REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: 21176/2016
(1) Reportable: Yes/**No**
(2) Of Interest To Other Judges: Yes/**No**
(3) Revised: Yes/**No**
Date: 16 April 2025
Signature: Suder AJ

In the matter between:

CHRISTINA SITHOLE **PLAINTIFF**

and

ROAD ACCIDENT FUND **DEFENDANT**

JUDGMENT

This matter has been heard in open court and is otherwise disposed of in terms of the directives of the judge president of this division. this judgment was prepared and

authored by the judge whose name is reflected herein and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on caselines. the date and for hand-down is deemed to be 16 April 2025.

SUDER, AJ

Introduction

[1] This matter was allocated to me for hearing on the default judgment trial roll on 16th of October 2024. The matter was set down on the default judgment roll pursuant to the Defendant failing to comply with an order granted by the interlocutory court on 26th November 2021. Counsel for the Plaintiff was in attendance with no appearance on behalf of the Defendant. The issue for determination before this court is that of merits and quantum.

[2] The plaintiff lodged a delictual claim with the Defendant in terms of the provisions of the Road Accident Fund Act, No. 56 of 1996 ("the Act") claiming damages resulting from the injuries sustained in a motor vehicle collision which occurred on 28th December 2013. The Plaintiff alleges that the motor vehicle collision in which she was injured was caused by the negligence of the driver of a motor vehicle bearing registration letters and numbers V[...] ("the insured vehicle").

[3] In the Particulars of claim the Plaintiff avers that the accident was caused by driver of the insured vehicle who was negligent in several respects. The Plaintiff averred that the insured driver:

3.1 Encroached into the Plaintiff's travelling lane;

3.2 Failed to keep a proper lookout;

3.3 Drove the insured vehicle without due regard to the right and safety of other road users;

3.4 Travelled at an excessive speed;

3.5 Failed to avoid the accident when, by taking reasonable and proper care (including, but not limited to travelling more slowly, swerving) he both could and should have done so;

3.6 Failed to apply the brakes of the insured motor vehicle at all, alternatively timeously or sufficiently;

3.7 Failed to maintain any, alternatively sufficient control over the insured vehicle;

3.8 Omitted to drive with skill, diligence, caution and/or circumspection;

3.9 Failed to avoid the accident when by the exercise of reasonable care he could and should have done so;

3.10 Moved into his incorrect side of the road at a stage and place and in a manner that was neither safe nor opportune;

3.11 Failed to remain on his correct side of the road.

[4] The Plaintiff was a passenger and allegedly sustained bodily injuries as a result of the collision. At the time of the accident and instituting the claim against the Defendant, the Plaintiff was a minor and represented by her mother. At the date of the hearing the Plaintiff was 24 years and had substituted her mother who had instituted the action on her behalf.

[5] In the particulars of claim commencing action dated 15th March 2016, the plaintiff claims damages for personal injuries sustained as well as future medical expenses, future loss of income, general damages and past loss of income in the sum of R4 000 000.00. In the application for default judgment, the plaintiff claims an amount of R9 000 000.00.

[6] The background to the procedural history in this matter is relevant to setting the foundation for the approach taken by this court when considering the request for default judgement and submissions made by Plaintiff's counsel on 16th October 2024 relating to the issue of quantum and merits.

[7] Aside from the issue of quantum and merits this court identified two procedural issues which need addressing, which are relevant to this matter being brought to the default judgment court. These were not brought to this court's attention by Plaintiff's counsel however this court finds it necessary to address same.

[8] The first issue is the order granted on 26 November 2021 dealing with the striking out of the Defendant's defence in the event of non-compliance and whether the court order directed an *ipso facto* striking out of the Defendants defence. The second issue is the procedural consequence of the Plaintiff serving a Rule 28 Notice of Amendment on the Defendant, simultaneously with the court order (26 November 2021) directing compliance by the Defendant, on 24th August 2022. The relevance of this is two-fold: 1) The service of the Rule 28 Notice re-opened pleadings and the issue to be decided is whether the court order dated 26 November 2021 would have effect if pleadings were re-opened, and 2) The Plaintiff failed to deliver the amended pages and the issue to be decided is whether the matter was ripe for hearing, even on the default judgment roll.

