

SOUTH AFRICA / JUDGMENT

Hlalele v Road Accident Fund (5668/2016)

[2017] ZAFSHC 210 (18 October 2017)

[2017] ZAFSHC 210**COURT**

Free State High Court, Bloemfontein

BEFORE

Daffue

CASE / FILE NUMBER

5668/2016

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Policy**IN****THE HIGH COURT OF SOUTH AFRICA,****FREE****STATE DIVISION, BLOEMFONTEIN****Case****number: 5668/2016****In**

the matter between:

J.HLALELE

Plaintiff

and

ROAD

ACCIDENT

FUND

Defendant

HEARD

ON:**THE EXPLANATORY AFFIDAVITS WERE
RECEIVED ON 31 JULY 2017**

JUDGMENT

BY: DAFFUE; J

DELIVERED ON: 18 OCTOBER 2017

I

INTRODUCTION

- [1] The dispute between the parties, at least insofar as the merits are concerned, has been settled. On the first day of the trial, to wit 27 June 2017, I was requested to grant orders in accordance with a draft order presented to me.
- [2] Paragraph 1 of the draft order is not contentious, but I declined to make orders pertaining to costs as set out in paragraph 2 of the draft.

- [3] The following orders were made by agreement:

"1.1 The issues of merits and quantum are separated in terms of Rule 33(4) and that the issue of quantum is postponed sine die.

1.2 That the Defendant is liable to pay 100% (one hundred percent) of the Plaintiff's proven or agreed damages."

- [4] The following further orders were made to enable me to consider the issue of costs for the reasons to be advanced later herein:

"2. Plaintiff is directed to advance reasons under oath why he elected to make use of Pretoria attorneys when the action was instituted in the High Court in Bloemfontein and also why this Court shall not order the claims handlers at the RAF and Maduba attorneys to pay his costs de bonis propriis, jointly and severally, to the exclusion of the Road Accident Fund.

3. Mr Jeje and the firm of Maduba attorneys as well as the claims handlers, M. Lekolwana and I.M. Chauke, are called upon to advance reasons under oath why they should not be ordered to pay plaintiff's costs de bonis propriis, jointly and severally.
4. The affidavits required in paragraphs 2 and 3 shall be served and filed not later than 31 July 2017."

Affidavits have now been received and consequently I am in a position to consider what costs order to be made. Unlike as reported to me by Mr Jeje, the senior litigation officer (also known as "senior claims' handler") that dealt with the matter was not Mr Chauke, but Ms Ledwaba who deposed to an affidavit in support of Mr Lekolwana's version.

II THE PARTIES

- [5] The plaintiff is Mr Jani Hlalele, identity number [7...], a major male person residing at Senekal, Free State Province.

Ex facie the affidavit attached to his claim documents lodged with the Road Accident Fund (“RAF”) he instructed Grimbeek, Van

Rooyen and Partners in Kroonstad to assist him with the filing of his third party claim against the RAF. Plaintiff also gave a power of attorney to the aforesaid firm and/or Van Zyl Le Roux Inc of Pretoria (also known as VZLR) to take the necessary steps against the RAF. VZLR eventually issued summons out of the High Court in Bloemfontein by making use of their local correspondents, Du Plooy Attorneys. Pretoria counsel appeared on behalf of plaintiff before me on 27 June 2017 when the aforesaid orders were made.

- [6] The RAF is a juristic person created in terms of s 2(1) of the Road Accident Fund Act, 56 of 1996 with registered office situated at [...] I. S., Menlo Park, Pretoria, Gauteng.

III THE COLLISION

- [7] There could never have been any doubt that during the early hours, and at approximately 01H20 of 11 October 2014, a motor vehicle

collision occurred between two vehicles on the NS national road between Bethlehem and Kestell, approximately 10 kilometres outside

Bethlehem, Free State Province.

- [8] The following motor vehicles were involved in the collision:

1. A motor vehicle with registration number [F...] driven by Mr TC Mofokeng on which vehicle plaintiff and several other people were passengers, having been transported at the back of a Tata bakkie.
2. A motor vehicle with registration number [C...], it being stationary in the yellow lane, the driver thereof being a certain Mr KP Lephatsa.

