REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA) 29/8/14

(1) REPORTABLE: YES/ NO
(2) OF INTEREST TO OTHER JUDGES: YES/
(3) REVISED.

29 August 2014 DSMolefe
DATE SIGNATURE

In the consolidated Review Application of the following Applicants:

1. BUTHELEZI, SIZWE ALOIS	Case Number: 12817/12
2. NZIMANDE, KENNETH COLANE	Case Number: 16335/12
3. KHUMALO, LINDA PEARL	Case Number: 12819/12
4. MAVECUA, PAULO ALFREU	Case Number: 12818/12
5. SIMELANE, PATRICK MZWAKHILE	Case Number: 12823/12
6. CHALA, SITHEMBISO SYDWELL	Case Number: 12821/12
7. NHABANGA, FERNANDO REGNAZDO	Case Number: 12822/12
8. NTSHOYI, THETHISWA	Case Number: ~~163336/12~~ 16336/12
9. MAHLALELA, THULANI MARTIN	Case Number: 12816/12

And the following Respondents:

HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA

MEMBERS OF APPEAL TRIBUNALS IN EACH CASE

ROAD ACCIDENT FUND

J U D G M E N T

MOLEFE J:

[1] **Introduction**

1.1 The proceedings before this Court are nine separate review applications that have been consolidated into one hearing. Each applicant was injured in a motor vehicle accident. The merits were conceded in all the applications but the applicants' entitlement to general damages remains an issue.

1.2 In each application, the Road Accident Fund ("RAF") rejected applicants' serious injury assessment ("SIA") report. The applicants thereafter notified the Registrar of Health Professions Council of South Africa ("HPCSA") that the rejection of the SIA reports was disputed and the dispute was referred to the HPCSA Tribunal ("Tribunal") for adjudication[1].

1.3 The Tribunal considered the disputes and in each case resolved that the applicants' injuries did not qualify as serious injuries either under the American Medical Association Guides ("AMA Guides") or the Narrative Test. It is that decision which the applicants in these proceedings seek to have reviewed and set aside.

1.4 Eight of the nine applicants seek an order of substitution in terms of Section 8 (1) (c) (ii) (aa) of the Promotion of Administrative Justice Act, 3 of 2000 ("PAJA"), that the court should substitute its decision for that of the Tribunal.

[1] Regulation 3 (8) (b) & (c)

The two other applicants (the other one only in the alternative) seek an order that their matters be remitted to the Tribunal in terms of Section 8 (1) (c) (i) of PAJA for reconsideration with the directions to be imposed by this Court.

1.5 In all the nine applications, the applicants raise a similar if not the same grounds of review that the Tribunal is unreasonable and arbitrary in that:

1.5.1 the tribunal did not properly or fairly have regard to the medico-legal reports submitted by the applicants and in certain cases did not consider them at all;

1.5.2 the tribunal unreasonably failed to exercise its powers under Regulation 3 (11) to call for further assessments, reports and submissions and/or itself examine the applicants before making decision (i.e. procedural unfairness);

1.5.3 the tribunal's decision is influenced by an error of law in that it focused on the defective SIA report(s) and failed to enquire into the seriousness of the inquiry and to apply its mind independently to the substantive question of whether the applicants' injuries were serious.

1.5.4 the tribunal's decisions are capricious and lacking of reason.

1.5.5 the tribunal failed to have regard to the applicants' lack of access to effective medical treatment.

[2] The review application raises novel issues arising from the enactment of amendments to the Road Accident Fund Act 56 of 1956 ("the RAF Act") and the

regulations promulgated under the RAF Act which came into effect on 1 August 2008. In terms of the current legislation only a road accident victim who is seriously injured as defined in the Act and Regulations can claim damages for non-pecuniary loss from the RAF. The Regulations have put in place procedures to determine whether a road accident victim has been seriously injured[2]. The Tribunal is constituted by medical experts who are appointed by the Registrar of the HPCSA[3].