[9] The determination of the above issues is relevant to the Defendant's position when considering the default judgment sought by the Plaintiff. It is reiterated that these issues were not brought to this courts attention by Plaintiff's counsel, who simply indicated that the Defendant had not participated in the proceedings and it was unlikely that the Defendant would participate in the proceedings.

Background to Procedural History

[10] The Plaintiff, represented by her mother, issued summons on 16th March 2016. The Defendant filed a Notice of Intention to Defend and entered its Plea and Special Plea on 12th April 2016. The Defendant delivered Notices in terms of Rule 35(8),

35(10), 36(4) and served an unsigned Discovery Affidavit on 7th June 2016 (uploaded to caselines on 25th October 2023).

[11] On 20 November 2019, the matter was certified trial ready, subject to compliance by the parties as follows:

11.1 Defendant to appoint expert before end December 2019

11.2 Defendant to file expert report by end March 2020

11.3 Plaintiff to file outstanding reports by end February 2020

11.4 Joint minutes to be filed by end April 2020

Interlocutory Application and Order/Striking of Defendant's Defence

[12] The Plaintiff invited the Defendant to a Pre-Trial conference on 29th September 2021.

[13] The Plaintiff brought an interlocutory application on 26th November 2021 to 1) seek compliance by the Plaintiff with Notice in terms of Rule 37(1) (a) and to attend a pre-trial conference in compliance with Chapter 6 of the Judge President's Practice Directive of 2021 within 10 (ten) business days of electronic service of the order, 2) for the Defendant to respond to the issues raised in terms of Rule 37(4) and at the pretrial conference and 3) <u>for the striking out of the Defendants defence in the event of non-compliance and for the matter to be enrolled in the Default Judgment Trial Roll (underline is my emphasis).</u>

[14] The order sought through the interlocutory court was granted. Although the court order was sought on the basis of the Defendant's dilatory conduct and prejudice to the Plaintiff's case, the court order was only served upon the Defendant on 24th August 2022, almost a year later.

[15] Interestingly, the Plaintiff, simultaneously with the delivery of the interlocutory order, also delivered a Rule 28 Notice on 24th August 2022, amending the initial claim of R4,000,000-00 (Four Million Rand) to R9,000,000-00 (Nine Million Rand).

[16] The matter was before court on 31 August 2022 and was removed from the roll. This court is not privy to the reasons for the removal, however notes from the timeline that as at 31 August 2022, the prescriptive 10 (ten) day period for compliance with the court order and in respect of the Rule 28 Notice would not have lapsed.

[17] A pertinent question which arises from the court order issued by the interlocutory court is whether the court order *ipso facto* strikes the Defendant's defence in the event of non-compliance. The Plaintiff sought an order for the striking of the Defendants defence in the event of non- compliance with the court order within 10 days of service thereof upon the Defendant. The question which arises is whether the court order *ipso facto* resulted in the striking of the Defendant's defence upon non-compliance or whether the Plaintiff was required to take a second step of making an application for the striking out on the same papers. This is also relevant to the re-opening of the pleadings occasioned by the Rule 28 Notice of Amendment, served simultaneously with the court order.

[18] An application to strike out a defence is regulated by Rule 30A which provides as follows:

> *"(1) Where a party fails to comply with these rules or with a request made or notice given pursuant thereto, or with an order or direction made in a judicial case management process referred to in rule 37A, any other party may notify the defaulting party that he or she intends, after the lapse of 10 days from the date of delivery of such notification, to apply for an order:*
>
> *(a) that such rule, notice, request, order or direction be complied with; or*
>
> *(b) that the claimant or defence be struck out.*

(2) Where a party fails to comply within the period of 10 days contemplated in subrule (1), application may on notice be made to the court and the court may make such order thereon as it deems fit."

