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**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

**Case Number: 18189/2018**

In the matter between:

**Ralph Kujawa N.O. obo M[...] N[...]**

**Plaintiff**

And

**Road Accident Fund**

**Defendant**

**JUDGMENT ELECTRONICALLY DELIVERED 19 JUNE 2023**

Baartman, J

[1] On 26 September 2018, the plaintiff instituted action proceedings claiming damages on behalf of a minor who had sustained injuries in an accident. I presided over the pretrial<sup>1</sup> proceedings in which the parties disclosed that they had reached settlement<sup>2</sup> in respect of all the heads of damages except the date

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<sup>1</sup> *Uniform Rules of Court*, rule 37.

<sup>2</sup> On 23 February 2023, the defendant offered in full and final settlement of the plaintiff's claim; (a) Payment of R1 576 786.65 in respect of the plaintiff's heads of damages; (b) Payment of the capital sum to be effected 180 days from date of settlement or court order; Payment of the claimant's taxed or agreed party and party costs, on the appropriate scale, on the 180<sup>th</sup> day of the month following the settlement of the costs.

from which interest should run. Despite a further opportunity to resolve the outstanding issue, agreement was not reached; they therefore agreed to argue that issue before me.

[2] The Road Accident Fund (**the RAF**) presented the offer without making provision for interest. The plaintiff was satisfied with the offer and on 2 March 2022 submitted to the RAF a draft order in which it provided for interest to accrue on the capital from 14 days of the court order to date of payment. In addition, the draft order provided for interest on the claimant's costs from 14 days of the agreement or taxation to date of payment. The plaintiff submitted the draft order instead of signing the written Offer and Acceptance of Offer from the RAF. On 6 March 2023, the RAF accepted the draft order but proposed that interest run from 180 days instead of 14 days.

[3] The parties requested a ruling on the following issue: 'what was the appropriate date from which interest on the capital and costs should run'. Section 17(3)(a) of the Road Accident Fund Act, 56 of 1996 (**the Act**) provides as follows:

'17(3)(a) No. interest calculated on the amount of any compensation which a court awards to any third party by virtue of the provisions of subsection (1) shall be payable unless 14 days elapsed from the date of the court's relevant order.'

[4] The plaintiff submitted that as the defendant's 'discharge did not stipulate that interest would run from 180 days,...the default position as stipulated in terms of [the Act] remains applicable.' On the contrary, the defendant submitted that the 'lis between the parties has been extinguished by agreement and section 17(3)(a) the Act does not apply.'

[5] The 180-day deferment was introduced, *Legal Practice Council*<sup>3</sup>, as a temporary measure suspending writs of attachment for 180 days from date of the court order. The court held as follows:

'[35] I am of the view that exceptional circumstances exist, taking into account the interest of justice, for the exercise of this court's inherent common law and constitutional power to order a temporary suspension for a limited period of 180 days as from the day when argument before this court was concluded on 16 March 2021, of all writs of execution and attachments against the RAF based on court orders already granted or settlements already reached in terms of the RAF Act, which are not older than 180 days as from the date of the court order or date of the settlement reached.'

[6] Importantly, the court was not dealing with an application for the stay of payments or the payment of interest. The RAF only sought a stay of attachments to enable it to make payments. It is clear from *Dunn*<sup>4</sup> that agreement in respect of the capital did not necessarily result in agreement in respect of interest. The court held as follows:

'[18] The applicant accepted a late payment, without raising the issue that it was entitled to interest from the date of judgment. It is surprising that the applicant did not raise the issue of interest as the circumstances of payment were different in that payment of the capital amount was deferred to a later date, unlike in other RAF court orders, where *mora* interest runs from fourteen (14) days after the date of judgment.'

[7] In *Dunn*, the court held that it was not apparent from the agreement that

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<sup>3</sup> *Road Accident Fund v Legal Practice Council and Others* 2021 (6) SA 230 (GP).

