

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case No: A2025-018626

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
30 April 2026	
DATE	SIGNATURE

In the matter between:

LUUS, LOUIS

Appellant

and

ROAD ACCIDENT FUND

Respondent

This judgment and the order incorporated herein is handed down electronically by circulation to the parties' legal representatives by e-mail and uploading to CourtOnline.

JUDGMENT

MOULTRIE, J

- [1] This is an appeal against the decision of the court *a quo* dismissing the appellant's claim against the respondent in terms of section 17(1) of the Road Accident Fund Act, 56 of 1995 ("the RAF Act") for damages arising from a

motor vehicle accident that occurred on 22 July 2017.

Condonation

- [2] The respondent gave no indication that it had any intention of participating in the appeal until the day before the hearing when the State Attorney delivered heads of argument together with an unnecessary "notice to oppose". The filing of the heads of argument was provisionally accepted on condition that the respondent would formally apply for condonation.
- [3] In the application that was subsequently delivered, the deponent explains that the matter had previously been dealt with by a firm of attorneys which had not returned the file after its mandate was terminated in 2020, together with those of all the other private attorneys on the respondent's panel. The respondent had then *"implemented a new model, instructing the state attorneys' offices in matters as they were brought to the attention of the Respondent particularly as they appeared on the court rolls"*, at which time the allocated claims handler was expected to instruct the State Attorney. Although the deponent acknowledges that the notice of appeal and the notice of set down were both delivered to the respondent's offices by hand for the claim handler's attention and served on his email address during February and December 2025 respectively, she states that he had been placed on special leave *"together with a host of other personnel"* and left the employ of the respondent in approximately February 2024, at which time his email address had been deactivated. The consequence was that the appeal was only brought to the attention of a responsible person and referred to the State Attorney when it appeared on the roll shortly before the hearing.

- [4] In my view, the respondent's failure to allocate a new claims handler and to instruct attorneys sooner may be excused in light of the fact that the last activity on the matter prior to the departure of the claims handler would have been the receipt of the application for leave to appeal in February 2022 and I do not think it would have been unreasonable for the respondent to assume, some two years later, that the matter had become dormant. Furthermore, given that the appellant claims no prejudice as a result of the late delivery of the heads of argument and has delivered a notice to abide the condonation application, and since it would in no way serve the interests of justice for this Court to ignore legal submissions, I am satisfied that the condonation application should be granted. The respondent rightly seeks no order as to costs and none will be granted.

The pleadings, the trial and the judgment of the court a quo on the merits

- [5] The appellant pleads the occurrence of the accident in the following terms:
5. *On or about 22 July 2017 at approximately 21h20 and at or near the intersection of Swartkoppies Road And Potgieter Street, Alberton, Gauteng a motor vehicle accident occurred between a grey Volkswagen Polo [...], driven at the time by the Plaintiff, and a white Ford Bakkie [...], and an unidentified third motor vehicle who's particulars and the particulars of the driver and owner thereof are to the plaintiff unknown.*
 6. *The motor vehicle accident aforesaid was caused by the negligent driving of the driver of the unidentified motor vehicle in that he/she was negligent in one of more or all of the following respects:*
 - 6.1 *failed to keep a proper lookout;*
 - 6.2 *Failed to apply brakes timeously or at all;*

- 6.3 *failed to have due regard to other road users in particular to the Plaintiff;*
- 6.4 *travelled at an excessive speed under the circumstances;*
- 6.5 *entered Swartkoppies Road, at high speed and forced the Plaintiff to take evasive action, thereby causing the Plaintiff to collide with the Ford Bakkie.*

[6] The respondent defended the action, delivered its plea (which included a denial of both paragraphs quoted above, and an alternative plea of sole or contributory negligence on the part of the appellant) and participated in the pre-trial procedures, pursuant to which the merits and quantum were separated. However, the respondent failed to appear at the trial, which proceeded in terms of Rule 39(1) by means of a virtual hearing.

