



**IN THE HIGH OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED: **YES**

Date: **28 November 2022** Signature:

Case No: **27383/2009**

In the matter between:

PIETER KRUGER

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

LEAVE TO APPEAL – RECONSIDERATION OF COSTS

NEUKIRCHER J:

- 1] This is an application for leave to appeal against the judgment and order handed down on 26 October 2022 in which I dismissed the plaintiff's application for reconsideration of the trial costs.

- 2] There are three main grounds upon which this application is based:
 - a) that I did not afford plaintiff an opportunity to make submissions - the application was considered on the paper;
 - b) that I exercised my judicial discretion incorrectly;
 - c) that it is in the public interest that a Full Court of this division consider the issue especially where the Rules of Court and tariffs lag so severely behind the times.
- 3] Whilst it is so that a finding in favour of plaintiff on only 1 of these grounds would suffice to grant leave – this court then being satisfied that there are prospects of success on appeal – the first ground requires comment.
- 4] The application for reconsideration was filed on 12 September 2022. By 21 October 2022 the RAF had failed to come out of its blocks and plaintiff was sitting with his hands in his hair. Of course, by then, the time limits set out in Rule 6 for opposing the application and filing an answering affidavit had long passed.
- 5] On 24 October 2022 I caused an email to be sent to both parties informing them that as the matter was unopposed, it would be decided on the papers.
- 6] By this stage I had had the benefit of a) presiding over this long duration trial, receiving heads of argument and hearing closing arguments and

delivering judgment in February 2022; b) presiding over the RAF's application for leave to appeal and considering the 2 sets of heads of argument each had party filed; and c) considering the application for reconsideration which included (in the affidavit) the case law relied upon to found the application.

- 7] Subsequent to 24 October 2022, no email was received by any of the parties asking for time to file heads (which of course I would have granted), or asking whether I would consider oral argument – in fact there was simply silence on either by both parties. Mr de Waal conceded today that he'd intended to file heads but there was a "glitch" in the communication endeavours with his attorney and so a delay occurred which resulted in them not filing anything timeously. As I've said, had an email been sent asking for that opportunity I would have granted it.
- 8] In general, if the modus operandi of the SCA and Constitutional Court are anything to go by, I see no bar to an application for reconsideration being dealt with on paper (much the same way as petitions are).
- 9] I am of the view that in this matter there was sufficient information and facts before me to enable me to weigh all factors and exercise my discretion judicially.

10] This being said, I am of the view that it is in the greater public interest that a Full Court consider and adjudicate on the legal principles applicable in matter of this nature. It is therefore on that basis, per section 17(1)(a)(ii), that leave to appeal should be granted.

11] The order I make is the following:

1. Leave to Appeal to the Full Court, Gauteng Division is granted.
2. Costs are costs in the appeal.



B NEUKIRCHER
JUDGE OF THE HIGH COURT

Delivered: This judgment was prepared and authored by the Judges whose names are reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 28 November 2022.

Original appearances at trial:

For the Plaintiff	: Adv de Waal SC
Instructed by	: Van der Hoff Inc
For the Defendant	: No appearance
Date of hearing	: 22 November 2022