

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO:6462/21

- (1) REPORTABLE: YES/NO  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED: NO

Date:29 November 2023 E van der Schyff

In the matter between:

DZINGA DZINGAI

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

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JUDGMENT

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Van der Schyff J

- [1] The plaintiff instituted a claim for damages against the Road Accident Fund (the Fund). The plaintiff testified that the accident occurred on 17 June 2017. The hospital records also indicate that the plaintiff was admitted to the hospital for injuries caused by a motor vehicle accident on 17 June 2018. The plaintiff, however, deposed to an affidavit on 22 June 2018 stating that he was involved in an accident on 13 June

2018. He was not asked to explain why he indicated the date of 13 June 2018 as the date that the accident occurred.

- [2] The plaintiff's case was closed after his evidence was led. I asked counsel to indicate whether the claim was properly lodged with the Fund. He referred me to the RAF 1 form. I noted that the medical practitioner signed the RAF 1 form on 24 June 2020. I requested counsel to upload proof that the claim was lodged with the Fund, and it transpired that it was only lodged via email on 28 July 2020.
  
- [3] Since this claim arises from the driving of a so-called unidentified vehicle, the claim had to be lodged with the Fund within two years of the accident occurring. Since 24 June 2020 supersedes the two-year cut-off date, I asked counsel to file written heads of argument addressing the issue of whether the court can *mero motu* take cognisance of the fact that the claim was not lodged with the Fund within the prescribed two-year period, whether this is a jurisdictional requirement or an issue of prescription, and if it is an issue of prescription, whether the court may raise it.
  
- [4] The defendant subsequently filed a notice of intention to amend its Plea and raise the issue of prescription as a defence.
  
- [5] The heads of argument subsequently filed on 27 November 2023 do not address these issues comprehensively with reference to case law. Since important questions of law arise in this matter, I am of the view that it is imperative that counsel file comprehensive heads of argument wherein they substantiate their viewpoint with reference to case law. Since the plaintiff may decide to object to the amendment of the Plea, the matter can also not be finalised at this point in time. To assist the parties, I will retain the matter. Once both parties have filed comprehensive supplementary heads of argument, the plaintiff's counsel may approach my registrar for the matter to be set down again. The parties' attention is drawn to the fact that I am unavailable between March and June 2024.

## **ORDER**

**In the result, the following order is granted:**

1. The matter is postponed *sine die*.
2. Both parties are requested to file supplementary heads of argument. The defendant must file its heads within ten days of the plaintiff's heads being filed;
3. The matter is retained by Van der Schyff J,
4. The plaintiff's attorney may approach Van der Schyff J's registrar when the parties are in a position to argue the issues raised in the judgment above.
5. Costs are reserved.



E van der Schyff  
Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. It will be emailed to the parties/their legal representatives as a courtesy gesture.

For the plaintiff:	Adv. M.L. Ndou
Instructed by:	M.H.P. Malesa Attorneys
For the defendant:	Ms. M. Potelo
Instructed by:	State Attorney, Pretoria
Date of the hearing:	22 November 2023
Date of judgment:	29 November 2023