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**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 9983/2022

In the matter between:

SIMO FORTUNE KHUMALO obo PFK

Applicant/Plaintiff

and

ROAD ACCIDENT FUND

Respondent/Defendant

CASE NO: 20576/2022

In the matter between:

DAVID THABISO MPHAKA

Applicant/Plaintiff

(ID No: 6[...])

and

ROAD ACCIDENT FUND

Respondent/Defendant

CASE NO: 60965/2023

In the matter between:

DELENE MARCELLE HIBBERD

Applicant/Plaintiff

and

ROAD ACCIDENT FUND

Respondent/Defendant

CASE NO: 25010/2016

In the matter between:

MATHEKA STRANGER RABOTHATA

Applicant/Plaintiff

and

ROAD ACCIDENT FUND

Respondent/Defendant

REASONS FOR JUDGMENT(S)

MAKHAMBENI AJ:

Introduction

[1] On Friday, 8 March 2024, the Deputy Judge President's office received a request for reasons of the order I had granted in the matter of *M S Rabothata v Road Accident Fund* under case number 25010/2016, which order is dated 22 February 2024 and located on CaseLines 034-19, which request was followed by the requests for reasons of judgment on Monday, 11 March 2024 in the matter of *Simo Khumalo obo PFK v RAF* under case number 9983/2022, *D M Hibberd v RAF* under case number 60965/2023, and *D T Mphaka v RAF* under case number 20576/2022.

[2] The most disturbing feature about these matters, and the requests in respect of reasons for judgment is attributable to the fact that in the matters under case number 9983/2022 and 60965/2023, the respondents/defendants were barred from filing their respective pleas, and any further participation in these matters should the plaintiffs elect to proceed by way of default judgment, hence the question as to

whether the respondents/defendants is in the first place entitled to any reasons for judgment comes into sharp focus.

[3] In the matter under case number 25010/2016, what is patently clear is the fact that my sister, Carrim AJ, struck out the defence of the respondent/defendant on 20 October 2022¹, hence the respondent/defendant in the absence of any meaningful opposition to the application for judgment by default and an answering affidavit giving a reasonable explanation, as well as showing good cause to reasonable prospects of success, had no leg to stand on before me in this matter, not to mention the fact that the striking-out order had also never been successfully appealed in this regard. Hence, on account thereof, the respondent/defendant had no fighting chance in as far as making it out of the starting blocks was concerned during the default judgment proceedings before me.

[4] In as far as the matter under case number 20576/2022 was concerned, wherein the respondent/defendant had not bothered to enter an appearance to defend the main action, and in addition thereto, had also not bothered to file a notice of intention to oppose the default judgment application, and also back it up by means of an answering affidavit to the default judgment application, wherein they would place a reasonable explanation, coupled with good cause and the prospects of success, as well as, the lack of prejudice, if any, as they are required in terms of Rule 27 of the Uniform Rules of this Court, I had no factual basis to assess whether, or not, the respondent/defendant was not in wilful default, and without the requisite factual basis, I could not find on the papers as they stood a sustainable legal basis that would have swayed me from exercising my discretion and tend the granting of judgment by default against the respondent/defendant in this regard.

[5] Therefore as a matter of course, if one considers the default position as expounded upon by Moseneke J (as he then was), with Bertelsman J and Dercksen AJ concurring, in the matter of *Harris v Absa Bank Ltd t/a Volkskas Bank Ltd*², which default position can be summed up as follows: Where and when a litigant

¹ CaseLines 034-13 to 034-15.

² 2006 (4) SA 527 (T) at 529E-F.

receives legal process, knowing what it would need to do in order to ward off judgment by default from being taken against it, such a litigant elects to sit back, fold its arms and do nothing, then such a litigant is deemed to be in wilful default, and even it was to apply for rescission of judgment, it would not attain success, since it is deemed to be in wilful default. Hence, with no evidence whatsoever having been provided to demonstrate to me that the respondent/defendant was, in none of these matters, in wilful default, I could not find a basis whatsoever, in fact and law, to sway or induce me into exercising my discretion in favour of dismissing each respective application for judgment by default.

[6] As a consequence thereof, it is my considered view that in all these matters, judgment by default was certainly justified.

Nature of the relief claimed in the matters in question

[7] In the matter of *Khumalo v RAF* under case number 9983/2022, the issues of liability and general damages had been settled, and what was outstanding was the issue of the pecuniary damages under the heading of future loss of income, hence the expert reports filed in this regard, stood undisputed and uncontested in any manner or form, and the evidence therein was factually and legally sustainable, hence the applicant/plaintiff was able to make it not only out of the starting blocks, but passed the finishing line without difficulty.

[8] In the matter of *Mphaka v RAF* under case number 20576/2022, counsel sought a separation and postponement of the general damages, and put before me the issue of future loss of earning capacity and the merits, which on the strength of the reasonably plausible and legally sustainable evidence placed before me, resulted in an order being granted in the applicant/plaintiff's favour. Hence there was no basis, in fact and law, to deny the applicant/plaintiff the relief sought on his behalf by Mr Saint.

