

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

Case Number: 13504/2023

1. Reportable: **No**

2. Of interest to other Judges: **Yes**

3. Revised

Date: **22/10/2025**

Signature:

In the matter between:

ZAMOKWAKHE THEMBA KHUMALO Applicant

And

ROAD ACCIDENT FUND Respondent

Heard: 30 July 2025

Delivered: 22 October 2025

Summary: Default judgment - damages claim - injuries sustained in a motor collision - loss of earnings - underlying inconsistencies on the details of the accident - when juxtaposed to the Medical Reports - may affect the validity of the claim - application refused.

Trust account advocates - The context with which, are to render their legal services as provided for in section 34 (2)(a)(ii) read with section 34 (2)(b) should be read with Rule 33 of the Rules of LPC and section 33 (3) of the LPA Act. A trust account advocate may not perform any act or render any service which is prohibited in terms

of any other statute for reasons that the work in issue can, under that relevant statute only be done previously by an advocate, attorney, conveyancer or notary.

No reason to depart from the Segole v RAF judgment.

JUDGMENT

Ncongwane AJ:

Introduction

[1] The applicant applied for default judgment for both the merits and quantum. This claim was pursuant to the action proceedings the applicant instituted against the defendant for damages, in terms of the Road Accident Fund Act 56 of 1996 ("RAF Act"), following a motor vehicle accident in which the applicant claims he was a passenger.

[2] The matter came before me whilst I sat in the trial default judgment roll of the 30th July 2025 and Adv M. Bothetele appeared on behalf of the applicant.

[3] It was submitted by counsel that the court ordered that the defendant is liable for 100% of the applicant's proven damages as per the order granted by Mabesele J on the 5th of August 2024. The court also ordered the respondent to deliver to the applicant an undertaking in terms of section 17 (4)(a) of the Road Accident Fund Act, to pay 100% of the applicant's costs of future accommodation in the hospital or nursing home, or treatment of, or rendering of service or supply of goods to him arising out of the injuries sustained by him. A claim for loss of earnings was postponed *sine die*.¹

[4] Before me essentially, was the applicant's claim for loss of earnings. Applicant relied on several Medico-Legal reports and an application was made in terms of Rule 38 (2) to have the Medico-Legal reports before court be admitted as evidence. I will revert to this aspect of the application hereunder.

¹ Order of court, dated 5th August 2024 by Mabesele J, caseline, item 013-3.

[5] In the course of counsel's address to the court I interrupted counsel to question her about a certain matter that was of concern to me, apart from the other issues that were also not clear to me regarding the application. I considered the said issue to be of serious concern and could in fact be fatal to the application.

[6] The matter that I raised with counsel involves the fact that I observed from the application that counsel had signed the pleadings and deposed to the affidavit in support of the application for default judgment, and seeks an order that the amount of damages, if granted, be paid in counsel's trust account, in her capacity as the advocate contemplated in section 34 (2)(a)(ii) of the Legal Practice Act No 28 of 2014 ("LPA Act"), to which counsel responded affirmatively.

[7] Section 34 (2)(a)(ii) of the LPA Act states that an Advocate may render legal services in expectation of a fee, commission, gain or reward as contemplated in the Act, or any other applicable law - upon receipt of a request from the member of the public...

[8] These issues triggered the cause for concern from me, more so, I had become aware of the judgment in **Segole v Road Accident Fund (16923/2022)[2025] ZAGPPHC 721**, handed down on the 21st of July 2025 by my brother Millar J.

In that matter, this court made an order refusing an application for default judgment due to, inter alia, the fact that section 34 (2)(b) of the LPA Act does not allow trust account advocates from doing the work previously done by an attorney as provided for in section 19 (c)(i) of the RAF Act.

[9] In paragraph 15 of the judgment the court stated that no liability can attach to the respondent where an advocate referred to in section 34(2)(b) of the LPA Act has taken steps to prosecute the action, which included taking a mandate to act as though he was an attorney. The court concluded:

"[15] In consequence of the fact that the further steps in the prosecution of the claim have not been taken by either the applicant or an attorney, no liability can attach to the respondent in consequence of such steps ... Section 34(2)(b) of the LPA Act specifically prohibits trust account advocates in his position from doing the work previously done by an attorney as provided for in section 19(c)(i) of the RAF Act."