<sup>4</sup> *Dunn v Road Accident Fund* 2019 (1) SA 237 (KZD).

the parties had intended that interest should run from 14 days after judgment. In those circumstances, the court ruled that it would run only from the date when the RAF failed to make payment in terms of the order. As indicated above, the plaintiff raised the issue of interest from the outset; the parties were unable to settle and so approached the court for a ruling. The legal position is that section 17(3)(a) of the Act regulates the issue in the absence of agreement to the contrary. The defendant submitted that this court has a wide discretion in circumstances where 'the *lis*' between the parties has been settled. The payment of interest is part of that '*lis*' but has not been settled. The parties have not agreed on the date from which interest should run and the court cannot make an agreement for them. In the absence of a substantive application, this court lacks jurisdiction to entertain the request to alter the legislative regime applicable and does not have the wide discretion the RAF contends for.

## **Conclusion**

[8] It follows that the legal position as per the Act must be applied and that interest should run from 14 days after the date of this order in respect of the capital and 14 days from date they reach agreement in respect of costs or taxation.

[9] I, therefore, grant the order per Annexure A hereto.

**Baartman, J**

**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

**CASE NO. 18189/2018**

**DATE:19/6/2023**

**BEFORE THE HONOURABLE JUDGE BAARTMAN**

In the matter between:

**RALPH KUJAWA (N.O) obo M[...] N[...]**

**Plaintiff**

And

**THE ROAD ACCIDENT FUND**

**Defendant**

**DRAFT ORDER**

**IN FULL AND FINAL SETTLEMENT OF THE PLAINTIFF'S DELICTUAL CLAIMS  
HEREIN AND ARISING OUT OF THE COLLISION ON 1 SEPTEMBER 2015 ("THE  
COLLISION"), IT IS ORDERED BY AGREEMENT BETWEEN THE PARTIES  
THAT THE DEFENDANT SHALL:**

**THE CAPITAL**

1.1 Pay to the Plaintiff the sum of R1 576 786.65 (one million five hundred and seventy six thousand seven hundred and eighty six rand and sixty five cents) ("the capital"), to be paid within 180 (one hundred and eighty) calendar days of this order.

1.2 It is recorded that the Plaintiff will not issue a Writ of Execution in respect of the capital amount prior to the expiry of the 180 days.

1.3 Defendant shall be liable for interest on the capital at the prescribed rate of interest from fourteen court days of this order to date of payment.

### **THE UNDERTAKING**

2. Provide an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996 (*"the undertaking"*), to compensate the Plaintiff for 100% (one hundred per centum) of the costs relating to the future accommodation of M[...] N[...] in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to M[...] N[...] after the said costs have been incurred and on proof thereof and arising from the collision which occurred on 1 September 2015.

### **COSTS**

3. Pay the Plaintiffs taxed or agreed costs on the High Court Scale, as between party and party to date hereof, including for the sake of clarity, but not limited to, the costs as set out hereunder.

### **GENERAL COSTS**

4. Any costs attendant upon the obtaining of payment of the amount referred to in paragraph 1.1.

5.1 Pay the taxed or agreed fees, of the expert witnesses listed herein below (*"the experts"*), as well as any agreed or taxed costs attached to the procurement of medico-legal/expert reports listed hereinafter, including the

taxed or agreed costs of Plaintiff attending all his medico-legal examinations:

5.2 The experts are

5.2.1 Dr. PA Olivier;

5.2.2 Keith Cronwright.

5.2.3 Marion Fourie;

5.2.4 Dawie Malherbe;

5.2.5 ARCH Actuarial consulting.

### **COSTS OF CURATOR AD LITEM**

6.1 Defendant shall pay the costs of the application to appoint a Curator Ad Litem on the High Court scale, as between party and party, as taxed or agreed, plus VAT, including the qualifying expenses of any expert witnesses used in such application (the amount of such qualifying expenses to be assessed by the Taxing Master).

6.2 Defendant shall pay the costs of the Curator Ad Litem on the High Court scale, as between party and party, as taxed or agreed, plus VAT.

