

SOUTH AFRICA / JUDGMENT

Mthisi v Road Accident Fund (2023/115885) [2025] ZAGPPHC 402 (8 April 2025) [2025] ZAGPPHC 402

COURT

North Gauteng High Court, Pretoria

BEFORE

R Hawman

CASE / FILE NUMBER

2023/115885

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTEN DIVISION, PRETORIA

CASE NO: 2023-115885

- (1) Reportable: NO
- (2) Of interest to other Judges: NO
- (3) Revised: No

Delivered on 08 April 2025

In the matter of

THULASIZWE MTHISI

Plaintiff / Applicant

And

ROAD ACCIDENT FUND

Defendant / Respondent

CORAM: R HAWMAN AJ

HEARD ON: 03 APRIL 2025

JUDGMENT

BY: HAWMAN AJ

DELIVERED ON: The date and time for hand-down is deemed to have been at 10h00 on 08 April 2025.

[1]

INTRODUCTION:

In this matter, the Plaintiff, a (currently) 35-year-old male person, had instituted action against the Defendant, claiming compensation for injuries sustained in a motor vehicle accident that occurred on 06 November

2022. Also in this matter, the Plaintiff made application for default judgment on both the merits (liability) and quantum aspects of the claim. Plaintiff's application for default judgment was brought on the basis that the Defendant had failed to enter an appearance to defend in the matter.

[2] CHRONOLOGY:

- The claim was lodged with the Defendant on 20 March 2023;
- Summons was, by hand, served upon the Defendant on 22 November 2023;
- On 07 February 2024, the Plaintiff attorneys made application to the Registrar for a hearing date to be allocated on the Default Judgment roll;
- On or about 13 August 2024, the Defendant, via electronic mail message, served a Notice of Intention to Defend upon the Plaintiff attorneys;
- Having failed to serve its Plea, the Plaintiff attorneys, by hand, served a Notice of Bar upon the Defendant on 12 September 2024;
- In reaction to the Notice of Bar, the Defendant, on 13 September 2024 (and again via electronic mail message), served its plea upon the Plaintiff attorneys;
- The matter was "created" on the CaseLines system on 14 November 2024;
- On 26 February 2025, the Plaintiff attorneys, via electronic mail message, and, in terms of Rule 28(1), served a Notice of Amendment of Particulars of claim upon the Defendant;
- On 18 March 2025, the Plaintiff attorneys, again via electronic mail message, served Plaintiff's amended pages (amended Particulars of claim) upon the Defendant;
- The Defendant's Notice of Intention to Defend was uploaded onto CaseLines on 20 March 2025;
- On 26 March 2025, the Plaintiff attorneys, again via electronic mail message, served its expert Actuarial report upon the Defendant;
- On 28 March 2025, via electronic mail message, the Plaintiff attorneys served its Application for Default Judgment upon Defendant attorneys. The

electronic mail message accompanying the Application for Default Judgment Application contained the following message:

“Rule 4A(1)(c) of the Uniform Rules of Court provides that the following abovementioned documents may be served via electronic mail to the relevant e-mail address provided.

Kindly find attached the Default Judgment application”.

· Also, on 03 April 2025, and via electronic mail message, the Plaintiff attorneys served its Rule 38(2) application (for evidence to be admitted by way of affidavit)

upon the Defendant;

· Plaintiff’s application for default judgment served before this Court on 03 April 2025.

[3] On the date of hearing, Adv E Diedericks appeared for the Plaintiff and Ms Riba (State Attorney) for the Defendant. Adv Diedericks informed the court that she held instructions to argue that, as the Defendant’s Notice of Intention to Defend was not properly delivered, there was no Notice of Intention to Defend before court and that, therefore, the Plaintiff can proceed with an application on a default basis. Ms Riba (on the other hand) argued that the Defendant’s Notice of Intention to defend was properly served and filed, and that the matter was therefore incapable of proceeding on a default basis.

[4] During argument, both parties were ad idem that there was no explicit agreement between the parties in terms of Rule 4A(1)(c), which provides for documents to be served electronically.

[5] Note should be taken that, in the event that the Court was to find that the Defendant’s Notice of Intention to Defend was properly served and delivered, no (alternative) application was brought by the Plaintiff for the setting aside of the Notice of Intention to Defend and subsequent plea on the basis of an “Abuse of Process”.