[3] **Brief Summary of Each Applicant's Case:**

3.1 **BUTHELEZI, SIZWE ALOIS**

Prior to the hearing of this matter, by agreement between the parties, the matter was settled and the following order was made:

(i) The decision of the Appeal Tribunal is reviewed and set aside and referred back to the Appeal Tribunal, which shall be different from the Tribunal of the first instance, and reconsidered for determination;

(ii) The matter is to be reconsidered and the decision of the Appeal Tribunal conveyed to the Applicant within 30 days of the granting of this order, or such further extension as may be agreed between the parties;

(iii) The sixth Respondent is to pay the Applicant's costs, including the costs of the application which costs are to include the costs consequent upon the employment of two counsels which costs are to be taxed or agreed.

[2] Regulation 3
[3] Regulation 3 (4) (8) & 11 (h) (i)

3.2 **NZIMANDE, KENNETH COLANE**

Nzimande is a 25 year old, single male person and has a girlfriend. They have three children and he lives with the girlfriend and the children in a three room RDP house with electricity, an outside water tap and flushing toilet. At the time of the accident, Nzimande was earning a living as a vendor. He was unemployed for two years until May 2011 when he started selling cigarettes and chips from home.

A) **Medical Evidence Before the Tribunal**

Both the RAF and Mr Nzimande filed medico-legal reports with the Tribunal.

Nzimande's Medico-legal Report:

3.2.1. **Dr Fine, psychiatrist** reported that Nzimande suffers from an organic-brain disorder and an accident traffic related anxiety disorder. He feels scared in a car and beats his girlfriend for no reason. This behavior started after the accident.

- His post-traumatic amnesia is unlikely to have been alcohol-related and the likelihood is that he has sustained at least a moderate head injury.

3.2.2 **Dr Lewer-Allen, neurosurgeon**, stated in his report that:

- Nzimande was unable to lay down continuous memory for 8 days after the accident and this technically put him in the severe head injury category, unless there is reason to suggest that this period was shorter, which would then put him

in the moderate category. His forgetfulness, bad temper and aggression suggest frontal lobe damage. Dr Lewer-Allen deferred to neuropsychological testing to be done.

- The comment in the hospital records that Nzimande was intoxicated on admission indicates an assumptive opinion rather than a scientifically verified fact.

3.2.3 **Ms Adam, psychologist**, state in her report that:

- Nzimande's neuropsychological assessment results showed moderate to severe diffuse difficulties with frontal lobe and left hemisphere overlay, including *inter alia*, fairly rapid onset of fatigue and reduced endurance, reduced verbal fluency and self-expression and poor narrative memory. These difficulties will impair his ability to utilize and apply residual cognitive and social skills. These are psychosocial changes post-accident in line with Organic Brain Disorder.
- Nzimande's confusion, restlessness and aggression at hospital upon admission were mistaken for intoxication.

3.2.4 **Ms Marks, occupational therapist,** stated that in her report physically, Nzinamde is able to work, but his understanding of instructions and concentration was poor, which may limit his employment capabilities.

3.2.5 **Ms Van Zyl, industrial psychologist**, stated in her report that Nzimande's head injury has probably rendered him unemployable.

RAF Medico-legal Reports:

3.2.6 **Dr van Heerden, neurosurgeon** stated in his report that:

- There are notes that Nzinmande remained confused for a day or two in hospital after the collision and that if this is so, the head injury would be graded as moderate.
- It is possible that memory problems Nzimande claims to have may indicate some frontal damage. He deferred to the opinion of a clinical psychologist in regard to neuropsychological problem and that if the neuropsychologist find evidence to suggest post traumatic neuropsychological problems, this would be permanent disability.

3.2.7 **Dr Cramer, clinical psychologist** stated in her report that:

- Nzimande was observed to have variable and limited attention and concentration, and also lower levels of motivation. His verbal reasoning abilities are also mildly compromised as is his mental flexibility;

- Given the probability of a moderate brain injury, the behavioural and mood changes are likely to have an organic basis even an exacerbation of pre-morbid traits;

- She defers to Dr Lewis-Allen's opinion regarding the nature and severity of the brain injury.

