



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

CASE NO. 2022/22071

DELETE WHICHEVER IS NOT APPLICABLE

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

09/01/2026

In the matter between:

MOKUMO MATOME MOSES

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

BHOOLA AJ,

Introduction

[1] The plaintiff, Mr Mokumo Matome Moses, institutes action against the Road Accident Fund (RAF) seeking damages arising from a motor vehicle collision which

occurred on 17 May 2021, at Jacaranda Street, Hennops Park, Centurion, Gauteng Province, where he was hit from behind by the insured driver who fled the scene.

[2] The relief sought against the defendant includes compensation for future hospital and medical expenses, past and future loss of earnings, and general damages. Liability has been resolved between the parties, with the defendant held liable for 80% of the plaintiff's agreed or proven damages.

Factual background

[3] The summons was served on the defendant on 30 June 2022. The defendant filed its notice of intention to defend on 18 July 2022 and its plea on 24 August 2022. On 8 November 2022, the Court ordered the defendant to comply with discovery in terms of Uniform Rule 35(2) within ten (10) days.

[4] On 13 November 2023, the parties attended a pre-trial conference where the defendant conceded compliance with the RAF Act and Regulations. On 21 November 2024, the Court ordered separation of merits and quantum, postponing the issues of causal *nexus* and damages *sine die*.

[5] On 18 February 2025, the Court granted a compelling order directing the defendant to attend a pre-trial conference on 21 February 2025, failing which its defence would be struck out in terms of Rule 37(8). The order was granted after the defendant filed its notice of opposition on 17 February 2025. The plaintiff subsequently filed a draft pre-trial minute, which remains unsigned. The matter is now set down for hearing on a request for default judgment.

Issue

[6] Whether the application for default judgment can be considered in the absence of proof of service of the compelling order on the defendant which was granted by the court on the 18 February 2025.

Legal Framework

[7] Uniform Rule 31(2)(a) permits a plaintiff to apply for default judgment where a defendant is in default of delivery of a plea or other procedural compliance.

[8] Uniform Rule 37(8) empowers the Court to strike out a defence where a party fails to attend a pre-trial conference after being compelled to do so.

[9] The principle of *audi alteram partem* requires that striking out of a defence be based on clear proof of service of the compelling order and evidence of non-attendance. It is trite that the principle of **audi alteram partem** requires that a litigant be afforded a fair opportunity to be heard before adverse procedural consequences are imposed. In the context of striking out a defence for non-compliance with a compelling order, the court must be satisfied on clear evidence that the order was duly served and that the defendant failed to attend or comply despite such service. Absent proof of service, the striking out of a defence constitutes a denial of procedural fairness and renders the order susceptible to rescission under Rule 42(1)(a). In *Minister of Police v Michillies*¹ the High Court held that striking out in the absence of proper proof of service was procedurally defective. The requirement of service is not a mere formality but a substantive safeguard of the right to be heard, integral to the “*audi alteram partem*” rule.

¹ Minister of Police v Michillies (1011/2020) [2023]



[10] Default judgment is a drastic remedy and may only be granted where the procedural default is established on the papers before the Court.

Evaluation

[11] The plaintiff seeks default judgment against the defendant, the Road Accident Fund. However, the record before this Court is incomplete. In particular, there is no proof of service of the compelling order of 18 February 2025 upon the defendant. While the unsigned pre-trial minute raises doubt as to whether the conference was properly held, the absence of the proof of service of the compelling order upon the defendant prevents this court from presuming non-attendance or default. In the circumstances, the defence cannot be deemed struck out, and the application for default judgment is not ripe for hearing.

Order

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

12.1 The application for default judgment is postponed *sine die*.

12.2 The plaintiff is directed to file proof of service of the compelling order on the defendant.

12.3 The plaintiff is further directed to clarify whether by way of affidavit whether there was compliance with the compelling order granted on 18 February 2025.

12.4 The plaintiff is granted leave to re-enrol the matter once the directions of the court have been complied,



12.5 The costs are costs in the cause,



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 January 2026 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 January 2026.



APPEARANCES

Date of hearing: 24 October 2025

Date of judgment: 09 January 2026

For the plaintiff: Atty C. Mashao

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For the Defendant: No appearance