[10] In light of this judgment, I directed applicant's counsel to provide the court with supplementary heads of argument dealing with the question whether or not a trust fund advocate may act upon direct request from claimants in matters involving claims against the Road Accident Fund, in view of the judgment of the court by Millar J. I accordingly reserved the judgment and order to consider the application together with this important issue.

[11] I now proceed to deal with this issue and the application before me.

Legal position of advocates with Fidelity Funds Certificate

[12] The Constitution Act² maintains a differentiation between advocates and attorneys. That differentiation is taken through to the LPA Act and distinctly preserved by section 34 of the LPA Act and in the holistic reading of the LPA Act, commencing with definitions of the relevant concepts, which are:

[12.1] Section 1 of the LPA Act defines:

"*Advocate*" to mean a legal practitioner who is admitted and enrolled as such under this Act;

"*Attorney*" means a legal practitioner who is admitted and enrolled as such under this Act;

"*Legal Practitioner*" means an advocate or attorney admitted and enrolled as such in terms of sections 24 and 30, respectively.

² Section 178 (2) of the Constitution of the Republic of South Africa, No 108 of 1996.

[13] Section 24 of the LPA Act provides that a person may only practice as a legal practitioner if he or she is admitted and enrolled to practice as such in terms of the Act and the High Court is empowered to admit a person to practice and authorise to be enrolled as a legal practitioner, conveyancer or notary if the formal requirements have been met.

[14] Section 30 of the LPA Act provides that a person who is duly admitted by the High Court and authorised to be enrolled to practice as a legal practitioner must apply to the Legal Practice Council ("Council") in a manner determined in the rules, for the enrolment of his or her name on the roll. The application:

Must indicate whether the applicant intends to practice as an attorney or an advocate and, in the case of an advocate, whether he or she intends practising with or without a Fidelity Fund Certificate.

Forms of legal practice under LPA Act

[15] In addition to the traditional practising advocate and practising attorney, the LPA Act creates a third category of practitioners, namely; an advocate practising with a Fidelity Fund Certificate who may take instructions directly from clients. As pointed out above, introducing a further "*legal practitioner*" to the distinction between attorney and advocate is expressly preserved in the Act by section 34.

[16] In terms of section 34 (1), an attorney may render legal services in expectation of any fee, commission, gain, or reward as contemplated in the Act or any other applicable law, upon receipt of a request directly from the public for that service.

[17] Section 34 (2)(a) provides that an advocate may render legal services in expectation of a fee, commission, gain or reward as contemplated in the Act or any applicable law, upon:

- (i) receipt of a brief from an attorney; or

(ii) receipt of a request directly from the member of the public or from a justice centre for that service, subject to section 34 (2)(b).

[18] Section 34 (2) (b) provides that an advocate contemplated in section 34 (2)(a) (ii) may only render those legal services rendered by advocates before the commencement of the Act as determined by the Council in the Rules, only if he or she:

- (a) is in possession of a Fidelity Fund certificate and conducts his or her practice in accordance with the relevant provisions of Chapter 7, with particular reference to sections 84, 85, 86 and 87;
- (b) has notified the Council thereof in terms of section 30(1)(b)(ii).

[19] Section 34 (2)(c) provides that an advocate may render legal services in criminal or civil matters in an expectation of a fee, commission, gain or reward as contemplated in the Act or any other applicable law upon receipt of a request directly from a justice centre for that service.

[20] In terms of section 34 (3) Council is empowered to make rules relating to the briefing of advocates by attorneys and directly by members of the public. Axiomatically, the latter provision apply to advocates practising with a Fidelity Fund Certificate.

[21] Section 34 (6) regulates the forms of practice allowed for advocates. In short, advocates may only practice for their own account and, as such, may not make over to, share or divide any portion of the professional fee whether by way of partnership, commission, allowance or otherwise.

Rules of the Legal Practice Council

[22] Section 95 of the LPA enjoins the Legal Practice Council³ to make rules relating to those services that may be rendered as contemplated in section 34 (2)(b) of the LPA Act.

[23] Rule 33 of the Legal Practice Council Rules made under the authority aforementioned, provides as follows:

“An advocate referred to in section 34 (2)(a) (ii) of the Act who is in possession of a Fidelity Fund Certificate may render all those legal services which advocates were entitled to render before the commencement of the Act, and may perform such functions ancillary to his or her instructions as are necessary to enable him or her to properly represent the client.”

