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

Case Number: 2023/071933

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
14 April 2025	_____
DATE	SIGNATURE

In the matter between:

M[...] F[...] H[...]

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

JUDGMENT

Krüger AJ

[1] This matter came before me on the default judgment roll during 20-24 January 2025.

[2] The deceased was a pedestrian on 29 May 2020, when he was injured in a motor vehicle accident and succumbed at the scene, from the injuries sustained by him. The plaintiff who is the biological mother of the deceased issued summons against the defendant in respect of loss of support.

[3] The plaintiff issued summons on 15 August 2023 and a notice of intention to defend was served on 19 September 2023. Notice of Bar was served on the defendant on 02 November 2023, which the defendant failed to plead to.

[4] The plaintiff caused two courtesy letters to be delivered on the defendant warning of their intention to apply for default judgment in light of the defendant being *ipso facto* barred.

[5] The plaintiff then served an undated application for default judgment on the defendant on 16 May 2024. An application in terms of Rule 38(2) was served by the plaintiff on 14 November 2024. Notice of set down for the default judgment was served on the defendant on 25 November 2024.

[6] When the matter was heard on 21 January 2025, the defendant requested a postponement in order to bring an application for the upliftment of the bar.

[7] The reason for the postponement proffered by the counsel for the defendant, was that the defendant wanted to plea and more specifically include in their plea that the matter was not properly lodged and that the claim in consequence has prescribed.

[8] The matter was stood down to 24 January 2025 in order to afford the defendant the opportunity to place documents before the Court as to why the postponement must be allowed. There was no substantive application before Court as to the postponement. Counsel of the defendant also did not file heads of argument.

[9] On 24 January 2025, the counsel for the defendant still had not filed heads of argument or a substantive application for postponement. After being warned by the

Court as to the risk of proceeding with his argument on postponement without any documents in such regard before the Court, he elected to proceed.

[10] The Court was referred by the plaintiff to a letter from the defendant dated 27 June 2023 which read:

- “1. We acknowledge receipt of the claim **presented** on 27-06-2023*
- 2. The claim as lodged is for the following product(s): **Loss of support***
- 3. We confirm that we have pre-assessed your claim in terms of Sect 24 of the Act and section 4(1)(a) of the Act in Board Notice 271 of 2022 (the Notice), published in Government Gazette No. 46322 on 6 May 2022 **and confirm that it is compliant.***
- 4. We reserve the right to pre-assess additional product(s) introduced after lodgement of the claim already listed in paragraph 2 and object to any invalidity in respect of such newly introduced product(s) *mutatis mutandis* within the ambit of sub-section 24(5) of the Act.”*

[11] Counsel for the plaintiff argued that there had been no objection from the defendant since this letter dated 27 June 2023. Counsel further argued that the defendant has had ample opportunity during the 19 months since the letter to object and some 14 months since the defendant had been *ipso facto* barred, to bring the application for the lifting of the bar.

[12] Although Counsel for the defendant tendered the costs of the postponement on a party and party scale, I am of the view that a postponement would have dire prejudice to the plaintiff that cannot be cured by a cost order, since the plaintiff, who was born on 14 October 1945 is already almost 80 years old.

[13] The interest of justice demand that this matter be finalised without undue delay especially more so taking into consideration:

- a. the age of the plaintiff,
- b. the failure of the defendant to engage in meaningful litigation with the plaintiff until the proverbial clock struck twelve,
- c. the reasons for the postponement which is not based on sufficient grounds,

- d. the failure of the defendant to place a substantive application before the Court, setting out the reasons and grounds for the postponement and also
- e. the fact that such application was not timeously made but only made from the bar on the day of hearing of the default judgement application, some two months after the notice of set down for the default judgment was served on the defendant.

[14] It is trite that a postponement is not merely for the asking, but seeking an indulgence from the Court and the granting of a postponement is entirely in the discretion of the Court.

[15] In ***Psychological Society of South Africa v Qwelane and Others***¹ the Constitutional Court held:

“In exercising its discretion, a court will consider whether the application has been timeously made, whether the explanation for the postponement is full and satisfactory, whether there is prejudice to any of the parties and whether the application is opposed. All these factors will be weighed to determine whether it is in the interests of justice to grant the postponement. And, importantly, this Court has added to the mix. It has said that what is in the interests of justice is determined not only by what is in the interests of the immediate parties, but also by what is in the broader public interest.”

[16] Factors that need to be taken into account in an application for a postponement is set out by the Constitutional Court in ***National Police Service Union and Others v Minister of Safety and Security and Others***² where Makgoro J said:

“The postponement of a matter set down for hearing on a particular date cannot be claimed as of right. An applicant for a postponement seeks an indulgence from the Court. Such postponement will not be granted unless this Court is satisfied that it is in the interests of justice to do so. In this respect the applicant must show that there is good cause for the postponement. In order

¹ *Psychological Society of South Africa v Qwelane and Others* (CCT226/16) [2016] ZACC 48; 2017 (8) BCLR 1039 (CC) para 31.

² See *National Police Service Union and Others v Minister of Safety and Security and Others* [2000] ZACC 15; 2000 (4) SA 1110; 2001 (8) BCLR 775 (CC) para 4 (*‘National Police Service Union’*).

to satisfy the Court that good cause does exist, it will be necessary to furnish a full and satisfactory explanation of the circumstances that give rise to the application. Whether a postponement will be granted is therefore in the discretion of the Court and cannot be secured by mere agreement between the parties. In exercising that discretion, this Court will take into account a number of factors, including (but not limited to): whether the application has been timeously made, whether the explanation given by the applicant for postponement is full and satisfactory, whether there is prejudice to any of the parties and whether the application is opposed.”

[17] For the reasons as set out herein above the postponement is refused.

[18] I continue with the application for default judgment.

[19] The application that is made in terms of Rule 38(2) to have the evidence of the plaintiff put before the Court by affidavit is granted.

[20] The plaintiff placed before the court an expert report by the actuary Brian Kufahakutizwi, which report was confirmed by affidavit. In the said affidavit the actuary confirmed that he conducted his calculations on the information obtained from the payslip of the deceased, the employment document of the deceased, the death certificate, the plaintiff's identity document and power of attorney. However, no mention is made in the actuarial calculation as to the minor child of the deceased, as stated in the 19F affidavit of the plaintiff, namely, B[.....] S[....] M[.....] born in 2016 and thus currently around 9 years old.

[21] There is insufficient evidence before the Court in respect of the quantum part of the plaintiff's claim.

[22] In the premises I make the following order:

1. The postponement sought by the defendant is refused with costs as on the scale of attorney and client;
2. The application in terms of Rule 38(2) is granted;

3. The defendant is liable to pay 100% of the plaintiff's proven loss of support claim;
4. Quantum is postponed *sine die*;
5. The defendant will pay the plaintiff's party and party costs in respect of the default judgement application, which costs will include the costs of counsel Adv S Zimema for 21 January 2025 and 24 January 2025 on scale B.

MJ KRÚGER
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Plaintiff: Adv S Zimema

Instructed by: Shweni Attorneys Inc

For the Defendant: M Madisele – State Attorney

Date of hearing: 24 January 2025

Date of Judgment: 14 April 2025