

SOUTH AFRICA / JUDGMENT

Laurie obo Laurie v Road Accident Fund (66368/2015) [2020] ZAGPPHC 563 (15 October 2020) [2020] ZAGPPHC 563

COURT

North Gauteng High Court, Pretoria

BEFORE

MNGQIBISA-THUSI

CASE / FILE NUMBER

66368/2015

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER

JUDGES: NO

(3)

REVISED.

Case

Number: 66368/2015

In

the matter between: ROBERT
 NAYLOR LAURIE obo MICHAU
 JACQUES
 LAURIE
 Plaintiff
 and
 THE
 ROAD ACCIDENT
 FUND
 Defendant

JUDGMENT

MNGQIBISA-THUSI J

- [1] The plaintiff, in his capacity as the father and natural guardian of his daughter, Michau Jacques Laurie, born on 12 November 1997, instituted an action against the defendant, a juristic person in terms of the provisions of Act 56 of 1996 (“the Act”) pursuant to a motor vehicle collision between a motor vehicle bearing registration number [...] and motor vehicle bearing registration number [...] in which Michau was a passenger. The collision occurred on 21 April 2011 along the N12 Highway, between Hopetown and Kimberley.
- [2] As a result of the collision Michau sustained fractures of the left femur and right distal radius and ulna.
- [3] At the time of the collision, Michau was a minor. As a result, the plaintiff lodged the claim with the defendant on her behalf. Furthermore, at the time of the collision, Michau had a pre-existing medical condition, she suffers from cerebral palsy and is a spastic quad.
- [4] At the hearing of this matter, Michau had reached the age of majority. Due to Michau being a major, the defendant raised the issue that Michau should have been substituted as the plaintiff.
- [5] On behalf of the plaintiff it was submitted that due to the fact that at the time the claim was lodged Michau was a minor and also due to the fact that she suffers from cerebral palsy, she is incapable of acting on her behalf.
- [6] At the hearing of this matter, the defendant’s counsel raised an objection as to the plaintiff’s locus standi in view of the fact that although at the time of the collision Michau was a minor, she was now a major and could not be represented by the plaintiff in her claim. It is the defendant’s contention that even though the issue of the plaintiff’s locus standi was not canvassed in its plea, the fact that Michau became a major on 12 November 2015, it was incumbent on the plaintiff, in view of Michau’s impairment to have brought an application for some curator ad litem to be appointed for Michau in order to represent her in these proceedings. It was submitted on behalf of the defendant that

in terms of Uniform Rule 57 only a court can declare a person to be impaired and therefore incapable of managing his or her affairs.

Counsel sought a postponement in order for the plaintiff to apply for some curator ad litem to be appointed for Michau.

- [7] It was further argued on behalf of the defendant that the Mental Health Care Act[1], the contrary being suggested on behalf of the plaintiff, does not apply as the Master does not have the power to make a ruling on the status of a person.
- [8] On behalf of the plaintiff it was submitted that although the parties had been in communication from the time Michau's claim was lodged and despite a judicial pre-trial conducted on 24 October 2016 when Michau had already turned 18, despite the defendant being aware that Michau suffers from cerebral palsy, it defendant never raised the issue of plaintiff's locus standi. The issue of the plaintiff's locus standi was only raised in an email dated 27 February 2018. Further as to the defendant's awareness of Michau's medical condition, it was submitted that even the expert report of Dr J J L Heymans, served on the defendant on 21 January 2017, an orthopaedic surgeon, does record that Michau has cerebral palsy.
- [9] It was further submitted that the lateness of the defendant's objection to the plaintiff's locus standi was prejudicial

particularly as Michau's medical bills are being paid by the plaintiff.

- [10] Uniform Rule 57(1) provides that:

"Any person desirous of making application to the court for an order declaring another person ... to be of unsound mind and as such

incapable of managing his affairs, and appointing a curator to the person or property of such patient shall in the first instance apply to the court for the appointment of a curator ad litem to such patient".

- [11] It is common cause that Michau has cerebral palsy and is a spastic quadriplegic thereby rendering her incapable of managing her affairs. No submissions were made with regard to whether Michau's condition also affected her cognitive and intellectual capabilities. The only inference this court can draw from the stated medical condition is that by reason of Michau's mental and physical disability she is incapable of managing her own affairs.
- [12] This situation envisages the appointment of a curator bonis and it is normal in such a situation that a curator ad litem should be appointed before a curator bonis is appointed. Even though the court has the discretion to dispense with the appointment of a curator, as suggested in Erasmus[2], this occurs only in situations where it is urgent for the appointment of a curator bonis or there are special circumstances necessitating dispensing the appointment of a curator ad litem.

[13] In light of the conclusion I have reached that Michau appears incapable of managing her own affairs by reason of her mental and physical disability, I am of the view that she may not be able to understand the proceedings relating to her claim and there is a need for a curator ad litem to assist her.

[14] From submissions made on behalf of the plaintiff and the medical condition of Michau, I am of the view expressed on behalf of the defendant that before the merits can be dealt with, the merits should be postponed and an application for the appointment of a curator ad litem for Michau should be made.

[15] The general rule is that a successful litigant is entitled to his or her costs. In exercising its discretion in awarding costs, the court must exercise such discretion judicially, taking into account the facts before it. It was submitted on behalf of the plaintiff that the defendant should pay the costs due to the fact that:

15.1 it raised the issue of the plaintiff's locus standi late; and

15.2 that the defendant should have filed a special plea for its objection to the plaintiff's locus standi rather than wait for the date of the trial to object to the plaintiff's locus standi.

[16] I am in agreement of the plaintiff's view that the defendant should be mulcted with the cost of this hearing particularly because in terms of procedural rules, an objection to a party's locus standi is raised by filing a special plea which would give the opposing party an opportunity of preparing a response to such objection.

[17] In the result the following order is made:

1. The matter is postponed sine die.
2. The defendant is liable for the costs of the hearing of its objection.

N P MNGQIBISA-THUSI

Judge of the High Court

Date of hearing: 09 March 2018

Date of Judgement: 15 October 2020

For Plaintiff: Riette Oosthuizen Attorneys

For Defendant: Iqbal Mahomed Attorneys

[1] Act 7 of 2002.

[2] Erasmus Superior Court Practice Vol 2; D1-722.

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Prepared on 12 October 2026 · Esheria