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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NUMBER: 7109/2021

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED: Yes

DATE: 21 October 2025

SIGNATURE:

In the matter between:-

PHILLIPINE KWENA TSIPA

FIRST PLIANTIFF

SESLA GRACE GALANE

SECOND PLAINTIFF

TULISILE MBIKO

THIRD PLAINTIFF

AND

ROAD ACCIDENT FUND

DEFENDANT

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand down of the judgment is deemed to be 21 October 2025 at 10:00 am.

Heard: 21July 2025

JUDGMENT

MASHIFANE AJ

1. This is an application for default judgment against the defendant (RAF) in which the plaintiffs seek an order on both merits and quantum.
2. On the 5th of October 2021 the plaintiffs served combined the summons on the defendant claiming loss of support on behalf of their minor children due to death of their father arising out of motor vehicle collision which is its alleged it occurred on 01 /01/2020 on Vedspaat street, Bender, Polokwane. The defendant filed notice to defendant but failed to file a plea and was barred from pleading resulting with this application.
3. The plaintiff did not call any witnesses to testify on both merits and quantum and proceedings were conducted in terms of Rule 38 (2) of the Uniform Rules which allow the Court to order evidence to be led on affidavit instead of hearing oral evidence. The Rule provides that- *'The witnesses at the trial of any action shall be orally examined, but a court may at any time, for sufficient reason, order that all or any of the evidence to be adduced at any trial be given on affidavit or that the affidavit of any witness be read at the hearing, on such terms and conditions at it may seem meet: provided that where it appears to the court that any other party reasonably requires the attendance of a witness for cross examination, and such witness can be produced, the evidence of such witness shall not be given on affidavit'*.
4. The plaintiff's founding affidavit is based solely on the affidavit by Constable Hleketani Mavabaga, the first police officer to arrive at the scene of accident, and the accident report completed by M.D Mothapo on 07/01/2020.
5. According to Constable Mavabaga on 01/01/2020 he was on duty when at approximately 08:00 he was informed of an accident which occurred at corner Vedspaat and Die Meer street, Bendor. He respondent to the call and upon his arrival he found an unknown African male lying on the outside the road with injuries

on the back of his head. Few meters away from him there were black sandals and a hat. He also observed pieces of glass and a piece of gold mirror.

6. He was approached by one Freddie Mahlasedi who informed him that he was together with the deceased known to him as John from Ga-Mashashane when he was pumped by a gold Opel Corsa and he saw him flying.

7. Later an African male person who introduced himself as Isaac Thaba informed the witness that the people who were driving the gold Opel Corsa were at Galitos SASOL Mukhweho garage dancing. Mr Thaba then went to the garage to obtain the registration number of motor vehicle and on his return, he gave Constable Mavabaga registration number of the motor D[...]which he obtained from the said motor vehicle.

8. The deceased was certified dead by Masebo SP a paramedic who arrived at the scene with an ambulance. Warrant Officer Raphela visited the scene and took pictures. Mr Mabitsela from forensic also visited the scene and removed the body of the deceased. A case docket of culpable homicide was then registered.

9. The accident report No 01/01/2020 completed by MD Mothapo identifies the particulars of the driver as Tshepo Delekiso of 38 Cestion street Polokwane and his phone number was also indicated on the report. The details of the motor vehicle were captured as gold Opel with registration number W[...].

10. The main issue before this court is whether there is a casual link between the deceased's death and the alleged motor vehicle accident. In other words, in is there evidence upon which the Court can find that the death of deceased was as result of a motor vehicle accident.

11. Applications for default judgment involving matters of this nature are regulated by Rule 31 (2) of the Uniform Rules which provide 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 of 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 order as to it seems meet".[**my emphasis**]

12. I must mention that this case is one of the cases that were brought before me during the day to assist my brother Muller J with his heavy roll. During the hearing and upon realising that the plaintiffs made no reference to postmortem report which proves the ultimate cause of death and that the evidence was based on hearsay the Court enquired from the plaintiff's counsel if he did not deem it necessary to provide further evidence in relation to the accident to prove the cause of death. The matter was stood down and when it was recalled counsel informed the Court that his instructions were to proceed with the application as it is. He proceeded to address the court and was given an opportunity to file supplementary heads of argument which he did.