- [9] The RAF did not have to believe the plaintiff's version relying on all these details in his affidavit, but surely, there was no reason not to accept the information contained in the Accident Report (AR) of the South African Police Service, prepared and filled out by Constable MK Moloi at 03H28 on 11 October 2014, which was attached to plaintiff's claim documents. I have not come across such a detailed AR in many years and the constable should be complimented for his quick response and thorough efforts.

- [10] The AR contains minute details of both drivers, their addresses, identity numbers, telephone numbers, their vehicles' make and registration numbers and even license disk numbers. The names and identity numbers of various passengers, including the plaintiff, as well as their addresses and telephone numbers are reflected in the AR. The AR even reflects details pertaining to the registration number of the ambulance and the ambulance driver who took the injured persons to the Dihlabeng Hospital in Bethlehem. A rough sketch was provided

by the constable as well as a brief description of the collision obtained from the drivers which description and rough sketch correspond 100% with the plaintiff's affidavit and the averments in the particulars of claim.

IV NEGLIGENCE OF THE INSURED DRIVER

- [11] Plaintiff alleged in his particulars claim that the collision was caused as a result of the sole negligence of Mr Mofokeng, the driver of the Tata bakkie. It is unnecessary to set out the grounds of negligence relied upon, but it was clearly averred that Mr Mofokeng failed to timeously observe the stationary vehicle in the yellow lane and therefore negligently failed to avoid colliding with

it.

V THE DEFENDANT'S PLEA

- [12] What did the RAF's attorney do? As many (if not the majority) of attorneys acting for the RAF (in particular the firm in casu) have been doing for a number of years, the RAF's attorney, Mr Jeje, pleaded in vague and evasive terms. He merely admitted that "on the 11 October 2014 at N5 Road outside Betlehem, a motor vehicle collision occurred." The particular collision and all further allegations pertaining to that collision were denied. In light of the case law referred to *infra* and the documents in his possession at the time, he could not seriously believe that the plaintiff's version of the collision was false and pleaded as he did. This is not a situation where the RAF did not have knowledge of the collision and/or where the motor vehicle drivers or independent witnesses gave diametrically contradictory versions. In any event the plaintiff did not cause the collision or contributed thereto.

VI UNPROFESSIONAL CONDUCT

- [13] It may amount to unprofessional conduct by the attorney who pleads to factual averments without having been properly instructed by his client in that regard. See: *Goodriche and Son v Auto Protection Insurance Co Ltd (in liquidation)* 1967 (2) SA 501 (WLD) at 503H & 5058 and also 506F; *Law Society, Transvaal v Matthews* 1989 (4) SA 389 (TPD) at 396 and *Barlow Rank Ltd t/a Barlow Noordelike Masjienerie Maatskappy v Lebos and Another* 1985 (4) SA 341 (TPD) at 347E- 348G.
- [14] An attorney has a duty to report to his client when it is reasonable and/or necessary and must at all time act subject to the proper instructions of his/her client. It is regarded as grossly negligent not to notify a client of particular steps in the litigation such as the receipt of a notice of bar. See: *Du Plessis v Tager* 1953 (2) SA 275 (OPD) at 280. It is in my view equally grossly negligent of an attorney not to inform his/her client timeously of a pre-trial conference, bearing in mind the purpose thereof, and a notice of set down.

[15] The duty in drafting pleadings is in essence the same for attorneys and counsel; however, there might be a substantial difference where counsel does not get his information from the client, but from the attorney. Counsel can presume that the attorney has sifted the evidential material and that proof of that which has been pleaded will be forthcoming. On the other hand, the attorney drafts his/her pleadings on instructions of his/her clients. See: *Findlay v Knight* 1935 (AD) 58 at 73 where Wessels CJ said the following:

"When, however the second plea was filed, Findlay had obtained so much information that he knew or ought to know that he would not be in a position to lay evidence before the Court to support the more serious charges contained in the second plea. When he drew the second plea he did not know whether the charges were true or false and whether there was or was not evidence to support them. He made them recklessly, careless of the consequences. This the Court cannot allow an attorney to do."

