

SOUTH AFRICA / JUDGMENT

Vermaak v Road Accident Fund (3491/2009) [2011] ZANWHC 69 (7 November 2011)

[2011] ZANWHC 69

COURT

North West High Court, Mafikeng

BEFORE

M J Ramagaga

CASE / FILE NUMBER

3491/2009

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record**N THE NORTH
WEST HIGH COURT
(MAFIKENG)****CASE NO.:****3491/2009****In the matter****between:**

AGATHA JOHANNA

VERMAAK

.....PLAINTIFF

and

ROAD ACCIDENT

FUND

.....DEFENDANT

DATE OF

HEARING: 7 NOVEMBER 2011

DATE OF

JUDGMENT: 7 NOVEMBER 2011

DATE OF

REASONS: 23 NOVEMBER 2011

FOR THE

PLAINTIFF: ADV SWART

FOR THE

DEFENDANT: ADV P SMIT

REASONS FOR

JUDGMENT

RAMAGAGA AJ

[1] The crisp question in this matter was whether the draft court order sought to be made an order of Court was an offer to settle in terms of Rule 34 of the Uniform Rules or not.

[2] Background to this matter is that:

Plaintiff sued the Road Accident Fund for payment of R478 307.00 plus costs. The defendant opposed the action. The pre-trial conference did not yield any concessions on the merits from either party. The case was set down for trial on the 7th to 8th November 2011.

On the first trial date, counsel for the plaintiff informed the Court that he was in possession of a draft court which was agreed upon between the parties to be made an order of Court in settlement of the plaintiff's claim.

The Court indicated to the plaintiff's counsel that it was inclined not to make the draft order an order of court unless a written confirmation by the Road Accident Fund that it offered to settle in the amount stated in the aforesaid draft order by the Court. This requirement was made on the basis that the draft order sought to be handed up was an offer to settle in terms of Rule 34 of the Uniform Rules.

[3] The matter was stood down for argument.

[4] When the matter later resumed, the defendant's counsel appeared for the defendant, thus both parties were now represented.

[5] Mr Swart, for the plaintiff, argued that the draft court order that he wanted to hand up was not an offer to settle the claim but was rather a settlement agreement between the parties. He thus argued that this draft order fell to be regulated by Rule 41 of the Uniform Rules and not Rule 34. He advanced his argument by also highlighting the purpose of Rule 34.

Rule 34 regulates offers to settle by the defendant. In particular Rule 34(1) provides that:

"Any action in which a sum of money is claimed, either alone or with any other relief, the defendant may at any time unconditionally or without prejudice make a written offer to settle the plaintiff's claim. Such offer shall be signed either by the defendant himself or by his attorney if the latter has been authorised thereto in writing." (my emphasis)

[6] It is clear from this provision that the offer can only be valid and thus enforceable by the Court if:

1. it is in writing; and
2. it is signed by the defendant or an attorney who is authorised by the defendant in writing to make the offer.

- [7] Settlements are regulated by Rule 41 of the Uniform Rules. Provisions relevant to the present case are found in Rule 41(4) which provides as follows:

“Unless such proceedings have been withdrawn, any party to a settlement which has been reduced to writing and signed by the parties or their legal representatives but which has not been carried out, may apply for judgment in terms thereof at least. . .”

- [8] This provision makes it clear that for the Court to enforce a settlement agreement in accordance with Rule 41, that agreement must:

1. be in writing; and
2. signed by the parties or their legal representatives.

- [9] At the end of the argument by the plaintiff’s counsel, the defendant’s counsel indicated that he fully aligned itself with the argument presented by the plaintiff’s counsel and would thus not add anything.

- [10] Counsel for the plaintiff was then allowed to hand up the draft order that he sought to be ordered by the court. Each page of the draft order was initialled by the respective attorneys of record for the parties and the last page was signed by the aforesaid attorneys of record and in their representative capacities. The draft order presented to Court for approval qualified as a settlement agreement for all intents and purposes.

- [11] In conclusion I find that the argument advanced by the plaintiff’s counsel and the draft order handed up for approval by the Court made it patently clear that the counsel was correct in its submission that the draft order at hand was outside the ambit of Rule 34 and fell squarely within the premise and regime of Rule 41.

- [12] I expressed gratitude in the effective way in which the plaintiff’s counsel drew a parallel between the two Rules and incisively dealt with the application of Rule 34.

- [13] Accordingly, I ordered that the draft order handed up by the plaintiff’s counsel and Marked “X” by the Court be made an order of Court.

M J RAMAGAGA

ACTING JUDGE OF THE HIGH COURT

ATTORNEYS:

FOR THE PLAINTIFF: GERHARD MAREE ATT

FOR THE DEFENDANT: BOTHA COETZER & SMITH

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZANWHC/2011/69.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/vermaak-v-road-unknown-topic-anwhc-2011>

Prepared on 9 October 2026 · Esheria