REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA,
MPUMALANGA DIVISION (MAIN SEAT)

Case Number: 2703/17

1. REPORTABLE: YES/ ~~NO~~	
2. OF INTEREST TO OTHER JUDGES: YES/~~NO~~	
3. REVISED.	
12 July 2021	**[SIGNED]**
DATE	SIGNATURE

In the matter between:

MOKOENA PRUDENCE **Plaintiff**

and

RAF **Defendant**

This judgment was handed down electronically by circulation to the parties' legal representatives by email and will be released to SAFLII. The date and time for hand-down is deemed to be 14:00 on 12 July 2021.

JUDGMENT

Roelofse AJ:

[1] On 12 June 2016 at Shishila on the Pienaar Main Road in Mpumlanga, the plaintiff, Ms. Prudence Mokoena was involved in a motor vehicle accident. She was a passenger. As a result of the accident Ms. Mokoena suffered a fracture of the right femur midshaft and facial injuries. Ms. Mokoena was taken to the Themba hospital where she received emergency treatment which included an open reduction and internal fixation of her right leg. Ms. Mokoena lodged a claim with the RAF[1].

Course of the litigation

[2] I dedicate some time in this judgment on the course of the litigation so that the way the trial unfolded (and ended) - the RAF first being represented then being unrepresented and later again being represented, all be it wholly inadequately, and the result thereof be better understood.

[3] This situation was most probably being brought about by the dire situation the RAF finds itself now after it has resolved to sever its ties with its panel attorneys.[2] The dire situation in which the RAF finds itself does not only impact upon itself but also, as will be demonstrated below, severely affects the proper and timeous administration of justice. This is even more alarming because it affects not only the public purse but also vulnerable members of our society who must wait for a long time to get the redress they are entitled to and, as this judgment demonstrates, receives less than they may have been entitled to due to a disregard of the rules of this court.

[4] Ms. Mokoena issued summons against the RAF[3] on 22 November 2017. The summons was served upon the RAF on 8 December 2017.

[5] In Ms. Mokoena's particulars of claim she alleges that she has suffered damages because of the accident as follows: future medical expenses; past loss of earnings; past medical expenses; future loss of earnings; and general damages. The total amount Ms. Mokoena claim amounts to R 1 000 000.00. Of the amount claimed, R 600 000.00 represents a claim for loss of income.

[6] A notice of intention to defend was delivered on behalf of the RAF on 10 January 2018 by Mboweni and Partners Incorporated. Subsequent thereto, the RAF delivered its plea. Ms. Mokoena also filed and delivered a replication.[4]

[7] A judicial pre-trial was conducted on 16 August 2019. Form A which is a "CIVIL TRIAL CASE MANAGEMENT DIRECTIVE/ORDER" prescribed by the Practice Directive (*"the case management directive"*) [5] was made an order of court on 16 August 2019. In paragraph 2.2 of the case management directive, it is recorded that Ms. Mokoena was a passenger, and that the RAF conceded the "merits". The case management directive furthermore set out time frames in respect of the filing of the parties' reports and joint minutes of their experts, for the conducting of a further pre-trial conference and the filing of the minutes thereof. The case management directive was signed by Mr. Mokoena and the RAF's legal practitioners.

[8] It appears from the papers that the last time the RAF's attorneys participated in the action was on 29 November 2019 when they delivered a notice in terms of Rule 36(9)(a).

[9] On 20 April 2021, a second Form A was filed. According to the second Form A, the matter was enrolled for trial for the week of 7 June 2021. The second Form A provided for the filing of joint minutes of experts and the holding of a pre-trial conference by the parties. The second Form A was only signed by Ms. Mokoena's attorney. The RAF's attorneys did not take part in this pre-trial proceeding. On 20 April 2020, a certificate of trial readiness was issued by the Registrar.

