

SOUTH AFRICA / JUDGMENT

Hamufari v Road Accident Fund (5092/2021) [2024] ZAGPJHC 392 (5 March 2024) [2024] ZAGPJHC 392

COURT

South Gauteng High Court, Johannesburg

BEFORE

D. Weideman

CASE / FILE NUMBER

5092/2021

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REPUBLIC

OF SOUTH AFRICA

IN THE HIGH COURT OF

SOUTH AFRICA

GAUTENG LOCAL

DIVISION, JOHANNESBURG

Case Number: 5092/2021

1.

REPORTABLE: NO

2.

OF INTEREST TO OTHER JUDGES: YES

3.

REVISED: NO

5 March 2024

In the matter between:

TATSERE SILIAS

HAMUFARI

Plaintiff

and

ROAD ACCIDENT

FUND Defendant

JUDGMENT**WEIDEMANAJ**

[1] This is an ex tempore judgment in matter number 6 on the Special Interlocutory Court roll, case number 5092/2021 being the matter of Tatsere Siliias Hamufari and the Road Accident Fund. The issue that was raised by Adv Kok in this matter related to a paragraph contained in the Consolidated Practice Directives 1 of 2024 and which took effect on the 26 February 2024.

[2] Sub-paragraph 27.14 of the Practice Directive reads as follows:

"The SIC will not deal with applications to compel a party to attend a pre-trial meeting unless the matter has been submitted to the registrar for decision, as provided for in rule 37(3)(b) of the Uniform Rules of Court."

[3] The proposition that was put to Adv Kock is that a request for a pre-trial conference cannot be entertained in the Special Interlocutory Court, given the content of paragraph 27.14. Adv Kok argued that on a proper interpretation of the said section 27.14, read with the rule of court to which it refers, Rule 37(3)(b), the Special Interlocutory Court retains its jurisdiction to hear matters in respect of which there has been no engagement from the defaulting or delinquent party (my emphasis). He argued that Uniform Rule of Court 37(3)(b) reads as follows:

"If the parties do not agree on the date, time of place for the pre-trial conference, the matter shall be submitted to the registrar for decision."

[4] Adv Kok argued that the implication is that Rule 37(3)(b) only relates to those matters where there has been engagement between the parties, but the parties could not agree on a date, time and place for a pre-trial conference. As such the rule does not apply to a situation where there has been no engagement.

[5] Having taken opportunity to consider the matter I believe that it could never have been the intention of the Practice Directives to add a burden to the office of the Registrar that it did not anticipate. It could never have been the intention

to deal with matters where there has been no engagement and that these matters cannot, and should not, be dealt with on the same basis as where the parties are unable to agree on a date, time of place for a pre-trial meeting as is envisaged in rules 37(3)(b).

[6] As such I find that, if there is proper documentary proof of attempts to engage the delinquent party and that there was no response, it remains open for an aggrieved party to approach the Special Interlocutory Court for relief in the form of a compelling order to attend a pre-trial conference.

ORDER

Having been persuaded that there have been sufficient documentary attempts to engage the delinquent party and having heard counsel it is ordered that:

1. The respondent shall complete and sign the applicant's pre-trial agenda within 10 days of service of this order on the respondent, alternatively shall nominate a date, time and place within 10 days of service of this order on which date the respondent will be available for a formal pre-trial conference.
2. If the respondent fails to comply with paragraph 1 of this order the respondent's defence will ipso facto be struck out on the 11th day after the date of the service of this order on the Defendant and the applicant may then approach the registrar for a date for hearing on the default trial roll.
3. The respondent is to pay the cost of this application.
4. I hand down the order which I have marked "S".

D. WEIDEMAN

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to Case Lines. The date and time for hand-down is deemed to be 5 March 2024.

Heard on: 05 March 2024

Delivered on: 05 March 2024

Appearances:

Appellant: Adv PJ KOK

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