3.2.8 **Dr Botha, Specialist physician** stated in his report that:

- It is possible that Nzinamde sustained a concussive head injury;

- Based on his clinical assessment and liver function test, there is no evidence of liver damage, but that this does not exclude the possibility of damaging effects on the brain induced by excessive alcohol consumption;
- He was clearly intoxicated when admitted after the accident, which could play a role in determining the cause of his amnestic syndrome.

B) **The Tribunal's decision and reasons thereof**

The appeal in this matter was dealt with on 24 February 2012 and the Tribunal resolved that:

- There is no substantive medical evidence to show that the applicant has sustained a serious head injury. The applicant's background of having made excessive use of alcohol at a stage was noted. From the hospital records, the Tribunal noted that the applicant was reported to have been very drunk and aggressive.

- The CT scan was normal and the applicant was admitted with a normal Glasgow count scale of 15/15.
- Dr Braude failed to perform physical examination of the applicant and the RAF 4 form had been completed by Ms Marks who is not a medical practitioner, as required by section 17 (1A) (b) of the RAF Act. Despite the fact that Nzimande's SIA report had not been properly complied, the Tribunal dealt with the dispute on merits.

3.3 **KHUMALO, LINDA PEARL**

Ms Khumalo is a 26 year old single female person. She has a Grade 12 qualification and was unemployed at the time of the accident. Her friend died in the same motor vehicle accident she was injured. She gave birth to a child 18 months after the accident by caesarean section.

A. **Medical Evidence before the Tribunal**

Both RAF and Khumalo filed medicolegal reports with HPCSA. Her hospital records were also before the Tribunal.

Khumalo's Medico-legal Reports

3.3.1 **Dr Barlin, orthopaedic surgeon** stated in his report that:

- She sustained a concussion with a short loss of consciousness, fractures of the left tibia and fibula; a fracture of the left ala of the sacrum; fractures of both superior and inferior pubic rami and of the right body pubis; fractures of the left

transverse process of the 5th lumbar vertebra; and a large hematoma over the lateral aspect of the left thigh.

- She suffers pain on exertion such as walking or standing and has a left antalgic gait and recommended removal of internal fixation;
- Her symptoms are likely to respond to intensive physiotherapy but may persist, requiring ongoing treatment;
- Persistence of her symptoms is likely to decrease her chances of finding employment.

3.3.2 **Dr Fine, psychiatrist** stated in his report that:

- Khumalo requires anti-depressant medication and psychotherapy as she presents with features of an Accident-Traffic-Travel-Related Anxiety Disorder. Given such optimal treatment, psychiatric prognosis is good.
- Her baby was born of caesarean section and she thinks this was due to her pelvis injuries and not having progressed during labour.
- She cannot "do sex" as she used to because of pain.

3.3.3 **Ms Romy Marks .occupational therapist** stated in her report that Khumalo:

- Suffers pain at fracture sites and walks with a limp;
- She can now only perform light work and once rehabilitated, she will be able to do light work with medium aspects;
- Experiences back pain when lifting or bending over to take care of her baby.

RAF Medico-legal Reports

3.3.4 **Prof Schepers, orthopedic surgeon** stated that Khumalo's prognosis was good and that she can be fully rehabilitated. He suggested removal of intermediary nail but did not prescribe any conservative treatment

3.3.5 **Ms Gatto, occupational therapist** stated in her report that:

- Pain-related behavior was noted and Khumalo was sensitive to touch on the left thigh;
- Hip movements were accompanied by pain and her lower limb did appear to be swollen compared to the right;
- She has the functional physical capacity for only light physical work. With rehabilitation, her capacity for work will improve.

3.3.6 **Prof Voster, psychiatrist** stated in her report that:

- Khumalo walks slowly with a noticeable limp. She can't wear high heeled shoes anymore.
- She has chronic pain and poor mobility and has difficulty in finding employment.

B. **The Tribunal's Decision and Reason Thereof**

The appeal in this matter was dealt with on 27 February 2012 and the Tribunal resolved that:

- Khumalo's injuries do not qualify as serious under the Narrative test as it was noted that all injuries have healed well with a good prognosis.
- It was noted from the RAF 4 Form that she was awarded a WPI rating of 10%. Her injuries did not qualify as serious injury under the AMA Guides.

