



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

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

**ELECTRONICALLY
SIGNED**

SIGNATURE

DATE: 11 May 2021

CASE NO: 42305/16

In the matter between:

YOLISA XOKOZELA

Applicant

and

THE ROAD ACCIDENT FUND

Respondent

JUDGMENT: LEAVE TO APPEAL

RETIEF AJ:

[1] The Applicant applied for leave to appeal against the dismissal of a declaratory order heard, on an unopposed basis, on the 12th of November 2020 (“the order”).

[2] There was no appearance for the Respondent, no opposition was filed and the Applicant did not seek costs against the Respondent.

[3] At the hearing, after hearing Counsel for the Applicant and considering:

3.1 the nature and effect of the order which was, as a result of the Applicant's failure to, on the papers before Court, demonstrate that he *de facto* had claimed non-pecuniary damages from the Respondent as envisaged in terms of the Road Accident Fund Act, 56 of 1996, as amended, the Applicant had failed to demonstrate that he was entitled the declaratory relief as prayed for;

3.2 that such failure on the papers, *supra*, stood irrespective of the serious injury report dated the 23 May 2018;

3.3 that although the Applicant had failed to allege and demonstrates his right to claim non-pecuniary damages on the papers, the Applicant did claim non-pecuniary damages from the Respondent in terms of Act. In this regard, the Court was referred to the initial and amended particulars of claim forming part of the recently updated bundles on Caselines. The Applicant's attorney updated Caselines after the order;

3.4 that the decision sought to be appealed did not finally dispose of the Applicant's right to claim for non-pecuniary loss, nor for that matter did it dispose of all the issues in the case as between the parties.

[4] Having regard to all the circumstances and the interest of justice, the Applicant should be afforded the opportunity to bring his application afresh.

[5] Applicant's Counsel did not formally withdraw the application for leave to appeal but informed the Court that the Applicant no longer wished to rely nor argue any of the grounds set out in the leave to appeal.

Leave to appeal was incorrectly sought.

In the premises, the following order is made:

1. The Leave to appeal is removed;
2. The Applicant is afforded the opportunity to bring an application afresh for appropriate relief;
3. No order as to costs.



L.A. RETIEF

Acting Judge of the High Court of
South Africa, Gauteng Division,
Pretoria

Appearances:

Applicant's Attorney:	Salomé Le Roux Attorneys
Applicant's Ref:	SLR/X2334/MVA
Applicant's Counsel:	Adv Ludwig Visser and Adv Jana Van Der Merwe
Respondent's attorney:	Lekhu Pilson Attorneys
Date of Hearing:	7 May 2021
Date of Order:	11 May 2021