[19] The striking out of a defence is a drastic step and should be the last resort. The court is clothed with a discretion to strike out the defence for reasons of non-compliance, which must be exercised judicially. A court must be appraised of sufficient facts to exercise its discretion judicially. It must be shown that the defendant deliberately and contemptuously disobeyed the court order directing compliance.[1]

[20] In the case of **Wilson v Die Afrikaans Pers Publikasies (EDMS) BPK 1971 (3) SA 455 (T) at 462 H- 463 B**, the court held as follows:

"The striking out of a defendant's defence is an extremely drastic step which has the consequences that the action goes forward to a trial as an undefended matter. In the case if the orders were granted it would mean that a trial court would eventually hear this action without reference to the justification which the Defendant has pleaded and which it might conceivably be in a position to establish by evidence. I am accordingly of the view that very grave step will be resorted to only if the court considers that a Defendant has deliberately and contemptuously disobeyed its order."

[21] In the case of **Fakie N.O. VCC II Systems (Pty) Ltd [2006] ZASCA 52; 2006 (4)SA 326 (SCA) at paragraph 22**, the SCA laid down the requirements for a contemptuous finding, as follows:

"(a) The civil contempt procedure is a valuable and important mechanism from securing compliance with the court orders, and survives constitutional scrutiny in the form of a motion court application adapted to constitutional requirements.

[1] Wilson v Die Afrikaans Pers Publikasies (EDMS) BPK 1971 (3) SA 455 (T) at 462 H- 463 B

b) In particular the Applicant must prove the requisites of contempt (the order, service or notice, non-compliance, and wilfulness and mala fides) beyond reasonable doubt.

c) But once the Applicant has proved the order, service or notice and non-compliance, the Respondent bears an evidential burden in relation to wilfulness and mala fides."

[22] In terms of the Revised Practice Directive (June 2021), if the Defendant fails to comply with any compelling Order, the Plaintiff must apply in the Trials Interlocutory Court for a referral to the Registrar to obtain a date for Default Judgment. This is supported by Rule 30A(1)(b) which states that when a party fails to comply with the Rules or with a request made or notice given pursuant thereto, or with an order or direction made by a court or in a judicial case management process referred to in rule 37A, the other party may notify the defaulting party that he or she intends, after the lapse of 10 days from the date of delivery of such notification, to apply for an order that the claim or defence be struck out. Failing compliance with the compelling order, it was incumbent on the Plaintiff to apply to the TIC for a striking of the Defendant's defence and for a referral to the Registrar to obtain a date for default judgment.

[23] However, it appears from the court order issued on 26th November 2021 that there was an *ipso facto* striking out of the Defendant's defence failing compliance by the Defendant. The striking out of the Defendants defence led to this matter coming before this court. However, the striking out order does not preclude the Defendant from participating in the proceedings to the extent of testing the validity of the Plaintiff's version, by cross-examining any witness which may be called by the Plaintiff[2]. In **Minister of Police v Michillies**[3] the court, in its judgement, placed reliance on Motala and stated that when a plea has been struck, it does not bar the defendant from proceeding to defend the action. The court held that when the Defendant's defence is struck out, the merits are not determined in favour of the plaintiff. The onus will still remain with the Plaintiff to prove its case on a balance of

[2] Motala NO v RAF (42353/2019) (2023) ZAGPJHC 1323 (15 November 2023)
[3] Minister of Police v Michillies (1011/2022) [2023] ZANWHC 90 22 June 2023

probabilities. The learned judge then proceeded to express the view that these probabilities can be attacked during cross-examination of the plaintiff, on both the issues of merits and quantum. The striking out does not remove the Defendant's constitutional right of access to courts in its entirety. Following this, the question to be addressed is whether the Rule 28 Notice of Amendment re-opened pleadings.

Rule 28 Notice of Amendment

[24] The Rule 28 Notice of Amendment was served on the Defendant simultaneously with service of the compelling order, on 24th August 2022.