Morris, *Technique in Litigation*, 6th ed. by John Mullins and Carlos Da Silva at 28 explains the duty of legal practitioners' disclosure to the court as follows, relying on the judgment of Nugent JA in *Van der Berg v General Council of the Bar of South Africa* [2007] 2 All SA 499 (SCA) at paras [14] - [16]:

"Off course, it is not the duty of either counsel or attorney to mistrust his client, let alone to act as some sort of guardian of the truth either by disclosing to the court or his opponent his doubts about his client's virtues, or by preventing his client from testifying to that version, no matter how improbable the counsel or attorney might view it as being. The dividing line is reached when he no longer suspects. but knows as a fact and not merely as a matter of belief that the version is false (either because the client has admitted this to him, or because he has come across incontrovertible evidence which undoubtedly disproves his client's version)." (emphasis added)

[16] Rule 18(5) of the Uniform Rules of Court clearly stipulates that when a "party denies an allegation of fact in the previous pleading of the opposite party, he shall not do so evasively, but shall answer the point of substance." See also Rule 22(2). It is uncertain which collision the attorney referred to. There is no admission that the two vehicles referred to by plaintiff were involved in the collision or that plaintiff was a passenger in one of them. Is this really what the attorney (and by necessary implication the RAF) wanted to convey, bearing in mind the objective documentary evidence placed in their possession?

VII THE RAF'S POWERS AND FUNCTIONS

[17] The powers and functions of the RAF include those set out in s 4 of the Road Accident Fund Act, 56 of 1996 ("the Act"), and inter alia contained ins 4(1)(b):

"the investigation and settling, subject to this Act, of claims arising from loss or damage caused by the driving of a motor vehicle whether or not the identity of the owner or driver thereof, or the identity of both the owner and driver thereof, has been established;"

[18] The procedure for filing a claim for compensation and accompanying medical report under s 17(1) of the Act is set out in s 24. Subsection 24(5) reads as follows:

"If the Fund or the agent does not, within 60 days from the date on which a claim was sent by registered post or delivered by hand to the Fund or such agent as contemplated in subsection (1), object to the validity thereof, the claim shall be deemed to be valid in all respects."

Subsection 24(6) reads as follows:

"No claim shall be enforceable by legal proceedings commenced by a summons served on the Fund or an agent -

- (a) before the expiry of a period of 120 days from the date on which the claim was sent or delivered by hand to the Fund or the agent as contemplated in subsection (1); and
- (b) before all requirements contemplated in section 19(f) have been complied with:

Provided that if the Fund or the agent repudiates in writing liability for the claim before the expiry of the said period, the third party may at any time after such repudiation serve summons on the Fund or the agent, as the

case may be."

[19] It follows from the provisions of ss 4 and 24 that the RAF and its personnel cannot just sit and relax after having received a claim for compensation. They are under a duty to investigate and if required to settle a claim lodged with the RAF.

VIII EVALUATION OF THE EVIDENCE

[20] I received affidavits from Mr Jeje of Maduba Attorneys, (the panel attorneys). the litigation officers of the RAF, Mr Lekolwana and Ms Ledwaba, and Mr Grimbeek of VZLR. No affidavit was received from plaintiff notwithstanding my directive.

[21] It is apparent that the litigation officers of the RAF blame their own attorney, whilst Mr Jeje wants to put blame on the RAF for not giving him proper instructions. I decided not to embark upon a process of evaluation of the evidence in order to ascertain who is speaking the truth and who is lying, but shall consider the weaknesses of the responses and dearth of concrete explanations in order to establish whether it is required that costs orders de bonis propriis shall be made in casu. However, I trust that this

judgment

will be circulated as widely as possible to enable relevant role players to take appropriate measures in order to address the inefficient system being utilized by the RAF and its attorneys. Although I make a general observation, it should not be regarded as applicable to each and every office of the RAF, each and every attorney instructed by the RAF and each and every litigation officer employed by the RAF. I have reason to believe that there are many people that do their work properly in order to serve the interest of the RAF and the public at large.

