



**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

**CASE NO: 6297/2020**

REPORTABLE

In the matter between:

**SHEREEN DAVINE BOOYSEN**

Plaintiff

and

**THE ROAD ACCIDENT FUND**

Defendant

**Coram:** **MOOSA AJ**

**Heard:** 1 SEPTEMBER 2025, 28 OCTOBER 2025, 28 NOVEMBER 2025

**Delivered:** 10 DECEMBER 2025 (delivered electronically to the parties)

**Summary:** Civil trial – Plaintiff suffered injuries to an eye – issue of liability and *quantum* separated at commencement of the trial – dispute arising whether the injuries to Plaintiff's eye was sustained in a motor vehicle collision and by reason of the negligent driving of the insured driver – defendant's liability proved – costs ordered

against Defendant – as a general rule, the scale of costs should be determined when *quantum* is adjudicated at the end.

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## ORDER

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1. Plaintiff's claim succeeds on merits with costs.
2. The appropriate scale of costs shall be determined by the trial court which adjudicates the quantum of the Plaintiff's proved damages.
3. The determination of the quantum of the Plaintiff's damages is referred for trial on an expedited date to be allocated by the Registrar of this Division.

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## JUDGMENT

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### **Moosa AJ**

#### **Introduction**

[1] Pursuant to the Road Accident Fund Act 56 of 1996 ("the RAF Act"), the Plaintiff sues the Defendant for delictual damages in the aggregate sum of R860 000,00.

[2] The Plaintiff's cause of action, as amended, is pleaded as follows:

‘4. On or about 28 December 2018 at 18h45 and on Linulelo Road, Greenfields, Western Cape, the Plaintiff was a passenger at the back of a truck driven by one Ricardo. The identity of the vehicle and further particulars of the driver is unknown (hereinafter referred to as the "insured vehicle"). The Plaintiff sustained injuries when the driver of the insured vehicle swerved at an inopportune time causing a branch of a tree to injure Plaintiff's eye.’

5. The aforesaid collision was caused exclusively by the negligence of the driver of the insured vehicle, who was negligent in one or more of the following aspects:

5.1 he drove too fast under the prevailing conditions;

- 5.2 he failed to keep his vehicle under proper control;
- 5.3 he failed to avoid the collision (the incident) when by the exercise of reasonable care he could and should have done so.'

[3] In answer to these factual averments, the Defendant's amended plea reads:

'4. AD PARAGRAPHS 4 & 5 THEREOF

- 4.1 The Defendant bears no knowledge of the allegations contained herein and the plaintiff is put to the proof thereof.
- 4.2 The Defendant reserves the right to lead evidence in rebuttal of allegations.
- 4.3 In the event of the above Honourable Court finding that the collision occurred as alleged, the Defendant pleads that:
  - 4.3.1 the insured driver denies swerving out for an oncoming vehicle;
  - 4.3.2 that the injury was not sustained as a result of the driving of a motor vehicle as alleged but due to the wind blowing an object into her eye whilst walking.'

[4] The disputes arising from this plea were not settled, and the case proceeded to trial. At the commencement thereof before me, the issues of liability and *quantum* of damages were, by agreement, formally separated in terms of Uniform Rule 33(4).

[5] Therefore, this judgment concerns only the merits of the Plaintiff's claim.

**Issues for adjudication**

[6] It is common cause that the Plaintiff's right eye sustained an injury. The dispute concerning the injury pertains to the circumstances that gave rise thereto. This is a purely factual dispute as regards causation.

[7] The question arising for determination in relation to the Plaintiff's eye injury is two-fold: first, whether the injury to the Plaintiff's right eye was causally linked with a truck in which she was a passenger on or about 28 December 2018 at about 18h45 colliding with the branches of a tree ("the accident").

[8] If the first issue formulated in the preceding paragraph is decided in the affirmative, then the second issue to be answered is whether the accident, and the

concomitant eye injury resulting therefrom, was caused by the negligent driving of the insured driver named Ricardo.

