

SOUTH AFRICA / JUDGMENT

Qelesile and Another v Road Accident Fund (14719/2020; 5168/2021) [2023] ZAGPJHC 221 (11 February 2023) [2023] ZAGPJHC 221

COURT

South Gauteng High Court, Johannesburg

BEFORE

Van Nieuwenhuizen

CASE / FILE NUMBER

14719/2020; 5168/2021

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IN THE HIGH COURT OF

SOUTH AFRICA

GAUTENG DIVISION,

JOHANNESBURG

CASE NO.: 14719/2020

(1)

REPORTABLE: NO

(2) OF

INTEREST TO OTHER JUDGES: YES

(3)

REVISED.

DATE: 11 FEBRUARY 2023

In the matter between:

QELESILE, BHEKISISA

ANTON APPLICANT

AND

THE ROAD ACCIDENT

FUND

RESPONDENT

CASE NO.: 5168/2021

BANDA, AARON

MATEMBU APPLICANT

THE

ROAD ACCIDENT FUND RESPONDENT

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e mail and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 24 February 2023.

JUDGMENT

Practice – Practice directives and clarification notes – Enrolment of applications in terms of Rule 34(4)(a) – Applications in terms of Rule 34A(4)(a) to be enrolled on the general civil trial roll, not unopposed motion court roll.

Motor vehicle accident – Compensation – Claim against Road Accident Fund – Application for interim payment under Rule 34A for medical costs already incurred – Written admission of liability for damages in rule 34A(4)(a) – Written admission that accident caused by sole or contributory negligence of insured driver insufficient to satisfy court that Fund has admitted liability – Section 17(1) of Road Accident Fund Act 56 of 1996 qualifies a claim in terms of Section 17(6) to the same effect as Rule 34(A)(4)(a) – Uniform Rules of Court, Rule 34A; Road Accident Fund Act 56 of 1996, ss 17(1) and 17(6).

VAN NIEUWENHUIZEN AJ:

[1] Sitting in the unopposed motion court on 21 February 2023, two matters came before me which required the same legal issue to be considered, namely whether or not the Road Accident Fund, being the Defendant in both matters, had admitted liability for the respective Plaintiffs' damages as meant by Rule 34A(4)(a). Accordingly, I directed that both matters be heard simultaneously pursuant to which argument was presented on behalf of the Plaintiffs

and judgment was reserved.

[2] In addition to the foregoing predominant issue to be determined, the question also arose as to whether or not the matters ought in fact have served before me sitting in unopposed motion court, or whether they are to be enrolled on the civil trial roll.

[3] Both these issues arose after a recent judgment of Moultrie AJ, delivered on 11 February 2023 and presently cited as *Alexander v Road Accident Fund and 3 Other Related Matters* (2021/53043; 2021/26274; 2020/15348; 2022/5105) [2023] ZAGPJHC 112 (11 February 2023), to which I was quite appropriately referred to by Mr Mudau who appeared on behalf of both Plaintiffs.

[4] At the first sentence of Alexander and in the first footnote, the learned acting judge stated that the matters his judgment dealt with served before him prior to the Deputy Judge President's clarification on 2 February 2023 ("the 2 February 2023 clarification") that applications for interim payments under Rule 34A(4)(b) should be enrolled on the civil trial roll and not in the unopposed motion court, and that there is no reason why that should not apply to applications in terms of Rule 34A(4)(a) [i.e. after 2 February 2023].

[5] The crux of Alexander (at paras 11 and 16) was to the effect that the admission of liability by a defendant in terms of Rule 34A(4)(a) necessitated an admission of all the requirements of the elements of a delict, not only negligence.

[6] Mr Mudau sought to argue that:

[6.1] firstly, despite a diligent search, he was unable to find the 2 February 2023 clarification and according to the present practice directives there was no bar to having the matters enrolled and heard in the unopposed motion court ("the correct roll issue"); and

[6.2] secondly, that Alexander was wrongly decided and that I should not follow it as section 17 of the Road Accident Fund Act 56 of 1996 ("the RAF Act"), and particular section 17(6) read with section 17(1), afforded the Plaintiffs a substantive right to interim payments for past medical expenses where the Plaintiffs suffered bodily injuries caused by the negligent driving of a motor vehicle by a driver indemnified under the RAF Act and a plaintiff merely had to meet the requirement of Rule 34A(1) and not Rule 34A(4)(a). Alternatively the admission of negligence by the Defendant is all that is required in the circumstances to meet the requirements of Rule 34A(4)(a). Thus, the Plaintiffs' argument ran, Rule 34A(4)(a) was merely a procedural mechanism invoked in conjunction with Rule 34A(1) to compel the Defendant to discharge its concomitant obligation under section 17 of the RAF Act in this regard and an admission of negligence suffices to constitute an admission of liability for the Plaintiffs' damages as meant by Rule 34A(4)(a).

