



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA MAIN SEAT**

JUDGMENT

Case No.: 4696/2022

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED YES/NO
21 JANUARY 2026 DATE	NGWENYA AJ SIGNATURE

In the application between:

LINAH MABUNDA

Plaintiff in case No:4696/2022

MEMORY NTOMBFUTHI METISO

Plaintiff in case No:3400/2021

And

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

NGWENYA AJ

Introduction

[1] In this judgment, I deliver two judgments in respect of two matters that came before me on the 05th June 2025 on the case management roll.

[2] The other matter is Metiso Memory Ntombifuthi v the Road Accident Fund, case no. 3400/2021.

[3] I have decided to consider these matters in the same judgment as they raise the same issues and legal principles.

[4] Both matters came before me on the case management roll for certification for trial readiness.

Case no: 469/2022 (Mabunda Case)

[5] Counsel for the Plaintiff informed me that the matter relates to a personal injury claim against the Road Accident Fund arising from a motor collision that occurred on the 26th of September 2021, in which the plaintiff was a passenger.

[6] She informed me that the past medical expenses and general damages had already been settled.

[7] The heads of damages that remain in dispute are loss of earnings and future medical expenses.

[8] She further informed me that the parties held a meaningful pre-trial conference and that they have completed a joint statement of issues.

[9] Counsel for the defendant also confirmed that the matter was trial-ready and reiterated that certain heads of damages had been settled. At the same time, the loss of earnings and future medical expenses remained outstanding.

Case no: 3400/2021 (Metiso Case)

[10] Counsel for the Plaintiff submitted that this is a personal injury claim that arose from a motor vehicle accident which occurred on the 07th of September 2019.

[11] Counsel informed me that the merits have been conceded at 100% and that only the quantum for general damages and loss of earnings remains to be determined.

Applicable Legal Principles

[12] Rule 37A of the Uniform Rules of Court governs case management.

[13] For a matter to be certified trial-ready by a case management Judge, parties must comply with the following requirements:

- 13.1 Parties must hold a pre-trial meeting before holding a case management conference at which issues identified in sub-rule (10) will be discussed, see sub-rule 37A(7)(c).
- 13.2 Parties must deliver an agreed minute of the proceedings held in terms of paragraph (c) (that is, the pre-trial meeting), *alternatively*, if there was no agreement in the content of the minute, a minute signed by the party filing the document, together with an explanation why an agreement on its content has not been obtained. See sub-rule 37A(7)(d)(ii).
- 13.3 Parties must deliver a detailed statement of issues which indicates the issues that are not in dispute and the issues in the case that are in dispute, describing the nature of the dispute, setting forth the parties' respective contentions in respect of each such issue. See subrule 37A(9)(a)(i) and (ii).

[14] This matter only engages the last requirement, i.e., sub-rule 37A(9)(a) (ii).

[15] I find it appropriate to reproduce the entire sub-rule, and it reads thus:

“(9) (a) In addition to the minute referred to in subrule (7)(d)(ii), the parties shall deliver a detailed statement of issues, which shall indicate-

(i)

(ii) The issues in the case that are in dispute, describing the nature of the dispute and setting forth the parties' respective contentions in respect of each of such issues."

[16] Under this sub-rule, parties are required to engage earnestly, identify the issues in dispute, and state their contentions regarding those issues.

[17] The first step is to define the terms 'issues' and 'contention'.

[18] The Black's Law Dictionary, Seventh Edition, defines issues as follows:

"A point in dispute between two or more parties."

[19] Therefore, in the context of sub-rule 9(a)(ii), 'issues that are in dispute' refer to the points of disagreement regarding the central question that must be ultimately resolved by the court. For instance, a central question in a motor vehicle accident is negligence; resolving this central question may require consideration of issues such as whether the defendant was speeding or failed to keep a proper lookout. These are the points of disagreement that must be resolved to ultimately determine the central question (negligence). Therefore, negligence cannot be characterised as an issue that is in dispute for purposes of the sub-rule.

[20] Accordingly, it is not sufficient for a party to say that the merits or quantum is an issue that is in dispute, as litigants often do. Merits are a broad term referring to the various facts supporting a case. Black's Law Dictionary defines merits as follows:

“1. The elements or grounds of a claim or defense; the substantive considerations to be taken into account in deciding a case, as opposed to extraneous or technical points, esp. of procedure<trial on merits>. 2. Equity (3)<on questions of euthanasia, the Supreme Court has begun to concern itself with the merits as well as the law>.”