[25] There was no objection to the Rule 28 Notice of Amendment, within the prescribed period for delivering such objection. Absent objection, the Plaintiff was required to effect the amendment by delivering each relevant page in its amended form.[4]

[26] This court could not find any document which demonstrated the Plaintiff's compliance with Rule 28(5) and 28(7) of the Uniform Rules which states:

> *"28.5 If no objection is delivered as contemplated in subrule (4), every party who received notice of the proposed amendment shall be deemed to have consented to the amendment and the party who gave notice of the proposed amendment may, within 10 days after the expiration of the period mentioned in subrule (2), effect the amendment as contemplated in subrule (7)."*
>
> *"28.7 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."*

[27] The records do not indicate that the Plaintiff served the amended pages on the Defendant in terms of the Rules. It is this court's view that the pleadings have not closed. This court did not find the amended pages or proof of the amended pages on

[4] Rule 28(7) of the Unform Rules of Court

caselines. It is apposite to mention that the default judgement is requested on the basis of the amended pleadings.

[28] Rule 29 of the Uniform Rules of Court provides that pleadings will be considered closed —

> *"(a) if either party has joined issue without alleging any new matter, and without adding any further pleading;*
>
> *(b) if the last day allowed for filing a replication or subsequent pleading has elapsed and it has not been filed;*
>
> *(c) if the parties agree in writing that the pleadings are closed and such agreement is filed with the registrar; or*
>
> *(d) if the parties are unable to agree as to the close of pleadings, and the court upon the application of a party declares them closed."*

[29] In **Nkala v Harmony Gold Mining Co Ltd**[5] the court stated the following regarding *litis contestatio*:

> "The issue as to when the stage of litis contestatio is reached in the modern-day law is a complicated one. It is reached when pleadings are closed. But this is no simple matter. Guidance as to when pleadings are closed can be found in Rule 29 of the Uniform Rules of Court. It advises that pleadings are closed if all parties to the case have joined issue and there are no longer any new or further pleadings, or the time period for the filing of a replication has expired, or the parties have agreed in writing that the pleadings have closed and have filed their agreement with the registrar of the court, or the court, on application, has declared that the pleadings are closed. At that point the pleadings are treated as being closed and the proceedings are said to have reached the stage of litis contestatio. In everyday practice, they are normally

[5] 2016 (5) SA 240 (GJ) at para188.

closed as soon as the period for the filing of the replication has expired, for at that stage the issues have become identified and parties are able to commence preparation for battle. Pleadings, though closed, will be re-opened should an amendment be effected, or should the parties agree to alter the pleadings. Amendments to pleadings can be brought by any party any time before judgment is delivered."

[30] In **Ngubane v Road Accident Fund**[6], the court at paragraph 18 stated:

"Litis contestatio is, in modern practice, synonymous with the close of pleadings as envisaged by rule 29 of the Uniform Rules of Court. As the defendant has never entered the fray and did not deliver a plea, the pleadings could not close and litis contestatio could not be reached."

[31] The court in **Ngubane** went on further to state the following:

"When due consideration is had to the amended particulars of claim, the amendments are substantial and material. There are new aspects that in my view would require some consideration. It may be so that this increase in quantum did not alter the cause of action, the identity of the parties and the scope of the issues in dispute as it was stated by the plaintiff. Notwithstanding, the scope of damages has been increased significantly and it would without a doubt require a pleading. This Court is unable to agree with the plaintiff that the amendment did not redefine the issues in relation to the claim for general damages, as the amount remained the same. This assertion, in my view, is somewhat mischievous as it is not for the plaintiff to prescribe how the first defendant should conduct their defence. In my view, the plaintiffs amended particulars of claim re-opened the pleadings and interrupted litis contestatio and/or litis contestatio fell away. Since litis contestatio fell away, the first defendant was yet to file its amended plea by the date of the death of the deceased."

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[6] 2022 (5) SA 231 (GJ).

