

SOUTH AFRICA / JUDGMENT

Ryno v Road Accident Fund (2020/19852) [2025] ZAGPJHC 516 (27 May 2025)

[2025] ZAGPJHC 516**COURT**

South Gauteng High Court, Johannesburg

BEFORE

D Goodenough

CASE / FILE NUMBER

2020/19852

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Policy**REPUBLIC****OF SOUTH AFRICA****IN****THE HIGH COURT OF SOUTH AFRICA****GAUTENG****DIVISION, JOHANNESBURG****Case**

number 2020/19852

(1)

REPORTABLE: No

(2)

OF INTEREST TO OTHER JUDGES: No

(3)

REVISED: Yes

27

May 2025

In

the matter between: VREY
RYNO
Applicant
And
ROAD
ACCIDENT FUND
Responden

JUDGMENT

GOODENOUGH, AJ Order 1. Paragraph 1 of the Notice of Motion is dismissed. 2. Each party is to pay their own costs. 3. By no later than 30 July 2025, the parties are to participate in mediation. 3.1. In this regard the parties are to comply with the provisions of the Directive Introducing Mandatory Mediation in the Gauteng Division and the Mediation Protocol Applicable in the Gauteng Division of the High Court (April 2025) Summary 4. The Applicant in his notice of motion sought an order compel the Respondent to attend a pretrial conference alternatively to complete and sign the Applicant's draft pretrial minute ("the application to compel") [1] 5. On the morning of 8 May 2025, the date of the hearing of this application, the Respondent did complete and sign the Applicant's draft pre-trial minute in compliance with prayer 1 of the Notice of Motion. 6. Both parties were in my view, somewhat at fault for the fact that a pre-trial conference has not taken place and that the Respondent only completed and signed the Applicant's pre-trial minute on the date of the hearing. 7. I decline to order the holding of a pre-trial conference and instead I order the parties to participate in mediation. Common Cause Facts/ Facts Which Appear from CaseLines Documents 8. In the action, liability is conceded, and all heads of damages have been resolved save for general damages. Service Of Rule 37 Notice and Related Documents 9. On 26 February 2025 the Applicant's attorney (emanating from the email address of Mr Jannie Louw of the Applicant's

attorneys namely j[....]a) sent an email[2] to Mr M.Khan, who was the person at the State Attorney's office who had all along been dealing with the Applicant's

action. Mr Khan's email address was M[...]. 10. That email address - namely M[...]

- which the Applicant used for delivery of the Rule 37 notice and draft pre-trial minutes and for all correspondence to the RAF / State Attorneys by the Applicants attorneys, was the same email address that Respondent had at the outset of the action proceedings provided to the Applicant in its notice of intention to defend[3] . The Applicant additionally sent that email to j[...][4] which is the Respondent's designated e-mail address for service of processes as per the practice directive.

11. Attached to that email of 26 February 2025 were: 11.1. the Applicant's Rule 37(2) notice calling for a pretrial conference to be held on 3 March 2025[5], and 11.2. the Applicant's draft pre-trial agenda[6] for a pretrial conference which the Applicant proposed should be held on 3 March 2025[7] and 11.3. a letter[8] requesting that if the date of 3 March 2025 was inconvenient to the Respondent then Respondent should provide an alternative

date. 12. The following additional recipients were included in the Applicant's email of 26 February 2025, namely two

other officers of the Respondent whose email addresses were l[...] and e[...] 13. There was no response at all from the Respondent or the State Attorney to that email or any of its email attachments until 10 March 2025. Communications On 10 March 2025 14. On 10 March 2025, the Applicant's attorney again emailed a letter[9] to Mr M. Khan's email address M[...] recording that no RAF person attended the pre-trial conference on 3 March 2025. In this letter, Applicant gave the Respondent further time until 12 March 2025 to complete the draft pretrial minute and stated that, failing this, the Applicant would apply for an order compelling Respondent to convene a pretrial conference[10]. 15. On that same day the Applicant's attorney (again emanating from the email address of Mr Jannie Louw j[...]) [11] sent an email [12] to the same email recipients as per the 26 February 2025 email, chasing up a response to the 26 February 2025 documents. 16. I find that one of the officers of the Respondent itself must somehow have become aware of those emails from the Applicant's

