



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: 2021/25588

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

DATE: 5 November 2025

SIGNATURE

In the matter between:

OMONIWA OLUGBENGA EMMANUEL.

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGEMENT

Introduction

- [1] This is a third-party claim wherein the Plaintiff Mr Omoniwa Olugbenga Emmanuel a Nigerian citizen seeks damages against the Road Accident Fund for an incident that took place on the 11th of September 2020. This matter was allocated as a special default judgement application as it remained undefended by the Road Accident Fund.
- [2] Counsel for the Plaintiff, Mr. Erasmus, requested permission to proceed pursuant to rule 38(2) of the uniform rules of court, which the court granted to facilitate the efficient conduct of the trial in this matter.
- [3] This court was informed that this matter will only proceed on the issue of merits.

Background Facts

- [4] The Plaintiff is an adult male residing in Eldorado Park who was involved in a motor vehicle accident on September 11, 2020, at approximately 16:00.
- [5] According to the affidavit, he attested that he was driving a vehicle with registration P[...] and proceeding straight on Albert Sisulu Rd. While doing so, another vehicle with unknown registration details was traveling behind him at high speed. He attempted to move into the yellow lane, but the other vehicle collided with the rear of his car and then left the scene.
- [6] The accident then resulted in the Plaintiff sustaining injuries which resulted in his hospitalization.

The Plaintiff's Argument

- [7] Mr. Erasmus for the Plaintiff argued that the accident occurred solely as a result of the negligence of the insured driver who in this case is insured by the Defendant. He argued that the only version which was before this court was that of the Plaintiff and in the existence of such the Plaintiff should be awarded 100% of the damages that he has claimed against the Defendant.
- [8] Mr. Erasmus, representing the Plaintiff, submitted that this incident constituted a clear rear-end collision, and pursuant to established practice, the vehicle that is struck from behind is entitled to full compensation for its claim in such circumstances.
- [9] Mr. Erasmus presented the accident report to the court, stating it provided evidence consistent with the Plaintiff's account that the Plaintiff's vehicle was struck from behind. He also noted that, according to the passport referenced to the court, the Plaintiff was in the country lawfully at the time of the accident.
- [10] Mr. Erasmus was subsequently questioned regarding the apparent inconsistency between the Plaintiff's affidavits and the account provided in the official accident report. The Plaintiff's version, as communicated to the officer responsible for compiling the report, is documented within the accident report as follows:
- "vehicle A was driving from West to East on Albertina Sisulu, as he was driving he saw a car driving recklessly and driver A swerved and lost control of his motorcycle and collide on his own with the tarmac."*
- [11] Mr. Erasmus argued that the version found on the accident report was consistent with the affidavit submitted by the Plaintiff. He further contended that, for a rear-end collision to occur, it is not necessary for the following vehicle

to make physical contact. According to him, the reckless driving of the unidentified motor vehicle alone constituted sufficient cause for the Plaintiff's accident.

- [12] Based on the evidence presented, the accident report reflects the Plaintiff's version of events. The accident report is dated September 11, 2020. Additionally, the Plaintiff reported the incident on that same date at approximately 21:30.

Passport issue

- [13] Counsel for the Plaintiff, Mr. Erasmus, opted to address the issue of the Plaintiff's passport copy annexed, asserting that he was lawfully present in the country at the time of the accident due to possessing a valid Nigerian passport. It should be noted that this argument was introduced by Mr. Erasmus independently, without prompting or inquiry from the court.

- [14] The court was unable to discern the identity of the individual from the passport images. I raised this concern and requested that a higher quality copy be uploaded. However, I observed that the Plaintiff's passport expired on April 21, 2020. Consequently, at the time of the accident, the passport was no longer valid. I addressed this matter with Mr. Erasmus, counsel for the plaintiff, who confusingly argued that the Plaintiff possessed a copy of the passport during the incident, which authorized his stay in the country. This point was not supported with any authority be it provisions in the Immigration Act or elsewhere.

[15] I informed Mr. Erasmus that his submissions were not correct it is not the legality of the passport only that legalizes a foreigner stay in the country, but permission is obtained through a visa¹.

“(4) A foreigner who is not the holder of a permanent residence permit contemplated in section 25 may only enter the Republic as contemplated in this section if—

(a) his or her passport is valid for a prescribed period; and

(b) issued with a valid visa, as set out in this Act.

[16] When the accident occurred, the Plaintiff was not lawful in the country let alone have a valid passport at the time.