[22] The following is a chronological sequence of the events from filing of the claim until the first day of trial:

1. On 1 July 2016 the claim, with all relevant documents including the AR and plaintiff's detailed affidavit was received by the RAF at its Head Office in Menlo Park, Pretoria.
2. Two and half months later, i.e. on 14 September 2016, a

certain Kathleen Makoro of the RAF responded for the first time and indicated to plaintiff's attorneys that it objected to the validity of the claim on the basis that the "SMR (was) not completed by the first treating doctor." However, the attorney was informed that the file would be transferred to the merits section.

3. Although it is alleged by Ms Ledwaba that "the matter was continuously assessed pertaining to the information at the disposal of the RAF" nothing of substance occurred. I am not prepared to accept such a general, but hollow statement. I have not been told when she was appointed as senior litigation officer over this matter and precisely what she did. We know that the matter was referred to the RAF's Forensic Investigation Department in Johannesburg, but what transpired there is a secret. If fraud was suspected, the matter could have been solved easily and within a day or two, bearing in mind the detailed information contained in the AR. On Mr Lekolwana's version the file was sent to this department on 15 May 2017, but it is a secret who did this. Initially the file was with the Originating Department. Until when, we do not know. It begs the question where the file was kept all the time before it was sent to the Forensic Investigation Department. On Mr Lekolwana's version, he as the most important person in charge of giving instructions and communicating with the RAF's attorneys, never saw this file until it eventually landed on his desk on 21 July 2017, nearly a month after the RAF conceded liability.
4. Plaintiff's attorneys issued summons on 22 November 2016 and service was effected at Head Office on 29 November 2016. Maduba attorneys received instructions from the RAF on 29 November 2016 to defend the matter which was duly done.
5. No doubt, the attorneys did not receive copies of the claim documents as Mr Lekolwana was not even in possession of the RAF's file. The file was sent to the Forensic Investigation Department and the RAF's head office received it back on 28 June 2017, a day after the merits have been conceded. The actual file arrived at Mr Lekolwana's desk on 21 July 2017. There is no indication on what basis the claim had to be defended. Mr Lekolwana, who was in charge

of the matter in terms of what he says is "an electronically managed system," initially believed that the RAF file was with the Forensic Investigation Department in Pretoria. He established at a later stage that it was in Johannesburg, but notwithstanding

requests that the file be returned to him, he obtained it only after throwing in the towel on 27 June 2017. This is a highly questionable

state of affairs. If Mr Lekolwana is to be believed, there was no communication between him and anyone at the Forensic Investigation

Department or any other department for that matter since the matter was allocated to him in December 2016.

6. Meanwhile, on 2 December 2016 Mr Jeje sent an email to the claims officer at RAF, one Awelani Rambuwani, requesting the so-called "lodgment documents" or "file contents" which can be none other than the plaintiff's claim with supporting documents. I must accept that this person caused the instructions to defend to be issued to Maduba Attorneys, but it is not clear. On Mr Lekolwana's version, the matter was allocated to him on 22 December 2016 and thus after the instructions to the attorneys to defend. He must have informed Mr Jeje of his appointment as litigation officer of this particular matter at a stage, bearing in mind that at least four emails were sent to Mr Lekolwana at the address: [...]raf.co.za. All the time Mr Jeje requested the "file contents". Later on the RAF was informed per email on three occasions of the imminent trial date. The RAF did not place Maduba Attorneys in possession of any documents pertaining to this claim. It did not instruct its attorneys fully. They did not know what to do, save to defend the matter. In fact, this is nothing but delaying tactics.
7. When Mr Jeje received a notice of bar on 24 January 2017, he apparently did not even inform the RAF, but decided to file a plea the next day, i.e. 25 January
2017. On his own admission he did this without having any instructions in that regard and in particular as to what the RAF's instructions were pertaining to the collision, the alleged negligence, plaintiffs injuries and the quantum of the claim. This explains the wording of the plea.
8. As mentioned, several further emails were sent by Maduba Attorneys to the RAF, which were also copied to Mr Albert Cilliers, a person stationed in Bloemfontein and employed by the RAF to assist Maduba Attorneys, the only Bloemfontein firm of attorneys on its panel, requesting the plaintiffs claim documents, but without any success.
9. The parties held a Rule 37 conference on 3 March 2017, but it was one of those meaningless conferences that are often encountered. Nothing of substance was discussed and/or agreed upon, save that merits and quantum should be separated. On 20 March 2017 the same legal representatives of the parties, Ms Kotze on behalf of plaintiff and Mr Jeje on behalf of the RAF, attended a pre-trial conference in terms of Rule 37(8) presided over by a judge of this Division. The matter was certified to be trial-ready in respect of the merits of the claim and three court days were allocated. The parties' legal representatives should have realized that,

