

REPUBLIC OF SOUTH AFRICA



NORTH GAUTENG HIGH COURT
PRETORIA
(REPUBLIC OF SOUTH AFRICA)

Case no: 69607/11

25/3/2014

In the matter between:

ROAD ACCIDENT FUND

APPLICANT

AND

- (1) REPORTABLE: YES / ~~NO~~
(2) OF INTEREST TO OTHER JUDGES: YES/~~NO~~
(3) REVISED.

02/04/2014

TLHOMEDI KGOMOTSO WINNIFRED

RERESPONDENT

JUDGMENT

BAQWA J

- [1] This is judgment on substantive application brought by the defendant for a postponement of this matter which had been set down for trial on both the merits and quantum.

- [2] The application is brought in the face of a very clear directive issued by this court in the context of case management practice implemented by this court to prevent applications of the nature that I have to deal with today. This directive reads as follows:

"Please note that trial matters on the roll have been enrolled to be allocated to a court or a Judge to be heard and NOT to be stood down for settlement negotiations or for instructions from client.

Trial matters that are not ready to be heard on the date of hearing should be removed from the trial roll otherwise an appropriate cost order will be made.

You are further directed to inform your opponent in writing about the date of this pre-trial."

- [3] The application, as submitted by plaintiff's counsel rests on three legs, the main one being the absence of a material witness, the insured driver Mr Bloem, lack of readiness for trial regarding the issue of quantum and the need to appoint a **curator ad litem** for the plaintiff.

- [4] Mr Farrell for the plaintiff, has made submissions regarding the lack of readiness for trial on quantum and the appointment of a **curator ad litem**. He submits that plaintiff is indeed ready and has subpoenaed witnesses to proceed on this aspect. He further submits that there is no factual or medical basis for the appointment of a **curator ad item**. In any event, this could in my view not be a issue for defendants consideration but would be a matter to be more primarily considered by plaintiff if it were an issue at all.

- [5] The duty of the defendant is set out in the judgment of the Honourable Madam Justice Maya JA in **Madzunye v Road Accident Fund 2007(1) SA 165 paragraph 17** at which she stated as follows:

In an unreported judgment of this Court, **Road Accident Fund v Roman Klisiewics, case No 192/2001**, handed down on 29 May 2002, Howie JA set out the extent of the respondent's responsibilities, saying in para [42]:

'The [Road Accident Fund] exists to administer, in the interests of road accident victims, the funds it collects from the public. It has the duty to effect that administration with integrity and efficiency. This entails the thorough investigation of claims and, where litigation is responsibly contestable, the adoption of reasonable and timeous steps in advancing its defence. These are not exacting requirements. They must be observed.'

- [6] Without going into detail regarding the omissions of the defendant herein it is quite clear to me even upon reading of the affidavit on which the application based that there is a belated flurry of activity beginning with the instructions to an assessor in Kuruman only in January 2014.
- [7] This happens regarding a matter which was brought to court in 2010 some four years ago. To borrow from applicant's counsel it appears that applicant was either dismissive of this court's practice directive which I have referred to or adopted a shockingly supine attitude towards taking timeous steps to advance its defence. It does indeed seem that defendant was until recently "at sea" regarding such defence, hence the recent flurry of activity with regard to the assessor, the subpoena, calls for the insured driver, his employer and communications to the plaintiff's legal representatives.

[8] Taking all those facts into consideration I am satisfied that the defendant has failed to carry out its duties thus far as set out by the Honourable Justice Maya.

[9] Having set out that background, there are more factors which I have had to consider. Defendant submits :

"9.1. The applicant's request for a postponement is bona fide and not an attempt to unnecessarily delay the proceedings;

9.2. The applicant is a legal entity with a social responsibility to compensate victims of motor vehicle accidents in accordance with the Road Accident Fund Act 56 of 1996 (as amended);

9.3. The respondent is claiming an substantial amount in excess of four million rand, and therefore any apportionment on the merits, by a finding of a trial court, may have a substantial impact on the quantum of the respondent's claim;

9.4. It is the legal duty of the applicant to protect public funds, and to make out a case to the above Honourable Court for the respondent's reasonable compensation."

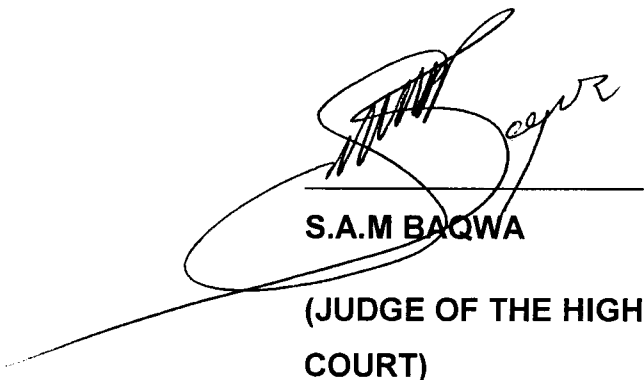
[10] Defendant submits further that this is the first time it applies for a postponement. I have therefore had to weigh these considerations more particularly the consequences of a refusal of postponement whilst bearing in mind defendant's public responsibilities.

[11] I have come to the conclusion that the circumstances justify the granting of the application.

[12] At the same time I need to put on record that the court takes a very dim view of the manner in which the defendant has conducted the pursuit of a defence thus far especially in the light of the practice directive referred to earlier.

In the result I deem the following to be an appropriate order:

- (1) This matter is postponed **sine die**.
- (2) Defendant is ordered to pay the wasted costs with regard to both the merits and quantum on an attorney and client scale. Those costs shall include costs of experts who have been subpoenaed by plaintiff in terms of Rule 36(9)(a) and (b).



S.A.M BAQWA
(JUDGE OF THE HIGH COURT)

Counsel for the applicant;

Adv AJP Bouwer

Instructed by:

Fourie Fisser Inc

Counsel for the respondents:

Adv S Farrel

Instructed by:

Levin van Zyl Inc