### **Material factual matrix**

[9] To prove her case on the merits, the Plaintiff testified. She also presented the testimony of Johannes Nicolaas Gerhardus Naude (“Naude”). The Defendant led the evidence of the insured driver, Ricardo Baartman (“Ricardo”).

[10] I will now summarise the testimony of each witness, but only so far as it is germane to the twin factual issues arising for determination in this case.

#### Plaintiff's evidence

[11] The Plaintiff testified in chief that, at all material times to the accident on 27 December 2018, she was a seasonal worker at the farm named JD Kirstens. Her employer provided transport for workers, both to and from work. Her employer's driver is Ricardo. He collected the Plaintiff and other farmworkers daily in the mornings. He transported them to their home districts at the end of each work day. The Plaintiff's home is in May Street, Lantana, Klein Nederburg, Paarl. This is the district where Ricardo collected and dropped the Plaintiff daily.

[12] The Plaintiff testified further in chief that about 50 farmworkers were driven home by Ricardo on the day of the accident. They departed from the farm at about 18h45. The Plaintiff and her co-workers were seated on the cargo bed area at the back of a truck. The cargo bed had no canopy or other covering. The truck was substantially similar to that photographed in Exhibit D.

[13] The Plaintiff testified that, on the day of the accident, Ricardo drove the same truck on the same route as he did daily when he took the farmworkers to their respective hometowns. Ricardo stopped the truck at various places to drop off workers. One of those stops is an area known colloquially as ‘Smartie Town’.

[14] Ricardo drove up a road in Smartie Town with overhanging branches from a tree rooted off the road to its left side when viewed from the direction driven by Ricardo. The branches over-hanging the road in Smartie Town on its left side is visible in the foreground of Exhibit B. The Plaintiff testified that her right eye was hurt

by a thorn of an overhanging branch. This was caused by Ricardo hitting the branches protruding into the road as he (Ricardo) drove under them.

[15] Ricardo dropped off the Plaintiff in May Street, Lantana at a spot about three houses away from her residence. She walked the short distance to her home. On arrival at home, the Plaintiff requested her husband to give her some water so that she could wash out her right eye. The Plaintiff felt that an object was in that eye. Her husband duly obliged. The Plaintiff washed her right eye with water.

[16] The Plaintiff testified that when she awoke at about 05h00 the next morning for work, she could not see properly with her right eye. She realised that something was wrong with it. The Plaintiff testified that, on the same day, she went to the T.C. Newman Day Hospital in Paarl. There she was attended to by Sister Tembane who provided the Plaintiff with a referral letter to see Dr Louw at Paarl Hospital.

[17] The referral letter is dated 28 December 2018 and is marked Exhibit F. Its contents are handwritten in Afrikaans. The referral letter identifies the patient to whom it relates as Shireen Booysen, aged 28 years. The letter records that her right eye is injured ('beseer') by a thorn in the eye ('Doring in oog'). The letter also records that there is a reduction in sight from that eye ('afname in visu').

[18] The Plaintiff went to Paarl Hospital on 28 December 2018 and was attended to there by Dr Louw who, in turn, referred the Plaintiff to Tygerberg Hospital. The Plaintiff was transported to Tygerberg Hospital by ambulance. There the Plaintiff underwent two operations to her right eye. She was hospitalised for about a month.

[19] During cross-examination, the Plaintiff testified that, on 27 December 2018, she sat on the left side of the truck. She sat on the side behind the passenger seated next to the driver. The Plaintiff testified that, considering the direction in which Ricardo drove up the road in Smartie Town visible in Exhibit B, the left side of the truck where the Plaintiff sat was closest to the pavement where the tree is rooted off the road with its branches over-hanging the road from the left side.

[20] Under cross-examination, it also emerged that none of the other passengers seated with the Plaintiff at the back of the truck were injured by any over-hanging branches when Ricardo drove under them. Furthermore, the Plaintiff never told

Ricardo that she was hit and injured by a thorny tree branch, nor did she ask for help during the rest of the drive home after her right eye was hurt.