### **COSTS OF CURATOR BONIS**

7. In the event of the High Court appointing a Curator Bonis to M[...] N[...], the Defendant shall pay the costs of an application to appoint a Curator Bonis on the High Court scale, as between party and party, as taxed or agreed, plus VAT, including the qualifying expenses of any expert witnesses used in such

application (the amount of such qualifying expenses to be assessed by the Taxing Master).

8. In the event of the High Court appointing a Curator Bonis to the M[...] N[...], the Defendant shall pay the costs of the Curator Bonis, as taxed or agreed, which shall form part of the undertaking to be furnished by the Defendant, such costs including, for the sake of clarity, but not limited to:

8.1 the remuneration of such Curator Bonis (after proof that such curator has been appointed has been furnished to the Defendant) in administering the estate of the M[...] N[...], according to the prescribed tariff, as approved by the Master of the High Court.

8.2 the costs incurred in administering the undertaking, as and when these costs arise and subject to the approval by the Master.

8.3 the costs, if any, incurred by the Curator Bonis in furnishing security to the Master.

## **PAYMENT PROVISIONS**

9. The payment provisions in respect of the foregoing are agreed as follows:

9.1 Payment of the amount reflected in paragraph 1 above shall be effected direct to Plaintiff's attorneys of record by means of an electronic transfer.

9.2 Payment of the taxed or agreed costs reflected in paragraph 3 above shall be effected within 180 (one hundred and eighty) calendar days of agreement or taxation ("due date") and shall likewise be effected



by electronic transfer into the Plaintiff's attorneys trust banking account.

9.3 In the event that the costs are not agreed, Plaintiff shall serve a Notice of Intention to tax bill of costs on the Defendant.

9.4 Defendant shall be liable for interest on amount referred to in paragraph 9.2 at the prescribed rate of interest from fourteen court days of agreement or taxation.

### **ACCOUNT DETAILS**

10. The Plaintiff's attorneys' trust banking account details are as follows:

Bank: **FIRST NATIONAL BANK**  
Account Name: **LESTER & ASSOCIATES**  
Account Type: **TRUST ACCOUNT**  
Branch Name: **PLUMSTEAD**  
Branch Code: **201109**  
Account number: **501[...]**

**By Order of the Court**

### **OFFER & ACCEPTANCE OF SETTLEMENT**

"Without Prejudice"

**LESTER & ASSOCIATES**

Date: 2023/02/23

**Docex:** \_\_\_\_\_

Per Telefax: 0217974912

*Dear Sir/Madam*

The RAF hereby offers, without prejudice or admission of liability, in full and final settlement of your claim, the amount as set out hereunder:

CLAIMANT :KUJAWA,RWM

YOUR REF :MNOMDOE

OUR REF:503/12393281/10/0 Link No:3887919 Version No:2

**SECTION A: CAPITAL PAYMENT DETAILS AND BREADOWN**

	PAST	FUTURE	TOTAL
HOSPITAL/MEDICAL EXPENSES	R 0.00	R 0.00	R 0.00
LOSS OF SUPPORT	R 0.00	R 0.00	R 0.00
LOSS OF EARNINGS	R 0.00	R 976 786.65	R 976 786.65
FUNERAL COSTS			R 0.00
GENERAL DAMAGES (Pain & Suffering, Permanent disability, etc.)			R600 000.00
		<b>SUB-TOTAL</b>	<b>R 1 576 786.65</b>
<b>Minus : Apportionment</b>	Percentage: 0%		R 0.00
		<b>SUB-TOTAL</b>	<b>R 1 576 786.65</b>
<b>Minus : Risks</b>	Percentage: 0%		R 0.00
		<b>SUB-TOTAL</b>	<b>R 1 576 786.65</b>
<b>Minus : Interim Payment(s)</b>			R 0.00
		<b>SUB-TOTAL</b>	<b>R 1 576 786.65</b>
<b>Minus : WCC Award (Workmans Comoensation)</b>			R 0.00
		<b>SUB-TOTAL</b>	<b>R 1 576 786.65</b>
		<b>GRAND TOTAL</b>	<b>R 1 576 786.65</b>

**An undertaking in terms of Section 17 (4)(a)**

Note that the above offer is conditional until the RAF receives confirmation of a the existence of a contingency agreement.