given the simplicity of facts in casu, the matter could have been finalized, even if defended, within a day. Bearing in mind the contents of the emails attached to his affidavit, Mr Jeje did not even inform the RAF of any of the two pre-trial conferences in order to obtain instructions pertaining to settlement or making admissions.

10. On 24 March 2017 plaintiffs attorneys set the matter down for hearing on 27, 28 and 30 June 2017. On even date a legal secretary of Maduba Attorneys emailed the notice to Messrs Jeje, Lekolwana and Cilliers. Ex facie the email it was read by Mr Jeje on the same day, but there is no proof that it was read by Messrs Lekolwana and Cilliers. I have reason to believe that Mr Lekolwana's email address is correct in that I have proof that he read at least the one email dated 29 March 2017, insisting that the file contents be provided, as well as the email relied upon by him as annexure MJ5 to his affidavit. Mr

Cilliers has been assisting Maduba Attorneys over an extended period of time and I can think of no reason why Maduba Attorneys would not have his correct email address.

11. On 12 June 2017 Maduba Attorneys received plaintiffs claim documents from the plaintiffs Bloemfontein correspondent. These were exactly the same documents attached to the Rule 36(4) notice as well as the claim originally filed with the RAF on 1 July 2016. Hereafter Mr Jeje provided the RAF with a legal opinion in an email dated 19 June 2017, advising them to fully concede the merits.
12. On 26 June 2017 Mr Lekolwana, without being in possession of the RAF's file, instructed Maduba Attorneys to concede the merits, or put in other words, to throw in the towel. This was a day before the hearing was to start. Mr Jeje's attitude is that the RAF could have conceded merits much earlier as it was always in possession of the file contents and information pertaining to plaintiffs claim. I agree, but in the same breath, he could have informed his client in January 2017 that the merits appeared to be indefensible and advised to settle.

- [23] Ms Ledwaba states that the RAF relies on its panel attorneys to provide it with documents served on their offices within 5 days. She then blames Maduba Attorneys for not providing the RAF with the "lodgment documents" allegedly contained in plaintiff's response to the RAF's Rule 36(4) notice which was served on the panel attorneys on 10 January 2017. No doubt, Ms Ledwaba is correct. Maduba Attorneys were in fact provided with all relevant documents as part of plaintiff's reply to the RAF's notice in terms of Rule 36(4), i.e. several days before Mr Jeje eventually pleaded as mentioned. I find it extremely difficult to believe that Mr Jeje could not have ascertained from plaintiff's response in terms of Rule 36(4) what really caused the collision. Plaintiff's supporting documents, attached to its claim for compensation lodged with RAF, were served in response to the aforesaid notice. Obviously, plaintiff went much further than required by Rule 36(4) which rule requires a party claiming damages or compensation for bodily injuries, to make available medical reports, hospital records, etc, to enable the other party to assess his/her damages. In casu plaintiff attached exactly the same documents filed with the RAF on 1 July 2016 when the claim was lodged.

