

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA**

**Case CCT 322/17**

In the matter between: -

**NDISHAVHELAFHI THOMAS NEKOKWANE**

*Applicant*

**And**

**ROAD ACCIDENT FUND**

*Respondent*

---

**APPLICANT'S PRACTICE NOTICE**

---

**1 NAME OF THE PARTIES:**

As above.

**2 THE NATURE OF THE PROCEEDINGS:**

2.1 Mr Nekokwane ("The Applicant") instituted action for delict against the Respondent (RAF) for damages suffered as a result of severe injuries sustained on the 03<sup>rd</sup> of June 2014 when a TLB loading basket which was left without being sufficiently

closed by one Mr Mabogo “*the insured driver*” fell and and squashed both his feet to the ground where it was left stationed.

- 2.2 The Applicant sued the RAF for damages he suffered. The Limpopo High Court, Limpopo Local Division, Thohoyandou (after a separation of the merits and quantum) dismissed his claim on the basis that firstly, the non movement of the TLB does not comply with the provisions of Section 20 (2) of the Road Accident Fund Act and that Mr Mabogo could not be deemed to have been driving the TLB because the TLB did not move from where it was left stationed either on the same day of the incident or the morning after.

### **3 ISSUE TO BE ARGUED**

- 3.1 At issue here is what the correct legal interpretation of driving of a motor vehicle is and whether the Applicant’s injuries were in fact caused by or arose from the driving of a motor vehicle in terms of Section 17(1) of the Road Accident Fund Act 56 of 1996;
- 3.2 Whether the Applicant’s injuries are too remotely connected to the harm caused or closely connected to it;
- 3.3 Whether the costs order against the Applicant, in the light of the totality of the evidence as well as the context and circumstances of this case constitutes misdirection.

### **4 PORTIONS OF THE RECORD NECESSARY FOR THE DETERMINATION OF THE MATTER**

The whole record.

**5 ESTIMATED DURATION OF ORAL EVIDENCE**

On behalf of the Applicant: 2 (two) hours.

**6 SUMMARY OF ARGUMENT**

6.1 The evidence is unequivocal:

(a) Mr Mabogo was the last person to drive the TLB

(b) He left the front loading basket of the TLB not properly closed.

6.2 It is submitted that the High Court's finding that the non-movement of the TLB does not comply with the provisions of Section 20(2) and that in this case the TLB can not be deemed to have been driven, is in law wrong.

6.3 The Respondent is obliged to compensate the Applicant;

6.4 When applying ordinary common sense standard, it could be said that the causal connection between the Applicant's injury and the negligent or otherwise unlawful conduct was sufficiently real and close.

6.5 In the absence of the explanation from Mr Mabogo, the High Court was duty bound to prefer the version that favours Mr Nekokwane's version as opposed to the Respondents version.

6.6 Had the insured driver left the TLB off and sufficiently closed, there was a better chance of deterring the harm on the Applicant.

6.7 The high Court did not give reason for awarding costs order against the Applicant. The high Court ought to have given the primary consideration that as it was dealing with a constitution litigation, the costs order should not hinder the advancement of constitutional justice. We submit that the High Court erred in not applying the general principle set out in *Biowatch* and in failing to realise that the exception to this general principle were not applicable in the circumstances of this case. We submit that had the High Court exercise its discretion judicially by taking that consideration into account, it would not have mulcted the Applicant with costs.

## **7 COUNSEL ON BEHALF OF THE PARTIES**

On behalf of the Applicant: Mr SO Raveele (Attorney)

Ms IM Khosa (Attorney)

On behalf of the Respondent: Adv Van Zyl

## **8 AUTHORITIES ON WHICH PARTICULAR EMPHASIS WILL BE PLACED**

Herewith the list of authorities that particular reliance will be placed on during the oral argument.

1 *Biowatch Trust v Registrar, Genetic Resources* 2012 ZACC 14; 2009 (6) SA 232 (CC); 2009 (10) BCLR 1014 (CC)

- 2 Lee v Minister of Correctional Services 2013 (2)
- 3 Mashongwa v Road Accident Fund
- 4 Ramuhovhi and Others v President of the Republic of South Africa and Others  
CCT194/16 (2017) ZACC 41; 2018 (2) BCLR 217 (CC); 2018 (2) SA 1 (CC) 30  
November 2017
- 5 Kruger v Coetzee 1966 (2) SA 426 (A) 430 E-F
- 6 Wells v Shield Insurance Co Ltd 1965 (2) SA 865 (C) at 869 (B)