

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO 039326/2022

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

2/10/2025

DATE

SIGNATURE

In the matter between:

Adv Heila Basson N.O obo

Sarah Morongwa Moruke

and

ROAD ACCIDENT FUND

Applicant/Plaintiff

Respondent/Defendant

JUDGMENT

PIENAAR (AJ)

Introduction

1. On 9 May 2001, Ms Sarah Morongwa Moruke was involved in a motor vehicle accident. As a result of the accident, she suffered skull fracture right occipital bone, basal skull fracture and sustained a blow to the head and she lost consciousness.
2. On 31 January 2002 a claim was lodged by T.P Magoro Attorneys with the Road Accident Fund.
3. On 31 October 2022 a Combined Summons was served on the Defendant by the Sheriff, C.F Nel. Therefore, twenty-one years later, the Combined Summons was served on the Defendant.
4. On 13 March 2023, before the Honourable Judge Lenyai, Adv. Heila Johanna Basson was appointed as *Curator ad Litem*.
5. The Defendant filed a Notice of Intention to Defend on 18 April 2024. The Plaintiff served a Notice of Bar on the Defendant on 23 May 2024.
6. This matter was on the default judgment roll for 2 July 2025. When the matter was called, there was no appearance for the RAF, despite due notice of the trial date being given to it. The matter proceeded on a default basis.
7. After hearing the Plaintiff's Counsel, Adv. Snyman SC, with Adv. Ernst, I reserved judgment.

Prescription

8. Adv Snyman SC referred the Court of the Constitutional court judgment in Van Zyl N.O vs RAF [2021] ZACC 44, prescription of claims against the Road accident Fund, where the claimants are of unsound mind, prescription only beings to run from date of appointment of *Curator ad Litem*. The Plaintiff's Heads of Argument, paragraph 1.14.1 reads as follows: "It should be noted that this matter was originally issued in the Magistrate Court, Tshwane Central by the patient's previous attorneys of record, Digaba Tlhabane Attorneys. The matter did not reach any finality in the Magistrate's Court as the previous attorneys of record failed to execute their mandate properly and failed to appoint any expert witness"

9. The Plaintiff's Heads of Argument, at paragraph 1.14.1, cannot introduce new information that was not pleaded in the Particulars of Claim.

10. There were previous attorneys on record who were supposed to issue summons within a five-year period, but this was not done. According to the Plaintiff's counsel, the summons was issued out of the Magistrate's Court. However, as mentioned previously, this was neither pleaded in the Particulars of Claim nor uploaded onto CaseLines.

Conclusion

11. The court is of the view that this matter has prescribed. The Plaintiff has not pleaded in the Particulars of Claim that there were any previous attorneys on record, that summons had been issued out of the Magistrate's Court, or provided any background history of the matter. The only averment made by the Plaintiff is that they were involved in a motor vehicle accident on 9 May 2001, and that the Combined Summons was served on the Defendant twenty-one years later.

Order

1. The application is dismissed.
2. No order as to costs



M PIENAAR

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

The judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to CaseLines. The date for hand down is deemed to be 1 October 2025.

Heard on : 2 July 2025
Delivered on : 2 October 2025

Appearances

On behalf of the Plaintiff : Adv M Snyman SC with Adv JRF Ernst

Instructed by : Andre Du Plessis Inc Attorneys

On behalf of the Defendant : Road Accident Fund
No appearance
Link no: 1043934