

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

CASE NO: 030819/2024

DATE: 09-05-2025

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DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE 9/5/2025

SIGNATURE

[Handwritten Signature]

In the matter between

RYAN KHUMALO

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

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J U D G M E N T

WEIDEMAN, AJ: When this matter was called in week 3, the week of 29 April 2025, I indicated that I wanted to consider the matter and that I will hand down judgment on 9 May 2025.

Whilst preparing for the hearing of this matter, I uploaded a case note stating the following:

"The Section 19(f) affidavit makes no averment of negligence and does not place

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the plaintiff in a vehicle at the scene of the accident. Affidavit = noncompliance.

Commissioning of expert affidavits at CaseLines 06-3 and CaseLines 06-5 problematic. Matter not ripe for hearing."

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The above note was uploaded on 26 April 2025 at 15:22.

Whether a matter is on trial or before court on a default judgment basis, the onus on the plaintiff remains the same. The plaintiff has the obligation to prove all the allegations contained in the particulars of claim.

One of the standard allegations is that the plaintiff has complied with the requirements of the Road Accident Fund Act and that a valid claim had been submitted.

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Section 19 of the RAF Act reads:

"19. Liability excluded in certain cases.

The fund or an agent shall not be obliged to compensate any person in terms of Section 17 for any loss or damage-

a) ...

b) ...

c) ...

d) ...

e) ...

f) if the third party refuses or fails-

i) to submit to the fund or such agent,
together with his or her claim form as
prescribed or within a reasonable period
thereafter and if he or she is in a position
to do so, an affidavit in which particulars of
the accident that gave rise to the claim
concerned are fully set out; or..."

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The relevant paragraph of the plaintiff's affidavit reads:

"On or about 10 September 2023 at
approximately 07:30 am near Taylor Road
and Monyana Road, Orange Farm,
Johannesburg, Gauteng Province, motor
vehicle collision occurred between a motor
vehicle bearing registration number
LG76WPGP driven by Khanjelwayo and the
motor vehicle bearing registration number
PPN309GP driven by Tshepo Ernest
Mokgotho."

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The affidavit contains no reference to the plaintiff and
neither does it state whether he was a passenger or a

pedestrian. There is no allegation of negligence or a description of how the collision occurred.

This, in spite of the note which the court took pains to upload onto CaseLines: "*matter not ripe for hearing*".

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An attempt was made to cure the defect by filing an amended purported Section 19(f) affidavit, now giving a proper and full description of the accident. This was however only done on 29 April 2025 at 10:11 am, after the commencement of court proceedings.

Having filed the amended affidavit, a host of new questions arise;

1. Does the filing of the amended affidavit, *per se*,
20 imply that the plaintiff has waived the opportunity to claim compliance with the RAF Act in accordance with Section 24(5) of the RAF Act, which deems a claim to be valid in law in all respects in the absence of an objection within 60 days from the date on which the claim is delivered?
2. Is Section 24(6)(b) applicable, which stipulates that no claim is enforceable by legal proceedings commenced by a summons "before all the requirements in Section 19(f) have been complied

with"?

3. If it is accepted that the affidavit filed on 29 April 2025 is a Section 19(f) affidavit, does that imply that the current legal proceedings are premature as a completed claim was only submitted on that date?

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I do not believe this court is the correct forum in which to ventilate what are essentially important legal questions without proper written submissions by both parties. I believe the filing of the amended Section 19(f) affidavit opened the door for the defendant to participate in, at least, this aspect of the litigation.

The second aspect of concern to the court relates to the commissioning of affidavits by the plaintiff's experts for the purpose of their evidence being tendered on affidavit subsequent to a Rule 38(2) application.

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At least two of the affidavits were not properly commissioned and the documents were signed by the expert and thereafter taken to the commissioner who simply stamped and signed the document without taking the expert's oath.

This practice flies in the face of the obligation of a legal

practitioner and the commissioner, *in casu* also a legal practitioner.

My order is as follows:

1. The plaintiff's application for default judgment is dismissed.
2. Neither the plaintiff's attorney nor counsel may recover any fees relating to the default judgment application from either the plaintiff or the defendant.
3. A copy of this judgment must be forwarded to the Legal Practice Council, Gauteng, by the registrar for the LPC's consideration, given the conduct of the members of the LPC in the purported commissioning of the affidavits.

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WEIDEMAN, AJ

JUDGE OF THE HIGH COURT

DATE: 9/5/2025