("The correctness of Alexander issue").

[7] I propose to deal with the correct roll issue first.

THE CORRECT ROLL ISSUE

[8] On 19 January 2023, the Deputy Judge President issued a clarification note about judgments and orders in damages claims against any organ of State in the High Court in Johannesburg. This clarification note provided as follows:

"1. It has become apparent that some uncertainty exists about the enrolment of a case by a Plaintiff who seeks an order for damages from an organ of State. This clarification note serves to resolve uncertainty.

2. In any case against the organ of State where a settlement agreement has been concluded, the case must be enrolled in the Settlements Court.

- (a) This court's remit was expanded in terms of the revision of Directive 1 of 2021, dated 1 December 2022 to include all organs of State.
- (b) Chapter 9 of Directive 1 of 2021 (as amended) prescribes the steps that must be taken to present to the Settlements Court a rational foundation for the settlement reached.
- (c) The settlement Court in Johannesburg can be accessed on a 3-week turnaround.
- 3. In any case against the organ of State where default judgment is sought, the case must be enrolled on the General Civil Trial Roll.
 - (a) Chapter 7 of the Directive 1 of 2021 (as amended by paras 4, 5, 6 and 7 of the revision of 1 December 2022) sets out the declaration that the Plaintiff must make to the registrar to obtain a set down date. Regrettably, the lead times for enrolment of default judgments in the trial court as at the time of writing are unacceptably long and practical methods to reduce the time are being explored.
 - (b) The trial judge must be presented with the relevant evidence to justify the claim and quantum of damages sought. Where it is appropriate to do so, evidence may be adduced on affidavit.
 - (c) Such a case must not be enrolled in the Unopposed Motion Court which is not able to conduct the appropriate interrogation of the order sought. Where such a matter is enrolled on the Unopposed Motion Court it shall be removed and no costs shall be allowed.
- 4. Typically, the organs of State that are frequent litigants are the Road Accident Fund, PRASA, the MEC for Health, Gauteng, and the Minister of Police. Other organs of State occasionally are subject to damages claims too.
- 5. It is appropriate to remind practitioners of the rationale for these procedures. In all the cases public money is being spent. It is incumbent on the courts not to be a rubber stamp for either settlements or default judgments which are not rationally premised. Regrettably, experience has shown that there are frequent settlements reached which are irrational. Similarly, where an organ of State is remiss in engaging with a plaintiff and a default judgment per se is justified, it remains appropriate that a court making an order of court by default does not inadvertently endorse an opportunistic overreaching at the public expense.
- 6. Compliance with this procedure shall obviate disappointments and delays."
- [9] On 19 January 2023, a firm of attorneys in Johannesburg addressed written correspondence to the Deputy Judge President, copying in the State Attorney, with a request for clarification in relation to the aforesaid clarification note issued by the office of the Deputy Judge President. The relevant portions of the said letter read as follows:

"2. We confirm that we have considered whether or not the clarification note is applicable to an Application for an Interim Payment in terms of Rule 34A ...

4. It is our respectful view that:

4.1. the “clarification note” is not applicable to Applications for an Interim Payment in terms of Rule 34A; and

4.2. an unopposed Application for an Interim Payment in terms of Rule 34A must be set down for hearing in the unopposed Motion Court.

5. We humbly request that the Honourable Deputy Judge President R T Sutherland, assist by clarifying and confirming the correct procedure to be followed in order to enable us to apply for an Interim Payment in terms of Rule 34A.”

[10] On 2 February 2023, the Deputy Judge President then replied to the attorneys per the 2 February 2023 clarification. Because Plaintiffs’ counsel indicated that despite his best efforts, he was not able to find the 2 February 2023 clarification as alluded to by Moultrie AJ, I deem it appropriate to quote the contents thereof in full:

“1. Your letter dated 19 January 2023 refers.