[7] The learned acting judge who presided *a quo* summarised the evidence adduced at the trial in her judgment as follows:

[7] The plaintiff was the only witness to lead evidence in support of his case. His evidence was brief and cursory. He testified that that collision occurred on Swartkoppies Road and Potgieter Street on 22 June 2017 at approximately 21h20. He clarified the date as being 22 July 2017 when led on this point by his representative, Mr Kok. He testified that he was travelling from his home to the hospital to pay a deposit because his wife was expecting their baby. He was driving a grey VW Polo motor vehicle on the right hand side of three lanes. He was in fact in the far right lane of these three lanes.

[8] The plaintiff testified that he approached a robot controlled intersection and the lights were green in his favour. He was looking forward at the intersection and then he tried to swerve to avoid a vehicle that just came out of nowhere. As a result of this maneuver his vehicle went over the middle Island and into oncoming traffic where it collided with another car. The unidentified vehicle came from his left and he tried to avoid it by swerving to the right over the middle island into oncoming traffic. He was travelling at under 70 km/h and he

was looking forward at the time.

[9] On questioning by the court regarding whether the unidentified vehicle forced him to perform evasive action, his response was that he did not know what happened and it is a mystery to him. This unidentified vehicle just drove off after it caused him to swerve to the right as he did.

[10] This represented the totality of the plaintiff's evidence. No photos of the scene, videos or sketch plan was presented, nor were any corroborating witnesses called to adduce evidence in support of the plaintiff's version.

- [8] Whilst recognising that the appellant's evidence was uncontested, the judgment indicates that the learned acting judge had "*difficulty accepting*" the appellant's "*brief, cursory and insubstantial*" testimony, and that she ultimately found it to be "*unsatisfactory and unreliable*" on the basis that ...

... it seems unlikely that a person would be travelling to a hospital at 21h20 on a Saturday night in order to pay a deposit for the delivery of a baby. The plaintiff's wife could have explained why this was of the utmost urgency at that time on that day or the plaintiff could have elaborated on this point. It was unclear where this unidentified vehicle actually appeared from and the plaintiff testified that he approached an intersection without considering any of his surrounds but for what was directly ahead. It is also not clear why no corroborating evidence was adduced to support the plaintiff's version.

- [9] The judgment also records that these perceived deficiencies were not addressed even though the learned acting judge had chosen to "*consider the documentation lodged by the plaintiff, with the RAF, in support of his claim*", namely an accident report completed by the driver of the Ford bakkie and an affidavit deposed to by the appellant as required by section 19 of the RAF Act. As to the basis for doing so, the judgment simply records that these documents had been "*lodged with the RAF and again delivered to the RAFs attorneys in July 2018 in response to a Notice in terms of Rule 35(14)*". The court *a quo*

noted that the Ford driver's accident report did not refer to the unidentified vehicle and that there had been no "*follow up counter statement provided by or from the perspective of the plaintiff*". The court observed that the appellant's section 19 affidavit "*makes no reference to Potgieter Street or a robot controlled intersection*" and that it states instead that the unidentified vehicle "*approached Swartkoppies Road from the off ramp of the R59*", to which there was no reference during the appellant's oral evidence.

- [10] The judgment concluded that the appellant had failed to discharge "*the onus of establishing his case in respect of liability*", particularly "*regarding the negligence of the driver of the unidentified vehicle*". In other words, the learned acting judge considered that the appellant had failed to adduce evidence showing on a balance of probabilities that the accident had, even partly,¹ been caused by the negligent driving of the driver of the unidentified vehicle.

The absence of the record, the notice of appeal, and the parties' contentions on appeal

- [11] The appellant sought, but was refused, leave to appeal by the trial court, and the appeal came before this court pursuant to leave being granted by the Supreme Court of Appeal.

- [12] In the notice of appeal delivered in terms of Rule 49(2), it is noted that no transcript of the appellant's evidence before the trial court is available, and that it has not been possible to reconstruct any record thereof.² Notwithstanding

¹ The appellant bears no onus in relation to the pleaded defence of contributory negligence: see, for example *Fox v RAF* [2018] ZAGPPHC 285 (26 April 2018).