3.4 **MAVECUA, PAULO ALFREU**

Mavecua is a 34 year old male person. He has a girlfriend with three children and live together in a one room. Prior to the accident he was self-employed as a hawker. He has a standard 5 qualification and has no vocational training. Prior to the accident, he was in good health and played soccer.

A. **Medical Evidence before the Tribunal**

RAF did not submit any reports to the tribunal.. The only medico-legal reports and hospital records before the Tribunal were from the applicant.

Mr Mavecua's Medico-legal Reports

3.4.1 **Dr Lewer-Allen neurosurgeon** stated the following in his report;

- Mavecua suffered potentially a severe brain injury and that this level of severity would be compatible with his having long-term neurological sequelae;
- His Glasgow Coma Scale at the scene was 9/15 and dropped to 8/15 at hospital. He was unconscious for three days;
- His prognosis is poor and no significant recovery would be expected;
- He suffers shortcomings in his memory and concentration, an aggressive behavior and other psychological changes.

3.4.2 **Ms Adam, counselling psychologist** stated in her report that:

- Mavecua's neuropsychological assessment results showed mild to diffuse difficulties with frontal and left hemisphere overlay which included psychomotor slowing, reduced attention span, liberal fine motor slowing, tendency for confusion and confabulation;
- He suffers from intermittent headaches, pain in his shoulder and back, intermittent dizziness, pain in the right hip, forgetfulness and mood changes.

3.4.3 **Dr Fine, psychiatrist** testified in his report that:

- Mavecua suffers features of an Accident-Traffic-Travel-Related anxiety disorder with depression due to chronic pain from his headaches;
- He is forgetful, gets angry easily, depressed and easily gets tired;
- Should cognitive impairment be confirmed (which Ms Adam's testing confirmed) then psychiatric sequelae could be anticipated;
- Should organic brain damage be confirmed (which was confirmed by Ms Adam's testing) any impairment would be anticipated to be permanent and irreversible.

3.4.4 **Dr Barlin, orthopaedic surgeon** stated the following in regard to his orthopaedic injuries:

- A fracture of the left superior pubic ramus with disruption of the symphysis pubic; contusion of the left shoulder, multiple severe abdominal lacerations and abrasions; and a severe abrasion over the anterior aspect of the left thigh;

- These injuries have resulted in persistent pain and stiffness of the right hip, probable rotator cuff disruption with persistent shoulder pain and stiffness;
- The hip and shoulder problems may persist despite treatment.

3.4.5 **Dr White, plastic surgeon** stated in his report that Mavecua has six scars including unsightly scars on his head, neck and shoulder, both forearms, elbows and knees. These can be improved by surgery.

3.4.6 **Ms Van Zyl, industrial psychologist** stated in her report that Mavecua's head injury has probably rendered him unemployable in any capacity.

B. **The Tribunal Decision and Reasons Thereof**

The appeal in this matter was dealt with on 11 November 2011 and the Tribunal resolved that:

- Dr Braude completed RAF 4 form without physical examination of the applicant;
- Ms Marks is not entitled as an occupational therapist to fill in the assessment in the RAF 4 form;
- The fracture of the tibia and fibula as assessed by Dr Barlin on 1 December 2010 was noted. It was reported that with adequate treatment the applicant should be able to return to his previous occupation
- Dr Lewer-Allen saw the applicant almost three years after the date of the accident. He opined that the applicant appeared to have sustained potentially a severe brain injury although no further neurosurgical intervention was anticipated with regard to the suspected "head injury".

- Applicant's psychologist confirmed that Applicant still keeps the same hours as before the accident and drives to a from work;
- It was noted from Dr Fine's report, applicant's psychiatrist that the applicant continues to perform occupationally on the same functional level as pre-accident.
- The applicant's injuries do not qualify as serious injury under the narrative test.
- The tribunal confirms the rejection.

