

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 136395/2024

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO THE JUDGES: ~~YES~~/NO

(3) REVISED.

DATE: 2/06/26

SIGNATURE:

In the matter between:

SHABALALA, SMANGELE WHITNEY

PLAINTIFF

and

THE ROAD ACCIDENT FUND

DEFENDANT

Delivered: This judgment was prepared and authored by the Judge (Acting) whose name is reflected and is handed down electronically by email and by uploading it to the electronic file of this matter on caselines. The date for hand down is deemed to be 24 August 2026.

Summary:

Action for damages against the Road Accident Fund (RAF). The Plaintiff to discharge onus to prove negligence against the insured driver on balance of probabilities.

Evaluation of Evidence: Material discrepancy in the Accident Report Form, Hospital Records and the Plaintiff's affidavit deposed to in compliance with Section 19(f) of the Road Accident Fund Act 56 of 1996, as amended "the Act".

Evidence tailored.

Plaintiff's evidence must be credible, consistent and reliable.

- Held: (1) The application for default judgment is refused.
(2) There is no order as to costs.
(3) This judgment is to remain on caselines under Case Number 136395/2024 until this matter is finalised.

JUDGMENT

LEOPENG AJ

INTRODUCTION

[1] The Cambridge, Collins and Oxford Dictionaries define discrepancy as a difference or inconsistency between two or more things that should be the same.

Furthermore, tailored evidence refers to testimony or facts that have been manipulated, coached or fabricated to fit a desired narrative.

This is what this matter is all about.

[2] Even in the absence of the defendant in default judgment applications, the plaintiff still bears onus of proof of negligence on balance of probabilities against the insured driver, whether it be identified or unidentified.

[3] Where there is apparent discrepancy from the documents filed in the dispute between the parties, *in casu*, Accident Report ("AR") Form, the plaintiff's affidavit

deposed to in compliance with Section 19(f) of the Act, and City Hospital records (clinical notes), a Court may exercise a discretion to hear evidence in respect of such a discrepancy. In such an instance, a court may, after hearing and evaluating evidence tendered by and on behalf of the plaintiff, if satisfied, and the discrepancy is not material, grant default judgment against the defendant, if not satisfied and the discrepancy is material, refuse default judgment and make such an order as it deems fit.

FACTUAL MATRIX.

[4] The plaintiff instituted a claim for damages against the Road Accident Fund, "the defendant", for injuries sustained in a motor vehicle collision which took place on 05 June 2022. The summons was properly served by the Sheriff on the defendant on 03 December 2024.

[5] On 29 September 2025, the State Attorney (RAF), Pretoria, electronically served the notice of intention to defend.

[6] On 18 November 2025, the plaintiff served the notice of bar.

[7] The plaintiff timeously served the notice of set down for the hearing of the application for default judgment to be heard on 01 April 2026.

PLAINTIFF'S CASE AS PLEADED.

[8] The plaintiff alleges in paragraph 4 of the particulars of claim that:

"on or about the 05th June 2022 at approximately 24h00 at or near at M4 Road, Victoria Embarkment, KwaZulu-Natal Province, a collision occurred between a motor vehicle with unknown registration letters and numbers (hereinafter referred to as insured vehicle) and a motor vehicle with registration letters and numbers N[...] driven by the plaintiff".

[9] The grounds for alleging the (*unidentified*) insured driver's negligence are listed in paragraph 5 of the particulars of claim.

[10] In support of the plaintiff's claim against the defendant on the aspect of merits, *inter alia*, the following were served on the defendant:

- (a) Clinical notes (records) of City Hospital,
- (b) Accident Report (AR) Form completed by Mr H.H Zinyana, and
- (c) Plaintiffs 19(f) affidavit.