² Two affidavits deposed to by the appellant's attorney and delivered shortly before the appeal hearing indicate that his investigations revealed that only the introductory portion of the trial at

this, a number of factual allegations is identified in the notice of appeal as forming part of the appellant's "*undisputed testimony*" – even though they either contradict, or are not referred to in, the court *a quo*'s summary.³ Recognising this, the notice of appeal proceeded to suggest that the appellant intended to "*rely on the affidavit and the allegations set out in his application for leave to appeal [i.e. to the Supreme Court of Appeal] ... to place facts before the court to substantiate his appeal read with the decided facts in the judge's judgment now on appeal*" and would request this court to accept this evidence "*as if part of the original record*". It is also indicated that the appellant will, "*if found to be necessary*", "*seek leave to adduce further evidence at the hearing of this appeal when the matter is heard ..., either viva voce or on affidavit*".⁴

[13] This somewhat unorthodox approach was abandoned in the appellant's heads of argument. Instead, it was submitted that "*[i]nsofar as the Court of Appeal is of the view that the record of proceedings in the court a quo is critical, then the appellant would submit that the matter should be referred for a rehearing before another judge*".

which counsel introduced himself had been recorded, and that no recording was made of the oral evidence given by the appellant. He also states that he has established that neither the appellant's previous attorney nor the learned acting judge *a quo* was able to furnish any notes of the unrecorded testimony.

³ For example, the appellant's SCA affidavit states that he testified during the trial that he approached the intersection "*whilst keeping a lookout*" and that he sustained serious injuries in the accident. The appellant also contends in the SCA affidavit that the trial court "*completely misunderstood*" his testimony regarding the purpose of the hospital deposit. He alleges that his evidence was that he was going to the hospital to pay a deposit not "*because his wife was expecting their baby*" as recorded in the court's summary, but because she had been admitted to hospital with a pregnancy complication that required emergency treatment, and he needed to pay a cash deposit for her treatment "*immediately*".

⁴ This is unsurprising given that the content of the appellant's SCA affidavit does not substantiate the notice of appeal in at least one instance: whereas the notice of appeal states that the appellant's "*undisputed testimony*" had been that the unidentified vehicle entered the intersection "*at high speed*", no such statement is either made on oath in the SCA affidavit or recorded in the court's summary of the appellant's testimony.

[14] The appellant's counsel nevertheless proceeded to argue that the appeal should succeed on the basis that:

- a. even as recorded in the judgment, the appellant's testimony was neither unreliable nor insufficient to establish the respondent's liability; and
- b. notwithstanding that the court *a quo* had improperly considered the accident report and the section 19 affidavit and unfairly relied upon them to make credibility findings against the appellant without giving him an opportunity to explain the apparent discrepancies, these documents were "*in any case in [his] favour*".

[15] On the other hand, the respondent's representative sought to persuade us to dismiss the appeal on the basis that, if the appellant's testimony had been correctly summarised in the judgment, the court *a quo* had correctly rejected it - especially in view of the cautionary rule applicable to single witnesses. She argued that the content of the accident report and the section 19 affidavit were not relied upon by the court *a quo* in reaching her conclusion. Finally, she pointed out that if the testimony given by the appellant is correctly summarised by the court *a quo*, then the appeal should in any event be dismissed because the appellant had evidently failed to establish that he suffered any bodily injury resulting from the alleged negligent driving. Notably, the respondent did not seek to suggest that the court *a quo*'s summary of the appellant's testimony was in fact accurate.

Analysis

[16] In my view, careful analysis of the judgment reveals that neither of the

arguments advanced by the appellant is sustainable on the basis that the appellant's oral testimony is accurately recorded in the judgment of the court *a quo*.

[17] In the first place, if it is to be accepted that the appellant's testimony was indeed correctly summarised in paragraphs 8 and 9 of the judgment, then I cannot fault the court *a quo*'s finding that it was unsatisfactory and unreliable in material respects.

