

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case No: 35022/2021

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED
13 March 2026	---
DATE:	SIGNATURE

In the matter between:

SIMPHIWE EMMANUEL ZUMA

Applicant

and

ROAD ACCIDENT FUND

Respondent

JUDGMENT

Mia J,

Introduction

[1] This is an interlocutory application brought by the applicant seeking an order striking out the respondent's plea and permitting the applicant to proceed to trial by default. The application arises from the respondent's failure to comply with an order granted by Malungana AJ on 20 April 2023,

directing the respondent to provide four dates and times for attendance of a Rule 37 pre-trial conference within five days of service of the order. The applicant contends that the respondent failed to comply with the order and in view of the respondent's failure such non-compliance justifies the striking out of the respondent's defence. In response the respondent opposes the application and contends that the order was served late and that it was practically impossible to comply within the time stipulated.

Background facts

[2] The application flows from an underlying action arising from a motor vehicle collision that occurred on 11 September 2019, in which the applicant was a passenger. The applicant sustained injuries as a result of the collision and instituted a claim for damages against the respondent. The applicant issued summons on 21 July 2021 and served on the respondent on 2 August 2021. The respondent delivered its notice of intention to defend on 2 June 2022, approximately ten months after service of summons. The applicant thereafter served a notice of bar on the respondent on 2 September 2022. The respondent subsequently delivered its plea on 19 October 2022. The applicant contends that the plea constitutes a bare denial and does not disclose a substantive defence.

[3] On 23 February 2023, the applicant launched an application to compel the respondent to attend a pre-trial conference. On 20 April 2023, Malungana AJ granted an order directing the respondent to provide four dates and times within five days of service of the order for the holding of a Rule 37 pre-trial conference. The order further provided that in the event of non-compliance the applicant would be entitled to supplement its founding affidavit and proceed with an application to obtain a date for default judgment. The order of Malungana AJ was served on the respondent by hand on 15 May 2023 and by email on 16 May 2023. The respondent failed to comply despite the service of the order within the prescribed period. The applicant accordingly launched the present application seeking an order striking out the respondent's defence.

[4] According to the applicant the respondent has demonstrated a pattern of disregard for the rules of court and orders of this Court. The applicant maintains that the respondent's conduct in failing to comply with the order of Malungana AJ constitutes serious procedural non-compliance which warrants the striking out of its defence. In addition to its non-compliance, the respondent provided no satisfactory explanation for its failure to comply with the court order. The applicant maintains further that the respondent should not be permitted to continue participating in the litigation.

[5] In its opposition to the application to strike out its defence, the respondent submits that the order relied upon by the applicant was served approximately 24 to 25 days after it was granted. Moreover, the respondent argues that because of the late service of the order, it was impossible to comply with the requirement that the pre-trial dates be provided within five days. The respondent further submits that it has always been willing to hold a pre-trial conference. It is argued that the striking out of the defence would cause substantial prejudice to the respondent as it would prevent the respondent from defending the claim. It submits that any prejudice suffered by the applicant can be remedied by an appropriate costs order.

Issues for determination

[6] The following issues arise for determination:

- 6.1 Whether the respondent failed to comply with the order of Malungana AJ.
- 6.2 Whether such non-compliance justifies the striking out of the respondent's plea.
- 6.3 Whether the Court should exercise its discretion to permit the respondent to continue defending the action.

Legal principles

[7] It is trite that court orders must be complied with. The rule of law requires that orders of court be obeyed unless and until they are set aside by a

competent court. In *Fakie NO v CCII Systems (Pty) Ltd*¹, the Supreme Court of Appeal emphasised that disobedience of court orders undermines the authority of the courts and the rule of law. Courts possess an inherent power to regulate their own process which includes the power to strike out pleadings where a party's conduct constitutes an abuse of the court process. However striking out a defence is a drastic remedy and should only be granted in exceptional circumstances. This discretion is exercised having due regard to the interests of justice.

Analysis

[8] The central question is whether the respondent's conduct justifies the drastic remedy sought by the applicant. It is common cause that the order of Malungana AJ required the respondent to provide dates for a pre-trial conference within five days of service of the order. The order was granted on 20 April 2023; the applicant maintains service of the order was effected on 15 May 2023 and 16 May 2023. The respondent contends that service was affected several weeks after the order was granted. This according to the respondent rendered compliance impractical. The explanation sounds hollow when the order states that the respondent was to furnish dates within five days of the service of the order and not after the grant of the order.

[9] The respondent tenders no other reasonable explanation why it could not give effect to the order after it was served. The respondent's inability to furnish a reasonable explanation is not the sole factor determining whether the respondent's defence be struck out. It is necessary to consider the broader litigation history of the matter. The chronology reveals significant delays in the progression of the case. The applicant did not serve the order immediately upon the granting of the order. It is necessary to balance the need to enforce compliance with court orders against the principle that disputes should, where possible, be determined on their merits.

¹ 2006 (4) SA 326 (SCA)

[10] The striking out of a defence has the effect of denying a litigant the opportunity to participate in the adjudication of the dispute. It is appropriate to grant such relief where the conduct of the defaulting party demonstrates a clear disregard for the authority of the Court. In the present matter, although the respondent's conduct may be criticised, a balancing of interests must consider whether the prejudice suffered by the applicant cannot be remedied by other means. A less drastic remedy may be appropriate.

[11] Having regard to the facts of this matter and the submissions made by the parties, considering whether the interests of justice favour the granting of the relief sought is informed by the need to enforce procedural discipline with the principle that disputes should ordinarily be resolved on their merits. In the present matter the interest of justice is best served by considering the merits of the matter.

Costs

[12] In this matter the respondent's opposition is essentially an indulgence to be permitted to do what is was required to procedurally. The respondent has conceded that its conduct be visited with an appropriate costs order.

Order:

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

1. The application to strike out the respondent's defence is dismissed.
2. The respondent is directed to provide dates for the holding of a Rule 37 pre-trial conference within five days of the grant of this order.
3. The respondent shall pay the costs of this application.



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JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Appearances:

On behalf of the applicant	: ST Mosomane
Instructed by	: Webber Wentzel Attorneys ST Mosomani Attorneys st@mosomani.co.za
On behalf of the respondent	: E M MDlovu
Instructed by	: RAF Elias Matalani Mdlovu eliasmatalani@raf.co.za
Date of hearing	: 18 July 2025
Date of judgment	: 13 March 2026