
SOUTH AFRICA / JUDGMENT

Mekula v Road Accident Fund (1987/2017) [2017] ZAECHGHC 118 (31 October 2017) [2017] ZAECHGHC 118

COURT

Eastern Cape High Court, Grahamstown

BEFORE

J.D. Pickering

CASE / FILE NUMBER

1987/2017

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IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION, GRAHAMSTOWN)

Case no: 1987/2017

Date heard: 26 October 2017

Date delivered: 31 October 2017

In the matter between

LINDIWE SYLVIA MEKULA

Plaintiff

Vs

ROAD ACCIDENT FUND

Defendant

JUDGMENT

PICKERING J:

- [1] On 5 December 2015 plaintiff sustained certain severe bodily injuries consequent upon a motor vehicle in which she was a passenger

overturning on the road between Idutywa and Mthatha. Plaintiff was, and still is, resident in Port Elizabeth and she accordingly

instructed Jock Walter Incorporated Attorneys of Port Elizabeth to institute action for damages against the Road Accident Fund.

This action was duly instituted in the Grahamstown High Court, such being the seat of the court of the Eastern Cape, on 28 April 2017.

- [2] Prior to the issue of summons the defendant, in December 2016, had already conceded that the sole cause of the accident was the negligence of the driver of the motor vehicle. The only issue in the matter therefore is the quantum of plaintiff's damages. In this regard plaintiff claims the sum of R965 902,00, being in respect of past and future medical expenses, general damages and loss of earnings and earning capacity.
- [3] Plaintiff has now applied for an order removing her action from this Court to the Eastern Cape Local Division, Port Elizabeth. The application is opposed by the defendant.
- [4] Section 27(1)(b)(i) of the Superior Court's Act 10 of 2013 confers a discretion upon the court to make such an order. It provides as follows:

"1. If any proceedings have been instituted in a Division or at a seat of a Division, and it appears to the court that such proceedings –

- (a) ...
- (b) Would be more conveniently or more appropriately heard or determined –
- (i) at another seat of that Division; or
- (ii) ...

that court may, upon application by any party thereto and after hearing all other parties thereto, order such proceedings to be removed to that other Division or seat, as the case may be."

- [5] The relevant principles pertaining to such an application are conveniently summarised in Erasmus: Superior Court Practice vol 1 where, at A2-143 the learned authors, with reference inter alia to Mulder v Beacon Island Shareblock Ltd 1999 (2) SA 274 (C) and Nongovu N.O. v Road Accident Fund 2007 (1) SA 59 (T) state as follows:

"A court will not lightly order the removal of a matter which it is competent to decide. An applicant for change of venue must

satisfy the transferring court that the proceedings would be more conveniently or more appropriately heard or determined at the

transferee court. In determining the removal the court will have regard to the convenience of the parties themselves, the

convenience of the court, and the general disposal of litigation.”

See too Davis v Denton unreported case number 630/2008 ECG.

- [6] Plaintiff states that she will require “extensive investigation by medical experts”. She states that because of her impecunious state she does not have the necessary funds to travel to Grahamstown to be examined by experts there. This averment, as pointed by defendant in reply, is disingenuous as it is well known that there are in fact no medical practitioners possessed of the relevant and necessary expertise in Grahamstown.
- [7] Plaintiff states further that apart from a serious injury assessment report compiled by an orthopaedic surgeon practising in Port Elizabeth, her attorney is in the process of obtaining medico-legal reports from a clinical psychologist, an occupational therapist and an industrial psychologist, all of whom are based in Port Elizabeth. If the trial were to be held in Grahamstown, so she avers, her expert witnesses would be required to travel from Port Elizabeth to Grahamstown, thus significantly increasing the costs of the action. Defendant, however, states that the prospect of medical experts having to travel to Grahamstown in the future is, in all probability, negligible, as the matter may well be settled once all the expert reports have been obtained.
- [8] Defendant states further that in any event its experts are based in East London. It submits accordingly, that if the matter does proceed to trial, its experts would need only to travel to Grahamstown rather than to Port Elizabeth. It would, defendant

avers, be only fair in the circumstances for plaintiff’s experts also to travel to Grahamstown which, being almost halfway

between East London and Port Elizabeth, would be the most convenient and appropriate venue for the trial. In my view there is considerable merit in this submission.

- [9] Plaintiff contends that it is “in the interest of justice for this claim to proceed to trial sooner rather than later.” Whilst this is undoubtedly correct no details are furnished as to how a transfer of the action to Port Elizabeth would expedite the hearing of the matter. In my view this contention takes the matter no further.
- [10] Plaintiff makes much of the costs that she would incur should the action not be transferred to Port Elizabeth. She states, for instance, as follows:

“If the trial in this action were to be held in Grahamstown, it would mean that these four expert witnesses would have to travel from Port Elizabeth to Grahamstown. This would significantly increase the legal costs, as I would be liable for the travelling and accommodation expenses of those expert witnesses. Those expenses would be saved if the matter were to be moved to Port

Elizabeth.”

And:

“For the trial to be heard in Grahamstown may very well result in significant expenses for me, but the trial being heard in Port

Elizabeth will not result in any further expense for the defendant.”

[10] In my view, however, bearing in mind that defendant has already conceded the merits of the action, it is difficult to envisage in what circumstances plaintiff would be liable for any costs relating to the attendance by her experts at a trial in Grahamstown. It is defendant which, in the ordinary course of events, would be liable for such costs. Despite this defendant is content to have the matter heard in Grahamstown should it not settle beforehand.

[11] Furthermore, defendant has appointed its present panel attorneys to represent it in the Grahamstown action. It states that it has a computerised system of appointing attorneys with an algorithm which cannot be disturbed without considerable difficulty. If the matter were to be transferred to Port Elizabeth there would have to be an interruption of the computerised system to cancel the mandate of the present attorneys and reappoint attorneys in Port Elizabeth. Whilst defendant may be somewhat over-emphasising the difficulties which would be occasioned to it in such circumstances the fact remains that it would be inconvenienced thereby. It is no answer, in my view, for plaintiff to aver that defendant “could simply transfer the file to one of its other panel attorneys in Port Elizabeth, at little additional cost.”

[12] As set out above the onus is on the plaintiff to satisfy the court that the proceedings would be more conveniently or more appropriately heard or determined at Port Elizabeth. I am entirely unpersuaded in the circumstances of this matter that plaintiff has discharged this onus. In my view this application was premised on the alleged inconvenience to plaintiff without any or proper regard being had to the inconvenience which would be occasioned to defendant. The application therefore falls to be dismissed.

[13] There is no reason why costs should not follow the result.

[14] Ms. Watt, who appeared for defendant, very fairly conceded that in these circumstances, where plaintiff is not a wealthy litigant,

payment of the costs should be deferred until the final determination of this action.

[15] Accordingly the following order will issue:

The application is dismissed with costs. Such costs are not to be taxed and payable until the final determination of the main action.

J.D. PICKERING

JUDGE OF THE HIGH COURT

Appearing on behalf of Plaintiff: Adv. Olivier

Instructed by: Cloete and Co, Mr. Cloete

Appearing on behalf of Defendant: Adv. Watt

Instructed by: Netteltons Attorneys

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