

SOUTH AFRICA / JUDGMENT

# D.M obo B.I.M v Road Accident Fund (39665/19) [2024] ZAGPPHC 66 (26 January 2024) [2024] ZAGPPHC 66

## COURT

North Gauteng High Court, Pretoria

## BEFORE

Khwinana

## CASE / FILE NUMBER

39665/19

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**Policy****IN****THE HIGH COURT OF SOUTH AFRICA****GAUTENG****DIVISION, PRETORIA****CASE NUMBER: 39665/19****(1)****REPORTABLE: [N]****(2)****OF INTEREST TO OTHER JUDGES: [N]****(3)****REVISED: [N]****(4)****Signature:****Date:**

26 January 2024

In

the matter between: D[...]  
M[...]  
OBO  
B[...] I[...] M[...]  
PLAINTIFF  
AND  
ROAD  
ACCIDENT FUND  
DEFENDANT

## JUDGMENT

KHWINANA AJ

## INTRODUCTION

- [1] The plaintiff D[...] M[...] is an adult female whose has instituted a claim on behalf of her minor child B[...] I[...] M[...] against the defendant pursuant to a motor vehicle accident on 20 FEBRUARY 2016 wherein the minor child was a pedestrian. The Minor was doli incapax at the time of the accident and liability have been conceded.
- [2] The Plaintiff issued Summons on 25th June 2019 against the defendant for the sum of R1 350 000.002 for the following prayers
- \* Hospital Expenses R 50 000.00
  - \* Future Hospital Expenses R 200 000.00
  - \* General Damages R300 000.00
  - \* Future Medical Expenses R 300 000.00
  - \* Loss of Income R 500 000.00.
- [3] The defendant is the Road Accident Fund, a schedule 3A public entity, established in terms of section 2(1) of the Road Accident Fund Act 56 of 1996, with its service office situated at 3[...] I[...] Street, Menlo Park, Pretoria, Gauteng Province. The defendant entered appearance to defend on the 09th July 2020 and delivered a plea on the 30th July 2020.
- [4] I am ceased to determine whether the amendment of the particulars of claim raises a new claim and therefore warrants the notice of intention to defend to be filed despite the plea of the defendant having been struck out and no application for rescission having be made.

## BACKGROUND

- [4] On the 12th May 2021 the plaintiff delivered a notice of motion wherein the application was to compel the applicant to hold a pre-trial conference as the notice to hold a pre-trial had been served on the defendant on the 16th 25th March 2021 and 01st April 2021. The order to compel was granted on the 24th May 2021 against the defendant. On the 23rd November 2022 the application to struck out the defence of the defendant was brought and granted Mnyovu AJ. The defendant was on the 25th November 2022 with the court order.
- [5] The matter had been certified trial ready in relations to merits but not quantum during 02nd September 2020 by Collis J. The notice of set down for hearing on the 26th October 2023 was delivered to the defendant on the 29th June 2022. During the 11th of July 2019 the plaintiff delivered a notice in terms of Rule 36 (4) being hospital records of the minor child.
- [6] The severe pain in the head was depicted on the hospital records. On 9th October 2023 the Plaintiff proceeded to deliver a notice of intention to amend the particulars of claim in particular the amount to read R 8 283 100.00, which amount is made up as follows:
- Hospital Expenses R 50 000.00
  - Future Hospital Expenses R 200 000.00
  - General Damages R2 000 000.00
  - Future Medical Expenses R 300 000.00
  - Loss of Income R5 733 100.00.
- [7] On the 23rd October 2023 the plaintiff proceeded to deliver the amended particulars of claim as the defendant did not object to the intended amendment. On the 12th October 2023 the plaintiff delivered a notice in terms of rule 36 (9) (b ) that a neurosurgeon was going to be called as an expert witness.
- [8] The plaintiff delivered a notice of set down on the defendant on the 29th June 2022 at plaintiff's offices and on the 06th July 2022 via email. defendant had The Defendant submits that the Plaintiff's amendment; namely the insertion of the new paragraphs 8 and 11 opens the Pleadings and the Defendant is allowed to enter litigation once more. The fact that the injuries sustained are still reflected as the Fracture of the right femur and Right hip injury and the head injury is not depicted according to the defendant warrants the notice of intention to be delivered as that is a new claim.
- [9] The plaintiff in reply submits that the medical records which were delivered to the defendant reflected the head injury as far back as 2019 and therefore this is not a new claim. Further that the defendant's plea has been struck out and the effect thereof has to be considered, necessity to uplift the struck out and the effect of the amendment.

