

SOUTH AFRICA / JUDGMENT

Petersen v Road Accident Fund (6868/2020) [2024] ZAGPPHC 1352 (19 December 2024) [2024] ZAGPPHC 1352

COURT

North Gauteng High Court, Pretoria

BEFORE

Ramawele

CASE / FILE NUMBER

6868/2020

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SUMMARY:

ML PETERSEN v. ROAD ACCIDENT FUND

Transfer

and removal of proceedings from one Division to another in terms of
section 27(1)(b) ---convenience of the parties---court
roll of the

transferring court congested or full, and application made to remove
and transfer matter to another Division.

Congested

court roll not sufficient to justify the removal and transfer of
matter from one Division to another.

The

Applicant instituted an application in terms of section 27(1)(b) of
the Superior Courts Act 10 of 2013 to remove a RAF matter from the
High Court of South Africa, Gauteng Division, Pretoria to the High
Court of South Africa, North

West Division, Mahikeng. The Applicant

contended that the court roll in the Gauteng Division, Pretoria was
full or congested and

applied that the matter be removed and

transferred to the North West Division where he would be allocated an
earlier date than

in Pretoria.
Held,
that it would not be convenient for the action proceedings to be transferred to the North West Division on the basis of the congestion of the roll in the Gauteng Division.
Held,
further, on the facts, that the Applicant has not dealt with the convenience of all the parties, the transferring court, the litigants and the transferee court sufficiently.
REPUBLIC
OF SOUTH AFRICA
IN
THE HIGH COURT OF SOUTH AFRICA
GAUTENG
DIVISION, PRETORIA
Case
Number: 6868-2020
(1)
REPORTABLE: YES
(2)
OF INTEREST TO OTHER JUDGES: NO
(3)
REVISED: YES

DATE: 19/12/24
SIGNATURE
In

the matter between: ML
PETERSEN
APPLICANT
and
ROAD
ACCIDENT
FUND
RESPONDENT

JUDGMENT

Ramawele AJ

Introduction

[1] This is an unopposed application for the removal of a trial from this Division in terms of Section 27 (1) (b) of the Superior Courts Act 10 of 2013 ("the Act") and for it to be transferred to the jurisdiction of the High Court of South Africa, North North-West Division, Mahikeng. On 5 December 2024 I dismissed this application after hearing Counsel for the Applicant. This judgement constitutes reasons for the dismissal of the application.

- [2] The Applicant seeks a relief in terms whereof the matter be removed from the High Court of South Africa, Gauteng Division, Pretoria, and transferred to the High Court of South Africa, North North-West Division, Mahikeng. The Applicant seeks, where necessary, that the Applicant be directed to facilitate the transmission of all court files and/or documents from the Registrar of the Gauteng Division, Pretoria to the Registrar of the North West Division, Mahikeng.

Background

- [3] The Applicant is a female person residing at 2[...] D[...] street, Extension 3, Alabama, Klerksdorp, North West Province. On or about 4 November 2018 and at or near the intersection of Mimosa and Kantoor streets, Alabama, Klerksdorp a motor vehicle collision occurred between a motor vehicle with registration number H[...] driven by one Oupa (the first insured driver) and a motor vehicle with registration number Y[...] driven by one TL Khan (the second insured driver). The Applicant was a passenger in the motor vehicle with registration number Y[...].
- [4] After the motor collision, the Applicant was admitted and treated at Klerksdorp/Tshepong hospital, situated in the North West Province, for the injuries she had sustained.
- [5] The Applicant instituted action proceedings on 30 January 2020 in the above Honourable Court. According to the Applicant, these proceedings were instituted in the above Honourable Court because this court "has jurisdictional competence premised on the fact that the respondent's registered address and principal place of business is situated within the above Honourable Court's jurisdiction".
- [6] After considering the merits of the case, the Respondent accepted 100% liability in respect of the agreed or proven damages suffered by the Applicant. On 23 May 2023, the HPCA acting on behalf of the Respondent, classified that the Applicant's injuries qualify as serious injury under the Narrative Test. The Respondent then conceded that general damages were payable to the Applicant.
- [7] As its heading attests, section 27 of the Act provides for the removal of proceedings from one Division to another Division or from one seat to another of the same seat in the same Division.
- [8] Section 27 of the Act provides that:
- (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) should have been instituted in another Division or at another seat of that Division; or
 - (b) would conveniently or more appropriately heard or determined-
 - (i) at another seat of that Division; or

(j) by another Division,

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

[9] The Applicant seeks the removal and transfer of the matter in terms of section 27(1)(b) of the Act. The Applicant avers in her founding affidavit that circumstances have arisen dictating that it would be, apart from merely been convenient in terms of section 27(1)(b) of the Act, financially sensible and in the interest of justice should the matter be removed and transferred.