2. The exercise which is prescribed in Rule 34A(b) is one that requires a judge to interrogate the basis for the interim payment and the quantum. The essence of this exercise has been addressed in greater detail in Chapter 9 in the Judge President’s Practice Directive 01 of 2021, as amended on 08 July 2022 and further amended on 01 December 2022.

3. The interrogation exercise contemplated in Chapter 9 whether as to a settlement agreement or as to a default judgment or as to proceedings on which the relief is opposed cannot, effectively, be carried out in the general unopposed motion courts or opposed motion courts because of time taken to audit, mero motu, the claims and a risk of calling for substantiation by way of evidence.

4. This process, cumbersome as it is, is the outcome of a policy decision that Judges shall not allow themselves to be rubber stamps. The scale of malfeasance in litigation seeking the extraction of money from the organs of state is so gross that these integrity audits are necessary to avoid the courts being inadvertent accomplices.

5. The division of the work of the court by assembling matters of different types on different rolls is one of organisational mechanics not one of principle; there is, in law, only one court. It has been decided that the most appropriate roll to use to hear matters on damages against organs of State, including default judgments, is one on the general civil trial roll.

6. This is not without concomitant logistical disadvantages; in this case, a longer lead time. Because of the awareness of this drawback, an exploration of an alternative channel to accommodate default judgments in damages cases is being explored. The chief inhibition to achieving a wholly satisfactory outcome is the lack of enough judges to staff additional courts.

7. Kindly enrol the matter on the general civil trial roll.”

[11] Thus, strictly speaking, sitting as a judge in the unopposed court, as a general proposition I should order that the matters be removed from the roll (see *In Re Several Matters On The Urgent Court Roll* 2013

(1) SA 549 (GSJ) at paras 11 and 13). However, in light of the fact that:

- (1) I was advised by the Plaintiffs' counsel that applications of the present nature were also pending on the very same day before the other unopposed motion courts;
- (2) that counsel had prepared a comprehensive practice note setting out various authorities and submissions, wherein he quite appropriately drew my attention to Alexander and made submissions as to why the learned acting judge had erred; and
- (3) I had spent a significant amount of time in researching the two issues,

I propose not to remove the matters from the roll, but dispose of the correctness of Alexander issue so that another court, for the conclusions that I have reached herein, need not spend precious judicial resources on these applications, and so too, as shall be seen hereinbelow, having come to the same result as Moultrie AJ, that future applications of this nature are not enrolled, nor trouble – not only the unopposed motion court – but also a judge hearing the matter from the general civil trial roll, if the necessary requirements as envisaged in terms of Rule 34A(4)(a) have not been met. I do caution though that my willingness to entertain the applications should not be construed in any way as inviting or allowing litigants to avoid this court's practice directives.

[12] It follows that applications for interim payments in terms of Rule 34A(4)(a) are to be enrolled on the general civil trial roll and not in the unopposed motion court roll.

THE CORRECTNESS OF ALEXANDER ISSUE

[12] Rule 34A(4)(a) provides as follows:

“If at the hearing of such an application, the court is satisfied that the Defendant against whom the order is sought has in writing admitted liability for the Plaintiff's damages, the court may, if it thinks fit but subject to the provisions of sub-rule (5), order the Respondent to make an interim payment of such amount as it thinks just, which amount shall not exceed a reasonable proportion of the damages which in the opinion of the court are likely to be recovered by the Plaintiff taking into account any contributory negligence, set off or counterclaim.”

(my emphasis).

[13] The application referenced is one either in terms of Rule 34A(1)[1] or 34A(3)[2]. This is clear from reading Rule 34A as a whole. Thus, the contention on behalf of the Plaintiffs that where the Defendant has admitted negligence only Rule 34A(1) or (3) need to be invoked, and not Rule 34A(4)(a), to give effect to the substantive right emanating from section 17(6) read with section 17(1) of the RAF Act, is, on face value, wrong.

[14] Does section 17(6) read with section 17(1) of the RAF Act in of itself cure this prima facie hurdle? In my view it does not.

[15] Section 17(6) of the RAF Act provides as follows:

“The Fund, or an agent with the approval of the Fund, may make an interim payment to the third party out of the amount to be awarded in terms of subsection (1) to the third party in respect of medical costs, in accordance with the tariff contemplated in subsection (4B), loss of income and loss of support: Provided that the Fund or such agent shall, notwithstanding anything to the contrary in any law contained, only be liable to make an interim payment in so far as such costs have already been incurred and any such losses have already been suffered.”