[10] The trial bundle contains a "NOTICE OF INTENTION TO AMEND IN TERMS OF THE PROVISIONS OF RULE 28" (*"the notice"*), dated 17 May 2021. The notice reads:

> "**BE PLEASED TO NOTICE THAT** the Plaintiff intends to amend its particulars of claim to the Summons as follows:
>
> *8.1 Future Medical Expenses section 17(4)(a)*
> *Undertaking*
>
> *8.2 Past and future Loss of Earnings R1 300 000.00*
>
> *8.3 General Damages R600 000*
>
> *TOTAL R 1 900 000.00"*

[11] Rule 28(1) of the Uniform Rules ("*the Rule*" or "*the Rules*") provides that any party desiring to amend any pleading or document filed in connection with any proceedings, shall notify all other parties of his intention to amend and shall furnish particulars of the amendment. Sub-rule 28(2) refers to "delivery" of the notice. Therefore, copies of a notice of intention to amend must be delivered to all parties and the original filed with the Registrar.

[12] The notice does not bear the Registrar's stamp and was delivered at the RAF's Menlyn offices according to a stamp that appears on the last page of the notice. The notice was not directed to the defendant's attorneys. No objection to the proposed amendment was raised as contemplated in Rule 28(3) by the RAF.

[13] The notice does not set out what is required by sub-rule 28(2) of the Rules.[6] The notice therefore constitutes a nullity in that it does not comply with the provisions of Rule 28(2). Even if I am wrong in this regard, the notice was not properly delivered[7] and the

amendment was never effected as contemplated in Sub-Rule 28(7).[8] I am therefore confined to the original paragraph 8 of Ms. Mokoena's particulars of claim.

[14] On 13 April 2021, the plaintiff's attorneys delivered a notice of set down for trial for Monday 7 June 2021. The notice of set down was not directed nor delivered to the RAF's attorneys but was delivered to the RAF's Menlyn offices. The notice of set down was also sent as an attachment to an email that was sent to officials of the RAF.[9]

The trial proceedings

[15] When the matter was called before me on 7 June 2021, only the plaintiff's counsel, Mr. Thabethe appeared. There was no appearance for the RAF. I was informed by Mr Thabethe that there would be no appearance for the RAF but that the notice of set down of the trial for 7 June 2021 was delivered by email to the RAF's claims handlers and also delivered by hand at the RAF's Menlyn office. I was also informed that the attorneys that had acted for the RAF have not yet withdrawn.

[16] At issue therefore was whether the delivery of the notice of set-down by email and delivery thereof to the RAF's offices.

[17] Before I proceed, I deal with service initiating proceedings and the service of documents and notices in the pursuant litigation process for this is important for the determination of this matter and may also be important for other litigants against the RAF under the present circumstances.

[18] The notice of set-down and constitutes a "notice" given in the course of the litigation and in the context of this matter, a very important notice.

[19] There is a difference between the manner of service of process commencing proceedings and service of subsequent documents and notices during the proceedings. Rule 4 of the Rules provide for service of process commencing proceedings. Rule 4A of

the Rules provides for service of all subsequent documents and notices, not falling under rule 4(1)(a).

[20] Rule 4(1)(a) provides for service of any process of the court directed to the sheriff. The rule reads as follows:

> *"Service of any process of the court directed to the sheriff and subject to the provisions of paragraph (aA)[10] any document initiating application proceedings shall be effected by the sheriff in one or other of the following manners:….*

[21] The following are processes directed to the sheriff: a summons for provisional sentence (Form 3), a simple summons (Form 9), a combined summons (Form 10), a subpoena (Form 16), a writ of execution (Form 18, Form A, Form B), a writ of attachment — immovable property (Form 20), a writ of commitment for contempt of court (Form F), a writ of attachment *ad fundandam jurisdictionem* (Form H).

[22] Service of all subsequent documents and notices, not falling under Sub-rule 4(1)(a), in any proceedings on any other party to the litigation may be effected in any manner laid down by Rule 4A.[11]

[23] Rule 4A(1) specifically refers to all subsequent documents and notices, not falling under rule 4(1)(a). Rules 6(5)(b), 6(5)(d)(i), 17(3), 19(3) or 34(8) all provide for the appointment of an address at which the parties will accept service of all documents in the course of the litigation that was already initiated. What Rule 4A(1) therefore contemplates is that, once litigation is commenced by service of process in terms of Rule 4(1)(a), all subsequent documents and notices must be delivered to the addresses appointed by the parties in terms of Rules 6(5)(b), 6(5)(d)(i), 17(3), 19(3) or 34(8).