### **SECTION B: CAPITAL**

Payment for the capital sum of **R 1 576 786.65** will take place 180 days from the receipt of this form signed by the Claimant/Representative. RAF captures all settled claims in 30 days and payment thereof is effected in 180 days from date of settlement or court order.

**SECTION C: COSTS** Payment of the Claimant's taxed or agreed party and party costs, on the appropriate scale, will be paid on the 180th day of the month following the settlement of the costs.

### **SECTION D: ACCOUNT DETAILS NOMINATED FOR PURPOSES OF RECEIVING PAYMENT**

Name of Account: LESTER& ASSOCIATES

Holder Branch: 250655 FIRST NATIONAL CUSTOMER COMPUTER SERVICES

Type of Account : CQ CHEQUE ACCOUNT

Account Number: **501[...]**

**I warrant that the nominated account details are true and correct, I further agree to indemnify the RAF against any demands, claims or actions that may arise due to the RAF making payment into the nominated account.**

I warrant that I have fully disclosed to the RAF all costs due to any supplier.

I further warrant that where I am entitled to payment under the Occupational Injuries and Diseases Act., ex contractu/lege payments by my employer,

pension/provident fund payments, insurance payments, medical aid/insurance payments, any benefit from the state/social services or any other collateral or accelerated benefit, I have fully informed the RAF of all payments received and to be received.

I understand the meaning and extent of this Offer and Acceptance Notice and confirm that it records the full and final agreement between the RAF and me. The RAF is discharged from all liability pertaining to the loss suffered in the above mentioned accident.

**This offer can only be accepted by full completion and on receipt of the signed original document. Any amendment to this form will not constitute settlement of this claim unless such amendment is expressly agreed on by the Fund.**

This offer is only valid for a period of 30 days from date of offer, or until the date preceding the date of prescription of the claim, whichever date occurs first.

If this offer was made after prescription of the claim, it will be deemed to be a bona fide error and acceptance thereof will not be enforceable.

The RAF further reserves its right to withdraw this offer at its own discretion at any time before acceptance.

Payments will only be made in dedicated Trust Accounts and not a transmission bank account. Proof of banking details may be required. The offer is subject to confirmation regarding the Contingency Fee Agreement concluded with the claimant and proof of compliance with section 4 of the Contingency Fee Act; (Proof should be either two affidavits, i.e. the affidavit by the attorney and the affidavit by the claimant (not 1

affidavit but both affidavits) alternatively proof of submission of the 2 affidavits to the Legal Practice Council or proof that both affidavits were filed with the court and /or where there is no contingency fee agreement in place, it must be recorded as such in the court order. Alternatively, the attorney must submit an affidavit to confirm that there is no contingency fee agreement.

Acceptance of this offer will only be deemed valid acceptance if it is accepted in its totality. An acceptance on one or more aspects of the offer (such as merits or quantum only or only selected heads of quantum) will be regarded as a counter offer by the claimant, and will not be deemed to constitute a valid agreement, unless the Road Accident Fund expressly accepts the counter offer.

SIGNED AT \_\_\_\_\_ ON THIS \_\_\_\_ DAY OF \_\_\_\_\_

\_\_\_\_\_  
**CLAIMANT/REPRESENTATIVE      SIGNATURE      \*PRACTICE NUMBER**

• *Supply if signed by Legal Representative on behalf of Claimant*

AS WITNESSES: 1. \_\_\_\_\_ 2. \_\_\_\_\_

Prepared *By*: **NOKWANDA MASINGA** *e-mail*: **NOKWANDAM@RAF.CO.ZA**

\_\_\_\_\_  
**SIGNATURE OF THE PREPARER**

**2023/02/23**  
**DATE PREPARED**

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