[24] In the discharge of his or her functions including, *"performing such functions ancillary to his or her instructions as are necessary to enable him or her to properly represent the client,"* will fall within the broad mandate given to section 34 (2)(a)(ii) advocate, which may exceed the usual authority or legal services which advocates were entitled to render before the commencement of the Act, palpably overlapping the functions that were previously attributed to attorneys.

[25] The nature of the work undertaken by counsel (i.e. referral advocate) is provided for in the Part IV of the Code of Conduct. The relevant provisions dealing with such nature or type of work for advocates is in article 23.1 to 23.2.19 of the Code.

[26] For purposes of this matter Part IV, makes a reference to trust account advocates accepting a brief which shall include his or her acceptance of instructions from an attorney or directly from a member of the public or from a justice centre. Accordingly, the nature of work undertaken by trust account advocates, is typically provided in the Code. The Code provides that the provisions of paragraphs 23.1 to 23.2.19 apply, with the necessary changes required by the context, to trust account advocates. The interpretation of the Code seems to include fettered discretionary

³ Legal Practice Council is established in terms of Chapter 2, Section 4 of the LPA Act.

powers by the trust account advocate to decide whether or not to be regulated by specific provisions in article 18.1 to 18.8 of the Code of Conduct.

[27] A trust account advocate shall comply with the requirement to be in possession of a Fidelity Fund Certificate and shall conduct his or her practice in accordance with relevant provisions of Chapter 7 of the Act and the Rules relating to the opening and keeping of trust accounts and the handling of trust monies.

Evaluation

[28] Historically, the legal profession comprised attorneys and referral advocates as its primary representatives. The LPA, its Rules and the Code of Conduct promulgated in terms of the Act, brought about a legislative framework for the transformation of the legal profession. The enactment of the LPA Act in pursuance of the transformation goals and in particular facilitating access to the legal profession and justice, provides for the introduction of trust fund advocate which step marked a pivotal shift aimed at transforming and restructuring the profession to support and promote an independent legal system that mirrors the diverse makeup of the legal profession in the Republic.

[29] Essentially, a trust fund account advocate has been accorded the capacity to perform the same services as a referral advocate. In addition thereto, a trust fund advocate may undertake any supplementary tasks necessary to effectively fulfil their clients' instructions. This encompasses the authority to accept and act upon various types of instructions, which in terms of Article 18.14 of the Code should include performing professional work of a kind commonly performed by an attorney, which in my view, can be seen as permitting instituting third party claims on behalf of the client, but subject to the relevant provisions of the Road Accident Fund Act.

[30] In **Rabalao v Trustees for the time being of the Legal Practitioners Fidelity Fund: South Africa and Another (2023) ZAGPPHC 1732, 638/2021 (3rd April 2023)** Van der Schyff J found that:

"The relevance and importance of enabling advocates to perform 'such functions ancillary to his or her instructions as are necessary to enable him or her to properly represent the client' should, in the context of the issue that is to be determined, not be overlooked. The need for this extension is borne from the historic position where an attorney whose contract with its clients is that of mandate, which includes the power to do everything that is incidental to the carrying out of his instruction unless specifically excluded."

[31] Counsel for the applicant submitted that since the promulgation of the LPA, both the Fund and the court have consistently recognised and permitted the role of the trust fund advocates assigned to RAF matters. This arrangement has been held without objection, indicating a long standing and unquestioned practice. There has been no recorded resistance or opposition from either the court or the RAF, reflecting their mutual acceptance of the trust fund advocates involvement in the proceedings related to RAF claims.

[32] I was also referred to an unreported judgment of **Matsaung v Mathedimosa and Others (110112019) [2021] ZALMPPHC 58 (30th August 2021)** by Kganyago J where he stated that the LPA makes provisions for three types of legal practitioners, namely, attorney, advocate and an advocate with a Fidelity Fund Certificate... An advocate with a Fidelity Fund Certificate is in the same position as an attorney as he/she is allowed to keep a trust account and take instructions directly from clients. An advocate without a Fidelity Fund Certificate is not permitted to keep a trust account or to take instructions directly from clients, he/she must be briefed by an attorney.⁴

[33] To determine the intention of the legislature, it is necessary to have regard to the provisions of the LPA in its entirety and not focus attention on a single provision to the exclusion of all the others. To treat a single provision as decisive might obviously result in a wholly wrong decision. This means that the interpreter of legislation must consider the legislation as a whole.

