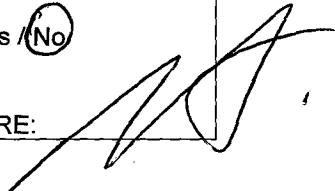


REPUBLIC OF SOUTH AFRICA**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
LOCAL SEAT, JOHANNESBURG****CASE NO: 16743/2015****DATE: 24 MAY 2019****DELETE WHICHEVER IS NOT APPLICABLE**

1. Reportable: Yes / ☒ No
2. Of Interest To Other Judges: Yes / ☒ No
3. Revised ☒

DATE: 24.5.19 SIGNATURE: 

In the matter between:

MARTINIQUE VAN DER WESTHUIZEN**PLAINTIFF**

and

ROAD ACCIDENT FUND**DEFENDANT**

JUDGMENT

WRIGHT J

1. On the afternoon of 22 May 2019, while I was on civil trial duty, I was approached in chambers by counsel and attorney for the plaintiff and counsel and attorney for the defendant, they having been sent to me by Victor ADJP.
2. The plaintiff had been injured in a motor vehicle collision and sought damages from the defendant.
3. The legal practitioners for both sides requested me to make a draft order an order of court. The defendant's legal practitioners did not have a mandate to settle the case but they wished that I make the draft order an order of court as they, the defendant's legal practitioners were in agreement with the plaintiff's legal practitioners on all aspects of the case relating to general damages and loss of income, which heads of damages formed the subject matter of the draft order.
4. The order included a globular amount for general damages and for loss of income and made provision for various other aspects of the case.
5. I questioned the legal practitioners for both sides at some length about different aspects of the case. There was no disagreement of any kind between the legal practitioners for the parties.
6. A substantial portion of the agreed settlement amount included a claim for general damages. It was common cause that the plaintiff had submitted an RAF 4 form to the defendant and that the defendant had not objected to it.
7. Having made the order, and on reflection I sent, through my clerk on the morning of 23 May 2019 an email to both sides' legal practitioners asking whether or not the order should be rescinded *mero motu*. The email expressly referred to the case of

Mphala v RAF (698/16) [2017] ZASCA 76 (1 June 2017), particularly at paragraph 17. The email expressly asked whether the defendant had taken a decision either way on the claim for general damages. The email expressly queried whether or not the plaintiff's remedy, in the face of the failure by the defendant either to accept or reject the RAF 4 form was to bring an application to compel the defendant to make a decision.

8. In reply, the plaintiff's counsel simply stated that the defendant had not rejected the claim for general damages. The defendant's attorney replied, agreeing with plaintiff's counsel's email and stating that there was no need to rescind the order of 22 May 2019.
9. The only inference that I can draw from these sparse facts before me is that the defendant never took a decision, either way on the submission of the claim to it for general damages.
10. The decision in **Mphala** is clear authority for the proposition that, in the absence of a decision by the defendant to take a decision, a court may not entertain the claim and that the remedy of the plaintiff is to apply to court to compel the defendant to take a decision.
11. The order granted was one in which there is a patent error, under Rule 42 (1)(b) and was the result of a mistake, common to the parties under Rule 42(1)(c). Accordingly, it is proper that, under Rule 42(1) I rescind the order. The general damages component of the order was a significant part of the order and it would not be suitable to set aside the order in part only.
12. Ideally, the legal practitioners would have drawn my attention to the **Mphala** case when they were in my chambers.

ORDER:

1. The order of 22 May 2019 is rescinded.