3.5 **SIMELANE, PATRICK MZWAKHILE**

Simelane is 27 years old, lives in a shack with his wife with no electricity and no toilet. They collect water about 5 km away. Before the accident he was working as a driver's assistant, loading and offloading goods from the truck. He played soccer and enjoyed running. Post-accident, he is incapable of coping with strenuous work and his injuries preclude him from playing soccer and running.

A. **Medical Evidence Before Tribunal**

RAF did not instruct any medico legal experts nor file any experts reports. Only Simelane's expert's reports were before the Tribunal.

Mr Simelane's Medico-legal Reports:

3.5.1 **Dr Barlin, orthopaedic surgeon** stated in his report that:

- He sustained a fracture of the left acetabulum (hip) and a laceration over the dorsum of the left hand and writ exposing the extensor tendons.

- The left acetabulum has united fully leaving no radiological evidence of injury or post-traumatic osteoarthritis but he continues to suffer left groin pain and restricted painful left hip movements. If arthritis develops, he may require a total hip replacement;
- His work capacity has been curtailed by his injuries;
- The laceration on his hand has healed with a keloid scar tethered to the underlying tendons. He would benefit from a Tenelosis.

3.5.2 **Ms Marks, occupational therapist** stated in her report that:

- Pain prevents him from lifting heavy objects and walking long distances;
- He would not be able to cope with strenuous work or work that requires long hours of standing and is best suited to light work.

3.5.3 **Ms van Zyl, industrial psychologist** stated in her report that:

- Simelane has probably been rendered unemployable in any capacity in the formal and informal sectors due to the sequelae of his injuries and has therefore suffered a total loss of earnings.

B. **The Tribunal Decision and Reason Thereof**

The appeal in this matter was dealt with on 25 November 2011 and the Tribunal resolved that:

- In the applicant's RAF 4 Form no rating was awarded for his WPI.

- The x-ray report by Dr Lurie dated 28 January 2011 of Simelane's pelvis and both hips shows no pathology;
- Dr Barlin's report stated that the undisplaced fracture of the left acetepulum had united fully, with no radiological evidence of injury or of post-traumatic osteo-arthritis.
- Applicant's occupational therapist noted that the applicant would benefit from only 4 hours of occupational therapy.
- The tribunal does not find that this is a serious injury.

3.6 **CHALA, SITHEMBISO SYDWELL**

Chala is a single, 48 year old male whose girlfriend left him after the accident. At the time of the accident he was working in a tavern as a barman and a general worker. He had to lift and carry cases of alcohol and stand for lengthy periods. He lost his job as a result of the accident. Chala has matriculated and completed an Adult Basic Education and Training certificate. He completed a Security Grade D Certificate.

A. **Medical Evidence Before The Tribunal**

Both RAF and Mr Chala submitted medico legal reports to the Tribunal. Hospital records were also before the Tribunal.

Mr Chala's Medico-legal Reports:

3.6.1 **Dr Barlin, orthopaedic surgeon** stated in his report that:

- He sustained bi-malleolar weber C fractures of the left medial and lateral malleoli (ankle). He was treated with an internal fixation of the medial

malleolus with a cancellous screw and the lateral malleolus with a plate and screw. A diastasis screw was inserted across the distal tibiofibular joint;

- He presents with a marked left antalgic gait and a fixed flexion deformity of 10 degrees;
- He requires removal of the internal fixation followed by intensive physiotherapy and analgesics and anti inflammatories;
- He is unlikely to regain full mobility of the ankle and subtalar joints.

3.6.2 **Ms Marks, occupational therapist** stated in her report that:

- Chala walks with a severe limp, has severely reduced left ankle movements and has difficulty getting up to an extended position;
- He is unable to control his bladder, is no longer able to get an erection and his sleep has been adversely affected;
- He was unable to complete several normal walking, balancing and squatting drills and still suffers ongoing pain and is only suited to light sedentary work.