[10] The Applicant further states in the founding affidavit that the trial roll in this Division is congested, and by transferring the matter, and having regard to where the Applicant resides and where the incident occurred, it will help ease the overwhelming case load and logistical challenges faced by this court. The Respondent would not be inconvenienced, so says the Applicant, because it has access to the appointed State Attorney's offices in the North West Province and the exchange of pleadings, notices and reports may be done by way of e-mail.

[11] On behalf of the Applicant, who was represented by Mr Du Preez, it was contended that all RAF matters in this Division are receiving allocation dates during the last quarter of 2028 whereas this matter may be set down before the end of the second term of 2025 in Mahikeng.

[12] Although not set out in the Applicant's founding affidavit, Counsel for the Applicant informed the court that a regional office of the Respondent was recently opened in Mahikeng after the Applicant's claim had already been instituted in this Division. It is also unclear when such a regional office had begun its operations.

[13] Mr Du Preez further contended that the Applicant's motion for the action proceedings to be transferred is premised on a twofold basis. First, the collision occurred in the North-West Province where the Applicant resides. Second, it is financially sensible and in the interest of justice that the matter be removed and transferred because the court roll in this Division is congested. As a direct consequence of this congestion, so submits Mr du Preez, this matter has been set down for hearing on 16 November 2026.

[14] The merits have already been settled between the parties. All that remains is the issue of quantum.

[15] The issue raised in this application is whether it is convenient for a Division of the High Court whose roll is congested to remove and transfer a matter to another Division of the High Court in terms of section 27(1)(b) of the Act.

[16] Other than the Applicant's residential address and the date on which the matter would be heard in this Division, no evidence was led or affidavits filed to establish this requirement, but Mr du Preez urged that the removal should be ordered, so he said from the Bar, because the Respondent has recently opened a regional office in the North West Province.

- [17] The Applicant's founding affidavit is riddled with legal submissions which are of no assistance to this court. There is a glaring paucity of facts justifying the removal and transfer of this matter. Although not determinative regarding the granting of the transfer, no evidence was adduced regarding any of the witnesses to be called, where they are based or where consultations would be held. This would have demonstrated the convenience of the parties but instead the Applicant stated that the parties will exchange pleadings by email. This can conveniently be done even if the matter is heard in this Division.
- [18] It may well be that if this matter was to be transferred to the Mahikeng High Court, it could be disposed of sooner than in this Division. In my view, that would not and does not render the matter transferable within the meaning of section 27 (1)(b) of the Act. It is not only the speedy disposal of litigation but also the convenience of the transferring court and the transferee court which is envisaged by section 27(1)(b) of the Act
- [19] I am not persuaded that by simply removing cases from a Division which has overwhelming backlog of cases to another Division with fewer cases would be convenient to the transferring court as contemplated in section 27(1)(b) of the Act.
- [20] Statutory provisions for the removal of cases from one court to another have been in existence in South Africa for many years and I am not aware of any case which was removed from one Division to another merely because the transferring Court's roll is congested.
- More is required. This matter concerns the ever increasing claims arising out of motor collisions flooding our courts unabatedly,
- particularly the Gauteng Division as well as the High Court of South Africa, Gauteng Local Division, Johannesburg.
- [21] In *Ying & And. v. Secretary for Transport & Others*[1] the court held that since it was dealing with an appeal, the question of the convenience of the witnesses or the expense of transporting them to the hearing did not arise[2]. As I said above, the Applicant has failed to deal with the convenience of witnesses sufficiently in the anticipated action proceedings.
- [22] It is a matter of public knowledge in the legal fraternity that the number of permanently appointed judges in this Division is not sufficient to deal with the "congested" court roll as stated by Counsel for the Applicant. The solution in my view, lies in the appointment of more permanent judges than transferring cases from one Division to another Division based on the "congested court rolls". The legislature may also intervene to create a new compensation system to address the backlog of RAF cases.