[21] The Defendant's counsel, Attorney Goosen, put it to the Plaintiff that the following facts are undisputed: (i) on 27 December 2018, Ricardo drove the Plaintiff and other farmworkers home; (ii) Ricardo stopped in Smartie Town to off load passengers seated with the Plaintiff on the uncovered cargo bed area of the truck; (iii) Ricardo drove in Smartie Town up the road in the same direction as the white motor car visible in Exhibit B; (iv) at the time when Ricardo drove up that road in Smartie Town, there were branches overhanging the road from its left side (as appears in Exhibit B close to where the white motor car is driving); (v) the branches were hanging low and were in Ricardo's driving path from the left-hand side of the road; and (vi) Ricardo drove the truck under the branches. In his testimony, Ricardo confirmed these facts.

[22] Attorney Goosen put it to the Plaintiff that her right eye was not injured by a tree branch overhanging the road in Smartie Town. He confronted the Plaintiff with the emergency centre notes recorded by Dr N.S.J Phukuta dated 28 December 2018. The notes record that the Plaintiff's eye was injured when something was blown into it by the wind. In cross-examination, the Plaintiff refuted that she gave this account to the doctor as to the cause of her eye injury.

[23] I pause to mention that despite the Plaintiff emphatically denying the recordal in the doctor's notes, Dr Phukuta was not called to testify. As a result, the emergency centre notes are uncorroborated hearsay. No application was made for Dr Phukuta's notes to be admitted into evidence.<sup>1</sup>

#### Naude's evidence

[24] Naude's testimony was, for the most part, uncontroversial. Naude testified that he is an investigator who was appointed by the Plaintiff's attorneys.

[25] Naude interviewed Ricardo and prepared a written summary of Ricardo's statement. A copy of Ricardo's signed statement is marked Exhibit G.

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<sup>1</sup> *Fortuin and Another v S* (A17/2024) [2024] ZAWCHC 244 (5 September 2024) para 52.

[26] Naude accompanied the Plaintiff to the scene in Smartie Town where the Plaintiff's eye was injured. Naude took the photographs that are, by agreement, admitted into evidence and marked Exhibits A1, A2, B, C, and E.

[27] Naude testified that Rainbows End Street is the name of the road in Smartie Town appearing in Exhibit B where Ricardo drove the truck on 27 December 2018 with the Plaintiff as passenger. This fact is undisputed.

[28] At the end of Naude's testimony, the Plaintiff closed her case. Attorney Goosen then applied for absolution from the instance. His application was opposed. Using settled legal principles, I delivered an *ex tempore* judgment in which I dismissed the absolution application. I have nothing to add to the reasons advanced in my *ex tempore* judgment, save to say that the contents of this judgment bolster my view that the absolution application lacked merit.

#### Ricardo's evidence

[29] In addition to testifying along the lines indicated in para [21] above, Ricardo testified that when he arrived in Smartie Town on Rainbows End Street en route to taking the Plaintiff home, there were children playing in his usual drop off zone, being the parking area visible in Exhibit C on the right side of the picture.

[30] I pause to mention that the road in the photograph in Exhibit C is the same road as that in Exhibit B, namely, Rainbows End Street, Paarl East, except that the photographs are taken from opposite directions. For this reason, the overhanging branches on the left-hand side in Exhibit B appear on the right-hand side of the road in Exhibit C. Moreover, owing to the different vantage points from where the photographs were taken, the parking area on the right-hand side in Exhibit C is not clearly visible on the left-hand side of Exhibit B.

[31] Ricardo testified in chief that he drove onto the pavement visible in Exhibit B on the left-hand side of Rainbows End Street. He testified that he stopped before the tree line to drop off passengers. He testified that when he re-entered the road surface, he drove nowhere close to the overhanging branches on the left side of the road. I pause to mention that this evidence contradicted the version that was put to the Plaintiff by Attorney Goosen during her cross-examination. This evidence turned out to be false.

[32] Under cross-examination, Ricardo marked an 'X' on Exhibit B to indicate where he had stopped on the pavement before the trees. Adv Joubert for the Plaintiff challenged this evidence. Ricardo then conceded that his evidence was wrong.