⁴ At para 22.

[34] In **Nasionale Vervoer Kommissie van Suid-Afrika v Salz Gossow Transport (EDMS) BPK 1983 (4) SA 344 (A)**, the court stated, when interpreting certain provisions a statute must be established in its entirety.

[35] In **Commissioner for South African Revenue Services v Bosch and Another 2015 (2) SA 174 SCA** at para 9, Wallis JA had this to say:

*"The words of the section provide the starting point and are considered in the light of their context, the apparent purpose of the provision and any relevant background material. There may be rare cases where words used in a statute or contract are only capable of bearing a single meaning, but outside of that situation it is pointless to speak of a statutory provision or a clause in a contract as having a plain meaning. One meaning may strike the reader as syntactically and grammatically more plausible than another, but, as soon as more than one possible meaning is available, the determination of the provision's proper meaning will depend as much on context, purpose and background on the dictionary definitions or what Schreiner JA (**Jaga v Donges NO and Another, Shana v Donges and Another 1950 (4) SA 653 (a) at 664 (G-H)**) referred to as 'excessive peering at the language to be interpreted without sufficient attention to the historical contextual scene."*

[36] The Act, from its preamble, was enacted to provide a legislative framework for the transformation and the restructuring of the legal profession in the Republic, ... ensure that the values underpinning the constitution are embraced and that the rule of law is upheld... and ensure that legal services are accessible. For purposes of the matters under consideration. The preamble refers to section 22 of the Bill of Rights of the Constitution which establishes the right to freedom of trade, occupation and profession, and provides that the practice of a trade, occupation or profession may be regulated by law.

[37] It should be borne in mind that, inter alia, access to legal services is not a reality for most South Africans and this was a matter that required statutory attention. Section 3 of the LPA Act sets out in broad, the purpose of the Act aimed at protecting and promoting the public interest. It is also significant to mention that in

section 33 (3) of the LPA Act it is provided that "*no person may in the expectation of any fee, commission, gain or reward, directly or indirectly, perform any act or render any service which in terms of any other Jaw may only be done by an advocate, attorney, conveyancer or notary, unless that person is an advocate, attorney, conveyancer or notary, as the case may be.*"

[38] The context within which the trust account advocate are to render their legal services as provided for in section 34 (2)(a)(ii) read with section 34 (2)(b) should, after taking into account the primary objectives of the LPA Act, not be read in complete oblivion with the provisions of section 33 (3) of the Act. A trust account advocate may for example perform the work that was historically the preserve of attorneys or work and use powers that are previously attributed to referral advocates but may not perform any act or render any service which is prohibited in terms of any other statute for reasons that the work in issue can, under that relevant statute only be done previously by an advocate, attorney, conveyancer or notary.

[39] Under the current statutory provisions, a trust fund advocate is authorised to accept instructions directly from members of the public. This effectively allows trust fund advocates to perform the roles traditionally associated with attorneys and referral advocates, in so doing, the trust fund advocates bridged the gap between client engagement and court room representation, offering a more integrated and accessible legal service model. However, in my view, this does not mean that any work that a trust fund advocate is prohibited from doing by a statute should be overlooked and any omission in the LPA or any other statute should not be deemed inconsequential.

[40] In the Segole judgment, this court found that the Fund is not liable where the claim has not been instituted or prosecuted by a person entitled to practice as an attorney within the Republic, as excluded in section 19 (c) and (d) of the RAF Act. In my view, I see no reason that I should depart from the Segole judgment and not to follow the same judicial interpretation of the intention of the enactment. Given the current ambiguity in the LPA Act and the judicial interpretation on the issue, it may be appropriate for the legislature to consider amending the relevant statutory provisions and the Rules Board to look into improving provisions in the Uniform

Rules relating to signing of the combined summons by both an attorney and the advocate to provide for the Fidelity Fund advocate as well. The RAF Act, in particular section 19, calls for attention from the legislation for possible revision so that it can exclude the existing prohibition by making a clear reference to the trust fund advocates within that provision in the Act. This step would effectively align the Act with the intent of the LPA, if it is the intention of the lawmaker, and will ensure that qualified trust fund advocates are not unnecessarily excluded from handling claims against the RAF.

