



**IN THE HIGH COURT OF SOUTH AFRICA**  
**(GAUTENG DIVISION, PRETORIA)**

DELETE WHICHEVER IS NOT APPLICABLE		
(1)	REPORTABLE:	No
(2)	OF INTEREST TO OTHER JUDGES:	No
(3)	REVISED:	Yes
Date:	25 July 2019	
SIGNATURE: <i>alst</i>		

**CASE NUMBER: 95892/2015**

In the matter between:

**CHIVANGA REGINAH SEKESAI**

**PLAINTIFF**

and

**THE ROAD ACCIDENT FUND**

**DEFENDANT**

Coram: A Vorster AJ

Heard: 24 July 2019

Delivered: 25 July 2019

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**ORDER**

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1. The matter is postponed sine die.
2. The defendant is ordered and directed to, within 2 (two) months of the granting of this order, investigate the plaintiff's claim, both in respect of merits & quantum, by the appointment of suitably qualified experts and assessors.
3. The Chief Executive Officer of the Road Accident Fund shall oversee implementation of the aforesaid injunction, and the injunction is to operate against the Chief Executive Officer in his / her capacity as accounting officer and head of the administration of the defendant, personally.
4. In the event of non-compliance with the terms of the injunction by the defendant, the Chief Executive Officer will be deemed to have caused obstruction of the execution of the injunction in a broad sense, and the defendant's failure will be deemed to constitute disobedience with the injunction by the Chief Executive Officer, attracting an action for contempt of court in his / her personal capacity.
5. The plaintiff's attorneys are ordered and directed to cause a copy of this judgment & order to be served on the Chief Executive Officer of the Road Accident Fund in the manner prescribed in 4(1)(a)(i) of the Uniform Rules of Court.
6. This matter may not be enrolled until such time as effect had been given to the terms of this order.
7. The issue of costs are reserved, save for the costs of the plaintiff's Counsel, which costs shall be paid by the defendant.

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## JUDGMENT

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### **A Vorster AJ**

- (1) This third party matter was enrolled for hearing on 13 June 2019. For some or other reason, which is not apparent from the documents filed of record, the matter was postponed to 24 July 2019, on the recess roll. This is a roll which was established in this Division to cater for matters which cannot be dealt with on the ordinary trial roll, due to the congested state of that roll. The recess roll is usually presided over by acting judges, pro bono.
- (2) Judges dealing with matters on the recess roll are in the fortunate position that they receive the court files way in advance. This is exactly what happened in this matter. I received the file a week before the matter was enrolled for hearing, and was therefore in a position to study the content of the court file before the date of the hearing.
- (3) The first thing that struck me was the value of the claim which, before application of the RAF Cap, was in excess of R7'000'000. After the Cap had been applied the value of the claim was in excess of R4'600'00.00. These figures appeared from an actuarial report filed by the plaintiff's attorneys. This calculation was based on the content of various medicolegal reports filed by the plaintiff's attorneys. The scope of expertise, and nature of investigations, of these experts are a matter of record.
- (4) I found it astonishing that the defendant did not file a single expert report. Further to the above it also became apparent, with reference to the trial bundle, that the



defendant took absolutely no steps to verify the collateral facts upon which the plaintiff's expert reports were premised.

- (5) From a simple reading of the expert reports, and the plaintiff's documentary evidence, it is glaringly apparent that the facts which the plaintiff presented to the experts were contradicted by the documentary evidence filed of record. There are numerous such examples but only a few will suffice. In the Officer's Accident Report the plaintiff recorded her residential address as Glenwood Road, Lynwood, Pretoria. In the Physiotherapy Referral Card the plaintiff recorded her address as Bezuidenhoutvalley, Johannesburg. According to the information given to the industrial psychologist the plaintiff reported that after the accident she was taken to a hotel where she was residing at the time. According to the experts, after the accident, the plaintiff returned to her home in Zimbabwe, and in some of the expert reports the plaintiff's address is indicated as being 4 Wallis Road, Mandora, Zimbabwe. I find it rather curious that the plaintiff will attend at Hillbrow Hospital, when the accident occurred in Pretoria, and at the time plaintiff resided in Pretoria. In the very same referral card the plaintiff recorded her occupation as being a student, yet according to the expert reports, at the time the plaintiff was gainfully employed.
- (6) All the experts considered the plaintiff's employment prospects from a South African labour market perspective. From the collateral information recorded by the experts, and the documentary evidence filed of record, the plaintiff was primarily employed in Zimbabwe. There was no collateral information provided indicating that the plaintiff was employed in South Africa. Surely contingencies which would be relevant in South Africa, would not as a matter of course be relevant in Zimbabwe.
- (7) There was no statutory affidavit in the court file. Except for the Officer's Accident Report there is not a single statement under oath in which the plaintiff commits

herself to the version of events pleaded in the particulars of claim. There is therefore no evidence presented by the plaintiff herself, or for that matter by anyone else, of how the accident occurred.