This included medical and hospital records and the AR. These are the documents which the RAF should have presented to its attorneys in the first place when instructions were issued. I would have expected the litigation officer, Mr Lekolwana, to be in possession of the very same documents so that he could give meaningful instructions on what basis to defend, if at all and/or to plead and/or to prepare for trial. I find it extremely disturbing that the RAF is accusing its attorneys for not providing it with the documents received from the plaintiff in accordance with the Rule 36(4) notice whilst these are the very same documents that the RAF received on 1 July 2016 when the claim was lodged and which it should have provided to its attorneys when instructions were given to defend the matter.

[24] Both Ms Ledwaba and Mr Lekolwana refer to the continuous assessment of the claim by the RAF without explaining what precisely was done. In my view nothing of substance was done in order to investigate with the purpose either settle the claim, or prepare to defend it to its logical conclusion. Mr Lekolwana's statements that "the matter was attended to in a diligent manner and was a thorough assessment done by the RAF before, during and after institution of the action in this Court" and "I can indubitably state that the RAF started assessing Plaintiff's claim since the moment of lodgement," are not accepted based on the information made available to me.

[25] Mr Jeje should have been aware of the fact that the RAF was confronted with a passenger's claim and that plaintiff needed to

prove the proverbial 1% negligence only in order to succeed with his claim on the merits. I would have expected an urgent telephonic

conference between him and Mr Lekolwana at an early stage, followed up by consultations with the SAPS constable who prepared the AR, and if need be, the ambulance driver and a responsible employee of the hospital where plaintiff was allegedly hospitalized. The attorney could obtain instructions to undertake such simple exercise and report to the RAF. Apparently the Forensic Investigation Department of the RAF was requested in May 2017 only to investigate. If there was really a need for such investigation, which has not been suggested at all, such investigation should have taken place before institution of the action and not a month before the trial. Justice is not done to the RAF and/or the tax paying public at large if the RAF and its panel attorneys are accusing each other of apparent ignorance, negligence and/or a lack of understanding of the RAF's own procedures, the law and litigation in particular.

[26] Plaintiff's Pretoria attorney, Mr JB Grimbeek, decided against filing an affidavit by the plaintiff notwithstanding my directive. His firm acts as correspondent for many firms of attorneys, bearing in mind that the RAF's head office is situated in Pretoria. The firm also acts as correspondent for Grimbeek, Van Rooyen and Partners of Kroonstad who instructed VZLR in casu. VZLR in turn instructed Bloemfontein attorneys, to wit Du Plooy Attorneys.

[27] Having been confronted with the congested court roll in Pretoria, particularly as a result of personal injury (RAF) claims, his firm decided to investigate what was the situation in other divisions. He ascertained that trial dates could be obtained in the Free State High Court within three to four months whilst the waiting period in Pretoria was between twelve and fifteen months in respect of merits, and much longer for quantum trials.

[28] There can be no objection if a client from Pretoria instructs Pretoria attorneys to issue summons against the RAF who then

institutes action in the Free State High Court because the cause of action arose in the Free State, bearing in mind the alleged congested court roll in Pretoria and the overall convenience to have a matter heard in the jurisdictional area where the cause of action originated. Surely, this court has to adjudicate disputes arising within its jurisdiction, but this is not the issue that concerns me. I am concerned with the payment by the RAF of unnecessary costs as will be explained in the next paragraph.

[29] Two sets of attorneys will normally be entitled to fees in a case as here where the plaintiff resides in Senekal, a small town about 170 kilometres from Bloemfontein and action has to be instituted in the High Court. It cannot be expected of plaintiff to directly instruct a Bloemfontein attorney. For a reason unknown to me plaintiff decided not to instruct one of the local attorneys in Senekal, but a Kroonstad attorney. Here, three firms of attorneys are involved and counsel from Pretoria was briefed. If this is what the plaintiff wanted, neither the court, nor the taxing master has any say, unless plaintiff seeks to claim all these extra costs (that could have been avoided) on a party and party scale. Plaintiff's attorney and client bill of costs is entirely a matter between him and his attorneys, but plaintiff shall not be allowed to claim from the RAF, and in essence the public purse, fees and expenses of three sets of attorneys and travelling and accommodation costs of counsel from out of town, whilst there are ample and efficient counsel at the local bar.

