

SOUTH AFRICA / JUDGMENT

Duduzile v Road Accident Fund (2760/2020) [2025] ZAMPMHC 32 (13 June 2025) [2025] ZAMPMHC 32

COURT

Middelburg High Court, Mpumalanga

BEFORE

Vele

CASE / FILE NUMBER

2760/2020

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IN THE HIGH COURT OF
SOUTH AFRICA
MPUMALANGA DIVISION,
MIDDLEBURG
CASE NO: 2760/2020
REPORTABLE: / NO
OF INTEREST TO OTHER
JUDGES: /NO
REVISED.
DATE: 13/06/2025
SIGNATURE

In the matter between:

SHONGWE JOHANNAH
DUDUZILE
APPLICANT
and
ROAD ACCIDENT
FUND
RESPONDENT

This judgment was
handed down electronically by circulation to the parties and/or
parties' representatives by email. The date
and time for
hand-down is deemed to be 13 JUNE 2025 at 10:00.

JUDGMENT

Vele AJ

- [1] This is an application for leave to appeal against the whole of my judgment and order delivered on 9 December 2024.
- [2] The order I granted was to dismiss the plaintiff's claim on the merits only, as the parties had applied for the separation of merits and quantum. The respondent did not file any heads and filed the notice to abide by the court's decision.

Grounds for appeal

- [3] The applicant's grounds are set out in her application for leave to appeal. I do not wish to repeat them in this judgement, save to highlight that the applicant submits that the court erred in reaching certain conclusions, and further, that I did not exercise the discretion I am meant to exercise judiciously. The grounds for seeking such leave to appeal have been set out in the notice filed on 20 December 2024 and were repeated by counsel in the heads of argument, as well as in his oral submissions.
- [4] At the centre of the applicant's grounds of appeal is the fact that this court dismissed the applicant's merits on the basis that she failed to prove negligence on the part of the insured driver. A further ground of appeal is against the finding that the damages were inconsistent with the vehicle involved in a rear end collision, as the vehicle had damages on the left rear, right front and right mid front. The applicant refers to the Officer Accident Report (OAR), which depicts the applicant's vehicle facing the oncoming traffic, but on the left side of the road.
- [5] The applicant's further ground was that the court failed to apply the principle in *Mnisi v Road Collision Fund and Seven Similar Matters*,^[1] wherein the court per Roelofse AJ (as he then was) held that negligence and causation ought to be determined as part of the trial

on the merits and stated the following:

"Fischer J [in MS v Road Collision Fund [2019] 3 All SA 626 (GJ)] proposes a four-stage inquiry at para 12 of her judgment:

'First: Did the negligence of the third party driver cause the collision? If both plaintiff and third party driver were negligent blame may be apportioned on the basis of a percentage allocation in terms of the Apportionment of Damages Act. (I shall call this first phase the Merits Enquiry).

Second: Did the plaintiff sustain the pleaded injuries in the collision? (This is the First Causation Enquiry)

Third: How have [sic] these proven injuries have affected the plaintiff? (this the Second Causation Enquiry)

Fourth: How should the plaintiff be remunerated for the effects of such injuries on the plaintiff? (this is the Quantum Determination First

Phase).”

- [6] The court must be satisfied that the applicant’s application for leave to appeal has met the requirements of the test set out in section 17(1)(a) of the Superior Courts Act 10 of 2013, namely that the appeal would have reasonable prospects of success or that there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.
- [7] The provisions of section 17(1)(a)(i) have been the subject of interpretation by this court and the superior courts. In determining whether leave should be granted or not the test prescribed by the Superior Courts Act with the use of the word “would” is crucial, as articulated in *Acting National Director of Public Prosecutions and Others v Democratic Alliance, In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others*,^[2] where the court reasoned that the Superior Courts Act has raised the bar for granting leave to appeal. The court made reference to *The Mont Chevaux Trust (IT2012/28) v Tina Goosen & 18 Others*,^[3] which stated the following:

“It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion, see Van Heerden v Cronwright & Others 1985 (2) SA 342 (T) at 343H. The use of the word ‘would’ in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.”

- [8] In *The Mount Chevaux Trust vs Tina Goosen*, it was also held that the wording of section 17(1) raised the bar of the test that now has to be applied to the merits of the proposed appeal before leave should be granted. The applicant now faces a higher and stringent threshold compared to the provisions of the repealed Supreme Court Act 59 of 1959.
- [9] In the present matter, the applicant’s claim is for compensation for personal injuries she sustained as the result of the alleged insured driver’s negligence. In my judgment, I clearly made a finding regarding the case that was pleaded and the case proven by the plaintiff’s evidence, which was not part of her pleadings. The applicant did not bring an application to amend her particulars, nor give reasons for not aligning her particulars of claim with her evidence. I stand by my findings that the current case is distinguishable from *President of the Republic of South Africa and Others v South African Rugby Football Union and Others*.^[4] The applicant failed to put before the court a case that is consistent with her pleadings and failed to give any reason for such

an action. It is an established principle of our law that a party stands or falls by its pleadings, which is not the case here.

