

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Numbers: 77573/2018, 4997/2020

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO
Date: 9 May 2022 2022 E van der Schyff

In the joinder application of:

M Coetzee

Applicant

and

Road Accident Fund

1st Respondent

Advocate Knoetze obo Malinga

2nd Respondent

EJP De Goede

3rd Respondent

In re:

Full Court various matters against the Road Accident Fund:

Adv. Anton Knoetze on behalf of Malinga

Plaintiff

E J P De Goede

Plaintiff

and

The Road Accident Fund

Defendant

JUDGMENT

Van der Schyff J

Introduction

- [1] The Acting Judge President of this Division, at the request of judges of this Division, constituted a Full Court to deal with the following legal questions:
- (i) Is it competent for a court to order that a Plaintiff's claim for future medical and hospital expenses be compensated by the Road Accident Fund by way of an undertaking issued in terms of section 17(4) of the Road Accident Fund Act 56 of 1996, where default judgment is granted and in the absence of a tender to that effect;
 - (ii) Is a plaintiff entitled to pursue the adjudication of general damages at trial in the default trial court, regard being had to the specific obligations placed upon the Road Accident Fund as set out in Regulations 3(3)(dA), 3(4) and 3(5) of the Road Accident Fund Regulations, 2008 (as amended)?
- [2] The parties to the Full Court proceedings are the plaintiffs in the cases with case numbers 77573/2018 and 54997/2020. They are represented by the same attorney of record and counsel. The Road Accident Fund is the defendant in the Full Court proceedings.
- [3] The applicant in this application, Mr. Coetzee, seeks leave for his case under case number 5736/2020 to be added to those cases already in the proceedings before the Full Court under case numbers 77573/2018 and 54997/2020.

- [4] Mr. Coetzee initially filed an application requesting that his case be consolidated and heard simultaneously with the cases under case numbers 77573/2018 and 54997/2020. As the designated case manager, I issued a directive dated 22 March 2022. I directed the parties to file written submissions by Friday 1 April 2022 indicating as to whether the admission as *amicus curiae*, would not be more convenient than a party intervening or consolidating trials. I advised the parties that cases 77573/2018 and 54997/2020 have not been consolidated, but that the separated issues stated in the Acting Judge President's Directive have been identified as questions of law for purposes of adjudication by a Full Court. I indicated that in the event that Mr. Coetzee persists to being joined as a party, after the submissions requested were filed, I would hear the joinder application as an opposed motion on 29 April 2022.
- [5] A notice of intention to amend, dated 25 March 2022 was subsequently filed by Mr. Coetzee's attorneys of record. Mr. Coetzee in the alternative to a consolidation, now sought his matter to be joined for the separated issues of law to be dealt with in his case as well as and together with the cases under case numbers 77573/2018 and 54997/2020. In the alternative he sought to be admitted as an *amicus curiae*.
- [6] The plaintiffs in the matters before the Full Court, who were cited as respondents in the application issued by Mr. Coetzee, objected to the proposed amendment of the notice of motion on the basis that Mr. Coetzee did not make out a case for joinder or to be admitted as an *amicus*. A Rule 28(4) notice was subsequently filed on behalf of Mr. Coetzee wherein an order was sought for the notice of motion to be amended on 29 April 2022 or a date determined by the case manager.
- [7] On 8 April 2022 a second notice of application to join (8 April-application) was filed on behalf of Mr. Coetzee. This notice was, however, filed in a different electronic CaseLine's file to the CaseLine's file created for the Full Court matter by the applicant at the insistence of the Acting Judge President (AJP). The relief sought in the 8 April-application is that Mr. Coetzee's case be added to those already in the proceedings before the Full Court being cases under case numbers 77573/2018 and 54997/2020. It is, similarly stated in the founding affidavit to the 8 April-application

that 'all that the Applicant now requires is that his case be added to the list of cases involved in the proceedings before the Full Court'.

- [8] The directive issued by the AJP indicated that applications to be admitted as *amici*, would be dealt with on paper. In light of the alternative relief sought as set out in Mr. Coetzee's notice of intention to amend dated 25 March 2022, the subsequent Rule 28(4) application filed, and the nature of the proceedings pending before the Full Court, I exercised my discretion as case manager and admitted Mr. Coetzee, together with five other parties, as *amici* on 22 April 2022. I considered the papers filed under the electronic CaseLine's file created for the Full Court matter. I was erroneously under the impression that the e-mail sent to my registrar by Mr. Coetzee's attorneys of record on 8 April 2022 regarding the joinder application, referred to the previous joinder application.
- [9] Mr. Coetzee is already admitted as an *amicus curiae*. I am, however, of the view that this fact does not prevent me from considering the application to which I shall refer as the 8 April-application.

Nature of the proceedings before the Full Court

- [10] It is apposite at this juncture, to clarify the nature of the proceedings before the Full Court. It is common cause, that the Full Court was constituted by the AJP to provide an answer to two specific legal questions. The proceedings before the Full Court are not adversarial, and quite unique in that the Full Court is called upon to provide clarity regarding two legal questions that will not only affect the plaintiffs in the cases already in the proceedings before the Full Court, but all plaintiffs who instituted claims against the Road Accident Fund that are brought before the court on a default basis. While the answers to these legal questions will provide clarity to the judges of this Division regarding the questions posed, it will not finally dispose any of the issues in litigation between the plaintiffs Adv. Knoetze obo Malinga, and EJP De Goede and the Road Accident Fund. No relief is sought against the Road Accident Fund and the determination of the legal questions is a quest for the true meaning of the relevant statutory provisions. Another of the unique characteristics of the Full

Court matter is that the Road Accident Fund is in default in the specific matters under case numbers 77573/2018 and 54997/2020, but participating in the proceedings before the Full Court.