[30] In casu plaintiff shall be entitled to have the bills of costs of two sets of attorneys taxed. However, it would have been an entirely different matter if plaintiff was resident in Bloemfontein or within its district and the same scenario was repeated. The fees and expenses of one set of attorneys should be allowed in such a case.

[31] Mr Grimbeek indicated that plaintiff is not seeking costs de bonis propriis from the litigation officers and/or the RAF's attorney, but left the decision for the court to make.

[32] The system at the RAF should be investigated and much better management practices shall be implemented. It is incomprehensible

that a litigation officer, without being placed in possession of a file containing the claim documents, is instructed to handle a claim in order to instruct attorneys, communicate with them, and eventually oversee that all pre-trial processes are conducted to get the matter trial-ready to ensure that the trial runs its normal course or to give instructions to settle. The two litigation officers were not prepared to accept responsibility. They are quick to put blame on the

attorney, but what transpired in the RAF's offices, prior to and when the matter should have been under their control, remains a mystery. We have not been told why it was necessary that an apparently straightforward claim had to be referred to the Forensic Investigation Department, and more importantly, what this department did to carry out the RAF's mandate. Fraud is indeed a worrisome matter and no doubt, the RAF must ensure that fraudulent claims be traced and dealt with. It is laudable that the RAF tries to do whatever is needed to eradicate false claims, but in casu no need was shown for such action. The outcome of any delayed action that might have been taken is a secret. The information available to me does not indicate that whoever was tasked to do whatever, did in fact contribute positively to the challenges faced by the RAF.

[33] From my experience on a weekly basis when allocated civil trials, the RAF seldom challenges the evidence of plaintiffs on the merits. A small percentage of the twelve to fifteen RAF cases set down for hearing on a weekly basis in this Division proceeds to trial. Obviously, in passenger claims it is difficult to successfully defend a claim for the reason mentioned supra, but then, such matters should proceed to trial on rare occasions only; by far the majority must be settled even before action is instituted. Unnecessary legal costs can be avoided. On the other hand, the RAF seldom investigates claims properly and its legal teams are often not in a position to proceed to trial in matters not involving the so-called 1% cases. Mostly, the RAF's legal teams come to court, not to settle, but to throw in the proverbial towel. In the majority of cases the outcome can be predicted: the merits are Settled 100% in favour of the plaintiff. Witnesses are not

subpoenaed and counsel (if one is appointed) is not instructed to conduct a defended trial, but receives instructions in respect of settlement only. To make matters worse, the court is often asked to stand matters down as the litigation officer cannot be contacted in order to give instructions to settle. Judges are even requested to stand matters down to the next day or even a third day. In the meantime legal costs soar.

[34] My personal experience is that, notwithstanding possible good intentions of RAF's senior management, the overall system is such that it cannot be tolerated much longer. I accept that the RAF is flooded with claims, but this country cannot afford the wasting of resources. It is not for the courts to prescribe to a litigant how it should run its business¹ but serious reconsideration must take place. It is general knowledge, but Mr Grimbeek confirms in his affidavit that the situation in Pretoria pertaining to congested rolls is much gloomier than in the Free State.

[35] I considered all relevant aspects, but decided against awarding costs de bonis propriis.

However, this is a borderline case and the attorney and litigation officers will be given the benefit of doubt who

really to be blamed for the handling of the case. One aspect that weighs heavily in favour of not granting punitive costs is the speed with which this matter was finalised. Unlike some matters that are dragged out for years, the merits were conceded within a year from filing of plaintiffs claim.

IX ORDER

[36] Consequently the following order is made:

- (1) The defendant shall pay plaintiff's taxed or agreed costs up and until 27 June 2017 in respect of VZLR, Pretoria and Du Plooy

Attorneys, Bloemfontein, such costs to include counsel's fee for preparation and his day fee but excluding his travelling and accommodation costs.

JP DAFFUE, J

On behalf of plaintiff: Adv KW Van Heerden

Instructed by: VZLR Inc

c/o Du Plooy Attorneys,

Bloemfontein

On behalf of defendant: Mr A Jeje

Instructed by:

Maduba Attorneys

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