SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM	The Registrar, Supreme Court of Appeal
DATE	18 June 2019
STATUS	Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

***P M obo T M v Road Accident Fund* (1175/2017) [2019] ZASCA 97 (18 June 2019)**

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[1] Today the Supreme Court of Appeal (SCA) dismissed the appeal by the appellant against the judgment of the full court of the Limpopo Division of the High Court, Polokwane.

[2] The appellant, acting on behalf of her minor child had instituted action against the Road Accident Fund (the RAF) for damages arising from the death of her minor child's father. The deceased had died in a collision and the appellant alleged that the sole cause of the collision was the negligent driving of the insured driver.

[3] The parties appeared before the Limpopo High Court. The matter became settled between them. They asked the judge a quo to make the agreement an order of court.

[4] The judge was not satisfied with the agreement. She had concerns that from the pleadings and certain witness statements of the appellant's witnesses, there was no way in which the insured driver could have avoided the collision. The deceased appeared to have been solely negligent. It appeared that the RAF settled the matter only because they were unprepared. The judge refused to make the agreement an order of court and ordered that the trial should commence. After one witness had given his evidence, as the matter could not be finalised, the matter was postponed.

[5] The appellant then launched an application claiming the following relief:

'1. Calling off the part-heard trial in the matter …..

2. That the said trial be and is hereby forthwith annulled.

3. Declaring that the *lis* between the Applicant and the respondent….. to have been fully and finally settled between the parties in terms of the agreement and resultant draft order made and prepared by the parties and bearing the same date of Wednesday, 14 September 2016.

4. That the draft order in paragraph 3 above is hereby made an order of the Court'.

[6] The application came before the same judge, who dismissed the application. The Full Court dismissed the appeal.

[7] On appeal to the SCA, the issues were twofold: Firstly, whether it was permissible to challenge the court's decision in this way. If so, was the judge's approach to the settlement agreement permissible.

[8] The appellant's case was that as an agreement had been concluded, the proceedings and the reference to trial were fatally flawed and irregular. The effect of the agreement was to deprive the judge of jurisdiction to adjudicate a non-existent *lis.*

[9] The SCA held (in a majority judgment) that when the parties arrive at a settlement, and wish it to be made a consent order, they do not withdraw the case but ask that it be resolved in a particular way. The jurisdiction of the court to resolve the pleaded issues does not terminate when the parties arrive at a settlement of those issues.

[10] As the trial had not run its course, there was no appealable judgment to be assailed in another court. The endeavour to create one by way of an interlocutory application in that trial could not succeed. It is only in very rare circumstances that a court will review a decision, or allow an appeal before the proceedings have been terminated. No appeal or interlocutory proceeding to reverse that decision lies whilst the proceedings are ongoing. Thus the SCA held that the procedure adopted by the appellant in the application was ill-conceived.

[11] Although it was not necessary In regard to the second issue, the SCA noted that it was necessary to make some remarks in this regard. The issue of the court's discretion, in relation to making a settlement agreement an order of court, occurs frequently in damages claims against organs of State involving the disbursement of public funds.

[12] The SCA found that our courts have a duty to ensure that they do not grant orders that are *contra bonos mores*, or that amount to an abuse of process. Section 173 of the Constitution specifically empowers the Court to prevent any such abuses. A court cannot act as a mere rubber stamp of the parties. Public funds are being disbursed and the interests of the community as a whole demand that more scrutiny be involved in the disbursement of such funds.

[13] In a dissenting judgment, it was held that the suggestion that the appellant should have followed the appeal procedure was not correct having regard to the

stage at which the proceedings were when the application was launched. The proceedings which were sought to be called off were still pending and it would not have been in the interests of justice for the parties to await the completion of the proceedings before taking any further steps. To non-suit the appellant because of how she presented her application, is to place form above substance.
The fact that the judge a quo was not was not satisfied that the settlement was in accordance with the documents and pleadings was an irrelevant consideration and its effect was to second-guess the parties' decision to agree to settle the issues. The agreement was not improper, incompetent or objectionable. Thus the appeal should have succeeded.