Mr. Coetzee's application

- [11] From the papers filed of record, it is evident that Mr. Coetzee will eventually seek an undertaking for his future medical and hospital expenses suffered as a result of a motor vehicle accident. He fears that the Fund will not participate in his trial and that his matter will be dealt with by default. The ruling of the Full Court will have a direct implication on his right to claim an undertaking. Mr. Coetzee holds a view contrary to that of the plaintiffs in cases numbers 77573/2018 and 54997/2020 and is of the view that him being allowed to joined the proceedings as a party, will assist in ventilating the issues.
- [12] During argument, Mr. Coetzee's counsel submitted that the role of an *amicus* is rather limited. As a friend of the court, an *amicus* cannot request a remedy that none of the parties have sought. Whilst an *amicus*, in general, does not have a directed interest in the matter before the court, but joins the proceedings because of its expertise on or interest in the matter before the court,¹ Mr. Coetzee has a legitimate interest in the proceedings.
- [13] The second and third respondents to the joinder application opposed Mr. Coetzee being joined as a party, as well as being admitted as an *amicus*. Counsel representing them submitted that there is no convenience to the court to join Mr. Coetzee due to the different stages of litigation wherein the respective parties find themselves, the fact that there is no *lis* between the parties, and because the plaintiffs he represents will be prejudiced if they are to incur extra costs. Mr. Coetzee's position changed substantially since the inception of the consolidation application and the litigation pertaining to his claim seems to be *on par* with the position wherein the second and third respondents find themselves.

¹ *Hoffman v South African Airways* 2001 (1) SA 1 (CC).

Discussion

- [14] As stated before, the proceedings of the Full Court are unique in the sense that the Full Court was constituted to answer two legal questions, which if answered, will not finally dispose of any issue between the litigating parties. No relief is, in these proceedings, sought against the Road Accident Fund. Although Mr. Coetzee has a direct and substantial interest in this matter, this is an interest that he shares with thousands of plaintiffs who claim damages pursuant to bodily injuries caused by or arising from the driving of a motor vehicle at any place in the Republic as provided for in section 17 of the Road Accident Fund Act 56 of 1996. The dilemma he faces because of the Road Accident Fund's apparent policy of non-participation in trials, is likewise a dilemma he shares with other plaintiffs. It is specifically the Road Accident Fund's non-participation in trials, that necessitated the referral of the two legal questions at hand, to a Full Court.
- [15] As *amicus*, Mr. Coetzee will be able to present legal argument which can assist the court to determine the true meaning of the relevant statutory provisions. There is no indication on the papers that Mr. Coetzee proposes to present any evidence. It is trite, however, that an *amicus* can apply to present evidence. I further considered the question as to whether Mr. Coetzee, as *amicus*, would be able to appeal the Full Court's judgment in the event that he is aggrieved by the court's judgment. It is evident from the decision of the Supreme Court of Appeal in *Helen Suzman Foundation v Robert McBride and Others*² that an appeal lodged by an *amicus* may, in appropriate circumstances, be considered. As for costs, although an *amicus* is not in the ordinary course awarded costs, the Full Court can be addressed on the appropriate costs order that is to be granted in light of the unique nature of the proceedings.
- [16] Mr. Coetzee's participation in the Full Court proceedings as *amicus* will be invaluable. His participation will contribute to the issues being ventilated and the argument presented on his behalf will carry equal weight with that of the counsel

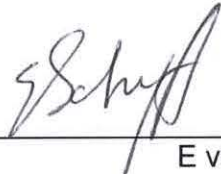
² (1065/2019) [2021] ZASCA 36 (7 April 2021).

representing the plaintiffs in the cases which caused the Full Court to be constituted. Despite the fact that the AJP's directive notionally allows for parties to be joined as well as being admitted as *amici*, it is not necessary for an interested party to be joined in the traditional sense, such as being admitted as a co-plaintiff or co-defendant, in order to be heard. The admission of a party as *amicus* will sufficiently cater for that without further separate cases 'joining' the list of those already before the court.

- [17] As for costs, the general principle is that costs follow suit. However, as far as this application is concerned, and specifically due to the unique nature of the Full Court proceedings as alluded to above, it is fair to all parties concerned if each party is to pay their own costs. The decision not to add Mr. Coetzee's case to those cases already in the proceedings before the Full Court under case numbers 77573/2018 and 54997/2020 is not informed by the plaintiffs' objection.

In the result, the following order is granted:

1. The applicant's application for his case under case number 5736/2020 to be added to those cases already in the proceedings before the Full Court under case numbers 77573/2018 and 54997/2020 is dismissed.
2. Each party is to pay its own costs.


 E van der Schyff
 Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email.

Counsel for the applicant:

Adv. BP Geach SC

With:

Adv. FHH Kerhahn

Instructed by:

Roets & Van Rensburg Attorneys

For the second and third respondents:

Adv. RJ De Beer

Instructed by:

Surita Marais Attorneys

Date of the hearing:

6 May 2022

Date of judgment:

9 May 2022