- (8) On the day of the hearing the respective parties' Counsel approached me and indicated that they intended settling the matter. I was informed that the proposed settlement amount was in excess of R1'000'000.00. I informed Counsel that I was not prepared to accept any settlement, having regard to the court file which was so vacuous in obvious respects. I enquired from the defendant's Counsel as to the reason why the defendant did not file any expert reports. I also enquired as to whether the defendant's attorneys objectively verified the collateral information upon which the plaintiff's experts relied. The Counsel could not provide me with a satisfactory answer.
- (9) I find it completely unacceptable that the defendant should deal with public funds, and having regard to the obligations imposed upon it to investigate claims, in such a reckless and irresponsible manner. I find it inconceivable that the defendant will propose to settle this matter without having independently assessed the cogency of any of the plaintiff's evidence, or the weight to be attached to the plaintiff's experts' opinions.
- (10) I am aware of the judgement of the supreme Court of Appeal in **Fischer and Another v Ramahlele and Others** [2014] ZASCA 88; 2014 (4) SA 614 (SCA).
- (11) I do not believe that I am constrained by that judgement to only consider the issues raised by the respective parties in an instance where it is clear that an organ of state is dealing with public funds in a reckless and irresponsible manner. I must make it clear that I am not casting aspersions on either the plaintiff, her attorneys, or the experts. I do believe that by the very nature of the defendant's

obligations, and the nature of the adversarial system, there is a duty on the defendant to independently investigate and assess the plaintiff's claim, especially having regard to the substantial quantum of the claim.

(12) I am of the considered view that oversight in the implementation of the order I propose to make is required, and I therefore will make an order that the Chief Executive Officer of the Road Accident Fund ensure that this claim is properly investigated.

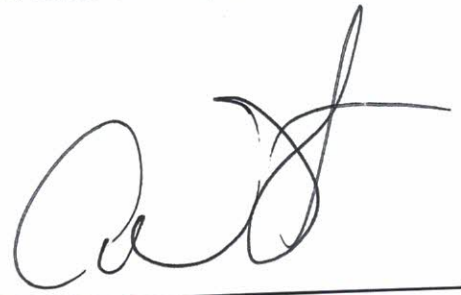
(13) I therefore make the following order:

- (i) The matter is postponed sine die.
- (ii) The defendant is ordered and directed to, within 2 (two) months of the granting of this order, investigate the plaintiff's claim, both in respect of merits & quantum, by the appointment of suitably qualified experts and assessors.
- (iii) The Chief Executive Officer of the Road Accident Fund shall oversee implementation of the aforesaid injunction, and the injunction is to operate against the Chief Executive Officer in his / her capacity as accounting officer and head of the administration of the defendant, personally.
- (iv) In the event of non-compliance with the terms of the injunction by the defendant, the Chief Executive Officer will be deemed to have caused obstruction of the execution of the injunction in a broad sense, and the defendant's failure will be deemed to constitute disobedience with the



injunction by the Chief Executive Officer, attracting an action for contempt of court in his / her personal capacity.

- (v) The plaintiff's attorneys are ordered and directed to cause a copy of this judgment & order to be served on the Chief Executive Officer of the Road Accident Fund in the manner prescribed in 4(1)(a)(i) of the Uniform Rules of Court.
- (vi) This matter may not be enrolled until such time as effect had been given to the terms of this order.
- (vii) The issue of costs are reserved, save for the costs of the plaintiff's Counsel, which costs shall be paid by the defendant.



**A. VORSTER AJ**  
**Acting Judge of the High Court**

<b>Date of hearing:</b>	<b>24 July 2019</b>
<b>Date of judgment:</b>	<b>25 July 2019</b>
<b>Counsel for plaintiff:</b>	<b>NETSHIOZWI TE</b>
<b>Instructed by:</b>	<b>MT MAKWELA ATTORNEYS</b>
<b>Counsel for defendant:</b>	<b>MAPHELELA LB</b>
<b>Instructed by:</b>	<b>BRIAN RAMABOA INCORPORATED</b>