[21] I now move to deal with the definition of the term ‘contention’. In simple terms, contention is an argument or assertion. So, in the context of sub-rule 9(a) (ii), a contention is an argument or a statement in support of the issue that is in dispute or point of disagreement.

[22] What is contemplated by the sub-rule may be equated to heads of argument or written closing submissions. That is what is expected to be set out in a joint statement under the sub-rule.

[23] The key feature of the sub-rule is that the parties must engage earnestly to clearly identify the points of disagreement. What is the remedy of a party if his or her opponent refuses to engage? Our practice directives provide a potent and useful remedy: the invocation of Rule 30A. The potency of this rule is that the defaulting party’s claim may be dismissed or its defence struck out for failure to comply, thus curtailing the proceedings with the end result that the compliant party will get judgment in its favour on an unopposed basis should it be successful in the Rule 30A proceedings.

[24] Clause 3.12 of the April 2025 Practice Directives provides as follows:

“Any party may invoke the provisions of Rule 30A in the event of a defaulting party’s failure to comply with the court rules or with an order or direction issued by a Case Management Judge during a judicial case management conference.”

[25] Failure to cooperate in the proper completion of a joint statement of issues as required by sub-rule 9(a)(ii) is a failure to comply with the court rules as contemplated in clause 3.12 of the Practice Directives. Accordingly, the party that does not receive cooperation from another must seek relief in terms of Rule 30A. Therefore, the aggrieved party cannot be assisted by having the matter certified as trial-ready, and I have observed that the aggrieved party often implores the court to do so. This would defeat the purpose of the sub-rule, which is to refer matters to trial with clearly defined issues for determination.

[26] The purpose of a joint statement where issues in dispute are clearly defined is to assist the trial judge in understanding the issues that ought to be determined without wasting time on issues that are not in dispute. In addition, proper engagement when completing a joint statement may lead to settlement, thus curtailing the proceedings and saving costs.

[27] The importance of clearly defining issues is stated in the case of **HAL obo MML v MEC For Health 2022 (3) SA 571 SCA**, where the SCA made reference to rule 37A at paragraph 198, where it said the following:

“[198] This diffuse, unfocused approach to the conduct of complex litigation is to be deprecated. If the issues are not properly and clearly defined the conduct of the trial cannot be controlled in a properly efficient manner. On appeal,

by which stage the issues should have been clear and the alleged negligence defined in terms of the acts or omissions of specific individuals, HL's counsel contented themselves with saying that the appellant's case was that: 'as a result of her prolonged labour and the lack of attention and medical care she received, in particular the failure by the personnel to properly monitor her and the foetal in order to either expedite delivery or perform an emergency caesarean section delivery upon detecting foetal distress, [MML] suffered a hypoxic ischemic insult in the intrapartum period.'

The heads of argument proceeded by saying that the trial focused on an almost complete absence of hospital records and submitting that the res ipsa loquitur principle should be applied. The impression is that even at this stage the precise basis of the claim is uncertain.

[199] The remedy is straightforward. In any case where the pleadings and pre-trial procedures have not resulted in a clear statement of the issues, the trial judge should require the parties to deliver a statement of the issues in accordance with Rule 37A(9)(a), that is, a statement of what is not in dispute and a statement of what is in dispute, setting out the parties' respective contentions on those issues. If the matter is subject to judicial case management under that rule such a detailed statement is a requirement. If it is not, it is within the judge's powers, under Rule 38(8)(c) and their inherent power to regulate the proceedings, to require that such a statement be provided."

[28] As spelt out by the SCA, the joint statement must be detailed: the issues in dispute must be clearly defined, and the contentions made must be clear.

Discussion

[29] I now turn to consider whether there was compliance with sub-rule 9(a) (ii) in both cases. I shall first deal with the Mabunda case.

Mabunda Case

[30] In this case, in an attempt to comply with the sub-rule, the parties state the following at paragraphs 4 to 4.2.4 of their joint statement:

“4.1 PLAINTIFF

4.1.1 Future medical expenses:

Future medical treatment has been defined and set out in the medico-legal reports by the orthopaedic surgeon, physician and occupational therapist. According to the available expert evidence, the Plaintiff will require future medical treatment and same will be proven at trial.

4.1.2 Past and Future loss of earnings – (Contingencies):

The Plaintiff's future loss of earnings should be calculated based on the difference between his pre- and post- accident earnings potential as postulated by the industrial psychologist and by

applying a higher-than-normal post-accident contingency deduction for the increased chance of loss of future income. This matter will be decided by the above Honourable Court based on the evidence presented and summarised below.

