

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG, PRETORIA)

14/11/14
CASE NO: 2768/2013

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
14/11/2014	<i>ls. Webster</i>
DATE	SIGNATURE

In the matter between:

HERBERT MORGAN STEENKAMP

PLAINTIFF

And

MUNICIPALITY OF THABAZIMBI

1ST DEFENDANT

MUNICIPALITY OF MADIBENG

2ND DEFENDANT

MUNICIPALITY OF WATERBERG DISTRICT

3RD DEFENDANT

PREMIER OF THE LIMPOPO PROVINCE

4TH DEFENDANT

MEC FOR ROADS AND TRANSPORT LIMPOPO

5TH DEFENDANT

PREMIER OF THE NORTH WEST PROVINCE

6TH DEFENDANT

MEC FOR PUBLIC WORKS, ROADS AND TRANSPORT NORTH WEST

7TH DEFENDANT

JUDGMENT

WEBSTER J

1. The plaintiff seeks an order in the following terms:

- “1. That the questions of Liability and Quantum between the Plaintiff and the Fourth Defendant be and are hereby separated in terms of Rule 33(4).
2. That it be ordered that the Fourth Defendant is liable for the proven or agreed damages suffered by the Plaintiff.
3. That the Fourth Defendant be ordered to pay the Plaintiff's costs of suit to date.
4. That the question of Quantum between the Plaintiffs and the Fourth Defendant be and is hereby postponed sine die.
5. That further and/or alternative relief be granted to the Plaintiff.”

2. Briefly, the facts on which the application is based are as set out below.

3. The plaintiff's father died on 22 May, 2011 as a result of injuries he sustained when his Toyota Hilux bakkie he was driving capsized. Even though he supplied the GPS co-ordinates of the location or the spot of the incident, the plaintiff is unable to determine which of the authorities, Premiers or MEC's have jurisdiction or authority over the scene of the incident.
4. The plaintiff avers in his particulars of claim that as a result of his father's death he suffered damages in consequence of “...persoonlike beserings... die aard en omvang waarvan soos volg is: 6.2.1 erge skok en emosionele versteuring; 6.2.2 sielkundige letsels...” resulting in damages calculated at R403 231.91.
5. Save for the fourth and fifth defendants all the other defendants entered appearances to defend timeously. When the fourth and fifth defendants ultimately did enter appearances to defend they were out of time and so were their pleas. Despite plaintiff's professional etiquette in advising the fourth and fifth defendants that their pleas which they attempted to serve were not only out of time but that it was procedurally necessary that they apply for condonation of their “late filing” of their pleas. The plaintiff justifiably refused to accept such late service thereof despite a “Notice of Bar” having been served on the fourth defendant on 8 April 2013.

6. The plaintiff, by notice dated 4 November, 2013 served and filed an application for an order as set out in paragraph 1 above.
7. That application was removed from the roll of 13 February, 2014 and re-enrolled for 18 July, 2014.
8. The plaintiff bases his claim on the allegation that the injuries sustained by his father were "...caused by the unlawful negligence of the fourth defendant, either individually or jointly as a joint wrongdoer with one or more of the other defendants...". He continues and avers that he "...is unwilling to fund actuarial calculations and to undergo medico-legal examinations, which he can ill-afford being an impecunious person until the issue of liability has been determined. Under the circumstances it is convenient to separate the issues of liability and quantum herein". The applicant seeks to rely on the case of *RAF v Hansen* 2002(1) All SA 143 (A).
9. I shall deal first with the last submission. Firstly, the above quotation must not be read in the context of the case in which it appears. In my view it was not intended to lay down a hard and fast principle. In the matter before me it is clear that the plaintiff faces several insurmountable problems. In the first instance the plaintiff does not know which municipal authority is in control of the area where the bakkie in question drove into whatever hole or crevice or bump that caused the driver to lose control resulting in the vehicle capsizing. It could be the first, second, third, fourth or sixth defendants. As far as this court is concerned and is aware, provinces and municipalities are clearly demarcated especially in a matter of roads and the maintenance thereof. The plaintiff has not managed to explain on what basis it can be assumed that the incident fell within the area of jurisdiction of the fourth defendant. That it has not filed a valid appearance to defend cannot justify an inference that the incident giving rise to the cause of action was within its area of jurisdiction. On that ground alone the relief sought by the plaintiff being a precursor to an application for a judgment by default is nothing less than aiding and abetting the plaintiff to be granted a judgement when he has not proved a fundamental requirement for liability.

10. The second issue is that of splitting of issues. As I understand the plaintiff's argument he is unable to secure a medico-legal report in order to calculate and quantify his damages. No effort has been made by the plaintiff in this regard and the court is not aware that it has the power to do so.
11. Were the court to grant the order sought, that is the separation of and the adjudication of issues there is a clear probability of splitting, if not a duplication of issues resulting in a piece-meal adjudication with the inevitable duplication of costs. No facts have been placed before this court to justify this. To highlight what could be regarded as inconsequential it must be emphasized that the parties would, if the order sought is granted, result in a possible duplication in appeal procedures. This would offend against piece-meal adjudication. When regard is had to the fact that the parties could resort to "piece-meal appeals" the prejudice to the one or other of the parties is not conjectural or speculative but very real (*Guardian National Insurance Co Ltd v Searle* NO 1999(2) All SA 151 (A)).
12. For the reasons set out above this court does not see its way clear to granting the order sought by the plaintiff.
13. **The following order is granted:**
- 1. The application is accordingly dismissed.**
 - 2. There will be no order as to costs.**



G. WEBSTER

JUDGE IN THE HIGH COURT

Date of hearing : 18 July 2014