[33] Under the rigours of cross-examination, it became clear that Ricardo attempted to mislead the Court. He admitted that he actually stopped on the pavement directly under the thorn branches that overhang Rainbows End Street. Using the marking 'X1', Ricardo indicated on Exhibit B where he had stopped under the tree branches.

[34] Ricardo also testified that when he drove beneath the branches on the left-hand side of the road, the back of the truck where the Plaintiff sat was open – it had no covering of any kind. Ricardo admitted that the tree branches were low hanging and posed a danger to persons sitting on the uncovered cargo bed area of the truck.

[35] Ricardo testified that he previously drove the same truck on Rainbows End Street at a time when the truck had a covering at the back. He recalled that the thorns of the overhanging branches scraped the left side of the truck. Ricardo also testified that the thorns of the branches are of such a nature that they could tear a canvass.

[36] Ricardo conceded that he should have kept this fact in mind when he drove on the pavement underneath the branches on 27 December 2018 while the Plaintiff and other passengers were seated at the back of the truck without any covering to protect them from the low-hanging thorn branches above them and protruding into the road.

### **Submissions by counsel**

[37] Relying on *Kruger v Coetzee*,<sup>2</sup> Adv Joubert argued that the Plaintiff proved, on a balance of probabilities, that her eye injury was caused by Ricardo's negligence when he drove the truck underneath the thorn branches overhanging Rainbows End Street. Ricardo admitted that he had prior knowledge of the dangers posed by the low hanging branches that protruded into the driving space on Rainbows End Street. Adv Joubert argued that a *diligens paterfamilias* in Ricardo's position would have

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<sup>2</sup> 1966 (2) SA 428 (A) at 430A - G.



foreseen the reasonable possibility that driving underneath the thorn branches would cause injury to a passenger seated on the uncovered cargo bed area of the truck through being hit by a branch and cause the passenger so struck to suffer patrimonial loss. Adv Joubert argued that a reasonable person in Ricardo's position would have taken reasonable steps to prevent such an occurrence. She argued that Ricardo failed to guard against the Plaintiff's injury. Thus, his negligent driving caused Plaintiff's loss.

[38] Relying on *National Employers General Insurance Co. Ltd v Jagers*,<sup>3</sup> Attorney Goosen argued that there is no *onus* on the Defendant to prove the cause of the Plaintiff's injury to her right eye. He argued that even if I am not persuaded that the injury was caused by an object being blown into the Plaintiff's eye by the wind, then that would not, in and of itself, mean that the Plaintiff discharged the *onus* of proving a causal link between her injury and Ricardo's driving. He argued that I would still need to evaluate the evidence in its totality to determine whether there was negligent driving by Ricardo and, if so, whether such negligence caused the injury and patrimonial loss suffered by the Plaintiff. I agree. These submissions are sound in law.

[39] Relying on *Herschel v Mrupe*,<sup>4</sup> Attorney Goosen argued that 'nothing that the insured driver did on the day in question, when measured against the standard of the reasonable person, can be said to fall short of what a reasonable person in his position would have done on the said day'.<sup>5</sup> On this basis, Attorney Goosen submitted that, viewed objectively, Ricardo's driving did not rise to the level of negligence.

[40] Relying on *Stellenbosch Farmers' Winery Group Ltd and Another v Martel et Cie and Others*,<sup>6</sup> Attorney Goosen submitted that the probabilities do not favour a finding that the Plaintiff's eye was injured at Smartie Town when Ricardo drove underneath the thorn branches. He submitted that the objective facts do not support a conclusion to this effect. Attorney Goosen submitted that if the Plaintiff was struck in her right eye by a thorny branch, then it makes no sense that she did not scream

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<sup>3</sup> 1984 (4) SA 437 (E) at 440E – G.

<sup>4</sup> 1954 (3) SA 464 (A).

<sup>5</sup> Para 37, Heads of Argument.

<sup>6</sup> 2003 (1) SA 11 (SCA) para 5.

or in any other way indicate that she was injured; nor does it make sense that she did not inform Ricardo or any other passenger of her eye injury, nor asked them for help.