## LEGAL MATRIX

[10] In terms of Rule “30A of the uniform rules

*“(1) Where a party fails to comply with these rules or with a request made or notice given pursuant thereto, or with an order or direction made in a judicial case management process referred to in rule 37A, any other party may notify the defaulting party that he or she intends, after the lapse of 10 days from the date of delivery of such notification, to apply for an order—*

- (a) that such rule, notice, request, order or direction be complied with; or
  - (b) that the claim or defence be struck out.
- (2) Where a party fails to comply within the period of 10 days contemplated in subrule (1), application may on notice be made to the court and the court may make such order thereon as it deems fit.”

[11] In Harms, Civil Procedure in the Supreme Court: LexisNexis provides that: “The rule applies only if compliance with the rules is sought and then only if the relevant rule does not have its own inbuilt procedure such as rule 21(4), which provides for an enforcement procedure in the event of a failure to provide particulars for trial.[1]

[112] In terms of Rule 18(12) it is provided that

*“If a party fails to comply with any of the provisions of this rule, such pleading shall be deemed to be an irregular step and the opposite party shall be entitled to act in accordant with rule 30.”*

[13] An example of the use of this rule would be an application to enforce compliance with Rule 35(12), which does not have its own remedy and should be preceded by a Rule 30(A) notice.

[14] In ABSA Bank Ltd v The Farm Klippan[2] 490 CC 5 the Court made it clear that if a provision in the rules provides a specific remedy for non-compliance with the rule, a party need only follow the specific rule and need not give notice in terms of, or follow, Rule 30A.

[15] In Erasmus: Superior Court Practice, Jutastat e-publications CD Rom & Intranet: ISSN 1561-7467 Internet: ISSN 1561-7475 at RS 20, 2022, D1-477 the author submits the following in relation to Rule 35(7):

*“ ‘Failing such compliance, may dismiss the claim or strike out the defence.’ It is submitted that the general requirement of rule 30A(1) that an applicant for an order to compel compliance with a request or notice given pursuant to the rules of court must notify the defaulting party that he intends after the lapse of ten days to apply for the order, does not override but gives way to the special provisions of this subrule relating to an application to compel discovery. It is sound practice for a party to call upon his opponent to remedy a default to comply with the request to make discovery or the notice in terms of subrule (6) and put him to terms before lodging the application under this subrule. In practice the court usually orders that discovery be made or the documents/tape recordings referred to in a notice under subrule (6) be made available for inspection within a time fixed by it and grants leave, in the event of this not being done, to apply on the same papers for the appropriate further relief.”*

[16] In terms of Rule 27 (3)

*“The court may, on good cause shown, condone any non-compliance with these Rules”*

[17] In terms of Rule 30(4)

*“Until a party has complied with any order of court made against him in terms of this rule, he shall not take any further step in the cause, save to apply for an extension of time within which to comply with such order.”*

[18] In terms of Rule 28 (8)

*“Any party affected by an amendment may, within 15 days after the amendment has been effected or within such other period as the court may determine, make any consequential adjustment to the documents filed by him, and may also take the steps contemplated in rules 23 and 30”.*

[19] Rule 21 (4) provides that “If the party requested to furnish any particulars as aforesaid fails to deliver them timeously or sufficiently, the party requesting the same may apply to court for an order for their delivery or for the dismissal of the action or the striking out of the defence, whereupon the court may make such order as to it seems meet.”

## ANALYSIS

[20] In terms of Rule 30A if a party does not comply with the rules, requests, notices, orders, or directions made in a judicial case management process, the other party involved in the case can notify the non-complying party of their intention to take action. This notification is a formal step that indicates the intention to seek a remedy due to the non-compliance.

[21] The party alleging non-compliance must wait for 10 days after delivering this notification. This period allows the defaulting party a chance to comply with the requirements they previously failed to meet. If the defaulting party still fails to comply within these 10 days, the other party may apply to the court for an order. The court then has the discretion to decide on the application.

[22] The court may order either:

- (a) That the rule, notice, request, order, or direction initially ignored be complied with.
- (b) That the claim or defence of the non-complying party be struck out.

[23] According to Harms in "Civil Procedure in the Supreme Court" by LexisNexis, Rule 30A only applies in situations where compliance with the rules is sought and does not apply to rules that have their own specific enforcement procedures. An example given is Rule 21(4), which has a specific procedure for enforcement in cases of failure to provide particulars for trial.