[32] The Rule 28 Notice of Amendment seeks a substantial amendment to the quantum claimed by the Plaintiff, increasing it from R4 000,000-00 to R9 000,000-00. This required the Defendant to plead to such a substantial amendment, which the Defendant was, in my opinion, unable to do absent the filing of the amended pages. Only once the amended pages are delivered would the Defendant be able to plead to the amendments.

[33] There is no indication that the Plaintiff, in compliance with Rule 28(7) of the Uniform Rules of Court delivered the relevant pages of the particulars of claim in its amended form on the Defendant. The only indication of an amended claim is found in the Plaintiff's Practice Note dated 25th September 2024, which states that the Plaintiff will claim judgment at the trial as per the amended particulars of claim.

[34] This court is of the view that if in fact the amended pages were served on the Defendant, this would have re-opened pleadings, resultant that the Defendant could enter the fray of delivering an amended plea. Even if the compelling order resulted in an *ipso facto* striking of the Defendant's defence, the Rule 28 Notice re-opened pleadings and the Defendant was still entitled to plead on the amended quantum.

[35] This court is of the view that pleadings have not closed and the matter should not be before this court. Notwithstanding the aforesaid, this court finds it apposite to comment on the application for default judgement.

Default Judgment Hearing

Rule 38(2) application and Rule 36(9)(a) and (b) Notices

[36] On the day of the hearing, Plaintiff's Counsel introduced himself in chambers and indicated that the matter was ready to proceed based on the expert affidavits. Plaintiff's Counsel was advised that there was no Rule 38(2) application for this court to consider whether the matter could proceed on the affidavits filed by the medical experts. The matter stood down until 2pm at which time Counsel subsequently uploaded the Rule 38(2) application, which application was served electronically on the Defendant the same day, viz. 16th October 2024, at 13h51pm.

[37] Plaintiff's Counsel sought an order for the Rule 38(2) application to be granted and for the matter to proceed on the affidavits filed by the medical experts.[7] The Rule 38(2) application was served on the Defendant ten minutes before this court resumed. The Plaintiff's Rule 38(2) application included an application for condonation. This court brought to the attention of Plaintiff's Counsel that the Plaintiff did not address the grounds for condonation in the Rule 38(2) application. Plaintiff's Counsel submitted that the Defendant did not file expert reports and have not participated in the matter since the termination of its erstwhile legal representatives. Plaintiff's Counsel argued there was no prejudice to the Defendant.

[38] Plaintiff's Counsel submitted that the expert Addendums were served on the Defendant the morning of the hearing. Plaintiff's Counsel submitted that the Defendant showed no interest in the matter and the Defendant would not be prejudiced.

[39] On 15th and 16th October 2025, the Plaintiff uploaded Rule 36 (9) (b) Notices for the Addendum Reports in respect of the following experts:

39.1 Specialist Neurosurgeon Report compiled by Dr LF Segwapa Inc- Date of Re-assessment 8th October 2024;

39.2 Neuropsychologist Report compiled by Dr S F Mphuthi- Date of Addendum 10th October 2024;

39.3 Education Psychologist Report compiled by Dr E M Pitsoane- Date of interview 12th October 2024;

39.4 Occupational Therapist Report compiled by Kgomotso Montwedi (no acknowledgement of service)- Date of Addendum 14th October 2024;

[7] Havenga v Parker 1993 (3) SA 724 (T)

39.5 Industrial Psychologist Report compiled by Talifhani Ntleni- Date of Addendum 15th October 2024;

[40] The Independent Actuaries and Consultants Addendum Report, compiled on 16th October 2024, was uploaded without an accompanying Rule 36(9)(b) Notice.

[41] The Plaintiff's expert reports in this matter were filed during April and August 2022, almost two years prior to the hearing of this matter. Plaintiff's Counsel indicated that the matter was before the DJP in 2023 and the Plaintiff had to obtain Addendum Reports since the expert reports were prepared two or more years prior to the matter coming before court in 2023.

