IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ / NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO.

(3) REVISED.

DATE 9/05/2014 SIGNATURE

Case Number: 61619/2012

In the matter between:

FANYANA JOHANNES NHLAPO PLAINTIFF

and

THE ROAD ACCIDENT FUND DEFENDANT

JUDGMENT

LEPHOKO AJ

[1] The plaintiff sues the defendant for damages he suffered as a result of a motor vehicle accident that occurred on 25 June 2009 at the intersection of Park Street and Wessels Street in Sunnyside, Pretoria.

[2] The merits and quantum were separated in terms of rule 33(4). The matter proceeded only in respect of the merits and the determination of the quantum was postponed *sine-die*.

[3] The plaintiff testified that on the 25 June 2009 at approximately 12h45 he was the driver of a Toyota Quantum motor vehicle and was travelling in a west to east direction on Park Street. He was travelling at a speed of less than 60 km/h. The intersection where the accident occurred is controlled by traffic lights. The traffic lights were green in his favour and he had the right of way. The plaintiff further testified that before entering the intersection he noticed the insured vehicle approaching in front of him travelling in an east to west direction on Park Street. The plaintiff entered the intersection with an intention to proceed on Park Street. The insured vehicle suddenly made a right turn in front of him across his path of travel. He did not have an opportunity to swerve, apply brakes or take any evasive action due to the insured driver's sudden and unexpected maneuver. His only evidence of the extent of the damage to his vehicle was based on hearsay and was disregarded by the court.

[5] Mr. Philip Chauke, the insured driver, testified on behalf of the defendant. He testified that on the day in question he was travelling in an east to west direction on Park Street. He

intended to turn right into Wessels Street at its intersection with Park Street. The traffic lights were green for traffic travelling on Park Street. He indicated his intention to turn to his right, started his turn into Wessels Street and came to a stop with his vehicle encroaching on the path of the eastbound traffic. He stopped in order to allow that traffic to pass. He stated that, though not demarcated, the eastbound section of Park Street is wide enough to accommodate two eastbound vehicles travelling parallel to one another. He had stopped in the middle of what could be the inside lane of the eastbound lane had it been demarcated into two lanes.

[6] Mr. Chauke further testified that he had stopped there for about a minute when he noticed the plaintiff's vehicle approaching from approximately 12 to 15 meters and driving in a zigzag manner at a speed of above 60 km/h. The plaintiff's vehicle collided with his vehicle whilst the insured vehicle was stationary and the insured vehicle was pushed by the impact to a point where it was stopped by the pavement. He admitted that the damage to his vehicle was to the right front and right mid front as indicated in the vehicle damage section of the police accident report

[8] Our courts have on numerous occasions pronounced on what conduct is expected of a driver turning across the line of traffic as well as the conduct expected of a driver travelling in the line of traffic. In Milton v Vacuum Oil of SA Ltd 1932 AD 197 at 205 the court held that where there are two streams of traffic in a road in opposite directions, a person in a vehicle proceeding in one direction is entitled to assume that those who are travelling in the opposite direction will continue in their course and that they will not suddenly and inopportunely turn

across the line of traffic until he is shown a clear intention to the contrary. When a person wishes to cross the line of traffic and to turn out into a side street he must give ample warning of his intention to other vehicles and execute his turn at the right moment and in a reasonable manner.

[9] In AA Mutual Insurance Association Ltd v Nomeka 1976 (3) SA 45 (A) 52F the court stated that *"To execute a right turn across the line of oncoming or following traffic is an inherently dangerous manoeuvre and there is a stringent duty upon a driver who intends executing such a manoeuvre to do so by properly satisfying himself that it is safe and opportune to do so.*

[10] In Sierborger v South African Railways and Harbours 961 (1) SA 498 (A) at 505 A-D, the court stated that. *A driver of a vehicle proceeding in the line of traffic does not, with reference to a vehicle whose driver has signaled an intention to turn across his path and who is directing his vehicle towards the middle of the road preparatory to doing so, incur an obligation to stop or slow down. Certainly he must keep such vehicle under observation and as soon as it is clear that, despite the inappropriateness of the moment, it intends to cross in front of him, he must take all reasonable steps that may be necessary to avoid colliding with it"*

[11] The direction of the insured vehicle at the point of impact, the fact that it had started its right turn into Wessels Street and was encroaching on the path of the eastbound traffic is common cause. The versions of the plaintiff and that of the insured driver as to the cause of

the accident are mutually exclusive. In order to resolve the factual dispute where there are two irreconcilable versions, the court must make findings on the credibility of the various factual witnesses, their reliability, and the probabilities. When all factors are equipoised probabilities prevail: see Stellenbosch Farmers' Winery Group Ltd & Another v Martell ET CIE & Others 2003 (1) SA 11 SCA at 14i – 15D.

[12] The court was not able to make an adverse credibility finding on the scanty evidence of the plaintiff and the insured driver nor was their reliability put in serious question. The insured driver testified that the impact of the collision pushed his vehicle to a point where it was only stopped by the pavement. In my view a reasonable inference to be drawn from this evidence is that the insured vehicle was in motion at the time of impact and continued to move until it was stopped by the pavement. It is highly improbable that the plaintiff's car, a minibus, travelling at the alleged speed could have propelled the stationery insured vehicle to the point alleged by the insured driver. This makes the version of the plaintiff more probable than that of the defendant.

[13] The insured driver could execute the turn only after satisfying himself that it was safe to do so. His evidence is that he had stopped in the path of oncoming traffic. He noticed the plaintiff's vehicle approaching and zigzagging on the road whilst it was still some 12 to 15 meters away from him. He made no attempt to take evasive action, get out of the way or hoot to warn the plaintiff of his presence notwithstanding his precarious position on the road. The insured driver was not entitled to assume that the plaintiff had observed him and his intention

to turn or that because the road was wide enough the plaintiff would safely negotiate his path around his encroaching vehicle.

[15] It appears from the totality of the evidence and the balance of probabilities that the insured driver's negligence was the sole cause of the accident.

I the circumstances, it is ordered that:

1. The defendant was the sole cause of the accident that took place on 25 June 2009.
2. The defendant is liable to pay the plaintiff 100% of the plaintiff's proven or agreed damages.
3. The defendant is ordered to pay the plaintiff's costs in respect of the merits of the plaintiff's claim.

A L C M LEPHOKO
(ACTING JUDGE OF THE HIGH COURT)

Heard on: 16 April 2014.

Judgment delivered on: 09 May 2014

For the Plaintiff: Adv.: M Upton

Instructed by: V Rea and Associates

For the Defendant: Mr. T Chauke

Instructed by: T M Chauke Inc