[17] In summary, despite repeated opportunities afforded to the Plaintiff to clarify or substantiate the Plaintiff's legal status at the relevant time, no satisfactory evidence or documentation was produced. The absence of a valid visa or any other lawful permit, in conjunction with an expired passport, undermined the Plaintiff's assertion of lawful presence. The explanations provided were inconsistent, unsupported by statutory authority, and failed to address the core requirement for legal authorisation to remain in the country. This lack of credible evidence regarding immigration status was a material factor in the court's consideration of the Plaintiff's case.

[18] I further raised the issue that the document presented to the court was certified on 9 August 2018, which predates the Plaintiff's accident. Accordingly, I requested that copies of the relevant passports be produced before the court, as the copy currently available is unidentifiable and was certified approximately six years ago. I requested a specific copy because I was told the Plaintiff was present in court, but it was never provided. Instead, a different passport photocopy—issued on July 14, 2021, and expiring July 13, 2026—was submitted.

¹ Section (4) ,(10) read together with (11) of the Immigration Act

[19] This raised an additional question regarding the copy submitted at the court's request, which was not an original passport, but a copy certified on 8 March 2022 in KwaZulu Natal. This document was certified over three years and five months ago. The court subsequently requested clarification, and Mr. Erasmus responded that no specific date is required for the certification of documents; as long as the document is authenticated, it is considered acceptable.

[20] While exceptions exist, I believe litigants should only use old certified (any certification older than 6 months) documents in rare cases. The President has pronounced that for government job applications; certified documents are valid for six months. In my view, I have followed the same consideration as pronounced. Without reliable, up-to-date certification or corroborating documentation linked to the Plaintiff's identity and immigration status, the risk of misrepresentation or administrative error increases. The court must therefore insist on rigorous standards for documentary evidence, particularly where issues of lawful presence and personal identification are central to the dispute.

[21] In response to these developments, I emphasised the necessity for clarity and transparency regarding the Plaintiff's immigration status at the material time. The Plaintiff's counsel was repeatedly afforded opportunities to produce credible evidence, yet failed to do so, leaving the Plaintiff's lawful presence in doubt. This failure to provide convincing proof significantly impacted the court's ability to accept the Plaintiff's assertions regarding his legal status.

[22] It was reported that even his current passport was lost and a copy of the affidavit deposed before the Tshwane Metro Police was handed up where in, it was noted that on the morning of May 14th, he woke to find his bike, containing his passport and other belongings in its box, had been stolen. He then went to the nearby police station to report the incident. The Tshwane affidavit is dated the 27th of May 2025. It gives the explanation of the lost passport which had the 13th of July 2026 expiry date.

[23] At the time of the accident, the Plaintiff did not possess any document authorizing his stay in the country. The court was not provided with any explanation or evidence from the Plaintiff regarding attempts to obtain legal status, such as a visa or other documentation, nor was any good cause demonstrated on his stay for the last 7 years. When this matter came before court, he was still illegal in the country.

[24] In an effort to establish the Plaintiff's legal status within the country, Mr. Erasmus submitted a marriage certificate, presenting it as documentation that legalized the Applicant's stay in the country. It is important to note, however, that the marriage certificate is handwritten and is dated in 2018, but it does not include the Plaintiff's passport number, nor does it bear any stamp from the Home Affairs office. The authenticity thereof is questionable. Furthermore, possession of a marriage certificate alone does not confer legal status upon an individual who is otherwise in the country unlawfully.

[25] The Department of Home affairs is directed to do further investigations on the matter as they are the relevant body to deal with such issues.

ANALYSIS OF THE MATTER

[26] In the Plaintiff's application made under rule 38(2), he requested that this court admit the following documents into evidence in accordance with the Law of Evidence Amended Act: the RAF1 form, the Plaintiff's affidavit, a rough sketch of the accident scene, the Plaintiff's passport, the officer's accident report, the Plaintiff's hospital records, and collateral evidence provided by the Plaintiff's expert witnesses. This application was granted in line with the prayers sought on the notice of motion.

[27] Wherefore all the above-mentioned documents were used in analyzing the merits of this matter. It is incumbent upon the Plaintiff to discharge the onus

endowed on him to prove negligence on the part of the insured driver on a balance of probabilities.

[28] In the *Ninteretse* unreported judgement that:

"... The plaintiff bears the onus to prove on a balance of probabilities that the insured driver was negligent and that the negligence was the cause of the collision from which he sustained the bodily injuries. There is no onus on the defendant to prove anything. Even in instances where the defendant has not tendered evidence to rebut the evidentiary burden of the prima facie case presented by the plaintiff in this case, the plaintiff may not succeed with his claim depending on the nature and weight of the evidence so tender."²

[29] It is apparent that the Plaintiff must demonstrate evidence that is persuasive on a balance of probabilities for this honourable court to make finding in his favour despite the matter not being defended.