4.2 DEFENDANT

4.2.1 Future medical expenses:

The plaintiff experts made recommendations for future medical expenses. Defendant to take instructions. The issue of future medical expenses is still in dispute.

4.2.2 Past and Future loss of earnings – (Contingencies if any):

The matter will only proceed on Contingencies. The issue of loss of earnings is still in dispute.”

[31] The Plaintiff attempts to identify the issues. However, the statement is insufficient because the issues a trial judge must decide in a dispute over future medical expenses and past and future loss of earnings are not clearly defined. Parties should clearly define the points of disagreement regarding future medical expenses and past and future loss of earnings. For instance, with respect to loss of past and future income, it should be stated whether the issue in dispute is the absence of proof of income, a challenge to the basis of the actuarial calculations, or both.

[32] As for the Defendant, it clearly fails in all respects, as it still refers to taking instructions regarding future medical expenses. Accordingly, in the absence of instructions, no point of disagreement can arise in relation to the dispute.

[33] Accordingly, in relation to the Mabunda case, I find that the Plaintiff attempted to comply with the sub-rule, and the Defendant clearly failed to take the process seriously.

[34] In the premises, I find that the parties have not complied with the sub-rule. I further find that the main cause of the non-compliance is attributable to the Defendant.

Metiso Case

[35] In an attempt to comply with the sub-rule, the parties say the following in paragraph 4.2:

“4.2 The issues that are in dispute (Rule 37A(9)(a)(ii)

Plaintiff outline issues which are in dispute for purposes of Rule 37A 9 (a)(ii)

4.2.1. All issues in the case relating to merits and quantum are in dispute.”

The Plaintiff’s respective contentions are set forth below:

1. Orthopaedic Surgeon: Dr Z Umar

- The Orthopaedic surgeon appointed by the Plaintiff intends on testifying on the medico-legal report as to the extent of the Plaintiff’s injuries*

sustained in the accident, as well as the seriousness of the above-mentioned injuries.”

[36] Having stated as above, the Plaintiff proceeds to set out its contentions. However, the contentions are not those that are contemplated in the sub-rule but rather constitute what is contemplated in sub-rule (10)(e), where a party is required to identify witnesses it intends to call and, in broad terms, set out the nature of the evidence to be given by such witness. As set forth in the joint statement, the Plaintiff identifies its expert witnesses and the nature of the evidence it will present at trial. As explained above under applicable legal principles, contentions are arguments or assertions similar to heads of argument.

[37] As for the Defendant, it simply says the following:

[37.1] That on the merits, the insured driver was not negligent, and that the court will have to decide whether the insured driver was negligent. No point of disagreement is identified in the negligence claim. The broad statement that the insured driver was not negligent is insufficient.

[37.2] Regarding general damages, the Defendant states that it has not made an election as to the seriousness of the injury and that the court therefore lacks jurisdiction.

[37.3] On the question of loss of earnings, the Defendant denies the allegations and the experts' opinions, leaving it to the Court to decide.

[38] Accordingly, in this matter as well, I find no compliance with the sub-rule's requirements.

Appropriate orders

[39] Under sub-rule 12(a), I may either certify that the matter is trial-ready or refuse certification. Furthermore, I can put the parties on such terms as appropriate to achieve trial readiness and direct them to report to the case management judge at a further case management conference on a fixed date. In addition, I can make an order as to costs, including ordering *de bonis propriis* against the parties' legal representatives or any other person whose conduct frustrates the objective of the judicial case management process.

[40] The Defendant's conduct in both cases falls short of what is required of a litigant seeking to finalise the cases. In both cases, the Defendant either makes bare denials on the issues or has no instructions. Were it not for the Plaintiffs' failure to comply in some respects, I would have issued a punitive cost order against the Defendant.

[41] In the premises, I make the following order:

41.1 The matters are not trial-ready.

41.2 The parties are directed to hold a new case management conference within 10 days of this order and to appear before a case management judge 10 days thereafter, having compiled a joint statement which complies with sub-rule (9)(a)(ii).

41.3 The Defendant is ordered to pay costs on a party-and-party High Court scale C.




**T S NGWENYA AJ
ACTING JUDGE OF HIGH COURT,
MPUMALANGA, MBOMBELA**

Date of hearing: 05 JUNE 2025

Date of judgment: 21 JANUARY 2026

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