offices that had been sent to Mr. M Khan's email address, notwithstanding that Mr M.Khan had long since resigned. I base that finding on the fact that, later that same day, at 2:25 pm, the Respondent itself sent an email [13] from j[...] to Ms Ameersingh and to the Applicant attorney's Mr Jannie Louw, asking Mr Louw to furnish the draft pretrial minute to Ms Ameersingh, who was to attend to the matter. 17. Later on that same day, the State Attorney per Ms Ameersingh, sent an email[14] to the Applicant's attorney (to Mr Jannie Louw's email address j[...]) requesting a copy of the Applicant's draft pretrial minute, but failing to nominate a time and date for a pretrial conference as had been requested. 18. I accept that the aforementioned emails of 10 March 2025 represent the first intimation that Ms Ameersingh personally had received that the Respondent or the State Attorney had now put her in charge of the matter. 19. It is formally agreed that the Applicant's attorney did not respond to Ms Ameersingh's email request. 20. The 10-March-2025 email from the email address j[...] from the Respondent was similarly the first intimation that the Applicant's attorney was given of the fact that it was now Ms Ameersingh and no longer Mr M Khan who was dealing with the matter at the State Attorney's office. It was formally agreed at the hearing that 10 March 2025 was the first time that Respondent informed Applicant's attorney that Muzafar Khan was no longer dealing with the matter. Service of the Application to Compel 21. On 11 April 2025, the Applicant physically served on the Respondent (but not on the State Attorney) the Applicant's application to compel[15]. 22. Paragraph 1 of the Notice of Motion reads as follows: "1.That the Respondent be ordered to complete and sign the Applicant's pretrial minute within 5(five) days of the date of this order, alternatively to nominate a date and time within 5(five) days of the date of this order on which the Respondent will be available for a formal pre-

trial teleconference” 23. It is evident from the contents of Ms Ameersingh’s subsequent emails [16] sent in the early morning of the date of hearing on 8 May 2025 that Ms. Ameersingh did not become personally aware before the early morning of 8 May 2025 that the application to compel had been served on the Respondent on 11 April 2025. Further Request by Ms Ameersingh for a Copy of The Draft Pre-trial Minute 24. On 30 April 2025, Ms Ameersingh, still unaware that the application to compel had been served, again sent to the Applicant’s

attorney (at email address j[...]) an email requesting the draft pre-trial minute. [17] 25. There was also no response from the Applicant’s attorney to that request. Events on 8 May 2025 – The Date of The Hearing 26. On 8 May 2025 – being the set-down date of the hearing - at 7h18 am - Ms Ameersingh again emailed Mr Jannie Louw of the Applicant’s attorney, yet again requesting a copy of the draft pre-trial minute[18] 27. In response thereto, Mr Louw for the first time responded to Ms. Ameersingh’s requests by emailing the draft pretrial minute to Ms Ameersingh at 8h15am[19] and Ms Ameersingh then that same morning completed and signed the minute and emailed it to Mr Louw and uploaded it to Case Lines before the matter was argued later that day.[20] My Reasons Underlying the Dismissal of Prayer 1 of the Application 28. As at the time that the application to compel was argued, the Respondent had already, on the morning of 8 May 2025, just completed and signed the Applicant’s draft pre-trial minute in compliance with prayer 1 of the Notice of Motion. 29. The Applicant in his notice of motion sought an order compel the Respondent to attend a pretrial conference alternatively to complete and sign the Applicant’s draft pre-trial minute [21] 30. Having delivered the completed and signed pre-trial minute, there was no basis in which I could grant an order directing the Respondent to attend a pre-trial conference, because that relief had only been sought in the alternative to an order to complete and sign the pretrial minute. 31. For that reason, I do not grant an order in terms of prayer 1. Considerations Relevant to My Ordering the Parties to go to Mediation 32. Applicant in his heads states: ”From the pre-trial minute, as sent by the Respondent, it appears that the minute (or questionnaire) was responded to as a matter of formalistic compliance in order to attempt a forced removal of the matter from the roll....This formalistic response appears from the blanket denial of most of the pre-trial questions and, perhaps most glaringly, when one considers the answer at para 6.7 of the document (Case lines 0-7) where the Respondent answers: “Defendant enquires whether the matter was referred to the HPCSA and whether a finding was made in this regard.” 33. “The above response appears, despite what has been stated in the introduction of the draft minute (Case lines 0-2) where it is stated: “The HPCSA indicated that the Plaintiffs injuries are serious and thus has a claim in regards of General Damages. The Plaintiff is ready to proceed on the determination of the remaining quantum.” 34. The Applicant’s counsel submitted that “this type of response smacks of an abuse of process.” I do not agree with that submission. The Applicant must accept some of the responsibility for the fact that the pretrial

