



**GAUTENG DIVISION, JOHANNESBURG**

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

DATE

**19 February 2024**

SIGNATURE



CASE NO.: 9380/2021

In the application of:

ADVOCATE RUABENHEIMER obo

DLAMINI: GOODMAN MBONGISENI

and

THE ROAD ACCIDENT FUND

Plaintiff /Applicant

Defendant /Respondent

## JUDGMENT

### CAJEE AJ

1. This is an application that served before me in the trial interlocutory court on the 28<sup>th</sup> of November 2023 to compel the Defendant to sign joint submissions pertaining to an offer it made to the Plaintiff to settle the issues of Liability, General Damages and Future Medical Expenses, with a view to use them in support of a later application to make a draft order an order of court in the settlement court.
2. The Plaintiff is Advocate Raubenheimer NO, who on the 17<sup>th</sup> of August 2023 was appointed as curator ad litem to Mr. Goodman Mbongiseni Dlamini, an unemployed male born on the 1<sup>st</sup> of January 1968.
3. Mr. Dlamini was injured in a motor vehicle accident on the 22<sup>nd</sup> of August 2019 while he was a passenger. He suffered a number of serious injuries including, inter alia, severe facial injuries, orthopaedic injuries and a head injury.
4. A claim was duly lodged by the Plaintiff's attorneys of record and summons was issued and served on the 26<sup>th</sup> of February 2021 on the Defendant. The matter was not defended.

5. On the 3<sup>rd</sup> of July 2023 the Defendant offered to settle the issues of Liability in favour of the Plaintiff, General Damages in the sum of R750 000-00 and a statutory undertaking for 100% of his Future Medical Expenses by way of a partial without prejudice offer of settlement. This offer was made outside the rules of court. In terms of the offer, should it be accepted, payment was to be made 180 days from date of settlement or court order.
6. The offer was accepted on behalf of Adv. Raubenheimer, the curator ad litem, on the 22<sup>nd</sup> of August 2023 and email confirmation of same was sent to the Defendant on the same day in which the signed acceptance formed an attachment. The Defendant was also informed that the Plaintiff would set the matter down on the default judgment roll of the 1<sup>st</sup> of September 2023 for determination of the Plaintiff's claim for loss of earnings.
7. The Plaintiff's attorneys then proceeded to apply for default judgment for Loss of Earnings, supported by several medico-legal expert reports, which was not proceeded with on the date set down for it, namely the 1<sup>st</sup> of September 2023. Instead the matter was postponed after the Defendant made an offer dated the 1<sup>st</sup> of September 2023 on the same terms as the one it made on the 3<sup>rd</sup> of July 2023. The new offer was accepted on the 5<sup>th</sup> of September 2023 on behalf of the Plaintiff. As to why a second offer was made and accepted on the same terms as the first is not explained.

8. Thereafter the present application was launched on the 9<sup>th</sup> of November 2023 wherein the Plaintiff seeks an order compelling the Defendant to comply with the Judge President's Revised Practice Directive 1 of 2021 dated 8 July 2022 by signing the Applicants submissions in support of the settlement failing which it seeks leave to approach the Registrar to obtain a date and proceed to settlement court to make the terms of the settlement an order of court.
  
9. The relevant portion of the Practice Directive reads as follows:
  - 49. In order to facilitate a swift but nevertheless substantive consideration of the Settlement/Consent draft Order and justification:*
    - 49.1. Plaintiffs' and Defendants' legal practitioners or in the case of a Defendant who has no legal representative; any official of the Defendant authorized to represent it shall, jointly, prepare and sign a document, styled Submissions in support of settlement/consent Draft Order. The Submissions should be in appropriate detail, indexed and paginated where necessary and in which the facts and opinions upon which the agreements are premised should be set out and further appropriately cross-referenced to the source documentation relied upon, and lastly wherein the connection is demonstrated between the facts and the conclusions in the opinions/reports.*
    - 49.2. The submissions document shall, together with the draft consent order, and FORM 9 be presented to the Registrar, whereupon the Registrar shall set the matter down on the Roll of the Court dealing with Consent Orders, a fortnight hence.*



