

SOUTH AFRICA / JUDGMENT

Molekwa v Road Accident Fund (54601/16) [2017] ZAGPPHC 506 (18 August 2017) [2017] ZAGPPHC 506

COURT

North Gauteng High Court, Pretoria

BEFORE

Motepe

CASE / FILE NUMBER

54601/16

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

REPUBLIC
OF SOUTH AFRICA
OFFICE
OF THE CHIEF JUSTICE
(GAUTENG
DIVISION, PRETORIA)
CASE
NO: 54601/16

DATE: 54601/16
In

the matter between: CAROLINE
LIZBETH
MOLEKWA
Plaintiff
and ROAD
ACCIDENT
FUND
Defendant

JUDGMENT

MOTEPE AJ:

Introduction

- [1] The plaintiff is an adult female aged 53 years. She sues the defendant for loss of support in her personal capacity stemming from the death of her father, Lesiba April Molekwa from a motor vehicle accident.
- [2] This motor vehicle accident occurred on 16 April 2015 at or near Elias Motswaledi Street and Thabo Mbeki Drive in Modimolle.
- [3] The plaintiff had to prove 1% negligence and the loss of support.

The pleadings

- [4] In her particulars of claim, the plaintiff duly alleged negligence. At the beginning of the trial, plaintiff's counsel

amended her particulars of claim by inserting a further paragraph that reads as follows:

"During the lifetime of the said Mr Lesiba April Molekwa he supported the plaintiff in full and up to his untimely death the plaintiff has suffered a loss of support."

- [5] The defendant did not object to the amendment and it was consequently granted.
- [6] The defendant disputed the plaintiff's claim. It however filed a bare denial plea. The effect thereof was that the defendant was not entitled to place any version on the plaintiff and her witnesses.
- [7] At the commencement of the trial, the defendant raised an issue concerning the police report upon which the plaintiff intended

placing reliance. I initially understood the defendant's case to be that the authenticity of the police report was challenged. To that end, I made a ruling that the defendant was not entitled to challenge the authenticity of the police report at this stage because in the pre-trial minutes of 5 September 2016, the parties agreed that the documents contained in the bundles were what they purport to be without necessarily admitting the contents thereof.

- [8] The defendant's counsel however clarified that he was not disputing the authenticity of the police report. His contention was that the contents of the police report constitute hearsay evidence and that the plaintiff is not calling the author of the report and has not laid any basis why hearsay evidence should be admitted. I could not make any ruling before I knew what the plaintiff's evidence was going to be on the police report.

[9] The trial commenced with the plaintiff calling her sister, Pauline Ramaisela Molekwa. In brief, she testified that she was the

plaintiff's older sister and that the plaintiff had never been able to work save for insignificant piece jobs that would last for a day or so. This was mainly due to the lung problem that she has had since birth. She also testified that the plaintiff also suffered from a mental handicap. She tried to convince the plaintiff to apply for disability grant without success. Her testimony was that the plaintiff harassed her when she raised the issue. It would seem that the issue of disability grant on behalf of the plaintiff was sadly not pursued any further.

[10] She confirmed that the deceased, their father, fully supported the plaintiff and that the plaintiff never left her parental home. The deceased supported the plaintiff with his salary when he was still employed. However, at the time of his death he was no longer employed but earning an old age social grant or pension from the state. He continued to support the plaintiff with this grant.

[11] She testified that on 16 April 2016, she received a telephone call from an unknown person that her father had been involved in a motor vehicle accident and was admitted at the Modimolle Hospital. On her arrival at the hospital she found that her father had in fact passed away. Of relevance is that she subsequently obtained an accident report prepared by the police which she then handed to her attorney. Significantly however no evidence was led as to which police report she was referring to and no such report was handed in as an exhibit.

[12] The plaintiff herself testified. She largely confirmed her sister's evidence that she has hardly worked in her life and that she largely depended on her father for support. While her siblings, including her sister Pauline did contribute to her upkeep, she mainly depended on her father. She confirmed however that her father was, at the time of his death, receiving social grant in a form of pension. At the end of the plaintiffs evidence, the plaintiff closed its case.

[13] Counsel for the defendant applied for absolution from the instance. The grounds for absolution were twofold. Firstly, the defendant

argued that the plaintiff had failed to prove the proverbial 1% negligence against the insured driver and secondly that at the time of his death, the deceased was receiving a government old age social grant and that such grant does not constitute an income for the purposes of claiming of loss of support against the defendant and consequently, the defendant is in law not liable to compensate the plaintiff.

