

SOUTH AFRICA / JUDGMENT

Khumalo v Road Accident Fund (030819/2024) [2025] ZAGPJHC 556 (9 June 2025) [2025] ZAGPJHC 556

COURT

South Gauteng High Court, Johannesburg

BEFORE

Weideman

CASE / FILE NUMBER

030819/2024

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IN THE HIGH COURT OF
SOUTH AFRICA
GAUTENG LOCAL
DIVISION, JOHANNESBURG
CASE
NO: 030819/2024

DATE:

09-05-2025

(1)

REPORTABLE: NO.

(2)

OF INTEREST TO OTHER JUDGES: NO.

(3)

REVISED.

In

the matter between

RYAN

KHUMALO

Plaintiff

and

ROAD ACCIDENT

FUND

Defendant

JUDGMENT

WEIDEMAN, AJ: When this matter was called in week 3, the week of 29 April 2025, I indicated that I wanted to consider the matter and that I will hand down judgment on 9 May 2025.

Whilst preparing for the hearing of this matter, I uploaded a case note stating the following:

"The Section 19(f) affidavit makes no averment of negligence and does not place the plaintiff in a vehicle at the scene of the accident. Affidavit = noncompliance.

Commissioning of expert affidavits at CaseLines 06 3 and CaseLines 06 5 problematic. Matter not ripe for hearing."

The above note was uploaded on 26 April 2025 at 15:22.

Whether a matter is on trial or before court on a default judgment basis, the onus on the plaintiff remains the same. The plaintiff has the obligation to prove all the allegations contained in the particulars of claim.

One of the standard allegations is that the plaintiff has complied with the requirements of the Road Accident Fund Act and that a valid claim had been submitted.

Section 19 of the RAF Act reads:

"19. Liability excluded in certain cases.

The fund or an agent shall not be obliged to compensate any person in terms of Section 17 for any loss or damage-

- a) ...
- b) ...
- c) ...
- d) ...
- e) ...
- f) if the third party refuses or fails-
- i) to submit to the fund or such agent, together with his or her claim form as prescribed or within a reasonable period thereafter and if he or she is in a position to do so, an affidavit in which particulars of the accident that gave rise to the claim concerned are fully set out; or..."

The relevant paragraph of the plaintiff's affidavit reads:

"On or about 10 September 2023 at approximately 07:30 am near Taylor Road and Monyana Road, Orange Farm, Johannesburg, Gauteng Province, motor vehicle collision occurred between a motor vehicle bearing registration number LG76WPGP driven by Khanjelwayo and the motor vehicle bearing registration number PPN309GP driven by Tshepo Ernest Mokgotho."

The affidavit contains no reference to the plaintiff and neither does it state whether he was a passenger or a pedestrian. There is no allegation of negligence or a description of how the collision occurred.

This, in spite of the note which the court took pains to upload onto CaseLines: "matter not ripe for hearing".

An attempt was made to cure the defect by filing an amended purported Section 19(f) affidavit, now giving a proper and full description of the accident. This was however only done on 29 April 2025 at 10:11 am, after the commencement of court proceedings.

Having filed the amended affidavit, a host of new questions arise;

1. Does the filing of the amended affidavit, per se, imply that the plaintiff has waived the opportunity to claim compliance with the RAF Act in accordance with Section 24(5) of the RAF Act, which deems a claim to be valid in law in all respects in the absence of an objection within 60 days from the date on which the claim is delivered?
2. Is Section 24(6)(b) applicable, which stipulates that no claim is enforceable by legal proceedings commenced by a summons "before all the requirements in Section 19(f) have been complied with"?
3. If it is accepted that the affidavit filed on 29 April 2025 is a Section 19(f) affidavit, does that imply that the current legal proceedings are premature as a completed claim was only submitted on that date?

I do not believe this court is the correct forum in which to ventilate what are essentially important legal questions without proper written submissions by both parties. I believe the filing of the amended Section 19(f) affidavit opened the door for the defendant to participate in, at least, this aspect of the litigation.

The second aspect of concern to the court relates to the commissioning of affidavits by the plaintiff's experts for the purpose of their evidence being tendered on affidavit subsequent to a Rule 38(2) application.

At least two of the affidavits were not properly commissioned and the documents were signed by the expert and thereafter taken to the commissioner who simply stamped and signed the document without taking the expert's oath.

This practice flies in the face of the obligation of a legal practitioner and the commissioner, in casu also a legal practitioner.

My order is as follows:

1. The plaintiff's application for default judgment is dismissed.
2. Neither the plaintiff's attorney nor counsel may recover any fees relating to the default judgment application from either the plaintiff or the defendant.
3. A copy of this judgment must be forwarded to the Legal Practice Council, Gauteng, by the registrar for the LPC's consideration, given the conduct of the members of the LPC in the purported commissioning of the affidavits.

WEIDEMAN, AJ

JUDGE OF THE HIGH COURT

DATE:

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CASE PAGE <https://chat.esheria.ai/case-law/south-africa/khumalo-v-road-unknown-topic-agpjhc-2025>

Prepared on 11 October 2026 · Esheria