[30] The court's initial concern regarding the Plaintiff's section 19(f) affidavit pertains to its reference to the Plaintiff operating a motor vehicle. However, upon review of both the accident report and the affidavit sworn in December 2020, it is evident that the Plaintiff was, in fact, operating a motorcycle nothing much turns around that issue.

[31] The second concern this court has are the contradictions contained on the affidavits and the accident report. The Plaintiff on his section 19(f) affidavit, attested that he was driving a vehicle with registration P[...] and proceeding straight on Albert Sisulu Rd. While doing so, another vehicle with unknown registration details was traveling behind him at high speed. He attempted to move into the yellow lane, but the other vehicle collided with the rear of his car and then left the scene.

[32] However, according to the accident report, reported promptly after the incident by the Plaintiff, he swerved, lost control of his motorcycle and subsequently

² *Ninteretse v RAF* (29586/13) [2018] ZAGPPHC 493 (2 February 2018).

collided with the tarmac independently. The accident report and the affidavit presented to this court differ substantially. When questioned by the court regarding these discrepancies, Counsel for the Plaintiff asserted that there were no material differences, as an impact is not necessary for a rear-end collision to occur. In my view that argument was incorrect as the version presented on both are different. The one alludes to a rear end of a motor vehicle, and the other alludes to motorcycle that lost control upon seeing the insured driver driving recklessly.

[33] Furthermore, the inconsistencies highlighted above are not trivial or peripheral; rather, they go to the heart of the Plaintiff's version and the core facts in dispute. The court cannot simply overlook such contradictions, as doing so would undermine the integrity of judicial fact-finding. It is therefore incumbent upon the Plaintiff to provide a plausible and logical explanation for these divergent accounts if he is to satisfy the burden of proof expected in civil matters. Absent such clarification, the court is left with unresolved doubts regarding the true sequence of events leading up to the collision.

[34] The third concern is what the Plaintiff reported in hospital. The hospital record paints another different picture its states "*MBA side swiped by a motor vehicle while on his motorcycle Injured L side of his body.*" This version casts more doubt that a rear end collision occurred.

[35] Upon careful consideration of the evidence presented, it is apparent that discrepancies exist between the Plaintiff's affidavit, and the accident report inclusive of the hospital record. These inconsistencies undermine the credibility of the Plaintiff's account and make it challenging for the Court to accept his version on a balance of probabilities. Furthermore, the hospital records introduce yet another narrative, suggesting that the Plaintiff may have been

side-swiped rather than involved in a rear-end collision, which further complicates the factual matrix before the Court.

[36] This court also identified an additional affidavit among the hospital records admitted as evidence. This affidavit, deposed by the Plaintiff on December 9, 2020—approximately three months after the accident—was not presented during the proceedings but is included in the documents labelled as hospital records submitted for the court's consideration. In this affidavit, the Plaintiff provides another different version, stating that he was traveling on Albertina Sisulu Road, a dual carriageway, at the time of the incident. He was approaching a red traffic light and observed a truck ahead moving in the same direction, with another vehicle behind him. The Plaintiff slowed down as he neared the traffic light and shifted to the left-hand lane to avoid both the truck in front and the vehicle behind. As they reached the intersection the light turned green, the vehicle behind him veered into the same left-hand lane and collided with his vehicle before driving away from the scene.

[37] This account contradicts the accident report submitted by the Plaintiff on the date of the incident and the affidavit dated 21 April 2021. Notably, the Plaintiff claims that the vehicle travelling behind him was moving at excessive speed in his section 19(f) affidavit. In contrast, the affidavit included in the hospital records which was attested in December 2020 contains no mention of the insured driver speeding, nor does it refer to being rear-ended by the said vehicle.

[38] Based on the available information, it appears that a rear-end collision did not take place. The inconsistencies in the versions presented make it challenging for the court to determine whether the Plaintiff was not responsible for the accident. Although the matter is not defended and no alternative version has been submitted to the court, the presence of conflicting descriptions regarding how the accident happened remains relevant to the court's assessment.

[39] These conflicting narratives highlight the necessity for careful judicial scrutiny. The Court is not only tasked with evaluating the credibility of each version but also with determining whether the Plaintiff's evidence, taken as a whole, meets the requisite standard of proof. The presence of multiple statements—ranging from the plaintiff's own affidavits to contemporaneous reports—requires the Court to assess which, if any, can be regarded as both reliable and consistent with the physical evidence. Without a coherent and unified account, the Plaintiff's case is fundamentally weakened, making it difficult to establish liability on the balance of probabilities.