[24] It is commonplace that many notices and documents are often exchanged between the parties during litigation before the matter reach the court. What cannot be done without is the appointment of an address for the delivery of all subsequent documents and notices. Any delivery to an address not so appointed will not be proper delivery of same.

[25] Rule 4A[12] provides:

> *"Delivery of documents and notices*
>
> *(1) Service of all subsequent documents and notices, not falling under rule 4(1)(a), in any proceedings on any other party to the litigation may be effected by one or more of the following manners to the address or addresses provided by that party under rules 6(5)(b), 6(5)(d)(i), 17(3), 19(3) or 34(8), by—*
>
> *(a) hand at the physical address for service provided, or*
>
> *(b) registered post to the postal address provided, or*
>
> *(c) facsimile or electronic mail to the respective addresses provided.*
>
> *(2) An address for service, postal address, facsimile address or electronic address mentioned in subrule (1) may be changed by the delivery of notice of a new address and thereafter service may be effected as provided for in that subrule at such new address.*
>
> *(3) Chapter III, Part 2 of the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002) is applicable to service by facsimile or electronic mail.*
>
> *(4) Service under this rule need not be effected through the Sheriff.*

(5) The filing with the registrar of originals of documents and notices referred to in this rule shall not be done by way of facsimile or electronic mail."

[26] Rule 4A specifically refers to the Electronic Communications and Transactions Act 25 of 2002 (*"the Electronic Communications Act"*). The Communications Act, amongst other objectives, provides for the facilitation and regulation of electronic communications and transactions and the development of a national e-strategy for the Republic.[13]

[27] Section 19(2) of the Communications act brings certain expressions in law within the ambit of the Act. This section provides:

"An expression in a law, whether used as a noun or verb, including the terms "document", "record", "file", "submit", "lodge", "deliver", "issue", "publish", "write in", "print" or words or expressions of similar effect, must be interpreted so as to include or permit such form, format or action in relation to a data message unless otherwise provided for in this Act."

[28] In Section 1 of the Communications Act, a data message is defined as:

"data message" means data generated, sent, received or stored by electronic means and includes—

(a) voice, where the voice is used in an automated transaction; and

(b) a stored record;

[29] Section 19(2) therefore authorises "delivery" by way of a data message. Simply put, the section authorises an email which includes a notice of set-down (or other notice required to be sent) or an email to which such notice is attached.

[30] Rule 4A specifically incorporates Chapter III, Part 2 of the Electronic Communications and Transactions Act 25 of 2002 ("*the Communication Act*") as being

applicable to effecting service by facsimile or electronic mail. Sections 23 and 26 of the Communication Act are relevant. Section 23 provides for the time and place of communications, dispatch and receipt of a data message. Section 26 deals with the acknowledgement of a data message. Of importance however is that sections 23 and 26 of the Communications Act only applies where the parties involved in generating, sending, receiving, storing or otherwise processing data messages have not reached agreement on the issues provided for therein.[14] Sections 23 and 26 of the Communications Act reads as follows:

> *"23. Time and place of communications, dispatch and receipt.-A data message:*
>
> *(a) used in the conclusion or performance of an agreement must be regarded as having been sent by the originator when it enters an information system outside the control of the originator or, if the originator and addressee are in the same information system, when it is capable of being retrieved by the addressee;*
>
> *(b) must be regarded as having been received by the addressee when the complete data message enters an information system designated or used for that purpose by the addressee and is capable of being retrieved and processed by the addressee; and*
>
> *(c) must be regarded as having been sent from the originator's usual place of business or residence and as having been received at the addressee's usual place of business or residence."*
>
> *"26. Acknowledgement of receipt of data message.-*
>
> *(1) An acknowledgment of receipt of a data message is not necessary to give legal effect to that message.*
>
> *(2) An acknowledgement of receipt may be given by*

> *(a) any communication by the addressee, whether automated or otherwise; or*
> *(b) any conduct of the addressee, sufficient to indicate to the originator that the data message has been received."*

[31] Within the context of Rule 4A, section 23(a) of the Communication Act must mean the delivery of a subsequent document or notice contemplated in Rule 4A(1) being sent by electronic mail as provided for in Rule 4A(1)(c). Therefore, the time and place of communications, dispatch and receipt of the subsequent document or notice by electronic mail and proof of delivery of same is regulated by the provisions of sections 23 and 26 of the Communication Act. In terms of section 20 of the Communications Act, only where there is no agreement between the parties. The point is this, there is no need for agreement between the parties as far as subsequent documents and notices not falling under rule 4(1)(a). The parties must appoint or set out an address for the delivery of subsequent documents and notices not falling under rule 4(1)(a). Delivery must be effected to the address so appointed which may include an email address or a physical address. What manner sections 23 and 26 of the Communications Act assists is to determine, in the event of email delivery, it to determine the delivery of the email communication and the acknowledgement of receipt of the email.