[42] The Plaintiff had almost a year to obtain the Addendum Reports but the Plaintiff was only assessed between 8th October 2024 and 15th October 2024 for the Addendum Reports and the Addendum Reports were only uploaded on 15th and 16th October 2024.

[43] There is no indication in the records that there was service upon the Defendant of the Rule 36(9)(b) Addendum Report for the Occupational Therapist and for the Independent Actuary. The Rule 36(9)(b) Notice for remaining expert reports were served on the Defendant on 14th and 15th October 2024, when the matter was set down for default hearing on 16th October 2024.

[44] Rule 36(9)(b) of the Uniform Rules of Court states as follows:

"(9) No person shall, save with the leave of the court or the consent of all parties to the suit, be entitled to call as a witness any person to give evidence as an expert upon any matter upon which the evidence of expert witnesses may be received unless— (a) where the plaintiff intends to call an expert, the plaintiff shall not more than 30 days after the close of pleadings, or where the defendant intends to call the expert, the defendant shall not more than 60 days after the close of pleadings, have delivered notice of intention to call such expert; and (b) in the case of the plaintiff not more than 90 days after the close of pleadings and in the case of the defendant not more than 120 days

after the close of pleadings, such plaintiff or defendant shall have delivered a summary of the expert's opinion and the reasons therefor: Provided that the notice and summary shall in any event be delivered before a first case management conference held in terms of rules 37A(6) and (7) or as directed by a case management judge."

[45] Plaintiff's counsel attempted to convince this court that the short service of the 38(2) application and the 36(9)(b) notices would not prejudice the Defendant as the Defendant did not participate in the proceedings. If this court were to accept the submission by Plaintiff's Counsel and accede to the late/short service of the 38(2) application and the 36(9)(b) notices on the Defendant, this Court would be depriving the Defendant of its right to interrogate the Plaintiff's expert reports which the Defendant was rightfully entitled to do. This court was not inclined for the matter to proceed on quantum and directed that the determination of quantum be postponed.

[46] Following this court's decision on the issue of quantum, Plaintiff's Counsel proposed that the matter proceed on the merits, alternatively that the matter be postponed. This court was not inclined to postpone the hearing on the merits at the times as the Plaintiff was in attendance and a postponement would have inconvenienced the Plaintiff. This court proceeded to deal with the issue of merits.

Plaintiff's Evidence on the Merits

[47] The Plaintiff claims compensation for injuries allegedly sustained as a result of a collision arising from the negligent driving of the insured vehicle. To be successful in a claim for damages against the Defendant, the Plaintiff must prove negligence on the part of the insured driver.

[48] The Plaintiff testified that on 28th December 2013, on her way back home, she was at the back of a bakkie. She testified that she was standing in the back of the bakkie, which had an open canopy. She testified that the driver of the vehicle in which she was a passenger tried to overtake another vehicle, lost control and overturned. The next thing she was on the road with injuries and some people came

to assist to take her to hospital. When prompted by Plaintiff's Counsel, the Plaintiff testified that the driver did not do anything to avoid the accident.

[49] Plaintiff's Counsel submitted that the evidence was on the Accident Report. Plaintiff's Counsel made submissions regarding the contents of the Accident Report and the recordal therein of how the accident happened. Plaintiff's Counsel submitted that the merits must be determined to be in favour of the plaintiff and conceded at 100% as the requirement was to demonstrate 1% negligence.

[50] According to the Accident Report, the driver of the insured vehicle (Vehicle A) was overtaking the vehicle (Vehicle B) in which the Plaintiff was a passenger, when a vehicle suddenly approached in front of Vehicle A. The driver of vehicle A swerved to avoid the oncoming vehicle and collided with Vehicle B. Vehicle A lost control and rolled off the road and Vehicle B swerved and stopped in the middle of the road with people in it. The sketch and plan of the accident scene depicts the exact description of the location of Vehicle A and Vehicle B.

[51] The version of events recorded in the Accident Report differs from the Plaintiff's version that the vehicle in which she was a passenger (Vehicle B) lost control and overturned. The Plaintiff's testimony does not support the Plaintiff's pleaded case.