RAF Medico-legal Reports:

3.6.3 **Dr Barnes, orthopaedic surgeon** stated in his report that:

•There is some limitation of active movement of Chala's left ankle joint with features consistent with early post-traumatic osteoarthritis of the left ankle joint and early degeneration. He suffered "functional impairment" of his left ankle joint;

- He will require further conservative treatment and future surgery to improve the symptoms of the joint ankle;
- There is a 20% chance that he may require an arthrodesis fusion of his left ankle joint in his lifetime.

3.6.4 **Ms Lowane-Mayayise, industrial psychologist** stated in her report that:

- Chala walks with a 'visible limp';
- The accident had a negative impact on his level of physiological functioning and he is only suited to light to sedentary work.

B. **The Tribunal's Decision and Reasons Thereof**

The appeal in this matter was dealt with on 31 January 2012 and the Tribunal resolved that:

- Both Dr Barlin and Dr Barnes agreed in their joint minutes that Chala had suffered a 12% WPI and based on the 12% WPI, the Tribunal believes that Chala has not suffered a 'serious injury'.

- The Tribunal believes that no narrative test is available and is 'curious' that "a matter has been brought to the attention of the Tribunal as there are no indications by experts or documentation at hand that [this matter] should be considered as serious injury";
- Applicant was still able to secure employment. The chances of him being able to do so, were dependant on his literacy abilities and physiological health, none of which were factors related to the accident;
- The Tribunal upheld the rejection.

3.7 **NHABANGA, FERNANDO REGINALDO**

Nhabanga is a 41 year old who grew up in Mozambique and has lived in South Africa since 1989. He lives with his partner and two children in a shack. Before the accident he was employed successively as a waiter, general labourer and machine operator. He resumed his employment as a machine operator a year after the accident and continues to be employed in this capacity.

A. **Medical Evidence Before The Tribunal**

RAF filed no medical reports. The only medico legal reports and hospital records before the Tribunal were from the applicant.

Mr Nhabanga's Medico-Legal Reports:

3.7.1 **Dr Barlin, orthopaedic surgeon** stated in his report that:

- Mr Nhabanga sustained Grade III compound segmental fracture of the left tibia and fibula and a fracture of the right lateral malleolus;
- The fractures of the left tibia and fibula were treated initially in an external fixator and then in a variety of casts and have united fully with very little deformity. The fracture of the right lateral malleolus was treated in a below-knee cast and has united fully in an almost anatomical position;
- He continues to experience pain in the left lower leg on exertion. He is now able to work seated only and will be able to continue working until retirement age.

3.7.2 **Ms Marks, occupational therapist** stated in her report that:

- Mr Nhabanga suffers pain in his right shoulder with any movement or activity;
- He cannot walk any distance without the aid of a crutch as his right leg is not strong and it is painful;
- He would not be able to cope with strenuous work that requires long hours of standing and is better suited to medium work.

3.7.3 **Ms van Zyl, industrial psychologist** stated that:

- Nhabanga has probably been rendered unemployable as an unskilled worker due to his injuries;

- His continued employment at Davey Industrial Equipment is probably sympathetic in nature.

B. **The Tribunal's Decision and Reasons Thereof**

The appeal in this matter was dealt with on 25 November 2011 and the Tribunal resolved that:

- The applicant was awarded a WPI rating of only 1%;
- The Tribunal is unanimous that this patient does not qualify as a serious injury under the narrative test;
- Dr Barlin applicant's orthopaedic surgeon observed, almost two years after the accident that the fractures had united fully. Applicant was unlikely to require further surgery and it was noted that he would be able to continue working until retirement age.
- Dr Baude completed the RAF 4 Form without physical examination of the patient; and the RAF 4 Form was completed by Ms Marks who is not a medical practitioner;
- The panel rejects the application and states that this patient does not qualify as a serious injury under the Narrative test.

3.8 **NTSHOYI, THETHISWA**

Ntshoyi is 30 years old, single and has a boyfriend. She has four children and lives with her mother and two of her children in a shack. Before the accident Ms

Ntshoyi was self-employed, selling public phone airtime. At the time of the accident she was working on a three month contract as a machine operator, making hair pieces. Before the accident she was diagnosed with AIDS and is on ARVS that have affected her breathing.