[32] Rule 16 provides for the representation of parties. It regulates situations where legal practitioners are appointed to act on behalf of a party, when such practitioner then ceases to act as such. Central to this rule is that the address for service of all further documents subsequent to the withdrawal of the practitioner. This is the address where proper service of all further document must be effected.

[33] Having set out the service and delivery of process, subsequent notices and documents, I return to the matter at hand.

[34] I was not prepared to hear the matter when it was first called in the absence of the

RAF although I was fully entitled to do so in accordance with the provisions of Rule 39(1)[15] I was concerned about two issues. Firstly, I was concerned because the RAF did not appear even though its attorneys have not withdrawn. Secondly, I was not satisfied that there was proper service of the notice of set down as contemplated in Rule 4A upon the RAF. I contemplated striking the matter from the roll due no non-compliance with Rule 4A. I decided not to do so because, having regard that the accident had already taken place almost 5 years ago and that Ms. Mokoena was ready to proceed to trial. Striking the matter from the roll would only have caused further delay and pressure on this court's trial rolls.

[35] For that reason, and in terms of the power the court possess to regulate its own process[16], I issued the following order:

1. *The matter is postponed to Wednesday 9 June 2021.*

2. *The Chief Executive Officer of the defendant is hereby directed to notify this court whether the defendant intends to participate in the action ("the notification"). If the defendant intends to further participate in the action, the defend and is directed to disclose the nature of its further participation in the notice.*

3. *The notice must be delivered by no later than 16:00 on Tuesday, 8 June 2021 by email to this court's Registrar at M[_____]@judiciary.org.za / m[_____]@yahoo.com, failing which the court shall accept that the defendant no longer wishes to participate in the action in which event the court shall dispose of the action in a manner it deems meet.*

4. *The plaintiff's attorneys are directed to deliver a copy of this order to the Chief Executive Officer of the defendant personally as well as the defendant's claims handlers of claim number 4177943, such delivery to take*

place by no later than 16:00 on Monday, 7 June 2021." [The email addresses have been redacted]

[36] The purpose of the order was to ensure that the RAF was aware of the trial being enrolled and about to be heard. I wanted to prevent a situation where the RAF could later seek to rescind the order if same was given in its absence.

[37] The plaintiff's attorneys directed a letter to which the order and the notice of set down was attached to the RAF's Chief Executive Officer. The letter was delivered at the RAF's offices.

[38] The matter was called on 9 June 2021. Mr. Thabethe appeared for the plaintiff. The order apparently had an effect because Ms. Mahlalela appeared for the RAF. I enquired from Ms. Mahlalela what the position was. Ms. Mahlalela informed me that she was only instructed the previous evening to attend to the trial. Ms. Mahlalela told me that she was not ready to proceed with the trial and that the RAF wanted a postponement. I directed that the formal application for a postponement be brought and determined time periods for the parties to exchange papers and to deliver same to the court. I postponed the matter to 10 June 2021 for purposes of hearing of the postponement application and, depending on the outcome of the application for a postponement, for the trial of the matter.

[39] The parties send the postponement application through to my registrar. The RAF's new attorney deposed to the founding affidavit in the postponement application. He alleged as follows:

"2.5 On the 08th June 2021 whilst travelling to East London I received instructions to represent the ROAD ACCIDENT FUND ("The Fund") herein. I then proceeded to engage counsel on the matter and briefed her accordingly to proceed with the matter. It is noteworthy that I only received

all documentation pertaining to this matter at 7:30 on the 9th June 2021, which is the date of trial, hence the application for a postponement.

