

**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO. 2025/034313

- (1) REPORTABLE: YES/NO
- (2) OF INTEREST TO OTHERS JUDGES: YES/NO
- (3) REVISED

In the matter between:

NICHOLAS MATABOGE

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

BHOOLA AJ,

Introduction

[1] The plaintiff, Mr N Mataboge, instituted action against the Road Accident Fund (“RAF”) seeking damages arising from a motor vehicle collision that allegedly occurred on 1 June 2024 along the N17 Road, Nasrec, Riverly, Johannesburg, Gauteng.

[2] The relief sought against the RAF includes (a) payment of past medical and hospital expenses in the sum of R50 000.00 (fifty thousand rand) , (b) future medical and hospital expenses in the sum of R100 000,00, (c) estimated loss of earnings in the amount of R 5 000,000, (d) general damages in the sum of R2 000 000,00.

[3] The summons was served on the defendant on 27 March 2025. The matter was set down for hearing on 21 - 24 October 2025, which notice was served on the defendant on the 22 July 2025. On the 23 of October 2025, on the eve of the hearing of the default judgment application, the defendant filed and served a notice of intention to defend.

[4] As a result, the plaintiff's application for default judgment could not proceed on the 24 October 2025 and was removed from the default judgment roll. The plaintiff sought a punitive cost order in consequence of the RAF's late filing.

Factual background

[5] The plaintiff in this matter was involved in a motor collision and sustained injuries as a result of the collision.

[6] As a result of the defendant's failure to file a notice of intention to defend timeously, the matter was set down for the hearing of an application for a default judgment in terms of Rule 31(2) read with Rule 38(2) of the Uniform Rules of Court. The plaintiff had complied with all procedural requirements with the hope of bringing the matter to a finality.

[7] On the eve of the hearing, the defendant filed its notice of intention to defend and the matter was subsequently removed from the roll.

Legal Framework

[8] Rule 19(5) of the Uniform Rules of Court provides:

“Notwithstanding the provisions of sub rules (1) and (2), a notice of intention to defend may be delivered even after expiration of the period specified in the

summons or the period specified in sub rule (2), before default judgment has been granted: Provided that the plaintiff shall be entitled to costs if the notice of intention to defend was delivered after the plaintiff had lodged the application for judgment by default.”

[9] It is trite that costs lie within the discretion of the court, to be exercised judicially upon consideration of the circumstances of each case.¹

[10] Punitive costs on the attorney-and-client scale are awarded where a party has abused the court’s process or conducted litigation in a manner that unduly delays or protracts proceedings.²

Evaluation

[8] The RAF filed its notice of intention to defend on the eve of the default judgment hearing. While Rule 19(5) permits such late filing, the consequence is that the plaintiff’s application was rendered nugatory, and the matter was removed from the roll.

[9] The RAF did not oppose the application for abusive process and offered no explanation for its delay. This conduct is consistent with a pattern of late engagement by the Fund, which burdens the court roll and prejudices plaintiffs who prepare for trial in good faith.

[10] The plaintiff sought costs on the attorney- and -own client scale. The draft order presents a cost order on an attorney- and client scale. The question to be decided is whether the RAF’s conduct rises to the level of abuse that warrants a punitive costs order.

[11] In *De Sousa and Another v Technology Corporate Management and Other*³,

¹ *Ferreira v Levin NO and Others* 1996 (2) SA 621 (CC) at para 3.

² *Scheepers and Nolte v Pate* 1909 TS 353 at 356; *Nel v Waterberg Landbouwers Ko-operatiewe Vereniging* 1946 AD 597 at 607; approved in *Swartbooi and Others v Brink and Others* 2006 (1) SA 203 (CC) (2003 (5) BCLR 497; [2003] ZACC 5) para 27.

³ . *De Sousa and Another v Technology Corporate Management (Proprietary) Limited and Others* (2010/50723) [2017] ZAGPJHC 109; [2017] 3 All SA 47 (GJ); 2017 (5) SA 577 (GJ) (31 March 2017).

the court held that attorney-and-client costs are justified where a party deliberately fails to curtail proceedings or abuses process. Similarly, in *Nel v Waterberg Landbouwers Ko-operatiewe Vereeniging*⁴, Tindall J explained

'The true explanation of awards of attorney and client costs not expressly authorised by Statute seems to be that, by reason of special considerations arising either from the circumstances which give rise to the action or from the conduct of the losing party, the court in a particular case considers it just, by means of such an order, to ensure more effectually than it can do by means of a judgment for party and party costs that the successful party will not be out of pocket in respect of the expense caused to him by the litigation.'

Order

[12] In the result, I make the following order:

1. The matter is removed from the Default Judgement roll.
2. The matter is substantially compliant, and the plaintiff is deemed to have lodged the matter in terms of Act 56 of 1996.
3. The defendant shall issue a claim and link number within seven (7) days of date of service of the order.
4. The defendant shall pay the plaintiff's taxed or agreed attorney and client costs on the High Court scale. Such costs shall include reasonable costs of all expert reports, medico-legal reports, actuarial calculations, and counsel's fees together with costs of preparation and attendance at court on the 24 October 2025. These costs shall remain subject to the discretion of the Taxing Master.
5. In the event that the costs are not agreed, the plaintiff shall serve a notice of taxation on the defendant and/or defendant's attorney of record.

⁴ 1946 AD 597 at 607

Following taxation or settlement of costs, the defendant shall make payment within fourteen (14) court days from the date of allocator.

6. Should payment not be effected timeously, the plaintiff will be entitled to recover interest at the rate of 10.50% per annum on the taxed or agreed costs, calculated from date of allocator to date of final payment.

7. The amounts referred to in paragraph 4 will be paid to the Plaintiff's attorneys, Van Niekerk Attorneys, by direct transfer into their trust account, details of which are the following:

Name: Van Niekerk Attorneys

Bank: First National Bank

Account number: 6[...]

Branch code: 2[...]

Ref: F[...]

CB. BHOOLA

Acting Judge of the High Court
Gauteng Division of the High Court,
Johannesburg

Delivered: This judgment was prepared and authored by the Judge whose name is reflected on 09 December 2025 and is handed down electronically by circulation to the parties/their legal representatives by e mail and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 09 December 2025.

APPEARANCES

Date of hearing: 24 October 2025

Date of judgment: 09 December 2025

For the plaintiff: Adv. P Uys

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