[6] The only aspect upon which this Court had to make a determination was therefore whether Defendant’s Notice of Intention to Defend had been properly “delivered” (served and filed) and whether the matter was capable of proceeding on a default basis.

[7] THE LAW:

Rule 4 of the Uniform Rules of Court, which deals with the delivery of documents and Notices, provides as follows:

[7.1] Rule 4 provides as follows:

4. Service

(1)

- (a) Service of any process of the court directed to the sheriff and subject to the provisions of paragraph (aA) any document initiating application proceedings shall be effected by the sheriff

Section 4A (Delivery of documents and notices) provides as follows:

- (1) Service of all subsequent documents and notices, not falling under rule 4(1)(a), in any proceedings on any other party to the litigation may be effected by one or more of the following manners to the address or addresses provided by that party under rules 6(5)(b), 6(5)(d)(i), 17(3), 19(3) or 34(8), by— (my emphasis)
- (a) hand at the physical address for service provided, or
- (b) registered post to the postal address provided, or
- (c) facsimile or electronic mail to the respective addresses provided. (my emphasis)
- (3) Chapter III, Part 2 of the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002) is applicable to service by facsimile or electronic mail.
- (4) Service under this rule need not be effected through the Sheriff.
- (5) The filing with the registrar of originals of documents and notices referred to in this rule shall not be done by way of facsimile or electronic mail. (my emphasis)

[Rule 4A inserted by GNR 464 in G. 35450 with effect from 27 July 2012.]

[7.2.] The term “deliver” is defined in Rule 1 of the Uniform Rules of Court as follows:

“ ‘deliver’ means to serve copies on all parties and file the original with the registrar ”

[7.3.] Rule 19 (Notice of intention to defend) provides as follows:

- (1) Subject to the provisions of section 24 of the Act, the defendant in every civil action shall be allowed 10 days, after service of summons on such defendant, within which to deliver a notice of intention to defend, either personally or through an attorney.... (my emphasis)

(3).

- (b) The defendant may indicate in the notice of intention to defend whether the defendant is prepared to accept service of all subsequent

documents and notices in the suit through any manner other than the physical address or postal address and, if so, shall state such preferred manner of service. (my emphasis)

- (c) The plaintiff may, at the written request of the defendant, deliver a consent in writing to the exchange or service by both parties of subsequent documents and notices in the suit by way of facsimile or electronic mail. (my emphasis)

(d). If the plaintiff refuses or fails to deliver the consent in writing as provided for in paragraph (c), the court may, on application by the defendant, grant such consent, on such terms as to costs and otherwise as may be just and appropriate in the circumstances.

(5) Notwithstanding the provisions of subrules (1) and (2) a notice of intention to defend may be delivered even after expiration of the period specified in the summons or the period specified in subrule (2), before default judgment has been granted: Provided that the plaintiff shall be entitled to costs if the notice of intention to defend was delivered after the plaintiff had lodged the application for judgment by default. (my emphasis)

[7.4] Rule 22 (Plea) provides as follows:

(1) Where a defendant has delivered notice of intention to defend, he shall within 20 days after the service upon him of a declaration or within 20 days after delivery of such notice in respect of a combined summons, deliver a plea with or without a claim in reconvention, or an exception with or without application to strike out.

[Rule 22(1) substituted by GNR 2021 in G. 3304 with effect from 15 November 1971, GNR 2164 in G. 10958 with effect from 2 October 1987, GNR 2642 in G. 11045 with effect from 31 December 1987.]

[7.5.] Rule 26 (Failure to deliver pleadings – Barring) provides as follows:

Any party who fails to deliver a replication or subsequent pleading within the time stated in rule 25 shall be ipso facto barred. If any party fails to deliver any other pleading within the time laid down in these Rules or within any extended time allowed in terms thereof, any other party may by notice served upon him require him to deliver such pleading within five days after the day upon which the notice is delivered. Any party failing to deliver the pleading referred to in the notice within the time therein required or within such further period as may be agreed between the parties, shall be in default of filing such pleading, and ipso facto barred: Provided that for the purposes of this rule the days between 16 December and 15 January, both inclusive shall not be counted in the time allowed for the delivery of any pleading.

