



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Tina Majope and Others v The Road Accident Fund (663/2022) [2023] ZASCA 145 (8 November 2023)

Today, the Supreme Court of Appeal (SCA) upheld an appeal from the Mpumalanga Division of the High Court, Mbombela (high court). The appeal concerned two related cases from the high court, the orders of which this Court set aside and replaced with orders rectifying the high court's misdirection.

The appeal concerned an application for default judgment against the Road Accident Fund (RAF). The appellants were involved in separate accidents and launched proceedings against the RAF, but signed attorney and own client fee agreements with their respective legal representatives. The RAF did not enter an appearance to defend and, after hearing the matter, the court instructed the legal representatives to submit draft orders. The draft orders specifically indicated that no contingency fee agreement had been entered into. This prompted the court to launch an inquiry into whether the agreements entered into were contingency fee agreements.

Subsequent to the inquiry, the high court made an order containing provisions that were never sought by any of the parties. The orders were premised on the high court's finding that the fee agreements were contingency fee mandates which did not comply with the necessary statutory requirements. Therefore, on account of such non-compliance, the legal representatives were not entitled to recover fees for services rendered and the RAF had no obligation to pay costs. In addition, the orders were never canvassed with any of the legal representatives. They were accordingly deprived of their rights without having been afforded the opportunity to first be heard.

This Court found that the order of the high court ran contrary to the principle that costs should follow the result. In addition, this Court held that the order of the high court was particularly concerning as the provisions of the order made were directed at individuals who were not parties before the court. This Court held that the high court erred in its determination that the fee agreement was a contingency fee agreement. Rather, a fee agreement was determined to be a contract between an attorney and client to arrange for payments outside the prescribed tariff. The SCA found that to deligitimise such agreements would erode the basic tenets of South African law of contract.

The SCA found that the fee agreement did not form part of the litigation before the high court and should not have been included in the order. The high court materially misdirected itself by making an order that was not sought by the parties.

In the result, the SCA upheld the appeal and rectified the order of the high court.

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