat the allegations made in the particulars of claim on affidavit. The present case provides an illustration of the consequences of such an abuse of the court process.”

[29] It is clear as daylight without any confusion that ordinarily the legal position in seeking default judgment does not require substantive application to be filed. This is clearly confirmed as provided in rule 31(2)(a) read with rule 31(4). The *Dlodlo* case is distinguishable from these three matters before this court and not applicable in that in the *Dlodlo* matter there was no specific practice directive requiring substantive application to be filed against RAF matters unlike in these cases wherein the directive specifically provides that in RAF matters substantive application must be filed. The fact that the directive only specify RAF matters only to the exclusion of others, by logic suggest that other matters may ordinarily proceed as provided under rule 31(2)(a) without filing substantive application.

[30] The *Dlodlo* matter evidently as confirmed in its para 14 is primarily based on addressing the abuse of court process in filing unnecessary and excessive

⁶ *Economic Freedom Fighters and Others v Manuel* 2021 (3) SA 425 (SCA) at para [93]

substantive default application, and further filing unnecessary papers before court. This is confirmed in para 15 which read as follows;

“As a result of the form of the application the appellants found it necessary to address all the averments made in the affidavit (which should never have been filed) and I have referred earlier to the extent of the answering papers that followed. Thus, the record on appeal, in respect of a default judgment application, now amounts to 540 pages. To add insult to injury, a few days prior to the hearing of the appeal Omega’s legal representatives found it necessary to deliver a “Supplementary Appeal Record” containing a further 270 pages of documentation relating to rescission applications filed by the appellants...”

[31] The reliance by counsel on the *Dondlo* judgment is unfortunately misplaced as that judgment is not applicable or comparable for purposes of this this matter. The Dlodlo judgment can only be relevant on circumstances wherein there is no practice directive requiring substantive application to be filed.

[32] There was an argument made by counsel after the court inquired whether Dlodlo judgment is binding to this court. The high court in terms of stare decisis⁷ is not bound by the decisions of another court including full court of another division. The doctrine of precedent is often expressed by the Latin maximum *stare decisis at non quieta movere*⁸. However, such decisions if comparable and applicable carry strong persuasive authority and are treated with high respect to ensure legal certainty and the uniform rule of law.

[33] The essence of the doctrine may be captured in the rule that a court is bound by the previous decisions of a higher court and by its own previous decisions in similar matters⁹. The high court is bound by the decisions of the supreme court of appeal and

⁷ The principles of precedent

⁸ “to stand by decisions and not to disturb settled matters”.

⁹ Precedent and the constitutional court by J Brickhill; www.saffli.org

the Constitutional court. The *Dodlo* judgment if applicable and comparable would only be persuasive under the circumstances.

[34] The court was further referred to the case of ***Economic freedoms fights and others v Emanuel***. The court in para 92 said as follows;

.....An unliquidated claim for damages must be pursued by institution of an action. No less so, when an aggrieved victim of a defamatory statement seeks compensation. That has always been the position and it is reflected in the Uniform Rules of Court. Uniform Rule 17(2) compels a person claiming unliquidated damages to use a long form summons and file particulars of claim, and Uniform Rule 18(10) obliges 'a plaintiff suing for damages [to] set them out in such manner as will enable the defendant reasonably to assess the quantum thereof' and plead thereto. In respect of damages claims for personal injury the rule requires even greater specificity..."

[35] The SCA in para 93 further said;

"This is not mere technicality. Claims for unliquidated damages by their very nature involve a determination by the court of an amount that is just and reasonable in the light of a number of imponderable and incommensurable factors. That exercise cannot be undertaken in proceedings by way of application. As Harms DP said in *Cadac*:

' ... motion proceedings are not geared to deal with factual disputes – they are principally for the resolution of legal issues – and illiquid claims *by their very nature* involve the resolution of factual issues.'(Emphasis added.)"

[36] The reliance of the Economic freedom fighters case insofar as the cases before this court is again misplaced. This case deal with whether determination of quantum of damages can be dealt with by motion proceedings and the SCA ruled that such determination must be referred to oral evidence for determination.

[37] The substantive application required by the practice directive is not in anyway meant to oust the obligations on a party pursuing unliquidated damages to prove his/her claim. The applicant seeking default judgment on unliquidated damages still has to satisfy the court on the merits and extent of the damages claimed.

[38] The practice directive among others requires the grounds of default to be fully set out by the applicant through an affidavit. This does not in any way suggest that the contents of the founding affidavit must only be exclusively considered for the claim. The court still has to among others assess pleadings, reports (if any) and other relevant documents to assess and verify if proper case is made. The substantive application does not absolve the applicant from either leading oral evidence or filing rule 38(2) application for evidence to be considered through affidavits.

[39] It was further argued that rule 38(2) application filed by the applicant is enough to place the applicant's evidence under oath. This submission is again legally unfounded and incorrect in that rule 38(2) does not specifically deal with the default grounds of the RAF. The rule 38(2) application normally requires the court to consider either factual evidence¹⁰ or expert evidence through filed affidavits without such witnesses testifying in court.

Conclusion

[40] In the premises, it is found that, there is no sound and founded legal basis advanced by the applicants to justify refusal to comply with consolidated practice directive 1 of 2024 and further that there is no prejudice demonstrated or to be suffered by the applicants by filing substantive default application against RAF.

¹⁰ Ordinarily deposed through an affidavit.

[41] Consequently, I make the following order;

In the matter of **NDLANGAMANDLA NELISWA PORTIA V ROAD ACCIDENT FUND CASE NO: 54826/21;**

41.1 The application for default judgment without filing substantive application is refused.

41.2 No order as to costs.

In the matter of **RALIKWATHA LATANI SALPHINAH V ROAD ACCIDENT FUND CASE NO: 12935/2;**

41.3 The application for default judgment without filing substantive application is refused.

41.4 No order as to costs.

In the matter of **RAMAGWEDE HULISANI PERTUNIA OBO MINORS V ROAD ACCIDENT FUND CASE NO: 28763/22.**

41.5 The application for default judgment without filing substantive application is refused.

41.6 No order as to costs



RESENGA AJ

**ACTING JUDGE OF THE HIGH
COURT, GAUTENG DIVISION,
PRETORIA**

APPEARANCES:

Date of hearing: 26 AND 27 JUNE 2025

Date of judgment: 25 September 2025

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FOR RESPONDENT: NO APPEARANCE