[41] Attorney Goosen submitted that logic dictates that the Plaintiff would not remain silent about an eye injury if it was sustained at the back of the truck on the ride home with Ricardo and the other farmworkers. He submitted further that paragraph 4 of the particulars of claim alleges that the Plaintiff's eye injury was caused by Ricardo swerving the truck. He pointed out, rightly so, that no evidence was led that Ricardo swerved the truck, whether to avoid an oncoming vehicle or for any other reason.

### **Discussion (analysis)**

[42] There are two fundamental pre-requisites to hold the RAF liable. These are: (i) that the injury suffered by a claimant was caused by, or arose out of, the driving of an insured vehicle; and (ii) that the injury was due to the negligence, or other unlawful act, of the insured driver or owner. Whether these requirements are satisfied in any case is dependent on two separate, but legally related, enquiries. The first enquiry is an entirely factual one. It entails determining the physical or mechanical cause of an injury. The second enquiry is a legal one. It entails determining whether the conduct of a certain person is legally blameworthy for the injury suffered.<sup>7</sup>

[43] For the reasons apparent from para [23] above, I am unable to conclude that the Plaintiff's injury was caused by an object being blown into her right eye.

[44] The Plaintiff impressed me as a witness. Her evidence did not suffer from material contradictions. Unlike Ricardo, the Plaintiff was clear and candid in every material respect. She did not embellish her testimony, nor presented misleading evidence. The Plaintiff's honesty shone through, for example, when the Plaintiff testified that she did not have any independent knowledge or recollection of Ricardo swerving the truck while driving on Rainbows End Street. If the Plaintiff wished to tailor her testimony to align with her pleaded case, then she could readily have said that he swerved to avoid another vehicle. The Plaintiff did not testify as such.

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<sup>7</sup> *Wells and Another v Shield Insurance Co. Ltd and Others* 1965 (2) SA 865 (C) at 867H - 868B.

[45] Having regard to the Plaintiff's credibility and reliability, and the probabilities arising from all the evidence, I can find no basis to reject, as improbable, the Plaintiff's direct testimony that her right eye was not injured while she walked the short distance home on 27 December 2018 after Ricardo had dropped her off in May Street, Lantana.

[46] Considering the evidence as a whole and the proved facts, I am satisfied that 'the more natural or plausible conclusion'<sup>8</sup> is that the Plaintiff's injury was sustained when her right eye was struck, on 27 December 2018, while she was a passenger seated at the back of the insured truck driven by Ricardo. I am persuaded that the more logical and credible conclusion is that the Plaintiff's eye was injured when it was hit by an overhanging thorn branch on Rainbows End Street in Smartie Town.

[47] The fact that the Plaintiff did not scream or call for help on the drive home when her eye was struck, nor informed Ricardo of the injury, in no way justifies a finding that the Plaintiff's version is improbable on the proved facts viewed in their totality. It should not be overlooked that the injury suffered by the Plaintiff was of such a nature that it took time to manifest itself properly. Initially, the Plaintiff thought that she merely had something in her right eye. For this reason, she washed her eye with water immediately on her arrival at home after Ricardo dropped her off in May Street.

[48] The undisputed evidence is that the Plaintiff's injury worsened overnight. When she awoke the next morning at about 05h00, the Plaintiff's vision through her right eye was blurred. This was not the position on the previous evening when the Plaintiff went to bed after her right eye was struck earlier on that day.

[49] On the question of Ricardo's legal blameworthiness for the Plaintiff's eye injury, due regard must be given to the fact that the truck driven by Ricardo had no canopy or other covering. Therefore, the passengers seated at the back of the uncovered truck were exposed to the dangers from the surrounding environment where Ricardo drove.

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<sup>8</sup> *Ocean Accident and Guarantee Corporation Ltd v Koch* 1963 (4) SA 147 (A) at 159D.

[50] It is common cause that Ricardo was familiar with Rainbows End Street. He drove on it daily when he transported the farmworkers. At all material times when Ricardo transported the Plaintiff home on 27 December 2018, he knew of the overhanging branches on Rainbows End Street. Moreover, he knew that the branches were low-hanging and posed a danger to road users.