[41] On returning to the matters gamain to the application, it is apposite to comment that the application itself is deficient by its measure in a number of respects in my view. The original combined summons, dated the 13th February 2023, made averments in paragraph 6 that:

"6. On or about the 5th of November 2018 at or along Majuba Road, Johannesburg, Gauteng Province, the plaintiff was a passenger in a motor vehicle registration number and letters F[...] (the insured vehicle) there and then driven by Mahlangu Peter (the insured driver), when the insured motor vehicle lost control and overturned."

[42] The particulars of claim were signed by counsel for the applicant as plaintiff's counsel and as the trust account advocate. The particulars of claim are not signed by an attorney.

[43] On the 9th of October 2023, it appears that the applicant filed an amendment to the particulars of claim and paragraph 6 of the amendment reads:

"6. On or about the 5th of November 2018 at or along Majuba Road, Johannesburg, Gauteng Province, the plaintiff was a passenger in a motor vehicle bearing registration number and letters X[...] (the insured vehicle) there and then driven by unknown person (the insured driver), when the insured motor vehicle lost control and overturned."

[44] Upon reading the applicant's bundle, specifically the section 19 affidavit required by the RAF Act, the applicant correctly identified himself by his name as the deponent and regarding the accident he stated the following:

"I am a male African with the above mentioned particulars, state that I was the driver of the white Toyota Quantum which got involved in an accident on the 5th -11-2018 Monday November with registration X[...] at R21. I was taken to Sunshine Hospital."

[45] The affidavit is signed by the deponent who is the applicant on the 21st of November 2018, commissioned by the member of the South African Police Service at Actonville.

[46] In the RAF 1 Form, the particulars of the applicant are completed on the form. Part 5 of the form provides that the accident's date is the 5th/11/2018, reported at Alberton SAPS station and the vehicle is identified by registration number X[...] and was driven by Mr Yende at the time of the accident. The duly completed form is also signed by the applicant.

[47] It is evident that there are substantial discrepancies that exists in the documents I have mentioned. No attempt was made by counsel to explain these discrepancies to the court. It is not clear to me as to what further evidence served before Mabisele J on the merits of the applicant's claim leading to the granting of the order. It is manifest, to me that had the discrepancies referred to above, regarding the merits, being brought to the attention of the court, the order on liability for the merits, would not have been granted against the Fund. From the objective facts before me, without the proper account on the discrepancies by the applicant, it is not unreasonable for the court to infer that the order on liability was sought irregularly.

[48] The inconsistent version regarding the details of the accident in the merits documentation were perpetuated in the Medico-Legal reports. In the Industrial Psychologist's report filed on behalf of the applicant, paragraph 4.4.1 of the report states that *"Mr Khumalo reported that he was in a taxi when an accident happened and he was on his way to work at around 05h20 am. He reported that their driver*

reportedly lost control of the car and people died in that accident. He further added that the car rolled four times. The client added that he was taken to Sunshine Hospital for 5 days."

[49] Regarding the same issue, the Occupational Therapist states in paragraph 5.1 that *"Mr Khumalo was involved in an accident on the 5th of October 2018. He was a passenger when the accident happened, the driver lost control and collided with another car. He reported that he was never previously involved in a motor accident except for the one under discussion. Mr Khumalo reported that he was transport to Sunshine Hospital, where he was admitted for 5 days ..."*

[50] These underlying inconsistencies leaves the validity of the applicant's claim unequivocally affected. Under the circumstances, an order in terms of Rule 38 (2) application, seeking to proceed on the Medico-Legal report's evidence and dispensing with oral evidence, stood to be refused. And this leaves the applicant's application with no shred of admissible evidence for the court to consider and for the applicant to achieve success in the application. With the mismatch in the merits documentation, when juxtaposed to the Medico-Legal reports, the Rule 38 (2) application had no chance of success.

[51] In view of the foregoing, it has become unnecessary for me to deal with the provisions in the Uniform Rules apropos the requirements for the signing and issuing of the combined summons relative to the advocates (including trust account advocates) and attorneys.

[52] In the premise, the application for default judgment stands to fail.

[53] The following order is made:

[53.1] Applicant's application for default judgment is refused.

Ncongwane AJ

**Acting Judge of the High Court
Gauteng Division Pretoria**

APPEARANCES:

On behalf of Applicant: Adv M. Bothetele

On behalf of Respondent: No appearance.

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email and by upload to Caselines. The date and time for the hand down is deemed to be 10h00 on the 22 October 2025.