

SOUTH AFRICA / JUDGMENT

Mohomi obo Mohumi v MEC For Health, Gauteng (23339/2022)

[2024] ZAGPJHC 724 (5 August 2024)

[2024] ZAGPJHC 724

COURT

South Gauteng High Court, Johannesburg

BEFORE

Yacoob

CASE / FILE NUMBER

23339/2022

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IN THE HIGH COURT OF SOUTH
AFRICA
GAUTENG LOCAL DIVISION,
JOHANNESBURG
CASE
NO: 23339/2022

DATE:

09-05-2024

1.

REPORTABLE: YES / NO.

2.

OF INTEREST TO OTHER JUDGES: YES / NO.

3.

REVISED.

In

the matter between

MOHOMI MP obo

MOHOMI MD

Plaintiff

and

MEC

FOR HEALTH, GAUTENG

Defendant

JUDGMENT

YACOOB, J: This matter was set down for trial on the 8th May 2024. The trial date was notified to the plaintiff in September 2023 and it was duly served on the defendants then attorneys of record, that is the state attorney in October 2023. The matter came before me and the defendant raises a point that firstly they were not properly served with the notice of motion and secondly that the matter is not right before hearing.

The defendant is now represented by different attorneys. There is a notice of withdrawal by the State Attorney dated 16 January 2024 which is after the date of which the notice of set down was served on the said attorney and this attorney came on record on the same day. The letter of instruction that is uploaded in response to one of the rule 7 notices filed by the plaintiff who has filed a plethora of interim applications shows that the attorneys were instructed in December 2023 and they were also instructed to retrieve the file from the State Attorney. There is therefore no basis on this this Court can accept that they did not know that the matter was set down for the 8th May.

In addition, there are emails from the attorney of the defendant in which, which show that the attorney arrogantly assumed that the matter is set down for the hearing of the merits which have already been conceded rather than the quantum, even though there are expert reports which clearly deal with quantum which have been uploaded on CaseLines.

The plaintiff has implored this Court not to allow the matter to be delayed any further because the defendant ought to have known and ought to have prepared. The plaintiff also complains of the conduct of the attorney of the defendant. I am not satisfied that it would be in the interest of justice to proceed with the matter in the absence of the expert reports which the defendant has undertaken to file, the defendant informs the court that the appointments have already been attended.

According to the defendant the reports will be read on or about the 15th August, joined minutes would then have to be provided. The plaintiff has requested that if the matter is not to proceed that in any event it be stood down to tomorrow to enable the parties to negotiate. I do not see any point in standing the matter down for them to negotiate however I do believe that it is imperative that the parties have a meaningful engagement with one another and taking into account that the request for a stand down to tomorrow implies necessarily that the counsel is available tomorrow and having determined that the defendant representatives are available tomorrow. I am going to direct in my order that the parties hold a pretrial conference tomorrow to try and narrow the issues and to negotiate as much of a settlement as is possible.

The question of medical expenses in particular should be negotiated particularly since the plea of the defendant makes it clear that the defendant is going to rely on the so-called public health defence, and I have not seen that the plaintiff meaningfully engages with it yet.

The quantum of the general damages and the loss of earnings claim can also be negotiated between the parties so I am going to direct them to hold a pretrial conference tomorrow and to upload the minutes of that pre-trial conference within the course of next week.

I am not going to make any order regarding the conduct of the parties to one another but it seems to me that neither side has been particularly considerate or civil to one another and this is a matter for some concern because legal professionals ought to treat each other with the civility due to colleagues.

The defendant attempted to pursue me that no cost order should be made against it for the delay, however it is my view that the defendant ought to have known the matter was on the roll for today and ought to either have prepared itself or to have brought a formal application for the removal or the postponement, they did not do this. The plaintiff has done the correct thing which is serve the notice of set down on the attorneys of record. They have uploaded all their expert reports and so on, and the plaintiff is being prejudiced by this delay.

I therefore make the following order:

1. The matter is removed from the roll.
2. The defendant is to pay the plaintiffs taxed wasted costs on an attorney and client scale.
3. The parties are to hold a pre-trial conference tomorrow, that is the 10th May 2024 at which they will endeavour to narrow the issues and to negotiate settlements on each of the heads of damages.
4. Minutes of that pre-trial conference are to be uploaded on CaseLines by the end of next week that is by the 17th May 2024.
5. Should the pre-trial conference not take place tomorrow that is on 10 May as ordered the plaintiff will have to bring, the plaintiff shall bring a substantive application explaining why this did not happen and why it should be allowed to set the matter down again on the trial roll.
6. The defendant's expert notices and summaries must be filed on or before the 20th August 2024.
7. Parties are to ensure that joined minutes are filed within six weeks of the reports of the experts being filed.
8. Should any party fail to comply with this order the other party shall take steps in accordance with the rules to remedy the situation.

That is my order.

YACOOB, J

JUDGE OF THE HIGH COURT

DATE:

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Prepared on 9 October 2026 · Esheria