[51] Despite this knowledge, and despite the insured vehicle being uncovered at the back where passengers were seated, Ricardo drove under the thorn branches to drop off passengers. The overhanging branches with their thorns that could tear through a canvass created a real risk of potential injury to Ricardo's passengers seated at the back. That danger increased by reason that Ricardo drove onto the pavement in Rainbows End Street, and then proceeded to drive close to the overhanging branches.

[52] As evident in Exhibits B and C, the pavement is elevated from the road surface. By mounting it, the distance to the overhanging branches decreased. This increased the risk of injury to passengers seated in the uncovered back area of the truck. In this way, Ricardo clearly failed to take reasonable measures to guard against the harm.

[53] Undoubtedly, when giving evidence, Ricardo realised that driving close to the low-hanging branches created a real risk of harm being caused to passengers seated on the uncovered cargo bed area of the truck. It was probably for this reason that he falsely testified in chief that he did not drive anywhere close to the thorn branches.

[54] In a passenger's claim, only 1% negligence on the part of an insured driver needs to be proved to entitle the passenger to 100% of damages.<sup>9</sup> I am persuaded that, viewed objectively, a reasonable person would, in the circumstances that prevailed when Ricardo mounted the pavement in Rainbows End Street and drove close to the overhanging thorn branches, have taken reasonable precautions to avert injury to passengers seated in the uncovered back area of the truck. Ricardo failed to act as a reasonable person would have done. As such, he drove negligently.

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<sup>9</sup> *Prins v RAF* (21261/08) [2013] ZAGPJHC 106; *Groenewald C v RAF* (74920/2014) [2017] 879 para 3.

[55] I am persuaded that there is a sufficiently close nexus between Ricardo's negligent driving on the one hand, and the bodily injury suffered by the Plaintiff, on the other. This nexus justifies my conclusion that the Plaintiff's injury, and her subsequent patrimonial loss, were caused by, or arose from, Ricardo's negligent driving.

[56] Based on all the evidence viewed holistically, I conclude that, applying ordinary common-sense standards, the Plaintiff proved, on a balance of probabilities, that Ricardo drove negligently at all material times to the accident and that Ricardo's negligence was the sole cause of the Plaintiff's injury and subsequent pecuniary loss.

[57] In sum: The Plaintiff proved all the elements necessary for the Defendant to be liable in delict for the Plaintiff's eye injury and concomitant loss. Accordingly, I hold that the Defendant is liable under s 17(1) of the RAF Act to compensate the Plaintiff.

### **Costs**

[58] It is trite that costs should follow success. There is no sound, rational basis for not applying that settled rule in this case. Therefore, I will award costs to the Plaintiff so that she is reimbursed for the expenses incurred to prove the Defendant's liability.

[59] The problem at present is that, owing to the separation ordered under Uniform Rule 33(4), the trial is only at its half-way stage. The *quantum* of damages will be determined later.

[60] As a result, it remains unclear whether the damages, as proved or agreed, falls outside a magistrate or regional court's monetary jurisdiction and squarely within the High Court's jurisdiction. In terms of Uniform Rule 67A(2)(f) quoted below, this is a relevant factor when adjudicating the appropriate scale of costs.

[61] If the damages awarded in the present matter falls well within the monetary limit of a lower court so that the claim should not have been instituted out of the High Court in the first place, then costs may be awarded on the lower court scale.

[62] This consideration favours the holding over of the determination of the scale of costs until the end of the trial when the *quantum* is finally determined.

[63] As a matter of general principle, I opine that the scale of costs should not be judicially determined at the half-way stage of a trial when a separation of liability and *quantum* has been ordered, unless the parties agree on a scale for the merits stage.

[64] In my view, it is more appropriate to grant a plaintiff costs when s/he is successful on merits, but then postpone determining the scale until the end when the *quantum* is finally determined. In that way, the scale of costs is resolved with reference to the case as a whole. Piecemeal adjudication of cases should be discouraged.

[65] In this regard, I align myself firmly with the approach adopted in *Mbatha v RAF* 2017 (1) SA 442 (GJ) para 18 and *Maguru v RAF* 2020 (3) SA 225 (LT) paras 15 - 20.