minute was hurriedly completed and signed on the very morning of the hearing. 35. The Applicant’s counsel submitted that: “Even in light of the Respondents signed pre-trial minute, it appears that there is still a need for a pre-trial to be held as the Respondents response – as contained in the draft pre-trial minute – does not assist in limiting the issues or of reaching settlement (as is required by the parties in terms of Rule 37 and the various practice directives of

the above court)” and that “the need for an order for a formal pre-trial to be held (as was requested in the letter of 25 February 2025 (Case lines 4-13)

therefore persists.” 36. I agree with the Applicant’s counsel that the pre-trial minute so hastily completed and signed by Ms Ameersingh leaves something to be desired and that there is scope for the issues to be narrowed further. 37. However, in my view, less is likely to be achieved by the holding of a pre-trial conference than by the holding of a mediation. 38. For that reason (coupled with the reason that I am not at liberty to order the Respondent to attend a pre-trial conference), I am instead ordering the parties to hold a mediation.

Factors Taken into Account Relevant to Costs

39. The fact that the Respondent’s notice of intention to defend gave the email address of Mr. M Khan as the Respondent’s email of choice in my view justifies the Applicant’s use of that email address when serving the Rule 37 notice and all its related emails and court documents, This is especially so in view of the fact that the Applicant additionally emailed those documents to the Respondent’s designated email address as stipulated in the practice directive.
40. The following contention in Respondent’s heads of argument is not in accordance with what was formally agreed at the hearing, namely :” 3.2.It is also common cause that Mr. Khan resigned from his employment as a state attorney at least early in 2024.The state attorneys’ offices in fact have confirmed that he resigned at the end of 2023.”). [my underlining]
41. It is not the Applicant’s fault that the Respondent did not, before 10 March 2025, inform the Applicant’s attorney that Mr M Khan had resigned and that the Respondent did not provide the Applicant’s attorney with a new email address at the State Attorney to which court documents should thenceforth be emailed for purposes of electronic service,
42. The Respondent and the offices of the State Attorney were in my view further at fault in not ensuring that the Rule 37 notice and the pretrial agenda that were served on Respondent physically were timeously handed to the correct person at the State Attorney’s offices, namely Ms Ameersingh. That was not the Applicant’s fault.
43. Moreover, the Respondent was also at fault in not informing the Applicant until 10 March 2025 that the email address of Mr M.Khan must no longer be used and that the email address of Ms Ameersingh must be used. As a result, the Applicant had innocently and reasonably used Mr M.Khan’s email address to serve its Rule 37 notice.
44. The Applicant’s attorney, on the other hand, was at fault in failing to respond to the Respondent’s request sent twice to furnish a copy of the pretrial agenda. In my view a reasonable legal practitioner, having been asked by a colleague for a copy of a document which that colleague - as a matter of fact and irrespective of formal service having been effected- does not have in her possession, would promptly furnish a copy of that document to the colleague as a matter of collegial courtesy.

