

REPORTABLE  
IN THE HIGH COURT OF SOUTH AFRICA  
[TRANSVAAL PROVINCIAL DIVISION]

CASE NO: 17335/2004

DATE: 23 JUNE 2008

In the matter between:

PHILLEMON WILLIAM MSIZA

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

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J U D G M E N T

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PHATUDI [AJ]

- [1] The Plaintiff instituted the action against the Defendant as a result of injuries sustained due to the motor collision that occurred on the 9 July 1999. The action is instituted in terms of the Road Accident Fund Act 56 of 1996 (the Act). According to the Act, the Plaintiff was to lodge his claim with the Road Accident Fund (RAF) within 3 years

from date of collision.

- [2] The Defendant alleged that the Plaintiff lodged the claim with RAF on the 9 July 2002 when it already had prescribed. The Defendant set this matter down for hearing of Special Plea on the basis of Defendant's ameliorated plea.
- [3] At the Commencement of the hearing, Ms van Antwerpen, Counsel for the Defendant, placed on record that this court is required to determine if the claim had prescribed in terms of Section 23 of the Act and if successful, then the merits and quantum be postponed sine die. Mr Pheto, Counsel for the Plaintiff, added that the Plaintiff pray for an order of costs against the Defendant in the event Defendant does not succeed with the Special plea.
- [4] The Defendant called one witness, Ms Christina Gonane who testified that she has been employed by RAF for 13 years at the Facilities Department. She explained the procedure of receipting the documents so lodged or delivered.

- [5] She said that the documents are received at the reception. They stamp the original and a copy that has been delivered as an acknowledgement of receipt. The claimant or his attorney is handed back the stamped copy. The originals are then sent to the Registry where the information is loaded on the system and the number is allocated to the claim. The number is then called the claim number. The data on the system will then indicate the date upon which the document(s) was served (or lodged).
- [6] She further testified that the RAF offices in Menlyn closes at 16h00 on daily basis and has been the practice since the opening and operation of the Menlyn offices. She said that once the reception closes at 16h00, no documents will be receipted and or acknowledged.
- [7] Reference was made to the bundle handed in marked "A" where the RAF reception date stamp showing the 2002-07-09 as the date upon which the document was received. The said date stamp appears again on page 1 and 3 to 6 of the said bundle. Page 1 thereof is the covering letter from Nonyane Attorneys specifying the documents attached thereto. Page 3 to 6 thereof is the hand completed pre printed RAF

claim form.

[8] It has been noted that other documents, to wit,

1. *Consent to inspect medical records;*
2. *Special Power of Attorney;*
3. *Copy of identity documents of the claimant;*
4. *Statement by claimant;*
5. *Statement by witness;*
6. *Road Traffic collision report,*

were not date stamped as pages 1 and 3 to 6

[9] **Ms Van Antwerpen**, referred, **Ms Gonane** to the bundle of Discovered documents marked “B” and specifically to page 1 thereof. Ms Gonane indicated that she takes note of the hand written date, time and signature thereon.

[10] She pronounced 08/07/02 as the date and 16:47 denoting the time.

She further placed on record that the word RAF appears just next to the time. The signature appears under the said time and word.

[11] When asked what the understanding and or interpretation of the said hand written date, time, and signature would be vis-a-vis the receipting procedure. She indicated that as not being in accordance with their custom of receipting documents at RAF. She further said that their offices (RAF) would not have receipted the documents after 16h00 as same would have been closed. According to her, the documents were not received by RAF on the 08/07/02 at 16:47.

[12] Ms Gonane was, under cross-examination, asked as to how many claims or documents do they receive in a day. She indicated that they at RAF Facilities Department, receive many documents. She further indicated that the reception date stamp is the mark that proof the date upon which the claim or document has been received by RAF. It is the said date stamp that assists them in “knowing” as to when the document was received and not by their memories. She emphatically indicated that the reception date stamp is their guidance on date upon

which the documents were received on a particular day. She further indicated with emphasis that the Plaintiff's claim was lodged on the 09-07-02 and not 08-07-02 as alleged.

[13] Ms Mapule Precious Nonyane, the messenger and employee at Nonyane Attorney took the witness stand and testified in favour of the Plaintiff and in rebuttal of the Defendant's claim.

