

SOUTH AFRICA / JUDGMENT

K.H.B obo L.B v Road Accident Fund (RAF574/23) [2025] ZANWHC 87 (22 May 2025) [2025] ZANWHC 87

COURT

North West High Court, Mafikeng

BEFORE

WESSELS

CASE / FILE NUMBER

RAF574/23

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IN

THE HIGH COURT OF SOUTH AFRICA

NORTH

WEST DIVISION, MAHIKENG

CASE

NUMBER:RAF 574/23

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In

the matter between: K[...]
H[...] B[...] obo L[...] B[...]
PLAINTIFF
and
THE
ROAD ACCIDENT FUND
DEFENDANT

Coram: WESSELS AJ

Date: 22 May 2025
ORDER
i.The
defendant's third special plea is dismissed.
ii.The
defendant is ordered to pay the costs of the third special plea on
scale B.

JUDGMENT

Introduction

- [1] What served before this Court is a special plea filed by the defendant pursuant to an action instituted by the plaintiff in her capacity as mother and natural guardian of L[...] B[...] (the minor), for damages resulting from injuries sustained in a motor vehicle accident.

Background

- [2] The defendant filed three special pleas. The first two special pleas were abandoned. At the core of the remaining special plea (the third special plea) is the defendant's allegation that the plaintiff's claim did not comply with the provisions of s 24 of the Road Accident Fund Act[1] (the Act), as well as a Board Notice of 2022 issued by the defendant. Basically, the defendant alleges that the plaintiff's claim is invalid due to her failure to lodge her claim in terms of the provisions of the Act, read with the Board Notice, before the issuing of her summons.
- [3] The heads of argument filed by both parties were mainly devoted to the issue of the merits of the third special plea, with cursory reference to the true issue at hand, being the obvious discord between the admitted facts in defendant's plea over and the content of its third special plea. This discord stems from the fact that the facts pleaded in the third special plea are inimical to an admission contained in the defendant's plea over.

Facts

- [4] On 2 February 2023 the plaintiff lodged her claim, consisting of, inter alia, her supporting documents, with the Chief Executive Officer of the defendant.

- [5] Having had no reaction from the defendant on the submitted claim, the plaintiff issued a summons against the defendant out of this Court on 26 July 2023, for the recovery of the damages suffered by the minor. Although the plaintiff amended her particulars of claim early in the litigation process, those amendments do not affect the dispute before this Court.
- [6] Shortly before this matter was to be heard on trial, the defendant introduced the third special plea by way of an unopposed amendment.
- [7] The core of defendant's third special plea is found in paragraphs 5 and 6 thereof which reads:

'5. Defendant specifically disputes and denies that the Plaintiff has complied with the provisions of Section 24 of the Road Accident Fund Act 56 of 1996 (hereinafter referred to as "the Act").

6. In the premises the Defendant avers that the Plaintiff's alleged claim is invalid and unenforceable in law due to her failure to comply or substantially comply with Section 24 of the Act and Board Notice of 2022.'

- [8] It is a feature of the *facta probanda* of the plaintiff's case that prior to the issuing of her summons, her claim had to be properly lodged with the defendant. To address this onus, the plaintiff pertinently alleged the compliance of her claim, prior to the issuing of the summons, in paragraph 10 of the amended particulars of claim as follows:

'10. Prior to the institution of this action the Plaintiff has duly complied with the provisions of the Act/Regulations, alternatively is deemed to have complied with the Act/Regulations'

- [9] In defendant's plea over, it pleaded to the aforementioned allegation in the following manner:

'8. Ad paragraph 10 thereof:

Save for admitting that the Plaintiff has lodged his [sic] claim with the Defendant, the Defendant denies that it is liable to compensate the Plaintiff for the amount claimed herein. The defendant denies allegations [sic] contained in this paragraph and therefore the Plaintiff is put to the proof thereof. The Defendant specifically denies that it is liable to compensate Plaintiff for his alleged damages.'

(emphasis added)

Legal principles

- [10] The purpose of pleadings is to define the issues in dispute as both the court and the parties should be informed of the case that stands to be met. This trite principle was referred to by the SCA in *Minister of Safety and Security v Slabbert*[2] as follows:

‘The purpose of the pleadings is to define the issues for the other party and the court. A party has a duty to allege in the pleadings the material facts upon which it relies. It is impermissible for a plaintiff to plead a particular case and seek to establish a different case at the trial.- It is equally not permissible for the trial court to have recourse to issues falling outside the pleadings when deciding a case.’