2.6. It is therefore my submission that, based on the above, it is self-evident that the Applicant is not ready to proceed in respect of quantum at this stage and therefore requests that the matter be postponed sine die, alternatively that it be removed from the roll to afford the parties an opportunity to engage with their experts with a view to getting them to reach a meaningful settlement. The matter would then be re-enrolled on the Judicial Pre-Trial Conference roll to enable the parties to obtain further directives from the Honourable Court with regards to further prosecution of the action."

[40] This was met by an opposition by the plaintiff that the RAF had not made out a good cause for a postponement to be granted. It is trite that good cause must be established by a party requesting a postponement. Having regard to the course of the litigation set out above, the RAF cannot possibly at the eleventh hour request a postponement just because it only instructed another attorney to appear a day after the matter was set down for trial. I therefore refused the application for a postponement and ordered that the trial proceed.

[41] Ms. Mokoena presented no oral evidence and solely relied upon her own affidavit and the affidavits of certain of her experts. After having admitted the affidavits into evidence, Ms. Mokoena closed her case.

[42] The RAF did not present any evidence and closed its case.

[43] I directed the parties to deliver heads of argument and gave them time prescripts for doing so. Only the plaintiff delivered heads of argument.

COMPENSATION FOR MS. MOKOENA

[44] I now must consider the evidence before me to determine what compensation in respect of her claim for loss of income as a result of the accident.

[45] Ms. Mokoena complains of pain in her right leg which is exacerbated by prolonged standing and walking. Ms. Mokoena takes pain medication upon occasion when she experiences pain in her leg.

[46] MS. Mokena was born on 14 April 1996. Presently therefore, she is 25 years old. She passed grade 10. Ms. Mokoena was unemployed before the accident. After the accident she was employed for two short periods as a cleaner and cook. Pain to her leg mad it difficult for her to cope with the employment. Having regard to Ms. Mokoena's education, she would have to rely upon her physical skills to be employed. Ms. Mokoena's physical skills have been compromised because of the accident and leave her in an unequal position to compete in the labour market. Employers have a wide choice amongst work seekers who are not physically challenged. In my view these are major contributing circumstances to take into account in determining compensation that is just and fair for Ms. Mokoena.

[47] Ms. Mokoena's Industrial Psychologist sets out as follows over Ms. Mokoena's post-morbid circumstances:

> *"Ms. Mokoena dead indeed incur loss of earning potential due to injury she sustained in this accident in question which will still have a negative impact on her future earnings.*
>
> *Thus, it is reasonable to point out that Ms. Mokoena will have difficulties functioning in the open labor market. The aforementioned limitations would prevent her from competing with her peers should the opportunity be awarded. She is likely to remain disadvantaged in the open labor market and their*

productivity will also be negatively affected. The writer is therefore of the opinion, accepting that because of her physical limitations, she has been negatively affected by this accident in question and is therefore unemployable in the open labor market."

[48] Ms. Mokoena's past- and future loss of earnings was calculated by Munro Forensic Actuaries. The total loss of earnings is calculated to be R 1 881 100. To this amount contingencies still had to be applied.

[49] The determination of just compensation is within the discretion of the court. The court must have regard to all the relevant circumstances and then determine what will be a just compensation. I accept that the accident affected Ms. Mokoena's ability to earn an income because of the accident. I am however not of the view that Ms. Mokoena is finally unemployable.

[50] In Ms. Mokoena's heads of argument, an amount of R 1 349 020.00 is proposed as compensation for her loss of income.

[51] Ms. Mokoena's actuaries' report where the amount of actual loss of income was calculated, was already delivered to the defendant's attorneys of record on 29 January 2020. Notwithstanding, Ms. Mokoena only furnished her notice of intention to amend on 18 May 2021 by delivery to the RAF's Menlyn office.

[52] Ms. Mokoena's notice of amendment dated 17 May 2021 constitutes a notice contemplated in Rule 4A. The notice of amendment was not delivered to the defendant's attorneys of record although they have not yet withdrawn. Thus, the address for delivery of notices (such as the notice of amendment) remained the address of the defendant's attorneys of record for purposes of Rule 4A. Nowhere in the papers is there any indication that the address for purposes of the delivery of notices was changed to the defendant's place of administration. In addition, no new address for the delivery of notices and documents was appointed by the RAF.