[16] Section 17(6) of the RAF Act is couched in permissive language, having employed the word “may”. In *Schwartz v Schwartz* [1984] ZASCA 79; 1984

(4) SA 467 (A) Corbett JA (as he then was) said the following at 473I – 474E:

*“A statutory enactment conferring a power in permissive language may nevertheless have to be construed as making it the duty of the person or authority in whom the power is reposed to exercise that power when the conditions prescribed as justifying its exercise have been satisfied. Whether an enactment should be so construed depends on, inter alia, the language in which it is couched, the context in which it appears, the general scope and object of the legislation, the nature of the thing empowered to be done and the person or persons for whose benefit the power is to be exercised. (See generally *Noble and Barbour v South African Railways and Harbours*, 1922 AD 527, at pp 539-40, citing *Julius v The Bishop of Oxford*, (1880) 5 AC 214; *South African Railways v New Silvertown Estate, Ltd*, 1946 AD 830, at p 842; *CIR v King*, 1947 (2) SA 196 (A), at pp 209-10; *South African Railways and Harbours v Transvaal Consolidated Land and Exploration Co Ltd*, 1961 (2) SA 467 (A), at pp 478-80, 502-4.) As was pointed out in the *Noble and Barbour* case (*supra*), this does not involve reading the word “may” as meaning “must”. As long as the English language retains its meaning “may” can never be equivalent to “must”. It is a question whether the grant of the permissive power also imports an obligation in certain circumstances to use the power.”*

[17] Thus, despite the word “may”, the provisor contained in section 17(6) that attaches liability for interim payments indeed does place a duty on the Fund to make such interim payments. However, such a duty is not unqualified. An interim payment to a third party (such as the Plaintiffs) is to be paid out of the amount to be awarded in terms of subsection (1) to the third party in respect of medical costs. In other words section 17(6) is qualified by section 17(1) of the RAF Act.

[18] Section 17(1) provides as follows (with my emphasis added):

“(1) The Fund or an agent shall-

- (a) subject to this Act, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established;

- (b) subject to any regulation made under section 26, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established,

be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee: Provided that the obligation of the Fund to compensate a third party for non-pecuniary loss shall be limited to compensation for a serious injury as contemplated in subsection (1A) and shall be paid by way of a lump sum.”

[19] Thus, any interim payment [in terms of section 17(6)] shall be made from the compensation to be awarded in terms of section 17(1). An award for compensation in terms of section 17(1) may only be made if the loss or damage suffered by a third party was caused by, or arose from, the driving of a motor vehicle and only if the injury or death was due to negligence or other wrongful act of such a driver. These express phrases patently relate to and require causation – one of the essential elements of a delict, to be proved or conceded (see *Law Society of South Africa and Others v Minister of Transport and Another* 2011 (1) SA 400 (CC) [25]). It follows that the Plaintiffs contention that an admission of liability suffices cannot be upheld.

[20] The next question is whether an admission of negligence by the Defendant constitutes an admission of liability for purposes of Rule 34A(4)(a)? In my view, it does not.

[21] As appears to have been the case in *Alexander*, in the matters before me, the written word emanating from the Defendant on which the Plaintiffs rely for the contention that the admission of liability requirement in Rule 34A(4)(a) has been met read as follows (with my emphasis added):

“The Road Accident Fund (RAF) has considered the available evidence relating to the matter in which the motor vehicle accident giving

rise to this claim occurred. The RAF has concluded that the collision resulted from the joint negligence of the injured and the RAF’s insured driver. ... Consequently, without prejudice, the RAF offers to settle the issue of negligence vis-à-vis the occurrence of the motor vehicle collision subject to the apportionment of negligence specified above. This offer is limited to the aspect of negligence as to the manner in which the collision occurred and the apportionment of such negligence. This offer may not be interpreted or construed in a manner that would have the RAF concede any other aspect of the claim. To avoid doubt, the RAF reserves all its rights in law with regards to all other procedural and substantive aspects of the claim. ... If this offer was made after prescription of the claim, it will not be deemed to be a waiver of prescription and any purported

acceptance will not be enforceable.”

The limitation of the admission of the Defendant to the issue of negligence pertaining to the could not be clearer. There is no scope for a construction that causation or damages were conceded.