A. **Medical Evidence Before The Tribunal**

RAF filed no medical reports. The only medico legal reports and hospital records before the Tribunal were from the applicant.

Ms Ntshoyi's Medico-legal Report:

3.8.1 **Dr White, plastic surgeon** stated in his report that Ntshoyi has a large unsightly, widened cross-hatched scar of the medical aspect of the left knee and thigh. The scarring can be improved by surgery.

3.8.2 **Dr Barlin, orthopaedic surgeon** stated in his report that:

- Ntshoyi sustained a severe deep laceration over the left knee with a large effusion of the joint. Her wound was sutured and a back slap was applied to her leg. She used crutches for about a month before her stitches were removed. The back slap was removed a week later.
- She suffers almost constant left anterior knee pain affecting her sleep and aggravated by sitting with the knee flexed, standing for long periods and walking long distances.

- There is a small chance that she may require an arthroscopic shaving of the patella articular surface.

3.8.3 **Ms Marks, occupational therapist** stated in her report that:

- Ntshoyi's left knee movements are extremely painful. There is a crepitus behind the knee;
- Her pain is strong at times. She is capable only of light work and suffers mild mood disturbances.

B. **The Tribunal's Decision and Reasons Thereof**

The appeal in this matter was dealt with on 25 November 2011 and the Tribunal resolved that:

- Annexure "C" to the RAF 4 Form did not indicate a rating for her WPI, this is an improper and invalid procedure;
- The Tribunal is unanimous that Ntshoyi does not qualify under the narrative test;
- According to the hospital records, the applicant sustained a severe deep laceration over her left knee with a large effusion of the joint. However, the x-ray reports taken at the hospital showed no fracture;
- The applicant's injury was treatable and could be improved with further treatment;

- Dr Braude did not examine the patient which nullifies the patient's validity of the RAF 4 form and furthermore he is outside his scope of expertise when he qualifies a scar that he had not seen as a serious disfigurement.

3.9 **MAHLALELA, THULANI MARTIN**

Mahlalela is 26 years old and single and lives alone in a hostel. Before the accident he was in good health, played soccer socially and worked as a semi-skilled electrician. He lost his job as a result of the injuries he sustained. He completed Grade 11.

A. **Medical Evidence Before The Tribunal**

RAF filed no medical reports. The only medico legal reports and hospital records before the Tribunal were from Mahlalela.

Mr Mahlalela's Medico-legal Report:

3.9.1 **Dr Barlin, orthopaedic surgeon** stated in his report that:

- Mahlalela sustained a midshaft fracture of the left femur. There is 'persistent deformity' of his left leg.
- There is wasting of the left thigh and valgus deformity of the left femur;
- The treatment he received was the application of skin traction to the leg, and an open reduction and internal fixation of the femoral fracture employing two Enders Nails inserted retrograde and two Cerclage wires.
- Mahlalela used crutches for a full year following this procedure. The fracture is partially united with 20 degrees valgus and 20% external rotation deformities.

3.9.2 **Ms Marks, occupational therapist** stated in her report that:

- Mahlalela can no longer run, can only walk for short distances, cannot play soccer as he used to and cannot crouch with his left leg;
- His tested work performance is below open labour market standards. He can currently only do light duties;
- His symptoms are ongoing and there has been no significant improvement which in all probability means that even though medical treatment would alleviate some of his symptoms, he is always likely to have residual symptoms for the rest of his life.

B. **The Tribunal's Decision and Reasons Thereof**

The appeal in this matter was dealt with on 13 January 2012 and the Tribunal resolved that:

- Dr Braude did not examine Mahlalela himself and left an Occupational Therapist, Romy Marks to complete annexures;
- The applicant had been awarded a WPI rating of 5%;
- Referring to table 16.3, the Tribunal allows the maximum of Whole Person Impairment in class 3 of 17%;
- X-rays of Dr Spiegel showed that there were no obvious and gross fractures demonstrated in the distal left tibia and distal left fibia.
- The Tribunal supports the fact that Mahlalela's condition will be improved by corrective surgery;

- The Applicant was expected to work until retirement age; and was still working in his previous job with the same company;
- Mahlalela's injuries do not qualify as serious under the narrative test.