13. The counsel for plaintiffs submitted, after reference number of decided cases¹ that, for the purpose of default judgment, the Court can accept the evidence at face value, hear some evidence, and that the purpose of leading evidence is mainly to establish damages, not the merits as a whole for the purpose of final judgment.

14. It is so that when adjudicating upon an application for default judgment some evidence has to be heard and that the enquiry is not as detailed as it would be when the matter is defendant, however the underlying requirement is that there must be some evidence placed before the Court for a discretion to be exercised. Evidence can be direct, circumstantial or hearsay subject to certain requirements.

15. The evidence of Constable Mavabaga in relation to how the accident occurred is hearsay and so is the accident report by MD Mothapo. The admissibility of the hearsay evidence is governed by provisions of Section 3 of the Law of Evidence Amendment Act of 1988 which provides as follows:

¹ Baliso v First Rand Bank LTD t/a Wesbank 2017 (1) SA 292 (CC), Venter v Nel 1997 (4) SA 1014 (D), and Economic Freedom Fighters And Others v Manuel 2021 (3) SA 425 (SCA) at page 100.

(1) "Subject to the provisions of any other law, hearsay evidence shall not be admitted as evidence at criminal or civil proceedings, unless- (a) each party against whom the evidence is to be adduced agrees to the admission thereof as evidence at such proceedings; (b) the person upon whose credibility the probative value of such evidence depends, himself testifies at such proceedings; or (c) the court, having regard to

- (i) the nature of the proceedings;
- (ii) the nature of the evidence;
- (iii) the purpose for which the evidence is tendered;
- (iv) the probative value of the evidence;
- (v) the reason why the evidence is not given by the person upon whose credibility the probative value of such evidence depends;
- (vi) any prejudice to a party which the admission of such evidence might entail; and
- (vii) any other factor which should in the opinion of the court be taken into account, is of the opinion that such evidence should be admitted in the interests of justice".

16. The Court was not provided with the reason why the statement of the eye witness who in all probabilities should have submitted the statement to Constable Mavabaga or police was not made available as evidence in Court. There was no application made on behalf of the plaintiffs to accept the hearsay evidence in terms of Section 3 (1) of the Act and I am unable to find any ground justifying its admission.

17. The counsel for the plaintiffs requested the court to take into account that the death certificate indicate the cause of death as unnatural causes and that the deceased was found on the side of the road and the evidence of broken glasses of the mirror of a motor vehicle. This type of evidence is circumstantial and as the general principle dictates the inference drawn should be the only reasonable inference to be drawn.

18. In my opinion circumstantial evidence become employable when there is no direct evidence and not in a situation where the litigant elects not to present available direct evidence. Even if I might be wrong, I still find that the circumstantial evidence I

am requested to consider is so remote that it cannot be said that the only reasonable inference to be drawn is that the death of the deceased was caused by a motor vehicle accident. Evidence in the form of postmortem report would have been better. The other difficulty I have is the difference between the motor vehicle registration number contained in the statement by Constable Mavabanga and the one contained in the accident report completed by Md Mothapo.

19. In **Gascoyne v Paul & Hunter 1917 TPD 171 at 173**, the Court said: "At the close of the case of the plaintiff, therefore the question which arises for the consideration of the Court is evidence upon which a reasonable man might find for the plaintiff? The question for the Court would be: 'Is there such evidence upon which the Court ought to give judgment in favour of the plaintiff.'"

20. In the light of the afore going this Court is not of the opinion that it will be fair and justifiable to exercise its discretion in favour of the plaintiff. I find no evidence upon which I could so decide. Discretion arises once there is evidence before the Court which includes admissible hearsay evidence.

21. I have considered the circumstance of this case and weight up my options and considered that the plaintiffs were given an opportunity to present further and more reliable evidence specified to their counsel by the Court, but the offer was rejected. There is evidence which if place before the Court justice could be seen to be done, and this can only be achieved through a full trial. Ordering absolution from instance is more drastic and may disadvantage the claimants. I make the following order.

Order

1. The application for default judgment is refused.
2. There is no order to cost.

RS Mashifane AJ

**Acting Judge of the High Court
Limpopo Division, POLOKWANE**

APPEARANCE

For the Plaintiff

Counsel : AC Diamond

Instructed by : Diamond Inc

For the Defendant : No appearance.