[22] In order for the Plaintiffs’ contention to have any merit, the word “liability” in Rule 34A(4)(a) would have to be interpreted as meaning “negligence”. Such an interpretation would have the effect of defeating the very circumscription of the substantive right set out in section 17(6) read with section 17(1) of the RAF Act. Such an interpretation is impermissible as it would mean that Rule 34A(4)(a), which is the procedure created to give effect to claims as is envisaged in terms of section 17(6) read with section 17(1) of the RAF Act, would bring in or allow claims that do not fall within the said sections’ purview (see *Dadoo Ltd and Others v Krugersdorp Municipal Council* 1920 AD 530 at 544).

[23] I am further fortified in this view with reference to the matter of *Karpakis v Mutual & Federal Insurance Co Ltd* 1991

(3) SA 489 (O) where Lichtenberg J comprehensively dealt with Rule 34A and found same to be adjective or procedural in nature regulating the procedure of the predecessor to the present section 17(6) of the Road Accident Fund Act. The result is that Rule 34A(4)(a) is the mechanism by which effect can be given to the substantive law and that mechanism, as explained by the learned Judge, places safeguards in place, such as, applicable in casu, the admission of liability for the Plaintiffs’ damages. At 497E, the learned Judge said the following:

“Under Rule 34A(4)(a) and (b) the respondent's (defendant's) position is a strong one because an interim payment can only be ordered if, inter alia, the defendant has in writing admitted liability for the plaintiff's damages, that is to say if the defendant has conceded the merits of the action (which is the case in the present action) ...”

At 498D – E the learned judge continued to state that:

“Rule 33(4) provides, inter alia, that the merits of a claim for damages, ie the defendant's liability for such damages, if any, can be tried

separately from the quantum of damages, and in such a case, ie where

- as often happens in 'third party' cases - the merits are disposed of by a judgment after such separate trial, no appeal is permissible until the entire case, including the damages aspect as well, has been decided; see *Botha v AA Mutual Insurance Association Ltd and Another* 1968 (4) SA 485 (A) at 489F - G.”

- [24] In *Alexander Moultrie AJ* in effect held that the Defendant's acknowledgement of negligence (or contributory negligence) did not satisfy the provisions of Rule 34A(4)(a) to constitute an acknowledgement of liability. The learned acting judge came to the conclusion (as summarised earlier in this judgment) with reference to various authorities, including *Karpakis, Tolstrup NO v Kwapa NO 2002*
- (5) SA 73 (W), *Law Society of South Africa and Others v Minister of Transport and Another 2011*
- (1) SA 400 (CC), *J v MEC Health, Western Cape [2017] ZAWCHC 75*, *MS v Road Accident Fund [2019] 3 All SA 626 (GJ)*, *Kaufmann v The Road Accident Fund 2019 JDR 2018 (GJ)*, *Apleni v Minister of Police and a Related Matter [2021] JOL 56020 (WCC)*, *Road Accident Fund v Krawa 2022 (2) SA 346 (ECG)*, and *Mnisi v RAF and Other Related Matters [2022] JRL 53515 (MM)*. [3]
- [25] I find the reasoning of Moultrie AJ, as well as those of Fischer J in the *MS v Road Accident Fund*, and Roestof AJ in *Mnisi*, persuasive. For the reasons already dealt with in this judgment I am in full agreement with Moultrie AJ (in *Alexander*) and Roestof AJ (in *Mnisi*) that Fischer J (in *MS v Road Accident Fund*) was quite correct in setting out that liability is not limited to negligence only.
- [26] The Applicants' counsel further submitted that Moultrie AJ misconstrued the Apleni judgment and that same is authority for the proposition that the acknowledgement of liability of negligence suffices for purposes of Rule 34A(4)(a). I disagree. In Apleni, on the pleadings, all remaining elements for liability, save the quantum of the damages, was clearly taken out of dispute. Mangcu-Lockwood J quoted paragraphs 12 and 13 of the summons which are reported to have stated as follows (at par. 4):

"12. The members of SAPS fatally shot two (2) staff members and three (3) of them sustained serious gunshot wounds.