[Rule 26 substituted by GNR 2164 in G. 10958 with effect from 2 October 1987, GNR 2642 in G. 11045 with effect from 31 December 1987.]

[7.6] Rule 30 (Irregular proceedings):

(1) A party to a cause in which an irregular step has been taken by any other party may apply to court to set it aside. (my emphasis)

[Rule 30(1) substituted by GNR 2164 in G. 10958 with effect from 2 October 1987, GNR 2642 in G. 11045 with effect from 31 December 1987, GNR 1883 in G. 14110 with effect from 3 August 1992.]

(2) An application in terms of subrule (1) shall be on notice to all parties specifying particulars of the irregularity or impropriety alleged, and may be made only if— (my emphasis)

- (a) the applicant has not himself taken a further step in the cause with knowledge of the irregularity; (my emphasis)
- (b) the applicant has, within 10 days of becoming aware of the step, by written notice afforded his opponent an opportunity of removing

the cause of complaint within 10 days; (my emphasis)

- (c) the application is delivered within 15 days after the expiry of the second period mentioned in paragraph (b) of subrule (2). (my emphasis)

[Rule 30(2) substituted by GNR 1883 in G. 14110 with effect from 3 August 1992; r 30(2)(c) amended by GNR 2047 in G. 17663 with effect from 13 January 1997.]

- (3) If at the hearing of such application the court is of opinion that the proceeding or step is irregular or improper, it may set it aside in whole or in part, either as against all the parties or as against some of them, and grant leave to amend or make any such order as to it seems meet.
- (4) Until a party has complied with any order of court made against him in terms of this rule, he shall not take any further step in the cause, save to apply for an extension of time within which to comply with such order.

[Rule 30(4) substituted by GNR 2164 in G. 10958 with effect from 2 October 1987, GNR 2642 in G. 11045 with effect from 31 December 1987.]

[8] THE REVISED CONSOLIDATED PRACTICE DIRECTIVE 1 of 2024 (WITH EFFECT FROM 26 FEBRUARY 2024 – AMENDED ON 12 JUNE 2024):

Section 6 of the Revised Consolidated Practice Directive 1 of 2024 (with effect from 26 February 2024 – amended on 12 June 2024) provides as follows:

Filing or delivery of documents / Notices:

6. Service, filing and the Invitation of Office Profiles:

6.1. Service of process in terms of the Uniform rules of Court remains strictly enforceable. (my emphasis)

6.2. Thus, the uploading of original notices or process to CaseLines or Court Online (whichever platform is applicable to the relevant

case in terms of this directive) will be regarded as compliant with the Rules of Court as the effective date of proper filing of the document, but not the service of same. Any party may be called upon at any time by the registrar or by a Judge to produce the original document so uploaded. (my emphasis)

6.3. Service should still be effected in terms of Rule 4 or 4A of the Uniform Rules of Court, as the case may be. Where service

is effected by e-mail the delivery or read receipt will serve as proof of service and must be uploaded. (my emphasis)

6.4. No filing of hardcopy or by way of emailing pleadings/notices and other documents shall be allowed.

6.5. Documents filed outside of court hours will be regarded as having been filed the following court day.

6.7. The responsibility to timeously upload pleadings, notices and legal process under the respective sections in all cases created by legal representatives, save for cases initiated in the urgent court lies with the party responsible for each particular pleading/ notice/ legal process and in line with the Uniform Rules of Court.

[9] RECENT CASE LAW REGARDING ELECTRONIC SERVICE:

[9.1.] In the matter of Mphuthi v Road Accident Fund (34766/2021)

[2024] ZAGPPHC 1137 (20 November 2024), delivered by Kruger AJ, the plaintiff issued summons against the defendant in respect of a motor vehicle accident that occurred on 22 March 2018.

The matter was before Court on the default judgment roll 3 July 2024. The Defendant electronically served a notice of intention to defend on the attorney of the plaintiff on 3 July 2024 at 8h39 am, according to the proof of service. The notice of intention to defend was uploaded on Caselines also on 3 July 2024. The proof of service was in e-mail form and the relevant portions reads:

"Good day

The above matter refers

Take note that that service is herewith effected in terms of Rule 4A(1)(c)

Find attached hereto the underlisted documents for service

NOTICE OF INTENTION TO DEFEND

Kindly affix an acknowledgement of receipt stamp and return the stamped copy to us electronically

We hope the above is in order and we await your response

Regards"

[9.2.] The Court found that the notice of intention to defend was not delivered as prescribed by the Uniform Rules as it was 'served' electronically on the attorney of the plaintiff, before the attorney of the plaintiff has given consent

that subsequent documents and notices may be exchanged by way of electronic mail. It was found that the defendant had not

complied with Rule 19(5).