[11] The purpose of pleadings is governed by the provisions of the Uniform Rules of Court. Rule 18(4) provides for the following:

‘Every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his or her claim, defence or answer to any pleading, as the case may be, with sufficient particularity to enable the opposite party to reply thereto.’

[12] The provisions of rule 18 should be read with rule 22(2) and (3) which provide for the following:

‘(2) The defendant shall in his plea either admit or deny or confess and avoid all the material facts alleged in the combined summons or declaration or state which of the said facts are not admitted and to what extent, and shall clearly and concisely state all material facts upon which he relies.

(3) Every allegation of fact in the combined summons or declaration which is not stated in the plea to be denied or to be admitted, shall be deemed to be admitted. If any explanation or qualification of any denial is necessary, it shall be stated in the plea.’

[13] The effect of an admission is regulated by s 15 of the Civil Proceedings Evidence Act[3], which provides that the consequence of an admission on record is that the other party would be absolved from leading any evidence in satisfaction of an onus of proof on a fact that has been so admitted.

[14] The amendment or withdrawal of an admission in pleadings is set apart from the amendment of an allegation contained in a plea, in that it is incapable of being withdrawn (or amended) by a notice of intention to amend alone. In *Bellairs v Hodnet*[4], the SCA held that the withdrawal of an admission by notice of amendment is of such gravity that it requires an explanation:

‘But, as it has frequently been stated, an amendment cannot be had merely for the asking. This is equally, if not especially, true of a proposed amendment which involves the withdrawal of an admission - in such cases the Court will generally require to have before it a satisfactory explanation of the circumstances in which the admission was made and the reasons for now seeking to withdraw it.’

[15] In *Amler’s Pleadings*[5] the authors hold the view that a substantive application is required to effect an amendment to, or withdrawal of, an admission in a plea. The applicable extract thereof reads:

‘An admission in a plea cannot be withdrawn or otherwise amended by an ordinary notice of intention to amend (or notice of amendment): a substantive application to court is required. It must be shown that the admission was made in error and that the plaintiff would not suffer material prejudice if the amendment were granted.’

Application to the facts

- [16] What this Court is engaged to decide on is whether the filing of the third special plea affects the admission (admitting the lodging of plaintiff’s claim) in the defendant’s plea over.
- [17] The defendant admitted that the plaintiff lodged her claim and does not take issue with the validity thereof. The defendant assails its liability by denying that it is liable to compensate the plaintiff for her claim. It is evident that the defendant disputes its liability, not the plaintiff’s submission (or validity) of her claim.
- [18] If the submission of the plaintiff’s claim was defective, the defendant had an obligation to plead such defect in accordance with rules 22(2) and (3). Defendant’s admission thus stands unqualified, leaving the validity of plaintiff’s claim undisputed. The practical effect of the defendant’s admission is that it absolves the plaintiff from producing evidence on the submission (and validity) of her claim. The defendant cannot take both positions, as it would defeat the purpose of its admission in the plea over.
- [19] An admission serves another equally important purpose in that it limits the disputes to be adjudicated. With the increasing prevalence of claims against the defendant congesting the roll of this Court (and many other courts throughout the country), the limitation of disputes plays a significant role in ensuring that a court does not have to devote unnecessary court hours to hearing disputes that have been conceded.
- [20] Against the backdrop of the defendant’s admission of the lodging of the plaintiff’s claim in its plea over, the defendant’s denial of the lodging of the claim in the third special plea cannot be countenanced.
- [21] In conclusion, the third special plea did not affect the admission in the defendant’s plea over, and the admission stands.

Order

[22] In the result, the third special plea stands to be dismissed and the following order is made:

- i. The defendant’s third special plea is dismissed.
- ii. The defendant is ordered to pay the costs of the third special plea on scale B.

M WESSELS

ACTING JUDGE OF THE HIGH COURT

Heads of argument filed : 6 December 2024

Date of judgment : 22 May 2025

APPEARANCES

Counsel for Plaintiff Counsel for Plaintiff Adv DS Gianni Instructed by Savage Jooste & Adams
Attorneys Pretoria c/o Nienaber Wissing Attorneys Mahikeng Counsel for Defendant Ms NF
Mathebula Instructed by State Attorney Mmabatho

- [1] Road Accident Fund Act 56 of 1996
- [2] Minister of Safety and Security v Slabbert (668/2009) [2009] ZASCA 163 para 11
- [3] Civil Proceedings Evidence Act 25 of 1965
- [4] Bellairs v Hodnet 1978 (1) SA 1109 at 1150 F-G
- [5] Harms et al, Amler's Pleadings 10th ed (2024) at Part A-III Pleas

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