

SOUTH AFRICA / JUDGMENT

# Schoonraad v Zulu (4289/2021)

## [2024] ZAMPMHC 21 (2 April 2024)

**[2024] ZAMPMHC 21****COURT**

Middelburg High Court, Mpumalanga

**BEFORE**

Z Gumede

**CASE / FILE NUMBER**

4289/2021

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**Source record****REPUBLIC OF SOUTH****AFRICA****IN THE HIGH COURT OF****SOUTH AFRICA****MPUMALANGA DIVISION,****MIDDLEBURG (LOCAL SEAT)****CASE****NO: 4289/2021****(1)****REPORTABLE: NO****(2)****OF INTEREST TO OTHER JUDGES: NO****(3)****REVISED: YES****SIGNATURE:****DATE:**

02/04/2024

IN

**THE MATTER BETWEEN:**

RONNIE

SCHOONRAAAD

EXCIPIENT/ DEFENDANT

and

MENZI

LUYANDA ZULU

RESPONDENT/PLAINTIFF

## JUDGMENT

GUMEDE AJ

1. The plaintiff instituted an action against the defendant for the payment of an amount of R2 million.
2. The plaintiff alleges that while in the employment of the defendant, he was injured when a charcoal grinding machine malfunctioned and injured his right hand. He alleges that the defendant breached his duty to provide and maintain a working environment that is safe and without risk to the health of its employees in terms of the Occupational Health and Safety Act 85 of 1993 (OHSA). He further alleges that the defendant failed to report the incident to the Compensation Board in terms of COIDA and failed to register him for protection under COIDA as well as the unemployment insurance fund. The plaintiff argues that he is entitled to claim damages directly from the defendant under common law.
3. The defendant excepts to the plaintiff's claim on the grounds that the plaintiff is statutorily barred from claiming directly against the defendant by virtue of section 35(1) of COIDA which provides that no action shall lie by an employee or any dependant of an employee for the recovery of damages in respect of any occupational injury or disease resulting in the disablement or death of such employee against such employee's employer, and no liability for compensation on the part of such employer shall arise

save under the provisions of this Act in respect of such disablement or death.

4. The defendant argued that the Constitutional Court in *Jooste v Score Supermarket Trading (Pty) Ltd (Minister of Labour intervening)*[1] has confirmed that the statutory limitation of common law personal injury claims against employers was specifically and deliberately excluded in the legislation, and that the limitation was constitutional.
5. In *MEC for Education, Western Cape Province v Strauss*[2], the Supreme Court of Appeal also confirmed that where an employer fails to register the employee in terms of COIDA, the employee is not prevented from claiming compensation from the Commissioner, the employer will be subject to a fine but cannot be sued by the employee.
6. The unemployment benefits under the Unemployment Insurance Fund Act can only be claimed in specified circumstances mentioned in section 16 of the UIF Act and are not applicable in this case.
7. In the circumstances, I agree with the defendant that the plaintiff's claim is bad in law.
8. I am of the view that the cause of the plaintiff's predicament is the defendant's failure to register him as an employee under COIDA and for this reason, I will not award costs of this exception.
9. In the result, I make the following order:

1. The exception is upheld.
2. Each party is to pay its own costs.

Z GUMEDE

Acting Judge of the High Court

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email. The date and time for hand-down is deemed to be 2 April 2024

#### APPEARANCES

For the Applicant: SJ Hyman Instructed by: VZLR Incorporated For the Respondents: MC Mavunda Instructed by: Mohlala Attorneys Date of hearing: 18 July 2023 Date of judgment 2 April 2024

[1]

[1998] ZACC 18; 1999 (2) BCLR 139 CC

[2] 2008 (2) SA 366 SCA

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CASE PAGE <https://chat.esheria.ai/case-law/south-africa/schoonraad-v-zulu-unknown-topic-ampmhc-2024--6a3ea50d3b1caa9129806cf1>

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