[9] In as far as the matter of *Hibberd v the Road Accident Fund* under case number 60965/2023 was concerned, Mr Molotjoa, on behalf of the applicant/plaintiff, eloquently put forward a factually and legally sustainable case, in the same way his

colleague, Mr R Saint, in the matter of *Mphaka v RAF* under case number 20576/2022 had done, with the benefit of sound and reasonable figures derived from the authorities in as far as the issue of general damages was concerned, coupled with the expert reports filed in support of the plaintiff/applicant's claim, hence on the strength of such skill and dexterity displayed by Mr Molotjoa in this regard, for which I am grateful, this Court derived a lot of value and help in reaching what I would regard as a just and equitable finding, in as far as the order that ended up being made into an order of Court was concerned, and my views in this regard also apply with equal force and measure to the work by Mr J Luvuno, in the matter of *Rabothata v the Road Accident Fund* under case number 25010/2016, Ms V Malebane, in the matter of *Khumalo v RAF* under case number 9983/2022 and Mr R Saint in the matter of *Mphaka v RAF* under case number 20576/2022, since all the legal representatives acting on behalf of the applicants/plaintiffs conducted themselves to the highest ethical standards expected of them in exhibiting evidence before me that enabled me to reach the basis for the respective orders that I handed down in all four of these matters without difficulty.

[10] In as far as the issue of jurisdiction with regard to general damages is concerned, the position I have adopted is supported by the logic that I have expressed in the matters of *S Muir v Road Accident Fund*³ and *J P Rautenbach v Road Accident Fund*⁴, and with that being the case there is no need whatsoever for me to repeat what I have said therein, since it is in the public domain for all and sundry to see.

Conclusion

[11] In light of the foregoing, it is my view that anything beyond what I have said thus far would amount to an act of giving advice to the respondents/defendants which would be to overstep the purview of my authority, since it is not the function of a Judge to venture into the arena and to advise one side to the prejudice of another.

³ [28025/2019] (unreported) (17 March 2024).

⁴ [2454/2019] (unreported) (29 February 2024).

[12] Therefore those are my reasons for judgment.

P W MAKHAMBENI
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

Electronically submitted therefore unsigned

Delivered: This judgment was prepared and authored by the Acting Judge whose name is 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 of the reasons of judgment / order is deemed to be 16 APRIL 2024.

In the matter of *Khumalo obo PFK v RAF*:

FOR THE APPLICANT/PLAINTIFF: Ms V MALEBANA

INSTRUCTED BY: MNTAMBO BT ATTORBEYS, Johannesburg

FOR THE RESPONDENT/DEFENDANT: Mr L Klaas

INSTRUCTED BY: STATE ATTORNEY, Johannesburg

DATE OF THE HEARING: 05 MARCH 2024

DATE OF JUDGMENT: 05 MARCH 2024

DATE OF REASONS FOR JUDGMENT/ ORDER 16 APRIL 2024

In the matter of *Mphaka v RAF*:

FOR THE APPLICANT/PLAINTIFF: Adv R Saint, Jhb Bar

INSTRUCTED BY: RH LAWYERS Inc., Johannesburg

FOR THE RESPONDENT/DEFENDANT: Mr L Klaas

INSTRUCTED BY: STATE ATTORNEY, Johannesburg

DATE OF THE HEARING: 05 MARCH 2024

DATE OF JUDGMENT: 05 MARCH 2024

DATE OF REASONS FOR JUDGMENT/ ORDER 16 APRIL 2024

In the matter of *Hibberd v RAF*:

FOR THE APPLICANT/PLAINTIFF: Adv. B. D. Molojoa, Jhb Bar

INSTRUCTED BY: A.WOLMARANS Inc., Johannesburg

FOR THE RESPONDENT/DEFENDANT: Mr L Klaas

INSTRUCTED BY: STATE ATTORNEY, Johannesburg

DATE OF THE HEARING: 05 MARCH 2024

DATE OF JUDGMENT: 05 MARCH 2024

DATE OF REASONS FOR JUDGMENT/ ORDER 16 APRIL 2024

In the matter of *Rabothata v RAF*:

FOR THE APPLICANT/PLAINTIFF: Adv. J Luvuno
Johannesburg

INSTRUCTED BY: S S NTSHANGASE ATT. Inc., Johannesburg
Ms Cecilia Munyai

FOR THE RESPONDENT/DEFENDANT: Mr L Mtshemla

INSTRUCTED BY: STATE ATTORNEY, Johannesburg

DATE OF THE HEARING: 21 FEBRUARY 2024

DATE OF JUDGMENT: 21 FEBRUARY 2024

DATE OF REASONS FOR JUDGMENT/ ORDER 16 APRIL 2024