[53] As set out above, Ms. Mokoena's notice of amendment of her particulars of claim was not in compliance with the provisions of Rule 28(2). In addition, the amendment was not effected. There was therefore no amendment and Ms. Mokoena's original particulars of claim stands. In the original particulars of claim, an aggregate amount of R 600 000.00 was claimed for past- and future loss of earnings. This is the amount I shall award.

CONCLUSION

[54] In conclusion, I say the following. The RAF is a litigant for purposes of the court and its rules and procedures. The fact that the RAF is the litigant with the largest number of cases before the courts make no difference. The RAF remains entitled to its procedural rights just as any other litigant - represented or unrepresented.

[55] On my roll of 7 June 2021, eight other RAF matters were enrolled for trial. In all of them as well, either the RAF's attorneys withdrew or have vanished from the scene at some stage during the litigation process. I have heard from the plaintiffs' legal practitioners that since the RAF has resolved to sever its ties with its panel attorneys, this has become common place.

[56] This is where a serious dilemma presents itself. After having gone through the whole of the pre-trial procedures and ultimately when a RAF trial is called nowadays, only the plaintiff's legal practitioners usually appear. I was told, and I am sure other courts are also told, that there will not be an appearance by the RAF at the trial. Plaintiffs' legal practitioners often rely on emails that are sent to the RAF's claim handlers or the delivery at the offices of the RAF of important issues such as notices of set down and practice notes. Worst, in this matter, the Rule 28 Notice of Amendment was emailed and delivered in this manner. In not one of the matters before me was the notices and documents delivered as contemplated in Rule 4A at an appointed address.

[57] There are two serious problems with this approach: Firstly, such delivery is not in terms of Rule 4A and, secondly, who says that the RAF's claims handlers have authority to accept subsequent documents and notices in the litigation. That they do have authority cannot simply be accepted.

[58] I appreciate the plaintiffs in RAF matters' predicament. However, the rights and interests of the RAF must also be considered. After all, the RAF is all about public funds. The only appropriate thing to do in circumstances where it becomes clear to a plaintiff's legal representative that the RAF's attorneys do not act anymore and have not formally withdrawn is to formally determine the address and manner of further delivery of documents and notices. Where the RAF's attorneys have formally withdrawn, the provisions of Sub-Rule 16(4)[17] are there to follow.

[59] Of course, in the absence of the proper delivery of documents and notices in terms of the Rules and in instance where judgment is granted against the RAF, it might well be that the RAF may be tempted to convince a court that the order against them was sought and granted erroneously. This will certainly not be in the interest of the proper administration of justice.

[60] Let this matter be an example of what can go wrong if the procedures of court are not followed or if corners are cut either because of ignorance of the Rules or to steal a march upon the RAF because of its present predicament.

[61] Costs must follow the result.

[62] In the premises, I order as follows:

a. The defendant is ordered to provide the plaintiff with an undertaking in terms of Section 17(4)(a) of Act 56 of 1996, and based on the expert reports

on behalf of the Plaintiff, wherein the Defendant undertakes to pay 100% of the Plaintiff's costs in respect of for future accommodation of the Plaintiff in a hospital or nursing home, or treatment of, or rendering of a service, or supplying of goods to the Plaintiff arising out of the injuries sustained in the motor vehicle collision that occurred on 12 JUNE 2016 , after such costs have been incurred and upon proof thereof;

b. The defendant is ordered to pay the sum of R 600 000.00 to the plaintiff;

c. The defendant is ordered to effect payment of the capital amount within 180 days of the date of this court order, failing which, the Defendant shall become liable for interest tempore *morae* on the capital amount at a rate of 7% per annum.

d. The defendant is ordered to pay the plaintiff's party and party costs which costs shall further include the reasonable costs and expenses of the plaintiff's attorney, correspondent attorney, which costs and shall also include all necessary travelling costs and/or expenses, if any, such costs further to include time spent and kilometers travelled concerning attendance to Court and preparation for trial.

e. In the event the defendant fails to pay the plaintiff's costs as taxed or agreed with 14 (fourteen) days from the date of taxation, alternatively date of settlement of such costs, the defendant shall be liable to pay interest at a rate of 7% per annum, such costs as from and including the date of taxation, alternatively the date of settlement of such costs up to and including the date of final payment thereof.

