

SOUTH AFRICA / JUDGMENT

Ramotshela v Road Accident Fund (61687/16) [2017] ZAGPPHC 800 (17 November 2017)

[2017] ZAGPPHC 800

COURT

North Gauteng High Court, Pretoria

BEFORE

M A Lukhaimane

CASE / FILE NUMBER

61687/16

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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

REPUBLIC OF SOUTH AFRICA

CASE NO: 61687/16

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

REVISED

In the matter between:

ADV T J KANYANE N. RAMOTSHELA PLAINTIFF

and

ROAD ACCIDENT FUND DEFENDANT

REASONS

FOR THE JUDGMENT

LUKHAIMANE AJ:

- [1] On 19 October 2017 this Court, having heard Counsel for the Plaintiff and Defendant, granted the following order

1.1 That the Defendant to pay Plaintiff an amount of R639 806.65 (six hundred and thirty nine thousand eight hundred and six rand sixty five cents) in delictual damages, such amount to be deposited into Lepule Mokaka Inc Trust Account number.... .

1.2 The capital amount referred to in paragraph 1 above will not bear interest unless the Defendant fails to effect payment thereof on or before 28 December 2017, in which event the capital amount will bear interest at the rate of 10.25% per annum calculated from and including the fifteenth (15) calendar day and including the date of payment thereof.

[2] The Defendant to pay the Plaintiff's taxed or agreed party and party costs on the High Court Scale, such costs to include:

2.1 The costs of obtaining reports by Robert J Koch; and

2.2 Counsel's fees.

[3] The contingency fee agreement between Plaintiff and Plaintiff's attorney is declared invalid and Plaintiff's attorneys shall be entitled to recover normal attorney and client costs.

[4] In the event that costs are not agreed, the Plaintiff agrees as follows:

4.1 The Plaintiff shall serve the Notice of Taxation on the Defendant's attorney of record.

4.2 The Plaintiff shall allow the Defendant fourteen (14) court days to make the payment of the taxed costs.

4.3 Should payment not be effected timeously, Plaintiff will be entitled to recover interest at the rate of 10.25% on the taxed or agree costs from date of allocator to date of final payment.

[5] Immediately after handing down the order, THIS Court received a request for reasons in terms of Rule 49(1)(c).

[6] This is a claim for loss of Support arising out of the wrongful death of the deceased, Hloman Kenneth Sekwati (hereinafter referred to as the deceased) for a minor dependant Tebatso Ramotshela, born 19 July 2008 duly represented by her curator ad litem Adv JT Kanyane. The deceased was killed on 31 December 2008.

[7] Initially, an amount of R2 million was claimed for loss of support, but indicated in the summons as an estimate. The Defendant duly filed its plea during September 2016. The deceased, a 37 year old male born on 9 November 1971 was self-employed as a street hawker selling fruits and vegetables.

[8] The matter was duly set down for hearing on 17 March 2017, however could not proceed and was postponed for settlement negotiations

between the parties to take place. Counsel for Plaintiff indicated that the Defendant had on that date also wanted to satisfy itself of the reasonableness of the assessed monthly amount of R7 675.00 (seven thousand six hundred and seventy five rands) being the income of the deceased as assessed by Plaintiff's assessors.

- [9] Counsel for the Defendant indicated that he was unaware of any prior proceedings and undertakings in this matter as it had only recently been handed over to him and therefore no prior issues should have a bearing on the proceedings of 19 October 2017.
- [10] The Plaintiffs mother has since passed away on 9 November 2011 and she is now under the care of her aunt, in her capacity as the sister of the mother of the minor child.
- [11] There is a notable practice of 'last minute appointment' by the Defendant of its Counsel in numerous matters which has the effect of delaying matters that were duly placed on the roll to the prejudice of claimants. This is acutely demonstrated by the current matter where Plaintiff is a minor in the care of a young adult without the necessary support of her parents, as the latter are both deceased. The deceased i'l the current matter passed away in December 2008 and the minor child has been without support since.
- [12] Once Plaintiff had presented its case, inst ad of presenting its assessed loss, Defendant sought to question the reasonableness of the assessed loss by Plaintiff in general term\$ without offering any documentary evidence in that regard despite having been granted the opportunity to do its proper work since March 2017, a period of almost seven (7) months. Considering the draft order handed over by the Plaintiff, there was all expectation from Plaintiff that this matter would be settled as it commenced with the words "By agreement between the parties."
- [13] This Court finds it unfortunate that stretched judicial resources have to be utilised to address matters that can be settled or presented with complete information by parties duly fulfilling their responsibilities. Moreover, it is disappointing that Defendant failed to follow through on its undertaking of 17 March 2017, a lapse that might result in taxpayer's money being spent without its proper input. Although it is to be encouraged for Defendant to satisfy itself of the loss of support suffered by Plaintiff, Plaintiff has been at a loss since January 2009 and has gone to considerable effort to resolve this matter as noticeable from its submission of the assessed loss report. Plaintiff has been severely deprived by the delay.
- [14] Except for the submission that the matter had only recently been handed over to Counsel before the prior proceedings and requesting

the Court to also ignore its prior proceedings, effectively commencing the matter from the beginning, no reasons were offered to

the Court by the Defendant for this current state of affairs.

[15] Therefore, this Court ruled in favour of the Plaintiff on its proven loss of support as the Defendant had failed to provide any coherent assessment of loss, despite its attempt at the hearing. Having said this, I hope that the Defendant takes note and reflects on its case management procedures. It can only augur well for this Court, Plaintiffs and tax payers.

M A LUKHAIMANE

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

APPEARANCES

Counsel for the Appellant: Advocate N Chimbuzi

Instructed by: LEPULE MOKOKA INC

Counsel for the Respondent: Advocate E.D. Mnguni

Instructed by: MOCHE ATIORNEYS

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