

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

Case Number: 105993/2025

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

MOKGADI CATHERINE MAKHURA

APPLICANT

(ID : 7[...])

AND

THE ROAD ACCIDENT FUND

RESPONDENT

JUDGMENT

This Judgment was handed down electronically and by circulation to the parties' legal representative by way of email and shall be uploaded on CaseLines. The date of the hand down is deemed to be on the **04 FEBRUARY 2026**.

MAKUME J:

1. This matter served before me in the unopposed roll on the 19 January 2026. Counsel for the Applicant handed up a draft order which reads as follows:

- 1.1. The Respondent is hereby ordered to deliver its discovery

affidavit within 10 (ten) days of delivering of this order upon the Respondent.

- 1.2. In the event that the Respondent fails to comply with prayer 1 above, the Respondent's defence is hereby *ipso facto* struck out on the day of default (that is on the 11th day after service of the order) and the Applicant may then approach the Court for a date for hearing on the default trial roll.
- 1.3. The Respondent is ordered to pay the cost of this application on party and party Scale A.
2. Counsel for the Road Accident Fund who was present in court, rose to object to the wording of the draft order. He informed the Court that to order that the Respondent's defence is to be struck off *ipso facto* on expiry of ten days is unconstitutional and trumps the rule *audi alteram partem*. Counsel referred this Court to the Eastern Cape High Court decision in the matter of *MEC for the Department of Public Works v Ikamva Architects*, case number 235/2021, a judgment delivered on 17 March 2022.
3. In response to the objection, counsel for the Applicant referred this Court to the Consolidated Practice Directive 1 of 2024, Court Operation in the Gauteng Division operative with effect 26 February 2024.
4. In particular, paragraph 27.11 of the Practice Directive reads as follows:

“To prevent unnecessary delays, additional cost and a waste of court resources, caused by noncompliance with orders handed down in the SIC, a party may seek an order in the SIC that provides for the *ipso facto* striking out of the claim or defence, in the event that the other party fails to comply with an order granted by the SIC within a specified time, provided that;

27.11.1, the order has been served on the

delinquent party; and

27.11.2, a Rule of Court provides that such noncompliance entitles an aggrieved party to apply strike out of the claim or defence.”

5. Counsel for the Applicant argues that the draft order is produced verbatim on the words used in the Practice Directive.
6. A brief history of events leading up to this application appears hereunder. The Applicant sustained injuries when as a pedestrian was hit by a motor vehicle in Johannesburg on 28 July 2023.
7. Summons were issued against the Road Accident Fund in July 2025, in which the Applicant claimed compensation. Simultaneously with the summons, the applicant served a notice in terms of Rule 41A of the Uniform Rules in which she indicated her agreement to refer the matter to mediation.
8. On 30 October 2025, the Applicant served on the State Attorney's office a notice in terms of Rule 35(1), (6), (8) and (10), calling on the Respondents to make discovery within 20 days of all documents relating to the matter in question.
9. The Respondent failed to comply with the notice referred to above. As a result, Applicant filed a notice supported by an affidavit on 30 November 2025, in which notice of motion prayer 2 of the draft order referred to above was been sought.
10. The notice of motion was served on the State Attorney's office on 1 December 2025. The notice setting down the notice to compel was served on the State Attorney on 18 December 2025, notifying them of the date of hearing being 19 January 2026.
11. The Respondents through their attorneys did not file any papers opposing the application set down for 19 January 2026.
12. The question is therefore whether the draft order handed up should be granted as it is, as it is based on the Practice

Directive or whether the *ipso facto* striking of the defence should be omitted.

13. The Court in *Ikamva* supra had to deal with the validity of an order granted by Her Ladyship Majiki J, in which she granted an order striking out the defence of the department. The Appeal Court sitting as a full bench issued a directive on 18 May 2021, in the following words:

“Did Majiki J have jurisdiction in terms of Rule 35(7) to make the order of 11 November 2011, striking out the defendant’s defence, and, if not, is the order a nullity as envisaged in the matter of the *High Court Northern Gauteng High Pretoria v Motala* 2012 (3) SA 325 (SCA).”

14. The Appeal Court in paragraph 18 concluded as follows:

“It must be accepted that the Majiki J order was erroneous on the basis that it followed a one- as opposed to two-stage procedure. Uniform Rule 35(7) does not contemplate a striking out of a defence automatically, but rather on the application on the same papers amplified if necessary. As noted by Plasket J, it is only when a court has had the opportunity to decide that grounds exist for the striking out of a defence that an application for default judgment may be made. The dismissal of a claim or the striking of a defence is a drastic remedy, and the power to grant such a remedy is discretionary, a discretion that must be exercised judiciously. The power to strike out the defence is derived from the Uniform Rules. The interpretation and application of a court rule often requires a consideration of the provisions of the

Constitution. Section 34 is relevant in this respect, providing that everyone has the right to have a dispute that can be resolved by the application of law decided by a court or tribunal in fair public hearing. The striking out of the plaintiff's claim or a defendant defence has a far-reaching impact on this right. It has the potential to deprive a litigant of a fair trial, bringing an end to a claim or defence. In the case of a defendant, the usual effect of a striking out is to prevent the presentation of a defence so that judgment will be entered for the plaintiff, subject to any further order of court."

15. Rule 35(7) provides that if any party fails to give discovery, or having been served with a notice under subrule 6, omits to give notice, the party desiring discovery may apply to court, which may order compliance. This subrule applies only where there has been a failure to comply with subrules 1 to subrule 6. The rule does not permit an automatic striking of a defence or claim, should a litigant fail to comply.
16. It is clear that the offended party still has a duty and an obligation to then inform the delinquent party that now that it has failed to abide the order compelling, there will now follow an application to strike the defence.
17. In the result, paragraph 2 of the draft order is deleted *in toto* and I accordingly grant the following order.

ORDER

- (1) The Respondent is hereby ordered to deliver a discovery

affidavit with 10 (ten) days of delivering of this order upon the Defendant.

(2) Respondent is ordered to pay costs of this Application on a party and party Scale A.

MAKUME J

JUDGE OF THE HIGH COURT

JOHANNESBURG

For the Applicant:

Ngomani Attorneys

For the Respondent:

State Attorney, Johannesburg