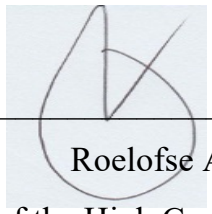
f. The taxed or agreed costs, as referred to above, shall be paid into the trust account as follows:

ACCOUNT HOLDER: MPHOKANE ATTORNEYS
BANK NAME: ABSA BANK

ACCOUNT NUMBER: 4074572063

BRANCH CODE: 632005

REF: B MPHOKANE/RAF061/MOK/2016



Roelofse AJ
Acting Judge of the High Court

DATE OF HEARING: 7,9 and 10 June 2021
DATE OF JUDGMENT: 12 July 2021

APPEARANCES

FOR THE PLAINTIFF: ADV THABETHE
INSTRUCTED BY: MPOKANE ATTORNEYS
FOR THE DEFENDANT: ADV. K MAHLALELA
INSTRUCTED BY: AMMM ATTORNEYS

[1] The Road Accident Fund established in terms of the Road Accident Fund Act, 1996.

[2] On 18 February 2020 the RAF notified its attorneys by letter that they were required to return all open files to the RAF. The way the situation with the RAF's panel attorneys unfolded, reference an also be made to: Road Accident

Fund and Others v Mabunda and Others [2021] 1 All SA 255 (GP); Fourie Fismer Inc and Others v Road Accident Fund [2020] 3 All SA 460 (GP); 2020 (5) SA 465 (GP); Road Accident Fund v Legal Practice Council and Others [2021] 2 All SA 886 (GP).

[3] The Road Accident Fund established in terms of the Road Accident Fund Act, 1996.

[4] The replication dealt with the RAF's special pleas which is not relevant fir purposes of this trial.

[5] In terms of paragraph 2.8 of the Court's Practice Directive of 9 January 2020.

[6] Sub-rule 2 reads as follows:

> *"The notice referred to in subrule (1) shall state that unless written objection to the proposed amendment is delivered within 10 days of delivery of the notice, the amendment will be effected."*

[7] I return to this aspect later in this judgment.

[8] Sub-rule 28(7) provides as follows:

> *"Unless the court otherwise directs, a party who is entitled to amend shall effect the amendment by delivering each relevant page in its amended form."*

[9] It appears to be the RAF's claims handlers in the claim. See the part in this judgment where I deal with the provisions of Rule 4A.

[10] Sub-rule (aA) provides:

> *"Where the person to be served with any document initiating application proceedings is already represented by an attorney of record, such document may be served upon such attorney by the party initiating such proceedings."*

[11] See Erasmus: Superior Court Practice RS 10, 2019, D1-30A.

[12] Rule 4A inserted into the Rules by GN R464 of 22 June 2012.

[13] Preamble to the Communications Act.

[14] Section 20 of the Communications Act.

[15] Sub-rule 39(1) reads as follows:

"(1) If, when a trial is called, the plaintiff appears and the defendant does not appear, the plaintiff may prove his claim so far as the burden of proof lies upon him and judgment shall be given accordingly, in so far as he has discharged such burden. Provided that where the claim is for a debt or liquidated demand no evidence shall be necessary unless the court otherwise orders."

[16] Through section 173 of the Constitution, 1996, which provides as follows:

> *"The Constitutional Court, Supreme Court of Appeal and High Courts have the inherent power to protect and regulate their own process, and to develop the common law, taking into account the interests of justice."*

[17] Sub-Rule 16(4) provides as follows:

"(4) (a) Where an attorney acting in any proceedings for a party ceases so to act, he shall forthwith deliver notice thereof to such party, the registrar and all other parties: Provided that notice to the party for whom he acted may be given by registered post.

(b) After such notice, unless the party formerly represented within 10 days after the notice, himself notifies all other parties of a new address for service as contemplated in subrule (2), it shall not, be necessary to serve any documents upon such party unless the court otherwise orders: Provided that any of the other parties may before receipt of the notice of his new address for service of documents, serve any documents upon the party who was formerly represented.

(c) The notice to the registrar shall state the names and addresses of the parties notified and the date on which and the manner in which the notice was sent to them.

(d) The notice to the party formerly represented shall inform the said party of the provisions of paragraph (b)."