- [10] It is incorrect to submit that the respondent's attorney did not cross-examine the applicant regarding the rear-end collision. She was cross-examined at length on this aspect but was not willing to commit to a number of aspects, like how far she had travelled prior to the collision after rejoining the roadway, and how far she was from the lane merging on the left side of the road. She was non-committal in how far behind the robot was. She could not give the reason for her failing to see the traffic travelling behind her, as the road was straight with nothing obscuring the view from behind. The respondent did not give reasons for the failure to call the insured driver, as it is the tendency in majority of its cases.
- [11] Though the applicant's further ground of appeal is that the court erred in admitting the OAR, with the author thereof not testifying, the applicant in paragraph 2.2 of the leave to appeal is relying on the very document to support her case that her vehicle spun around and ended on the right hand side of the road, which is not the case as sketch plan reflects vehicle "B" on the left side of the road facing oncoming traffic, if one considers where the directional arrows are pointing, for the direction of travel. The applicant finds the said document to be admissible if she refers to it, but not in an instance that it is not supportive of her case.
- [12] The OAR was introduced by the plaintiff when she submitted the claim to the Fund, meaning she had no issues with the contents thereof, as at the time it was in line and consistent with her section 19(1)(f) statement. It is incorrect to state that the court erred in taking into consideration the statement submitted to the Fund in support of the claim, as it is the prerequisite for a party who wishes to institute court proceedings for compensation of a claim. This was confirmed in paragraph 9 of her particulars of claim. The Supreme Court of Appeal in *Minister of Safety and Security v Slabbert*,^[5] as referred to in my judgment of 9 December 2024, warned against pleading one case and proving another inconsistent with the pleadings. Pleadings are to give a guide to the opponent as to what case to prepare to deal with.
- [13] The applicant has failed to comply with same and is not addressing it in the leave to appeal. Before calling upon the respondent to respond, the applicant has the onus to put before the court the case that on the balance of probabilities should succeed if the respondent fails to rebut. The applicant has three conflicting statements, all under oath, as to the events that caused the collision resulting in her cause of action.

Conclusion

- [14] Given the fact that I failed to follow the four steps as set out by Fischer J in *MS v Road Accident Fund*^[6] and approved by this court in *Mnisi v Road Collision Fund and Seven Similar Matters*,^[7] though maintaining that the matter was sufficiently considered, I find that the applicant made a case that there are prospects of another court coming to a different conclusion on the decision to dismiss the claim on merits.

- [15] The mainstay of the applicant's case in this application is that the court erred in disregarding her evidence in court that the insured vehicle collided with hers from the back. She further submits that the court erred in accepting the OAR without the testimony of the author, but saw the OAR fit to support her case in relation to where the vehicle came to a standstill. She claimed that the court did not exercise its discretion judiciously. She identified aspects in support of why she so alleged, namely, that the court acted capriciously or was influenced by incorrect legal principles.
- [16] In line with section 17(1)(a)(ii) of the Superior Courts Act, which reads "there is some other compelling reason why the appeal should be heard...", the court grants leave to appeal, as the applicant's application raises issues of legal importance on which a different court may reach a different conclusion.

Order

- [17] The application for leave to appeal to the full bench is granted, with costs to be costs in the appeal.

SO VELE

ACTING JUDGE OF THE HIGH COURT

Appearances

Applicant's Counsel: Adv P Tshavhungwa Instructed by: Nkgadima & Associates Middelburg
Respondent Attorney: Ms A Nefolovhodwe Instructed by: State Attorney, Mbombela
DATE OF HEARING: 28 March 2025 DATE OF JUDGMENT: 13 June 2025

- [1] Mnisi v Road Collision Fund and Seven Similar Matters

[2022] ZAMPMBHC 23 para 31.

- [2] Acting National Director of Public Prosecutions and Others v Democratic Alliance, In Re: Democratic Alliance v Acting National Director of Public Prosecutions and Others

[2016] ZAGPPHC 489 para 25.

- [3] The Mont Chevaux Trust (IT2012/28) v Tina Goosen & 18 Others (LCC14R/2014) para 6.

- [4] President of the Republic of South Africa and Others v South African Rugby Football Union and Others 2000

- (1) SA 1 (CC); 1999 (10) BCLR 1059.

- [5] Minister of Safety and Security v Slabbert

[2009] ZASCA 163; [2010] 2 All SA 474 (SCA) para 11.

- [6] MS v Road Accident Fund

[2019] 3 All SA 626 (GJ).

[7] Mnisi fn 1 above.

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Prepared on 9 October 2026 · Esheria