

SOUTH AFRICA / JUDGMENT

Maepa v Road Accident Fund (2021/44473) [2025] ZAGPJHC 422 (25 April 2025) [2025] ZAGPJHC 422

COURT

South Gauteng High Court, Johannesburg

BEFORE

GC Wright

CASE / FILE NUMBER

2021/44473

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2021/44473

1. Reportable: No
2. Of interest to other judges: No
3. Revised

25 April 2025

WRIGHT J

MAEPA, MILLICENT

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

WRIGHT J

1. In this, mostly settled action in which Ms Maepa, as plaintiff seeks damages from the defendant Fund I am, by agreement to decide only one narrow issue, relating to counsel's costs.
2. The matter was set down for trial on 22 April 2025. Due to a shortage of Judges, the parties' legal practitioners were informed only late on 24 April 2025 that the matter was allocated to me. I was informed of the allocation only during the late morning of 25 April 2025. The matter proceeded over Teams, a few minutes later, at 12 noon on 25 April 2025.
3. Each side has prepared a draft order, recording the settlement and its terms and reflecting the two different points of view relating to counsel's costs. Mr Raikane for Ms Maepa and Mr Klaas for the Fund presented oral argument over Teams.
4. The parties have agreed that costs, to be paid by the Fund, should be on the party and party B scale.
5. Mr Raikane, for Ms Maepa asked for costs of counsel for 22-25 April 2025, both days included.
6. Mr Klaas tendered Ms Maepa's counsel's costs for 24 and 25 April 2025.
7. Mr Raikane said that he has held himself available since 22 April 2025. He also said that he spent some time, since then, dealing with the matter, for example checking settlement proposals. I accept Mr Raikane's word without hesitation.
8. Mr Klaas asked rhetorically, what if no Judge is available for ten days? In my view, the question is valid.
9. Neither side can be blamed for the delay in the start of the hearing.
10. By way of comparison, it was long the practice at the Johannesburg Bar that counsel did not charge waiting time even though they were obliged to remain available and were not allowed to double brief. This had the advantage, to litigants, and irrespective of whether or not a costs award was in favour of or against a litigant, that a litigant did not have to pay for unused time.
11. I do not make the finding that counsel generally may not charge for waiting time. That question is not before me. Nor do I make the finding that Mr Raikane may not charge his client, Ms Maepa a trial fee for 22 and 23 April 2025. That question too, is not before me. What is before me is a separate question, namely whether the Fund should be liable for the costs of Ms Maepa's counsel for 22 and 23 April 2025. In my view, the Fund should not be saddled with such costs.
12. In cases such as the present, a balance needs to be drawn between compensating adequately a litigant in whose favour a costs award is made and not over burdening the other party who has to pay the costs. In my view, on present facts, counsel's trial fee for two days rather than four days is fair, at least insofar as the taxation of these costs against the Fund is concerned.

13. The question of what may apply where punitive costs are awarded does not arise here. Nor does the question of collapse fees arise. I refrain from dealing with these questions.

ORDER

1. An order is made into the draft order at 17-6 to 17-10 of caselines.

GC Wright

Judge of the High Court

Gauteng Division, Johannesburg

HEARD: 25 April 2025

DELIVERED: 25 April 2025

APPEARANCES:

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