

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA



Case number: 2020-35091

Date of hearing: 20 August 2026

Date delivered: 27 August 2026

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHERS JUDGES: YES/NO
(3) REVISED
DATE 27/8/26
SIGNATURE

In the application of:

E[...] A[...] O[...]

personally and obo K[...] O[...]

and M[...] T[...] V[...] R[...]

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT

SWANEPOEL J:

[1] The plaintiff is the biological parent of K[...] O[...] (“K[+]”), a 15 year-old girl who was born on 4 December 2010, and M[...] v[...] R[...] (“M[+]”), a 10 year-old boy who was born on 28 September 2015. She claims against the defendant for loss of support for herself and her two children, pursuant to the death of her fiancé, Mr. T[...] v[...] R[...] (“the deceased”), in a motor vehicle accident on 27 August 2016.

[2] The only issue in dispute is whether the deceased had a duty of support in respect of the plaintiff and of K[...]. Should I find in favour of the plaintiff, the rest of the previously disputed issues are common cause. The quantum of the claim has been agreed between the parties. The claim in respect of M[...] is not disputed in any respect.

[3] The facts are common cause. The plaintiff met the deceased during or about 2012. They became involved in a romantic relationship, and during 2013 the plaintiff and K[...] moved to Mokopane to live with the deceased. K[...] had been born from a previous relationship between the plaintiff and an unidentified person. K[...]’s biological father never played any role in her life. He had no contact with her, had never paid maintenance, and seems to have disappeared altogether from the plaintiff and K[...]’s lives.

[4] After the plaintiff moved in with the deceased, he was the sole breadwinner. He enjoyed lucrative employment with the Anglo Platinum Mine, and he was able to financially provide for the entire family’s

needs. The plaintiff never worked during the period that she lived with the deceased. The deceased paid for K[...]’s pre-schooling, he provided for all of the family’s material needs, and both the plaintiff and K[...] were dependants on the deceased’s medical aid scheme. The plaintiff had a bank card for the deceased’s bank account, and she was

[5] The plaintiff testified that she had had a discussion with the deceased, and that he had undertaken to care for her and K[...] until death.

[6] During November 2015 the plaintiff and the deceased were engaged to be married. The deceased purchased an engagement ring for the plaintiff which contained 27 diamonds. The number ‘7’ evidently bore some significance for the plaintiff and the deceased, because they also agreed to be married in 2017. They had agreed to be married on a farm where the deceased’s mother resided.

[7] For all intents and purposes, the deceased and the plaintiff lived as husband and wife, initially with their child K [...], and later also with M[...] after his birth in 2015. All of their friends and family were aware of their intention to marry, and all regarded them as a nuclear family. The deceased regarded K[...] to be his own daughter. She called him “Pappa” in Afrikaans.

[8] None of the aforesaid facts were challenged. The defendant cross-examined the plaintiff on the lack of a written agreement to support the plaintiff and her daughter, an obvious absurdity because I

have never heard of anyone deciding that it is necessary to record such a relationship in writing. The defendant also made much of the fact that M[...] was the deceased's sole beneficiary on his Provident Fund. Nothing turns on this fact, and there may have been many reasons why M[...] was the sole beneficiary.

[9] Having heard the evidence I was curious why the defendant had chosen to oppose the claim. The evidence seemed to establish conclusively that the deceased had a duty of support towards the plaintiff and both her children. The defendant had not called witnesses, and had not filed heads of argument. I thought it proper to provide the defendant with a further opportunity to file heads of argument so that I could properly understand its opposition to the claim.

[10] The defendant cited *Paixão v Road Accident Fund*¹ in arguing that there had to have been an express or tacit agreement that bound the deceased to support the plaintiff and K[...]. The defendant referred extensively to affidavits that the plaintiff had submitted in support of her claim, arguing that the affidavits do not make out a case for a duty to support. The problem is that none of these affidavits were placed in evidence, and I cannot take cognizance of any of these arguments.