*49.3. Note that matters which have been left on the Trial Roll, which ought to have been removed from that roll and re-enrolled in the Settlements Court shall be summarily struck off the Trial Roll and no costs may be charged in respect thereof.*

*49.4. Such a matter left on the trial Roll, which is at that time settled, shall not be dealt with at the trial Roll, but shall be struck off, whereupon the parties may seek to have the consent order considered in accordance with this directive in the Settlements Court.*

*49.5. Not more than 20 matters shall be enrolled per Judge per day on the Settlement Roll.*

10. However, before this application was launched, on the 8<sup>th</sup> of May 2023 the Supreme Court of Appeal handed down judgment in the matter of Road Accident Fund v Taylor and other matters 2023 (5) SA 147 (SCA). This precipitated a drastic change in how settlement agreements in matters involving inter alia the Road Accident Fund were forthwith to be dealt in this Division and a new Practice Directive was issued on the 22<sup>nd</sup> of May 2023. The Directive is aptly titled IN RE: REVISIONS TO THE SEVERAL DIRECTIVES DEALING WITH SETTLEMENT AGREEMENTS.

11. Paragraphs 7 to 9 of the new directive reads as follows:

*7. Accordingly, with immediate effect the following changes to the Directives are effected:*

8. Directive 1 of 2021:

*The heading of chapter 9 and the provisions of paras 46 – 58 are deleted.*

*In substitution is the following:*

New heading:

SETTLEMENT/CONSENT ORDERS

New Para 46:

*Matters in which the parties seek a settlement agreement to be made an order of court should be enrolled on the general civil trial roll,*

New Para 47:

*The Judge presiding in a court before whom such a matter is brought shall, in keeping with section 173 of the Constitution, exercise a discretion whether or not to grant such an order.*

9. Directive 2 of 2022:

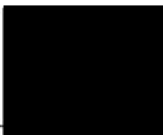
9.1. Para 78 – the provisions are deleted, and the following is substituted: ‘A matter before the general civil trial court which becomes settled and the parties seek that the agreement be made an order of court shall be dealt with in the that court.’

9.2. Paras 70, 80 and 83: – these provisions shall apply for the remainder of term 2 of 2023; from term 3 of 2023, all such cases must be enrolled on the general civil trial roll.

9.3. Para 84: – these provisions shall apply for the remainder of term 2 of 2023; from term 3 of 2023, Para 84.1 and 84.2 are deleted and applications for settlement agreements to be made orders of court shall be dealt with on the general civil trial roll.

*9.4. Para 92: – these provisions shall remain for the rest of term 2 of 2023, and from the beginning of term 3 of 2023 they are deleted.*

12. In the premises it is not open to me to even consider granting the orders sought, as paragraph 49 of Revised Directive 1 of 2021 dated 8 July 2022 is no longer in operation and applicable.
13. Interestingly in the deleted directive no provision is made for how to deal with a Defendant who fails or refuses to sign any submissions in support of any settlement reached, and the consequences of that failure or refusal. I refrain from expressing any fixed view on the issue.
14. In the premises the application is dismissed.



---

CAJEE AJ

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

DATE MATTER HEARD: 28<sup>TH</sup> NOVEMBER 2023

DATE OF JUDGMENT: 19<sup>TH</sup> FEBRUARY 2024

**APPEARANCES:**

<b>COUNSEL FOR THE PLAINTIFF:</b>	Adv. Van Wyk
<b>INSTRUCTED BY:</b>	Van Der Elst Attorneys
<b>DATE OF HEARING:</b>	28 <sup>th</sup> November 2023
<b>DATE OF JUDGMENT:</b>	19 <sup>th</sup> February 2024