[14] The test for absolution has been stated as whether, at the close of the plaintiffs case, there was such evidence before Court, assuming it were true, upon which a reasonable Court might, not should, give judgment against the defendant.[1]

[15] In order to prove 1% negligence against the insured driver, the plaintiff had to at the very least identify the accident report

referenced by the plaintiff's sister in her evidence and also hand it in as an exhibit. This is so because both Pauline and the plaintiff did not witness the accident. The only record of the accident was in the accident report, which had to be identified and led into evidence. Thereafter, the plaintiff had to lay the basis as to why I should accept the contents of the accident report. This the plaintiff did not do.

[16] As indicated above, the accident report was never identified and handed in as an exhibit. The mere fact that the plaintiff placed bundles of documents before Court does not necessarily mean that the Court is entitled to have regard to those documents when evaluating evidence without them being identified and handed in as evidence. On this ground alone, the plaintiff has failed to prove the proverbial 1% negligence, thereby entitling the defendant to absolution.

[17] Even if I were wrong, the defendant would still be entitled to absolution on the second ground. The defendant has referred to the judgment of His Lordship Mr Justice Legodi in this division, handed down on 18 November 2015. It is the matter of Dikeledi Alice Modibedi obo Ismael M Modibedi v The RAF under case no: 45626/13. In that matter, the learned Judge made a declarator that a disability grant is not an income for purpose of suing for loss of support. This case is fatal to the plaintiffs claim. Plaintiffs counsel has in fact conceded, and correctly so in her heads of argument that had the plaintiff known that this judgment was the basis of the defendant's defence, it would have attempted to address it but most importantly that "the plaintiff would not have continued with the claim at all".[2]

[18] In the premises, the defendant's application for absolution must succeed.

Costs

[19] The evidence before me confirms that the plaintiff is indeed indigent. While the defendant is successful, the Court still retains a discretion whether to grant costs against an unsuccessful litigant or not. In this case, the defendant has correctly contended that I should not order costs against the plaintiff. The defendant however argues that I should order costs against the plaintiffs legal representatives on the ground that they ought to have known of Legodi J's judgment and advised their client accordingly. The plaintiff's counsel argued on the other hand argued that I should not accede to the defendant's request for an order of costs de bonis propriis on the basis that it was only at the trial that the defendant raised the point, relying on Legodi J's judgment.

[20] I agree with plaintiffs counsel that the defendant ought to have raised the point much earlier in order to avoid the leading of unnecessary evidence. Firstly, the defendant ought to have raised an exception in accordance with rule 23 that the plaintiff has failed to allege that the deceased supported her in full. Secondly, after becoming aware that the loss of support was based on the state pension, the defendant could have brought this legal point to the

attention of the Court so that it be decided before any evidence is led, in accordance with rule 33(4) of the Uniform Rules. Either way, this matter should not have proceeded this far. The blame therefore is not only on the plaintiff's legal representative. The defendant's legal representatives are also partially to blame.

[21] In addition, costs de bonis propriis are not necessarily awarded where a legal representative might have made an error of law. They are generally awarded for conduct by legal representatives which substantially and materially deviates from the standard expected of legal practitioners such as dishonesty, irresponsible

and grossly negligent conduct etc[3] No such conduct is alleged and there is none in casu.

[22] In any event, no prior notice was given that the defendant would be requesting costs de bonis propriis. In the premises, I find that each party is liable to pay its own costs.

[23] Consequently, I make the following order:

1. The defendant's application for absolution from the instance against the plaintiff succeeds;
2. Each party to pay its own costs.

JA Motepe

Acting Judge of the High Court

Matter heard on: 8 August 2017

Judgment

reserved on: 8 August 2017

Counsel for the plaintiff: Adv S Strauss

Attorneys for the plaintiff: Scholtz Attorneys

Pretoria

Counsel for the defendant: Adv Bl Magagula

Attorneys for the defendant: Pule Incorporated

[1] Levco Investments (Pty) Ltd v Standard Bank of SA Ltd 1983

(4) SA 917 (A) at 928 (B); Gascyne v Paul and Hunter 1917 (TPD) 170

[2] Plaintiff's heads, para 7.4

[3] See in this regard Multi-links Telecommunications Ltd v Africa Prepaid Services Nigeria Ltd and Others, Telkom SA Soc Ltd and

Another v Blue Label Telecoms 2014 (3) SA 265 (GP) at paras 34 and 35; Ward v Sulzer 1973 (3) SA 701 (AD) at 706-707

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2017/506.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/molekwa-v-road-unknown-topic-agpphc-2017>

Prepared on 26 October 2026 · Esheria