[11] Furthermore, the defendant argued that the fact that M[...] was the sole beneficiary of the Provident Fund, justified a conclusion that the deceased did not intend to support the plaintiff and her daughter permanently. I reject that argument. The fact is that the plaintiff

specifically testified that during a discussion with the deceased, he undertook to care for the plaintiff and K[...] permanently. That evidence was never challenged, and having been left unchallenged, the defendant cannot now argue to the contrary.

[12] The defendant has not taken issue with the authorities relied upon by the plaintiff. In *Paixão (supra)* the Supreme Court of Appeal said:²

“[14] Although the precise scope of the dependants’ action is unclear from the writings of the old Roman-Dutch jurists, there is a strong suggestion that it was not confined only to these classes of persons to whom the breadwinner had a legal obligation to support, but it was also available to those whom the deceased ‘was accustomed to support from a sense of duty’. In *Amod v Multilateral Motor Vehicle Accidents Fund* Mahomed CJ put it thus:

‘[7] The precise scope of the dependant’s action is unclear from the writings of the old Roman-Dutch jurists. De Groot extends it to those whom the deceased was accustomed to aliment *ex officio*, for example his parents, his widow, his children.... This and other passages in De Groot’s writings perhaps support his suggestion that the action was competent at the instance of any dependant within his broad family whom he in fact supported whether he was obliged to do so or not but this is unclear. The same uncertainty but tendency to extend the dependant’s action to any dependant enjoying a close familial relationship with the breadwinner is also manifest in Voet 9.2.11

who seeks to accord the dependant's action to the breadwinner's wife, children and the like (*uxori, liberis, similibusque*).'

[15] However, as this court observed in *Amod*, the old authorities appeared to be anxious to recognize the existence of a dependants' action for the 'family' members of the deceased. But it cannot be stated conclusively that they intended only relationships by blood or marriage to fall within its ambit. And, given the *sui generis* character of the remedy, there seems no proper reason to restrict it only to family or blood relationships when social changes no longer require this."

[13] In *Metiso v Padongelukke Fonds*³ the court held that a binding offer to support the children was sufficient to ground a duty of support because to do so was consistent with the morality of society.

[14] In *JT v Road Accident Fund*⁴ the Court said⁵ that "*The right to support that may arise does not arise because it is a spousal benefit but rather because the obligation was assumed in a relationship akin to a family relationship.*" Sutherland J went on to say:⁶

"[26] It seems to me that these cases demonstrate that the common law has been developed to recognize that a duty to support can arise, in a given case, from the fact-specific circumstances of a proven relationship from which it is shown that a binding duty of support was assumed by one person in favour of another. Moreover, a culturally imbedded notion of 'family', constituted as being a network of relationships of reciprocal nurture and support, informs the common

law's appetite to embrace, as worthy of protection, the assumption of duties of support and the reciprocal right to claim support, by persons who are in a relationship akin to that of a family."

[15] Applying these principles to this case, there is no doubt that the deceased maintained the family unit, and accepted the obligation to do so indefinitely. I find, therefore, that the deceased had assumed a duty to support the plaintiff and her daughter K[...].

[16] The plaintiff and the defendant presented me with a draft order that is to be made an order of court, should I find in favour of the plaintiff on the issue of the deceased's duty to support the plaintiff and her daughter. The draft order provides, inter alia, for the creation of two separate trusts for the protection of the funds to be paid to M[...] and K[...].

[17] **Consequently, I make the following order:**

The draft order marked "X" is made an order of court.

**SWANEPOEL J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA**

Counsel for the plaintiff:

Adv. P Vermeulen SC

Attorney for the plaintiff:

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Attorney for the defendant:

The State Attorney

Heard on:

20 August 2026

Judgment on:

27 August 2026

¹ [2012] ZASCA 130

² At para [14]

³ 2001 (3) SA 1142 (T)

⁴ 2015 (1) SA 609 (GJ)

⁵ At para [24]

⁶ At para [26]