13. The members of SAPS wrongfully and negligently shot the Plaintiff."

The response in the plea was reported to have recorded as follows (at par. 5):

"Ad paragraphs 12 & 13

13. Defendant admits that specific passengers travelling in the Quantum were found to have been fatally wounded and that certain other passengers, including Plaintiff, were found to have been injured in that Plaintiff had been shot by the police.
14. Defendant admits the shooting of the Plaintiff was unjustified and consequently wrongful."
- [27] It is in that context that paragraph 11 of the judgment by Mangcu-Lockwood J is to be understood. Thus questions of causality, conduct and wrongfulness were conceded, and patently so. The only thing that I was unable to discern from the judgment was the issue of negligence, however, as there had been no suggestion from the judgment that there was a denial of negligence or a plea of contributory negligence or it seems to me that same may have been agreed to between the parties, and especially having regard to the nature of the

argument presented on behalf of the Defendant in that matter, that it was accepted that negligence was also conceded.

[28] Insofar as the Applicants seek to place reliance on Karpakis as authority for the proposition that an acknowledgement of negligence to constitute compliance with acknowledgement of liability for purposes of Rule 34A(4)(a), the reliance is misplaced. In Karpakis, Lichtenberg J consistently distinguished between the issue of liability and the issue of quantum of the Plaintiffs' alleged

damages. In that case, it was the issue of liability (i.e. all the elements of a delict) that was conceded by the Defendant and thus the only issue remaining was the quantum (i.e. the extent) of the Plaintiff's alleged damages (at 491D – E). In the part of the judgment in Karpakis already quoted above (at 498D), Lichtenberg J again clearly distinguished between the principles of liability for damages, on the one hand, and the quantum of damages on the other.

[29] I have not been able to find any interpretive aid or authority to suggest that the word “liability” in Rule 34A(4)(a) may be limited to negligence. To the contrary, Karpakis, which seems to me to be exceptionally comprehensively reasoned and considered, which forms the basis for the judgment in Apleni, and upon which the Plaintiffs rely, itself emphasises the importance of the safeguard that the written acknowledgement of liability puts in place. That safeguard is not detracted from in my view in any way by anything else stated in the judgment by Lichtenberg J.

[30] There is thus no merit in the submission that Moultrie AJ did not consider Apleni's judgment on the principle of Rule 34A(1) as submitted in the Plaintiffs' practice note. As I have already stated, it is conspicuous from the judgment of Karpakis and Rule 34A itself, that 34A(1) is to be read with the safeguard of Rule 34A(4)(a) applicable in casu. Even if that weren't the case, the qualification by section 17(1) of a third party's right to interim payments in terms of section 17(6) of the RAF Act has the same effect and safeguards, in effect, as Rule 34A(4)(a).

[31] The argument on behalf of the Plaintiffs that they may approach the court on good cause shown in terms of Rule 34A(3) is similarly misplaced. That is true as a general proposition, but in no way supports an entitlement of the Plaintiffs to the relief claimed presently, nor in some way could it circumvent the safeguard as provided for in Rule 34A(4)(a).

[32] Finally, similarly misplaced is the attempted reliance on sections 17 and 18 of the RAF Act for the proposition that same somehow reduces the provisions of Rule 34A to some hollow provision applicable only to the extent of being a box to be ticked to have the applications placed before a court. Karpakis quite comprehensively explains the context of Rule 34A when seeking to enforce a substantive right as the Applicants attempt to do presently through the provisions of section 17(6) read with section 17(1) of the RAF Act.

[33] Accordingly, I make the following order in relation to the applications for interim payments in terms of Rule 34A in each of the above matters:

(i) The application is dismissed;

(ii) There is no order as to costs.

H P VAN NIEUWENHUIZEN AJ

Acting Judge of the High Court

Gauteng Division, Johannesburg

Date heard: 21

February 2023

Judgment

Delivered: 24

February 2023

Appearances:

Counsel for the Applicants : R

V Mudau

Instructed by: A

Wolmarans Inc

- [1] “(1) In an action for damages for personal injuries or the death of a person, the plaintiff may, at any time after the expiry of the period for the delivery of the notice of intention to defend, apply to the court for an order requiring the defendant to make an interim payment in respect of his claim for medical costs and loss of income arising from his physical disability or the death of a person.”
- [2] “(3) Notwithstanding the grant or refusal of an application for an interim payment, further such applications may be brought on good cause shown.”
- [3] In the Alexander Moultrie AJ comprehensively and precisely refers to which parts of the said judgments reliance is placed upon and accordingly I do not repeat same hereat.

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