- [23] It appears to me that the primary reason for this application is not because it would be convenient to all the parties but because the Applicant seeks to address the inordinate delay in the prosecution of her claim in this Division. The Applicant is thus seeking a transfer to expedite the finalization of her claim under the guise of section 27(1)(b) of the Act. I sympathize with the Applicant, but this is not what is contemplated by section 27(1)(b) of the Act.
- [24] One should be cautious of attempting to resolve fundamental human resource problems by creating even more problems where none existed or had not yet manifested themselves. If litigants were to be allowed to transfer their cases to the North West Division based on the congested court roll in Pretoria as the Applicant is trying to do, then the court roll in the North-West Division might also become congested.
- [25] One should bear in mind that the High Court of South Africa, North-West Division, Mahikeng might also become congested. One should bear in mind that the North West Division is a smaller Division with fewer judges. This can hardly be said to be convenient for the matter to be transferred to that Division. The Applicant has not alleged that it would be more convenient or fitly for the North West Division to hear this matter.
- [26] This matter cannot therefore be more conveniently or fitly transferred to the North West Division for hearing.
- [27] Arendse AJ in *Mulder and Another v Beacon Island Shareblock Ltd*[3] held that "A court having original jurisdiction to hear a matter will not lightly order the removal of such a matter which is competent to decide. In this regard, the court has a discretion which has to be exercised upon consideration of the facts of the particular application, most importantly having regard to the important consideration of whether it will be more convenient for the matter to be heard by the transferee court[4]".
- [28] I have no evidence regarding the allocation of matters for trial in the North West Division. Without such evidence, any suggestion that the Applicant might be allocated an earlier date is speculative. However, even if I were to assume that the Applicant might be allocated an earlier date, I am still of the view that this application has no merit.
- [29] I should not be understood to suggest that it would not be in the interests of the Applicant to have her claim adjudicated as expeditiously as possible. It is the desire of every litigant that his or her claim be concluded as soon as possible, and it is also in the interests of justice that cases should not be outstanding for an unreasonable long period.
- [30] As I said above, I accept and sympathize with the Applicant in this matter who has to wait until November 2026 for her claim to be adjudicated upon. There are certainly many more other litigants in the same position as the Applicant. On the date that this application was heard, there was another application where the same relief as in this application was sought.

- [31] In determining whether it will be convenient for the transferring court to remove the matter and transfer it to another Division, one should take into account the basis upon which it is alleged that it would be convenient for the transferring court to do so. In regard to the convenience of the court and the general disposal of litigation, none has been established in this matter.
- [32] I am not suggesting that by allowing these RAF matters to be transferred to the North West Division will open the flood gates, but a trend is definitely developing, and a swirling dust is hovering menacingly over the North West Division. An Applicant must make a proper case for the removal and transfer of a case to another Division of the High Court.
- [33] Cases should not simply be transferred to other Divisions solely because the transferee court is also seized with jurisdiction. Like all applications, an application of this nature should not be slovenly made but must be grounded upon acceptable, relevant and material factual matrix justifying the removal and transfer of the matter from one Division to another.
- [34] As stated above, section 27 of the Act provides that 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 would be more conveniently or more appropriately heard or determined at another seat of that Division the 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.
- [35] The Applicant submits that it would be convenient for the matter to be transferred to the North West Division. I disagree.
- [36] In *Nongovu NO v Road Accident Fund*[5] it was held that in determining whether to transfer a matter, the court will have regard "to the convenience of the parties themselves, the convenience of the court and the general disposal of litigation"[6]
- [37] The Applicant has not dealt with the convenience of this court as the transferring court as well as the convenience of the transferee court sufficiently. Even the issue of witnesses was cursorily dealt with or not dealt with at all.
- [38] I take judicial notice that the distance from Mahikeng to Klerksdorp and from Mahikeng to Pretoria is not sufficiently significant. Accordingly, the consideration of the Applicant's convenience in respect of her proximity to the North West Division appears to be of limited importance
- [39] In all the circumstances, I am unable to hold that the requirement of section 27(1)(b) of the Act has been fulfilled and the application for the removal and transfer of the matter to the High Court of South Africa, North West Division, Mahikeng should accordingly be refused.

Order

In the result the following order is made:

[1] The application is dismissed.

[2] No order as to costs.

RATHAGA RAMAWELE

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION OF THE HIGH COURT,

PRETORIA

Date of hearing: 5 December 2024

Date of judgement: 19 December 2024

Appearances:

For the Applicant: WR du Preez instructed by Adams & Adams

For the Respondent: No appearance

[1]

[1964] (1) SA 103

[2] Id at page 111 para G

[3] 1999 (2) SA 274 at page 277 para [8]

[4] Id at page 277 para 8

[5] 2007 (1) SA 59 (T) at 64H-65

[6] Id at 64H

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