[40] In light of these varying accounts, the Court must exercise caution before making any findings of fact. It is essential to reconcile the Plaintiff's statements with the objective evidence provided in the accident report and hospital records. Where material differences exist, the Court should prefer the version that is most consistent with the probabilities and the contemporaneous documentation. Ultimately, the Plaintiff bears the burden of proof, and unless he can provide a satisfactory explanation for these inconsistencies, the Court is compelled to approach his version with scepticism.

[41] None of these inconsistencies were explained before this court except for Counsel for the Plaintiff to strongly argue that this was a rear end collision which the insured driver was solely to blame for.

[42] Given the above, the Court finds that the Plaintiff has failed to reconcile the conflicting versions presented in his section 19(f)affidavit, the accident report, and the hospital records(affidavit). These contradictions are material and go to the heart of the dispute, casting substantial doubt on the reliability of the Plaintiff's evidence. It is incumbent upon the Plaintiff to provide a clear and

consistent account, supported by credible documentation, in order to discharge the burden of proof. Absent such clarity, the Court cannot confidently accept the Plaintiff's assertions regarding the manner in which the accident occurred.

[43] The approach usually taken by the courts, when faced with two conflicting and mutually destructive versions, was formulated in *National Employers General Insurance v Jagers*³ as follows:

"It seems to me, with respect, that in any civil case, as in any criminal case, the onus can ordinarily only be discharged by adducing credible evidence to support the case of the party on whom the onus rests. In a civil case the onus is obviously not as heavy as it is in a criminal case, but nevertheless where the onus rests on the plaintiff as in the present case, and where there are two mutually destructive stories, he can only succeed if he satisfies the Court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the other version advanced by the defendant is therefore false or mistaken and falls to be rejected. In deciding whether that evidence is true or not the Court will weigh up and test the plaintiff's allegations against the general probabilities. The estimate of the credibility of a witness will therefore be inextricably bound up with a consideration of the probabilities of the case and, if the balance of probabilities favours the plaintiff, then the Court will accept his version as being probably true. If however, the probabilities are evenly balanced in the sense that they do not favour the plaintiff's case any more than they do the defendant's, the plaintiff can only succeed if the Court nevertheless believes him and is satisfied that his evidence is true and that the defendant's version is false."

[44] If this court were to accept the Plaintiff's argument that the accident was caused solely as a result of the insured driver who rear ended the Plaintiff impact less. It then raises a question why was a different account reported to the officers on the date of the incident? This version given on the accident report is more probable simply because it was done immediately after the accident occurred and same was reported by the Plaintiff. Rather than the affidavit which was done eight months after the accident had occurred which was used by Counsel in presenting his argument.

³ 1984(4) SA 437 (E) at 449 D- G

[45] Then there is an affidavit sworn in December 2020 which presents unclear details for the Plaintiff, who is relying on a rear-end collision claim. The Plaintiff does not specify his speed but notes he slowed down when approaching a red light. Confusion arises because he moved to the left lane to avoid a truck ahead and another vehicle behind—raising questions about why such evasive actions were necessary at a slow speed. It also prompts inquiry into whether he properly checked before changing lanes.

[46] To add to the confusion, when he was already of the left-hand side a vehicle behind him veered to the left. If it veered to the left, why would an accident occur because the insured drivers left will not be the same side as the Plaintiff. It appears that the Plaintiff maneuvered his motorcycle between the truck and another vehicle at an inopportune moment. Upon observing the red traffic signal ahead, the Plaintiff attempted to avoid a collision by moving left without maintaining an adequate lookout, thereby solely causing the accident.

[47] The fact that the Plaintiff's affidavit omits key details—such as any mention of maintaining a proper lookout—further detracts from the reliability of his version of events. The inconsistencies are not merely peripheral but go to the core of the plaintiff's claim, and the lack of corroborative evidence supporting the rear-end collision theory means that the Plaintiff has not met the threshold required to prove his case on a balance of probabilities.

Conclusion

[48] Given these findings, the Court must conclude that the Plaintiff's version of events is not sufficiently supported by credible or consistent evidence. As a result, the Court cannot accept the plaintiff's account as more probable than not, and the application must consequently fail.

[49] The Plaintiff has not succeeded in discharging the requisite burden of proof, nor has he provided a coherent and plausible narrative supported by the available documentation. The inconsistencies in the Plaintiff's account, combined with the absence of corroborative evidence, undermine the credibility of his claim and render it unsustainable in law.

[50] I therefore make the following order:

1. The matter is dismissed with no order as to costs.
2. This judgement must be served on the Minister of Home Affairs.

NHARMURAVATE, AJ

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

For the Applicant: Adv Erasmus

Instructed by: De Brogolio

Date of Hearing: 11 August 2025

Date of Judgment: 5th of November 2025