MATERIAL DISCREPANCY

[11] Suffice to mention that there is an apparent material discrepancy in the clinical notes (records) of City Hospital, Accident Report (AR) Form, and the plaintiffs section 19(f) affidavit. I list the discrepancy ad seriatim hereunder:

[11.1] Clinical Notes (Records) of City Hospital¹

The following is stated:

How the injury occurred? Please give full details:

"Patient Jost control/ (sic) and she knocked a wall and a car was on fire she was help{sic} by unknown people"

[11.2] Accident Report (AR) Form²

Under the Brief Description of the Accident the following is recorded:

"It is alleged that the driver of MV "A" was travelling North on the M4 North upon taking the off-ramp to Victoria Embarkment she collided with the concrete wall separating M4 and the off-ramp to Victoria Blockmen the vehicle caught fire,

¹ Caselines 005(3)-17.

² Caselines 005(13)-260.

other motorists assisted the driver to City Hospital, family called and arranged the tow "

[11.3] Plaintiff's Section 19(F) Affidavit³.

Paragraph 3 of the plaintiff's section 19(f) affidavit, states:

"On or about the 05th of June 2022 at approximately 24h00 at or near M4 North, Victoria Blockmen, KwaZulu- Natal Province, I was involved in an accident.

An accident occurred wherein I was driving a motor vehicle with registration letters and numbers N[...], where an insured motor vehicle with unknown letters and numbers bumped me from behind and veered off the road, colliding with a concrete divider".

HEARING OF THE APPLICATION FOR DEFAULT JUDGMENT.

[12] On 01 April 2026, Mr Mosala appeared on behalf of the plaintiff seeking a default judgment order against the defendant in respect of the aspects of the liability and quantum. There was no appearance of behalf of the defendant. I brought to Mr Mosala's attention the discrepancy mentioned in paragraph 11 *supra*. I mentioned that considering this discrepancy, I will only deal with and make a finding on the aspect of merits only, that is, the negligence of the alleged unidentified insured driver, under Section 17(1)b of the Act.

[13] In exercising a discretion in terms of Rule 31(2)(a) of the Uniform Rules of Court, I directed the plaintiff's legal representative(s) to contact Mr H.H Zinyana with Service No 3793206, who completed and signed Accident Report (AR) Form referred to in the preceding paragraphs, to present himself to Court.

[14] In addition, I unequivocally directed that the plaintiff's legal representative(s) should not discuss with Mr Zinyana the contents of the Accident Report (AR) Form, in particular the "Brief Description of the Accident" and the plaintiff's alleged version of how

³ Caselines 005(12)-258.

the motor vehicle collision under review took place as pleaded, and as appearing in the plaintiff's section 19(f) affidavit. The matter stood down to the 09 April 2026.

[15] On 09 April 2026, after Mr Zinyana took a stand and was duly sworn in, I enquired from him whether there was any discussion on the merits of matter, and in particular the contents of the Accident Report (AR) Form between him and the plaintiff's legal representative(s), any day from or after 01 April 2026, pursuant to my directive that he must present himself to Court. His answer was in the affirmative, simply put, he said, he was asked about the discrepancy in the Accident Report (AR) Form under "Brief Description of the Accident", and the plaintiff's account of how the motor vehicle collision under review took place. I assume this refers to what is contained in plaintiff's section 19(f) affidavit and paragraph 4 of the particulars of claim.

I find this conduct of the plaintiff's legal representative(s) improper. This is clearly contrary to, and with complete disregard of the directive I issued in paragraphs 13 and 14 supra.

EVIDENCE TENDERED AND EVALUATION THEREOF

I now turn to deal with their evidence presented and evaluation thereof.

The evidence of Mr Zinyana.

