

SOUTH AFRICA / JUDGMENT

Gutta NO v Road Accident Fund (2293/07) [2010] ZANWHC 42 (17 December 2010)

[2010] ZANWHC 42**COURT**

North West High Court, Mafikeng

BEFORE

A A Landman

CASE / FILE NUMBER

2293/07

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Source record**IN THE NORTH
WEST HIGH COURT****MAFIKENG****CASE NO.:****2293/07****In the matter****between:**

NADIA GUTTA NO

.....PLAINTIFF

and

ROAD ACCIDENT
FUND

.....DEFENDANT

DATE OF HEARING

: 13 DECEMBER 2010

DATE OF

JUDGMENT : 17 DECEMBER 2010

FOR THE

PLAINTIFF : ADV CHWARO

FOR THE

DEFENDANT : MR LEKGETLHA

JUDGMENT**LANDMAN J:**

- [1] Ms N Gutta NO, as curator ad litem, has instituted proceedings against the Road Accident Fund (the RAF) to recover damages on behalf of certain minor children. Ms Gutta was a member of the North West Bar. She was appointed as a judge of this Court with effect from 1 November 2010.
- [2] This matter was set down from hearing today 13 December 2010. I intimated that the plaintiff had been appointed a judge and asked whether she had been replaced as curator ad litem. The answer was in the negative. Mr Chwaro, who appeared for the plaintiff, sought a postponement of the matter until 21 September 2011, the next available trial date. He submitted that the costs should be reserved.
- [3] Mr Lekgetlha, who appeared for the defendant, was not opposed to the postponement. However, he wanted an order for the payment of the defendant's wasted costs. He did not seek an order against the plaintiff or the minors. Rather he submitted that the plaintiff's attorney had not conducted the matter properly as he should have realised that the curator ad litem needed to be replaced and that the matter could not proceed. The plaintiff's attorney should have advised the defendant's attorney of this problem. It would have obviated the defendant's attorney incurring, inter alia, travelling costs from Pretoria. Therefore he sought an order for wasted costs against the plaintiff's attorney de bonis propriis.
- [4] Mr Chwaro submitted that his attorney should be given an opportunity to put the facts on paper. He submitted that it would be invidious to place facts before the court from the bar.
- [5] I think that Mr Chwaro is correct. The plaintiff's attorney should have some time to prepare his defence. Fairness dictates this. The question was raised this morning and so some notice of the application for costs needs to be given to the plaintiff's attorney even if he were present in court. See *Reck v Mills en 'n Ander* 1990 (1) SA 751 (A) AT 760B and *Visser v Cryopreservation Technologies CC* 2003 (6) SA 607 (T) at 610J–611A.
- [6] In the result:
1. The application for the payment of wasted costs by the plaintiff's attorney is postponed sine die.
 2. The plaintiff's attorney may file an affidavit setting out the consideration which he wishes to be taken into account within one month of today.
 3. The defendant may file an answering affidavit within 10 days of delivery.
 4. The plaintiff's attorney may reply within 10 days of receiving the answering affidavit.

5. Thereafter the defendant may enrol the application for costs for hearing on or prior to the date of the trial.

A A LANDMAN

JUDGE OF THE HIGH COURT

ATTORNEYS:

FOR THE PLAINTIFF : K J KETSE

FOR THE DEFENDANT : NKOMO & PARTNERS

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