[52] This court identified further contradictions in versions in the expert reports which are mentioned only for the purpose of addressing the merits of the case. The neurosurgeon, Dr Segwapa, recorded in his expert report that he was informed that the Plaintiff was an asleep passenger in the back of a bakkie without a canopy. This casts doubt on whether the Plaintiff actually witnessed how the accident took place. This is also in contradiction to the Plaintiff's testimony.

[53] The educational psychologist reported that according to the Plaintiff the car she was travelling in collided with another car and overturned. There is no indication in the Accident Report that the vehicle (Vehicle B) in which the Plaintiff was a passenger overturned. The report of the occupational therapist recorded that the Plaintiff reported that she was a passenger at the back of a van with no canopy and

she woke up at the scene of the accident. This version was not placed before this court.

[54] The Plaintiff did not call any witnesses to confirm her testimony. She testified as a single witness and her version of events was uncontested by the absence of the Defendant. *Section 16 of the Civil Proceedings Evidence Act 25 of 1965*, as amended provides that judgment may be given by a court on the evidence of a single and credible witness. This court must therefore be satisfied that the Plaintiff's evidence is credible. In making such a determination this court must have regard to all the evidence before it.

[55] In the absence of a defendant on trial, a Plaintiff is still required to adduce admissible evidence in support of his or her pleaded case. In determining whether the evidence supports a finding in the Plaintiff's favour, the Court is still required to apply the applicable rules and principles, as it would have done in a defended matter[8].

[56] In **Minister of Justice v Seametso**[9] the Appellate Division, regarding the approach to be adopted to the evidence of the single witness which stands uncontradicted, the court stated the following:

> "Counsel for the appellant contended that the fact that Daniel's evidence stands uncontradicted does not relieve the plaintiff from the obligation to discharge the onus resting upon him. If thereby is meant that Daniel's evidence should not have been accepted merely because it stands uncontradicted then the contention is sound, for as was said by *Innes CJ in Sittman v Kriel, 1909 T.S 538 at p 543:*
>
> "It does not follow, because evidence is uncontradicted, that therefore it is true. Otherwise, the Court, in cases where the defendant is in default would be bound to accept any evidence the plaintiff might tender. The story told by the person on whom the onus rests may be so improbable as not to discharge it."

[8] *Siffman v Kriel* 1909 TS 538
[9] 1963 (3) SA 530 (A) at 534 G-H and 535 A

[57] In the matter of **Louis v RAF**[10], on the evidence of the single witness, the Court held that "the brief, cursory and insubstantial nature of the plaintiff's evidence resulted in a paucity of facts being established that may be used in support of the plaintiff's duty to discharge the onus that rests upon him regarding the negligence of the driver of the unidentified vehicle. A plaintiff is not relieved of this obligation even if he is a single witness and his evidence stands uncontradicted".

[58] The Plaintiff's testimony does not accord with her pleaded case. This casts doubt on whether there was negligence on the part of the insured driver, as pleaded in the Plaintiff's particulars of claim. The Plaintiff's *viva voce* evidence appears to absolve the insured driver from any liability. However, this court cannot ignore the accident report which records that there was a collision. It would not be in the interest of justice to grant an order of absolution and neither would it be in the interests of justice to grant default judgement on the merits. This court is of the view that the contradictions in respect of liability should be ventilated at trial.

[59] In the result, the following order is made:

59.1 The determination on the issue of quantum is postponed *sine die*;

59.2 The application for default judgement on the merits of the claim is refused.

59.3 There is no order as to costs.

F SUDER
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES

[10] (23724/2018) [2022] ZAGPJHC 12 (10 January 2022) at paragraph [16

For the Plaintiff:	Advocate E M Lekgwati
Instructed by:	Lebala Moloi Attorneys Inc
For Defendant:	No appearance
Date of Hearing:	16 October 2024
Date of Judgment:	16 April 2025