[14] She testified that her duties are mainly to serve documents at the offices of other attorneys' firms and to deliver some to the RAF. She indicated that she delivered documents at RAF on the 08-07-02. She conceded that the said documents were delivered after hours.

[15] She testified further that on her arrival at the RAF premises, the person she regarded as the "security", stopped her from entering the gate. The said person said that the reception has been closed. The said "security" person said to her that he will forward the documents to the reception. The date 08\07\02 with the time 16:47 followed by the alphabetical letters RAF were inserted on the document (As indicated in bundle marked "B"). She then returned to her work with

a copy of the “acknowledged” documents. She confirmed the acknowledgement in bundle marked “B” as the acknowledgement effected by the security or the person at the gate.

[16] She, under cross-examination, accepted that there are times of opening and closing at various offices inclusive of theirs (Nonyane Attorneys). She further said that they used to work from 08h00 – 17h00 but the time has since been changed to 07h45 – 16h30.

[17] She conceded that she would normally serve or deliver documents at RAF before 16h00 and that the acknowledgement would be done at the reception by the date stamp. She, under re-examination stated that she could have gone again to the RAF on the 09-07-2002.

[18] In their arguments, Ms van Antwerpen submitted that the court should only consider the evidence tendered by the defence and that the court should accept that the claim was duly lodged on the 09-07-2002. She submitted that the evidence is corroborated by the date stamp of the reception indicating that documents were received on the 09-07-02. She further submitted that the claim was lodged a day after the date of

prescription.

[19] She further submitted that the court should not consider the evidence tendered by the Plaintiff's witness as far as the "wording and or saying" by the security as that constitute hearsay. She submitted further that the Plaintiff failed to call the said witness (security) to corroborate what the witness said the security said to her.

[20] She lastly submitted that the person who is allegedly said to have acknowledged receipt of the documents as indicated on bundle "B" was not the RAF employee and unknown by the Defendant. She finally submitted that the Defendant does not have any other arrangements with any department or person to accept and acknowledge receipt of documents ("after hours") after 16h00. She, based on that, pleaded that the Special Plea on prescription be upheld with costs.

[21] On the other hand, Mr Pheto, Counsel for the Plaintiff, submitted by first conceding that the documents were served after 16h00. He, however, submitted that the documents were served on 08-07-2002 at



the premises of RAF.

[22] He further submitted that the evidence is consistent with the testimonies of both witnesses that testified for the Plaintiff and the Defendant respectively. He stated that the documents were served and acknowledged by RAF on the 08-07-02 and only stamped by their receptionist on the 09-07-02.

[23] He, in his further submissions, referred to Section 23(1) of the Road Accident Fund Act 56 of 1996 which he quoted *verbatim* as:

“23 *Prescription of Claim;*

*1) Notwithstanding anything to the contrary in any law contained, but subject to subsections (2) and (3), the right to claim compensation under section 17 from the Fund or an agent in respect of loss or damage arising from the driving of a motor vehicle in the case where the identity of either the driver or the owner thereof has been established, shall become prescribed upon the expiry of a period of three years from the date upon which the cause of action arose.*

[24] In support of his submission, Mr Pheto stated that 12h00 midnight of

the 08-07-02 should be taken into consideration in the calculation and compounding of days for the purposes of determining the “expiry of the period of three years from the date upon which the cause of action arose.”

[25] He lastly submitted that in interpreting the statute, the interpretation thereto must be just, reasonable and equitable. He referred to a book *Re-Interpretation of Statutes by Lourence du Plessis, 1<sup>st</sup> Edition, 2002, Butterworths, at page 154 and 155.*

[26] It is trite law that the right to claim compensation under Road Accident Fund Act shall become prescribed upon the expiry of the period of three years from the date upon which the cause of action arose.

[27] The issue to be determined is whether the Plaintiff’s claim was lodged on the 08/07/2002 or 09/07/2002 and if it may be accepted that they have been lodged on the 08/07/2002, can the time(16h47) upon which the documents were served or delivered at RAF fall within the definition of the day compounding “a period of three years” as

envisaged by the provisions of section 23 (1) of Road Accident Fund 56 of 1996(the Act).