45. In my view, a further shortcoming in the Applicant's conduct is that the Applicant's attorney saw fit to serve the application to compel only on the Respondent's offices and not also on the State Attorney's offices.
46. The Applicant ought also to have served the application to compel on the State Attorney and ought to additionally have emailed the application to Ms Ameersingh, who as a result of such omission only became personally aware of the application on 8 May 2025, the day of the hearing.
47. The Applicant's counsel in his heads of argument complains that none of the requests uploaded by the Respondents Representative (Case lines 1-4 – 1-11) were directed to the attorney dealing with the matter (Ms Kelly Williamson).
48. However, in my view the Respondent and Ms Ameersingh acted reasonably in using Mr Jannie Louw's email address in view of the fact that, starting from 26 February 2025 when the Applicant's attorney sent an email [22] to the Respondent and the State Attorney, the Applicant's attorney sent all its emails using the email address of Mr Jannie Louw of the Applicant's attorneys namely j[...])
49. The Applicant's counsel in his heads of argument submitted that I should make an order as per the draft order at Case lines 7-3 – 7-4, but that I should award punitive costs against the Respondent on the submitted basis that the Respondent has abused the process of the Court by its conduct.
50. I am not persuaded that this submission is sound, and I decline to award punitive costs.)
51. Applicant's counsel submitted that the Applicant's attorney's non-response to Ms Ameersingh's email (which was not directed to the attorney at the Applicant's offices that dealt with the matter, namely Ms Kelly Williamson), does not equate to the Respondent not having had access to the draft pre-trial minute as the draft pre-trial minute was sent to the Respondent on at least four occasions, two of which included being part of the physical service of the application papers. I agree with that submission. However, taking into account the fact that Ms Ameersingh on two occasions requested a copy of the draft pretrial minute and the fact that her emails went unanswered waters down the weight of that point considerably.
52. The Applicant's counsel in his heads complained that Ms Ameersingh's email with the signed pre-trial minute did not contain a tender of costs. In my view it was not unreasonable of the Respondent to hold out for an order that each party pays their own costs.
53. Respondent's legal representative Ms. Ameersingh referred to the fact that other courts have in the past, in the exercise of their discretion, declined to grant similar applications in circumstances where no Rule 30A notice was served, she submitted that I must exercise my discretion in the same manner.

53.1. I decline to do so.

53.2. In my view, the fact that the Applicant did not serve a Rule 30A notice in the present matter does not in itself justify a dismissal of the application to compel.

53.3. Rule 30A does not require a party to serve a Rule 30A notice.

53.4. Furthermore, it is in my view relevant that the Applicant did state in its email dated 10 March 2025 that the Applicant would bring an application to compel in the event that the Respondent would fail to comply within the extended deadline.

53.5. My reasons for declining to grant prayer 1 of the notice of motion has been set out in paragraphs 28 to 31 of this judgment.

D GOODENOUGH

ACTING JUDGE OF THE HIGH COURT

JOHANNESBURG

For the Applicant: Adv PJ Kok instructed by Wim Krynauw Attorneys For the Respondent: Ms S Ameersingh (State Attorney) Hearing Date: 08 May 2025

Judgment

Date: 27 May 2025

- [1] Case Lines 4-6 para 1
- [2] Case Lines 4-35
- [3] Case Lines M2_ Notice of Intention to defend
- [4] See for example Case Lines 4-38
- [5] Case Lines 4-33
- [6] Case Lines 4-33
- [7] Case Line 4-15 and 4-32 and 4-33
- [8] Case Lines 4-15
- [9] Case Lines 4-36
- [10] Case Lines 4-36
- [11] Case Lines 4-37
- [12] Case Lines 1-23 : proof of emailing of Mr. Louw's letter
- [13] Case Lines 1-20
- [14] Case lines 1-7

- [15] Case Lines 4-3
 - [16] Case Lines 1-22 and 1-23
 - [17] Case Lines 1-23
 - [18] Case Lines 1--23
 - [19] Case Lines 1-22
 - [20] Case Lines 1-22
 - [21] Case Lines 4-6 para 1
 - [22] Case Lines 4-35
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