

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION, JOHANNESBURG**

(1) REPORTABLE: YES
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED.: YES

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CASE NO: 2018/43336

In the matter between:

FIRSTRAND BANK LIMITED

And

**EXCEL BALENI SHABANGU
EXCEL BALENI SHABANGU N.O
MASTER OF THE HIGH COURT, JOHANNESBURG
CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY
BODY CORPORATE OF HARADENE HEIGHTS**

1st Respondent

2nd Respondent

3rd Respondent

4th Respondent

5th Respondent

CASE NO: 284/2019

And in the matter between:

SHAIDA ABOO BAKER MAHOMED

Applicant

And

ROAD ACCIDENT FUND

1st Respondent

DEV MAHARAJ & ASSOCIATES INC

2nd Respondent

DEV MAHARAJ

3rd Respondent

SUMMARY

Rule 32 of the High Court rules was amended with effect from 1 July 2019. The unamended rule permitted a plaintiff to initiate summary judgment proceedings (only) once the defendant had delivered its notice of intention to defend. In contrast, under the amended rule, a plaintiff must wait for the defendant to deliver its plea, before the plaintiff may initiate summary judgment proceedings. This judgment considers whether the amended rule must be applied when any matter is adjudicated after this date – and so whether it must be applied, retrospectively, to pending matters.

The Court considered the implications of the distinction drawn in the Interpretation Act 33 of 1957 between laws and rules that are repealed entirely, as opposed to those which are merely amended, the common law on retrospectivity, the reasons proposed by the Rules Board for the amendment, and what must, inevitably, have been the intention of the legislature.

Held - that the amended rule is to be applied when any matter is adjudicated after 1 July 2019 and that it is indeed retrospective and applicable to pending matters.