- [24] In essence, Rule 30A provides a mechanism for addressing non-compliance with procedural requirements in legal proceedings, offering a structured approach for seeking court intervention to enforce compliance or penalize non-compliance. This rule highlights the concept of an "irregular step" in legal procedure and how it can lead to the invocation of Rule 30 for remedial action.
- [25] The Absa[3] decision emphasizes that when a procedural rule has its own specific remedy for non-compliance, parties are required to follow that specific remedy. This approach respects the unique provisions laid out in individual rules. This interpretation helps avoid redundant legal steps and streamlines the process of dealing with non-compliance. In cases where a specific rule has its own remedy, there is no necessity to issue a notice under Rule 30A.
- [26] The decision in ABSA Bank Ltd v The Farm Klippan 490 CC[4] rightly underscores the importance of following specific remedies provided in individual procedural rules, instead of defaulting to the general procedures under Rule 30A. This approach enhances efficiency, respects the particularities of individual rules, and contributes to a more streamlined and predictable legal process.
- [27] Rule 27 (3) allows for condonation, it does not automatically excuse non-compliance. A party seeking to invoke this rule is expected to adhere strictly to procedural rules, and condonation is not guaranteed. To seek such relief, an application must be made to the court.
- [28] Rule 30 (4) underscores the importance of complying with court orders. By restricting further participation in the legal proceedings until compliance, it enforces the authority of the court and ensures that orders are taken seriously. In casu the respondent has failed to honour the court order to hold a pre-trial. It is encumbered upon the respondent to invoke the provisions of rule 27(3). It is evident that the respondent has not considered the uniform rules but wishes to be heard.
- [29] In terms of Rule 28 (8) the affected parties have 15 days from when the amendment is made to respond or adjust their documents. This period can be altered if the court determines a different timeframe is appropriate. In casu the amendment was effected and the fact that the respondent's defence has been stuck out remained unaltered.
- [30] Rule 21(4) provides when a party does not provide the requested particulars within the given timeframe or if the particulars provided are insufficient. The party that requested the particulars has the right to apply to the court for relief. This application can be for an order compelling the delivery of the requested particulars or for more severe measures like the dismissal of the action or the striking out of the defence.

- [31] In this case the plaintiff has applied for the defence to be struck out and to date that order has remained against the defendant. The order is within the knowledge of the defendant and despite knowledge the defendant has not brought an application to uplift the court order.

## CONCLUSION:

- [32] The defendant's plea remains dismissed, thereby obligating the defendant to file a motion to dismiss the striking out order. Upon reviewing the implications of the proposed amendment, I find no applicable rule that permits the defendant to file a notice of intention to defend, considering that the defendant's plea has been struck out. The only recourse available to the defendant, under these circumstances, is to submit an application seeking to uplift the aforementioned order.
- [33] The proposed amendment cannot be construed as introducing a new cause of action since the plaintiff's claim arises directly from a motor vehicle accident, and the submitted hospital records pertain to the injuries sustained. It is a well-established principle that the plaintiff is expected to submit medico-legal reports, which will provide a detailed account of the injuries. According to the Uniform Rules, the plaintiff is entitled to file such medico-legal reports.
- [34] In response, the defendant is granted the opportunity to challenge these reports with their own medical experts. Furthermore, the defendant is permitted to subject the plaintiff to additional medical examinations to challenge the veracity of the plaintiff's claims. I concur with the plaintiff's assessment that the defendant is attempting to 'sneak in through the back door' in this matter.
- [35] The conduct of the defendant appears to be a strategic manoeuvre to 'drag their feet,' primarily serving to prolong the litigation, a process which already 'moves at a snail's pace' to secure a trial date. It is imperative that this case be addressed with 'all deliberate speed' to ensure finality. I therefore find that the defendant's notice of intention to defend is an irregular step. Consequently, I order that this case be scheduled on the trial roll, permitting the plaintiff to proceed with a hearing focused on the determination of damages (quantum).

KHWINANA ENB

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

COUNSEL FOR PLAINTIFF: ADV RM PHIRI INSTRUCTED BY: SSD ATTORNEY INC. COUNSEL

FOR DEFENDANT: MS LIZEL SASS INSTRUCTED BY: STATE ATTORNEY DATE OF HEARING: 27

OCTOBER 2023 DATE OF JUDGMENT: 26 JANUARY 2024

- [1] Norman & Co (Pty) Ltd v Hansella Construction Co (Pty) Ltd 1968 (A) SA 503 (T); Houtlands Investments (Pty) Ltd v Traverso

Construction (Pty) Ltd 1976 (2) SA 261 (C).

[2] 2000 (2) SA 211 (W) at 215 A – B. (3) The court may, on good cause shown, condone any non-compliance with these Rules.

[2] 2000 (2) SA 211 (W) at 215 A – B.

(3) The court may, on good cause shown, condone any non-compliance with these Rules.

[3] 2000 (2) SA 211, Epstein, AJ found at 214 I-J

[4] Ibid

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