[9.3] As the Counsel for the defendant conceded that the notice of intention to defend was electronically served on the plaintiff without consent to such service by the plaintiff as is required in terms of the Uniform Rules of Court, the Court found that that did not constitute proper service and that same did not comply with the requirement of 'delivery'

as stipulated in Rule 19(5).

[9.4] The court found that the defendant had various opportunities to file a notice of intention to defend, had the

defendant had any desire to defend the matter, inter alia, the following:

1. After the summons had been served on the defendant by Sheriff on 16 July 2021;
2. After the application for default judgment had been served on 17 May 2023;
3. After the notice of set down for default judgment had been served on 14 May 2024;
4. After the notice of intention to amend had been served on the defendant on 10 May 2024.

[9.5] The Court found that, not only did the defendant not comply with the Rules but also used the Rules as an abuse of the process of the Court. The Court found that the purpose of Rule 19(5) is not the 'go to place' if one has ignored a claim and now "the clock has struck 12".

[9.6.] The Court found that there was no intention to defend before it and that, even if there were, in the circumstances, it stood to be set aside as an abuse of process of Court.

[10] The facts of the matter under discussion are distinguishable from the Mphuthi matter in the following ways:

· In the Mphuthi matter, the Notice of Intention to Defend was served via electronic mail upon the Plaintiff attorney on 03 July 2024 (being the date of the hearing of the application for default judgment). In casu, the Notice of Intention to defend was (via electronic mail) served upon the Plaintiff attorneys on 13 August 2024, therefore well in advanced of the hearing date of 03 April

2025. The Plaintiff, therefore, had ample time, opportunity and remedies to timeously object to the service by electronic mail of the Notice of Intention to Defend – something that was simply not done;

· In the Mphuthi matter, once the Notice of Intention to Defend was served, no further steps in the cause was taken by the Plaintiff (except for the application for the setting aside of such notice on the basis of an "Abuse of Process"). It is evident from the facts in casu that, although there was no formal (explicit) agreement between the parties regarding electronic service of Notices or documents, the Plaintiff had, after being served with the Defendant's Notice of Intention to

Defend via electronic mail message, not objected to the manner of service (by bringing an application to set it aside as an “irregular step”), but had, on the contrary, taken further steps in the cause by proceeding to serve the Defendant with a Notice of Bar, calling upon the Defendant to deliver its plea in the matter;

- [11] It is evident that, by taking further steps in the cause (with full knowledge of the alleged “irregularity”, i.e. of service via electronic mail message), the Plaintiff (by its conduct) admitted full knowledge of the Notice of Intention to defend and had, accordingly, acted upon it.
- [12] Moreover, the Plaintiff attorneys themselves, thereafter, served Notices and applications upon the Defendant via electronic mail message, further confirming Plaintiff’s willingness to exchange documents in the manner.
- [13] I therefore find that Defendant’s Notice of Intention to Defend had properly been served upon Plaintiff attorneys;
- [14] Furthermore, I find that the Notice of Intention to Defend had properly been filed in terms of paragraph 6.2 of the Revised Consolidated Practice Directive 1 of 2024 (with effect from 26 February 2024 – amended on 12 June 2024), when same was uploaded onto the CaseLines system on 20 March 2025;
- [15] Consequently, I find that the Defendant’s Notice of Intention to Defend had properly been “delivered” (served and filed) and that same was therefore properly before Court on 03 April 2025;
- [16] As already indicated, as this Court was not required to make any determination on any possible “Abuse of Process” in the matter, no further view will be expressed on the issue.
- [17] In light of the above, the following order is made:
1. The matter is removed from the roll;
 2. Cost in the cause

R HAWMAN AJ

On behalf of Plaintiff:

Adv E Diedericks

Instructed by:

Gert Nel Incorporated

Pretoria

On behalf of Defendant: Ms

Riba

State Attorneys

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