[28] The words, day; week; month and or years are not defined in either the Road Accident Fund Act or its Regulations under Section 26 thereof.

[29] In the absence of the definition of any word in any Statute or law, then the provision of Interpretation Act 33 of 1957 to the interpretation of every law in force and to the interpretation thereto unless there is something in the language or context of the law.

Section 4 of Interpretation Act provides:

*“4. Reckoning of number of days:-When any particular number of days is prescribed for the doing of any act, or for any other purpose, the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day happens to fall on a Sunday or on any public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively also of every such Sunday or Public Holiday.”*

[30] There is no dispute as to the date upon which the claim prescribes.

Both parties concede that the date upon which the claim prescribes was 8 July 2002. The dispute is the time upon which the documents were delivered. The dispute arises as to the definition of day. The Defendant's day ends at 16h00 when their offices are closed, whereas the Plaintiff submitted that 12h00 midnight be construed as a cut off time of the day 08-07-2002. In the British context the word day, is defined in Shorter Oxford English Dictionary On Historical Principles; Volume 1 as:

**“a period of 24 hours as a unit of time especially from midnight to midnight”.**

[31] The procedure of lodging the claim is outlined in Section 24 of the Act as follows:

*“24(1) A claim for compensation and accompanying medical report under Section 17(1) shall;*

*(a)...*

*(b) be **sent by registered post** or **delivered by hand** to the Fund at its principal , branch or regional office, ... and the Fund or such agent shall at the time of delivery by hand acknowledge*

*receipt thereof and the date of such receipt in writing.”*

[32] It is clear from the provisions of section 24(1) (b) that the documents must be sent by registered post or delivered by hand. I find it important to first consider service by registered post as provided by Section 24(1)(b). Section 7 of Interpretation Act 33 of 1957, provides that;

*“Where any law authorises or requires any documents to be served by post, whether expression “serve” or “give”, or “sent”, or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing prepaying, and posting a registered letter containing is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.”*

[33] It is common cause that most post offices close at 16h30 and that no postal services will be accessible by members of the public except for “depositing” letters in the (usually red) post box. I however, take judicial notice that some Post offices, especially those that are situated in the shopping malls that close late into the night. In the event the claimant utilise the services of such Post Offices after 16h00 by sending the documents by registered post, then the claim would be

deemed to have been “lodged” on time.

[34] The matter that created the umpteenth problem to the Defendant is the “delivering by hand” and as it being the kernel of this Special Plea.

[35] Section 24(1)(b) further provides that the documents or claim for compensation “shall be delivered by hand to the Fund at its principal , branch or regional offices,” and the fund shall at the time of the delivery by hand acknowledge receipt thereof and the date of such receipt in writing.

[36] The word deliver is as well not defined in both the Road Accident Fund Act and Interpretation Act. The word “deliver” is defined in Erasmus Superior Court Practice’s Uniform Rules of this court at page B1-10 as:

*“Both filing with the Registrar and service upon all parties must take place. The usual practice is to require receipt of a copy of a document that has been delivered to be acknowledged on the original by the recipient. The original is filed with the registrar.”*

[37] The Road Accident Fund Act or its Regulations do not provide for the

time upon which the RAF offices open and closes. The Interpretation Act 33 of 1957 is as well silent on the “business day” to which I refer herein below.

[38] The Road Accident Fund Act or its regulations ought to have made provisions to the office times as provided (comparatively speaking) in terms of Rule 3 of the Uniform Rules of Court. Rule 3 provides that:

*“ Except on Saturdays and Sundays and Public Holidays, the offices of the registrar shall be open from 9h00 to 13h00 and from 14h00 to 16h00, save that, for the purpose of issuing any process or filling any document, other than a notice of intention to defend, the offices shall be open from 9h00 to 13h00, and from 14h00 to 15h00. The registrar may in exceptional circumstances issue process and accept documents at any time, and shall do so when directed by a judge.”*

[39] In evaluating the evidence tendered and submissions made by both Counsel, I first find that the computation of time in compounding the day is as being a period of 24 hours as a unit of time especially from midnight to midnight. I may as well regard this defined day as a calendar day. I further find that the normal working hours from 8h00 -16h00 of the day be construed as Business day.