[66] The case before me typifies an everyday occurrence in civil trials. As is evident from the discussion elsewhere above in this judgment, the trial on the merits raised no legal or factual issue of real complexity. It was decided on the probabilities.

[67] Accordingly, the first half of the trial was uncomplicated and straightforward. That is, of course, a relevant consideration when determining the scale of costs. However, owing to the nature of the Plaintiff's injuries to her eye and the consequences thereof for her claim, the trial on *quantum* will likely involve some complexity.

[68] If the scale of costs in the present case is determined now, then it is likely to be on a lower scale than that which may potentially be awarded at the end of the entire trial. If that eventuality materialises, then it would lead to potential problems at a taxation, particularly as regards taxing attendances that occurred before the trial. That situation should be averted.<sup>10</sup>

[69] On this basis, holding over the determination of the appropriate scale of costs would, in the present matter, be more beneficial to the Plaintiff. Another consideration militating against me deciding the scale of costs at the halfway stage of this trial is the import and legal effect of Uniform Rule 67A(2) and (3) inserted by GN R4477 of 8

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<sup>10</sup> *Maguru supra* para 16.

March 2024. On my interpretation of their provisions, these sub-rules do not favour a piecemeal determination of the question of the scale of costs. Rather, they favour a singular determination of that issue at the end of a trial.

[70] The relevant parts of Uniform Rule 67A reads as follows:

‘(2) In considering all relevant factors when awarding costs, the court may have regard to —

- (a) the provisions of rule 41A;
- (b) failure by any party or such party’s legal representative to comply with the provisions of rules 30A; 37 and 37A;
- (c) unnecessary or prolix drafting, unnecessary annexures and unnecessary procedures followed;
- (d) unnecessary time spent in leading evidence, cross examining witnesses and argument;
- (e) the conduct of the litigation by any party’s legal representative and whether such representative should be ordered to pay such costs in his or her personal capacity; and
- (f) whether the litigation could have been conducted out of the magistrate’s court.

(3)(a) A costs order shall indicate the scale in terms of rule 69, under which costs have been granted.

(b) In considering the factors to award an appropriate scale of costs, the court may have regard to:

- (i) the complexity of the matter; and
- (ii) the value of the claim or importance of the relief sought. ...’

[71] Uniform Rule 67A(2) requires that the question of the scale of costs be determined in the light of ‘all relevant factors’ including, but not limited to, those factors listed in sub-sections (a) - (f). Although Rule 67A does not expressly preclude the scale of costs being determined at the end of a case on its merits as regards liability for costs in the first half of the trial proceeding, the stipulations that the appropriate scale of costs be awarded having regard to, *inter alia*, the complexity of the matter viewed as a whole and the value of the claim awarded are, in my view, strong indicators against a piecemeal determination of the scale of costs in relation to a civil trial.

[72] Properly interpreted, I conclude that the express reference to the determination of the question of costs in the light of 'all relevant factors' listed in Rule 67A(2) and (3)(b) favours the appropriate scale of costs being determined once only, namely, at the end of a trial, rather than twice with the potential for an award of different scales.

[73] I emphasise that nothing precludes litigants from agreeing to a scale of costs which would apply in relation to the merits stage of a trial, and then to make such agreement a court order. This judgment relates to a situation where a trial court has determined the merits in a plaintiff's favour and the *quantum* of damages is held over for later determination pursuant to a separation ordered under Uniform Rule 33(4).

### **Order**

[74] In the result, the following order is made:

- (a) The Plaintiff's claim succeeds on merits with costs;
- (b) The appropriate scale of costs shall be determined by the trial court which adjudicates the *quantum* of the Plaintiff's damages; and
- (c) The determination of the quantum of the Plaintiff's damages is referred for trial on an expedited date to be allocated by the Registrar of this Division.

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**F. MOOSA**

**ACTING JUDGE OF THE HIGH COURT**

### **Appearances**

For Plaintiff: L Joubert

Instructed by: Kruger & Co (KC Ross)

For Defendant: FS Goosen



Instructed by:

State Attorney, Cape Town