[18] On the court's description of the appellant's evidence, it is apparent that he was ambivalent under questioning by his own representative as to whether "*he was looking forward at the intersection and then he tried to he swerve to avoid a vehicle that just came out of nowhere*" (i.e. he did not see the unidentified vehicle at all) or whether the unidentified vehicle "*came from his left and he tried to avoid it by swerving*" (i.e. he did see it, coming from his left). To make matters worse, the court's summary records that "*on questioning by the court*" the appellant testified that "*he did not know what happened and it is a mystery to him*". Furthermore, as the respondent rightly argues, the fact that the traffic light was green for the appellant does not necessarily mean that it was red for the unidentified vehicle, or that it was obliged to stop, or that the appellant had right of way. Any of these conclusions might be incorrect, depending on the layout of the intersection, which was not sought to be proved by the appellant at the trial.

[19] Secondly, although I accept that it was inappropriate for the court *a quo* to have considered the accident report and the section 19 affidavit without them having

been adduced into evidence (whether they were hearsay or not),⁵ I agree with the respondent that the learned acting judge did not rely on these documents in reaching her conclusion that the appellant failed to establish causal negligence on the part of the unidentified driver. It is apparent from the judgment not only that the court *a quo* contemplated that "*a simple explanation*" might well exist for the "*discrepancies*" that she identified between these documents and the appellant's *viva voce* evidence, but that she ultimately elected to ignore their contents, and to evaluate the appellant's oral testimony on its own terms. She expressly observed that to "*reconcile*" the discrepancies "*and to try fill in the incomplete picture presented by the plaintiff will entail a fair amount of conjecture and speculation*" and that it was "*not the task of this court to speculate on the manner in which the collision occurred because of the paucity of factual evidence adduced by plaintiff*" before returning to the other deficiencies that she identified in the appellant's testimony.

[20] It is therefore apparent that the accuracy of the court *a quo*'s summary of that testimony is indeed "*critical*" to the determination of the appeal, as contemplated by the appellant and referred to in paragraph [13] above.

[21] This brings the matter 'full circle' and places the appellant's criticisms of the court *a quo*'s summary of his testimony into sharp focus. The Supreme Court of Appeal has held that where a trial court's findings of fact are disputed in circumstances where it is not possible to reconstruct the record of evidence, fairness compels an appeal court to remit the matter to the trial court for a

⁵ cf. the recent judgment of this court, per Strydom J, in *Shoreline Auctioneers CC v City of Johannesburg and Another* (unreported, Gauteng Division, Johannesburg Case no. A2024-056855, 24 April 2026) paras 24 to 29.

hearing *de novo* before a different judge, and that failure to do so would constitute a serious misdirection on the part of the appeal court.⁶ This is the path that we are obliged to follow here.

Conclusion, costs and order

[22] In conclusion, the appeal falls to be decided on the basis of the inadequacy of the record of the proceedings before the court *a quo*, and the impossibility of reconstruction thereof in circumstances where its findings of fact are disputed.

[23] Given that neither party has been granted the primary relief sought by it in the appeal and, given that the circumstances underpinning this court's decision on appeal were not of either of their making, it is appropriate that the wasted costs of the trial before the court *a quo* and the costs of the appeal (including the costs in the unsuccessful application for leave to appeal) should be costs in the cause.

[24] I make the following order:

1. The respondent's application for the condonation of the late filing of its heads of argument is granted, with no order as to costs.
2. The appeal is upheld and the order of the court *a quo* is set aside.
3. The matter is remitted to the trial court to start *de novo* before a different presiding judge.
4. The wasted costs of the trial before the court *a quo* and the costs of the appeal (including the costs in the unsuccessful application for leave to

⁶ *Maravha v Minister of Police* 2024 (4) SA 84 (SCA).

appeal) shall be costs in the cause.



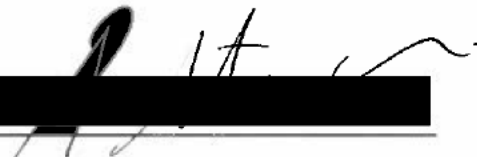

RJ MOULTRIE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

I agree.




FHD VAN OOSTEN
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

I agree.




R STRYDOM
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Date of hearing:	23 February 2026
Date of judgment:	30 April 2026
For the Appellant:	I Strydom instructed by Leon JJ van Rensburg Attorneys
For the Respondent:	S Ameersingh instructed by the State Attorney, Johannesburg