[40] In evaluating the evidence as to the manner in which the delivery was effected, I find that the Plaintiff complied with the provisions of Section 24(1) (b) in that;

- “(i) The Plaintiff delivered a claim for compensation that has been accompanied by medical report under Section 17(1) by hand on the 08-07-2002;*
- ii) The Fund did acknowledge, at 16:47 the time of delivery by hand, receipt thereof in writing.*

[41] The major point to consider is whether the time of receipt (16:47) is within the day as defined and submitted by parties. The Defendant submitted that they close their offices at 16h00 and any delivery after that time will not be regarded as being delivered on that day but the day upon which the reception's date stamp is affixed thereto. On the other hand the Plaintiff's submission is that a day should be construed as been compounded from midnight to midnight.

[42] As I already have indicated above that the day is not defined by both the Road Accident Fund Act and the Interpretation Act. In the



absence of legally defined word, I then resort to the British context as defined in the Oxford dictionary. I accept and find the word day, as defined (infra), to mean the time as between Midnight to midnight.

[43] The other point to consider is whether the acknowledgement of receipt as it appears on page 1 of the Bundle of Discovered Documents marked “B” as being proper receipt.

[44] The Defendant denied same as being receipted by RAF in that the receipting was not effected as outlined by **Ms Gonane**. The Defendant further denied that the person who is allegedly referred to as security by the Plaintiff was not an employee of the Defendant. The Defendant submitted, through counsel, Ms van Antwerpen that the evidence of **Ms Nonyane** be ignored and disregarded on the basis of its hearsay.

[45] It is correct and trite that Section 3(1) (c) of The Law of Evidence Amended Act 45 of 1988 provides that hearsay evidence shall not be admissible as evidence at criminal and civil proceedings unless the court, having regard to:

- (i) the nature of the proceedings;
- (ii) the nature of evidence;
- iii) the purpose for which the evidence is tendered;
- iv) the probative value of the evidence
- v) the reason why the evidence is not given by the person upon whose credibility the probative value of such evidence depends;
- vi) any prejudice to a party which the admission of such evidence might entail; and
- vii) any other factor which should in the opinion of the court be taken into account,

is of the opinion that such evidence should be admitted in the interest of justice.

[46] In my view, the interest of justice, in the present circumstances, requires the court to admit the hearsay evidence adduced by *Ms Nonyane* in relation to the acceptance and acknowledgement of the documents delivered on the 08-07-2002. The nature of the acknowledgement gave (and still do) the impression in the mind of the

deliverer that the documents have reached their destination. i.e the Road Accident Fund. The messenger, who may not be well acquainted with the internal arrangement of the Defendant, accepted, as a reasonable man, that the acknowledgement was in order. Based on the above, I find the hearsay evidence of *Ms Nonyane* to be admissible.

[47] In that premises, I find that the Plaintiff did comply with the provisions of Section 24(1) (b) and that the claim was delivered on the 08-07-2002. In my final analysis, the claim has not prescribed as envisaged in terms of the Section 23 (1) of the Road Accident Fund Act 56 of 1996.

[48] I further find it appropriate to, in obiter, opine that the RAF should endeavour to provide, through its Section 26 regulations, the times and manner upon which the claims should be delivered considering the “midnight to midnight” as it appears in the definition of a day or make provisions similar to those of Rules 3 of the Uniform Rules of this Court to avoid further problems regarding the delivery or

lodgement of claims and or documents. It is often said “*A stitch in time saves nine.*” Promulgations of such times will save the defendant from being mulcted with costs.

[49] It is an accepted practice that costs follow the event. The party who succeeds in litigation, is entitled to costs. The Plaintiff, who succeeded herein, is entitled to costs.

[50] Accordingly, I make the following order;

**1. SPECIAL PLEA ON PRESCRIPTION IS  
DISMISSED WITH COSTS,**

**2. THE CASE ON MERITS AND QUANTUM IS  
POSTPONED *SINE DIE*.**

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AML PHATUDI  
Acting Judge of the High Court

Date of hearing: 9 June 2008  
For the Plaintiff: Adv Pheto  
Instructed by: Nonyane Attorneys  
For the Defendant: Adv van Antwerpen  
Instructed by: Maluleke Seriti Makume Matlala Incorporated  
Date of Judgment: 25 June 2008