[16] Mr Zinyana's salient testimony is summarised as follows:

- he attended the scene of the motor vehicle in question, and obtained the information of what is stated under "Brief Description of the Accident", of Accident Report (AR) Form from the homeless people at the scene of the accident in question, and did not ask their names, addresses and contact numbers, as he says, they were homeless people,

- he was told by the same homeless people at the scene of the accident that the plaintiff was assisted out of her motor vehicle and taken to the hospital,
- he obtained the plaintiff's names, identity number and the details of her motor vehicle that he filled in the Accident Report (AR) Form from her family members,
- he knew the plaintiff personally as they were/are colleagues at eThekweni Municipality (Traffic Department),
- he was also involved in a motor vehicle collision on 06 June 2022 on his way to hospital to take the statement from the Plaintiff as to how the motor vehicle accident she was involved in took place, and as a result he did not arrive at the hospital, and therefore could not take a statement from the plaintiff,
- he did not obtain and record the plaintiff's version of how the motor vehicle collision she was involved in took place in the Accident Report (AR) Form, and
- he received a call from the plaintiff after her discharge from hospital, she wanted to give him her version of how the motor vehicle accident she was involved in took place, but by then, according to him, she informed her that the Accident Report (AR) Form was already completed and sent to the Department of Transport.

[17] The plaintiff's salient testimony is summarised as follows:

- she was driving a motor vehicle with registration letters and numbers N[...], and an insured motor vehicle with unknown letters and numbers bumped her from behind and she veered off the road, colliding with a concrete divider, and sustained bodily injuries,

- she was assisted by other people out of her motor vehicle and taken to hospital,
- she was discharged from hospital after three (3) or so days, and called Mr Zinyana, as they knew each other from work, with the intention of giving him her version of how the motor vehicle collision she was involved in took place,
- Mr Zinyana informed her that the Accident Report (AR) Form was already sent to the Department of Transport,
- she first saw and read contents of the Accident Report (AR) Form, in particular what is stated in the Brief Description of the Accident, when her attorneys requested and obtained it from "Traffic / Transport Department during the lodgement process of her claim against the Defendant.

[18] I pause to mention that she did not give a satisfactory, candid and convincing answer when I asked, regard to her as a Traffic Authorised Officer, why on reading what is stated in the Brief Description of the Accident in the Accident Report (AR) Form, she did not take it up with Mr Zinyana in an attempt to state how the collision actually took place before her attorneys served it on the defendant in the prosecution of her claim.

CONCLUSION

[19] In evaluating the evidence of Mr Zinyana and the Plaintiff, I find it to be tailored in many respects, neither credible nor coherent, this is compounded by the material discrepancy mentioned in paragraph 11 *supra*.

[20] I find:

[20.1] what is stated in the City Hospital records (clinical notes) and the Brief Description of the Accident in the Accident Report (AR) Form, probable, and therefore conclude that Plaintiff was involved in a single motor vehicle accident,

[20.2] what is stated in the plaintiff's section 19(f) affidavit, and the oral evidence of the Mr Zinyana and the Plaintiff, improbable,

[21] Consequently, I find that the plaintiff failed to prove negligence of the alleged unidentified insured driver.

[22] Even if I am wrong in finding that the discrepancy mentioned in paragraph 11 *supra* is material, furthermore in the evaluation of the evidence tendered, and consequently that the plaintiff failed to prove negligence of the alleged unidentified insured driver, refusal to grant default judgment does not have the final effect in the main dispute between the parties, rather a simple interlocutory order⁴.

ORDER.

[23] I make the following order:

1. The application for default judgment is refused.
2. There is no order as to costs.
3. This judgment should remain on caselines until this matter finalised.

P.M LEOPENG

⁴ First Rand Bank Limited TIA First National Bank v Mokaleng (2016) ZASC 169. Candice v Road Accident Fund (2025) ZAGPJHC 310. Cowen & Others v Norton & Others (2025) ZAGPJHC 142.

**ACTING JUDGE OF THE HIGH COURT,
GAUTENG DIVISION, PRETORIA**

Appearances:

For the Plaintiff: Adv C. Mosala

Instructed by: Sontsele Attorneys, Pretoria
Suite 423 217 Van Erkom Building
Crn Pretorius & Paul Kruger Streets
Pretoria.
Tel :082 937 5633
Email: sontsele@gmail.com

For the Defendant: No appearance.

Date of hearing: 01 April 2026 & 09 April 2026.

Date of Judgment: 21 August 2026.