[4] **Grounds of Review**

Applicants' counsel [4] submitted that the grounds of review to all nine of these applications are common and that:

4.1 The decisions were so unreasonable that a reasonable person could not have made that decision;[5]

4.2 The Tribunal failed to apply its mind in that it did not properly or fairly have regard to the Medico-legal reports submitted by the Applicants and in certain cases did not consider them at all;

4.3 The decisions were procedurally unfair, including each procedural decision not to investigate the matters by call for further reports, assessments or submissions and not to examine the Applicants before making its decision;

4.3.1 These procedural decisions precluded the Applicants' cases being fully and fairly considered by the Tribunal;

4.3.2 The Tribunal's conduct in reading all of the decisions was an example of a high-handed or mistaken action which has prevented the aggrieved party from having his case fully and fairly determined.

[4] Advocate Ancer SC and Advocate Goodenough.
[5] As per PAJA 56(2)(h).

4.4 Irrelevant considerations were taken into account and relevant considerations were not considered;

4.5 The decisions were made arbitrarily or capriciously. Nowhere is it evident on what basis the Tribunal elected to accept one medical opinion and to reject a conflicting medical opinion;

4.6 The decisions are not rationally connected to the information before the Tribunal or the reasons given therefor by the Tribunal;

4.7 The decisions were influenced by an error of law regarding whether the defective nature of the SIA was relevant to the question to be determined by the Tribunal, namely "were the injuries serious."

[5] Applicants' counsel submits that in the case of **Ms Khumalo,** the appropriate order would be in terms of section 8(1)(c)(i) of PAJA whereby this Honourable Court will remit the matter for reconsideration by the Tribunal, with direction that;

> 5.1 The Tribunal is to investigate the matter further by exercising one or more or all of its powers set out in Regulation 3(11) under the RAF Act; and
>
> 5.2 The Tribunal is to call for an examination by the gynaecologist (at RAF's expense) of Ms Khumalo to establish whether Ms Khumalo's pelvic injuries and *sequelae* are serious, with specific reference also to her inability to give birth naturally and her inability to have sex without pain.

[6] In all the seven remaining cases in the present application, Applicants' counsel submits that the appropriate order would be in terms of section 8(1)(c)(ii)(aa) of PAJA

whereby this court will set aside the Tribunal's decision and will substitute the Tribunal's decision with a decision by this court to the effect that the Applicants' injuries are declared to be serious and Applicants' are declared entitled to damages for non-pecuniary loss as envisaged in section 17 of the RAF Act. It is the contention of the Applicants' counsel that the only decision that a reasonable Tribunal could have made was to find the Applicants' injuries to be serious.

[7] An alternative order is sought regarding **Ms Ntshoyi**. Applicants' counsel submits that in the event that this Honourable Court is not inclined to substitute the order as prayed above, in the alternative the Court is asked to make an order in terms of section 8(1)(c)(i) of PAJA whereby this court will set aside the Tribunals decisions and remit the matter for reconsideration by the Tribunal, with directions that:

> 7.1 The Tribunal is to investigate the matter further by exercising one or more or all of its powers as set out in Regulation 3(11) under RAF Act, and
>
> 7.2 The tribunal is to call for an examination by a plastic surgeon (at RAF expense) of Ms Ntshoyi to establish whether Ms Ntshoyi's injuries and *sequelae* are serious.

The Legal Position

[8]. A "serious injury" is defined by the RAF Act and the 2008 Road Accident Regulation: Regulation 3(1)(ii)(iii) provides:

"(ii) If the injury resulted in 30% more impairment of the Whole Person as provided in the AMA Guides, the injury shall be assessed as serious.

(iii) an injury which does not result in 30% or more impairment of the whole person may only be assessed as serious if that injury:

(aa) resulted in a serious long term impairment or loss of body function; and if that

(bb) constitutes serious permanent disfigurement; and if that

(cc)....."

[9] The applicants are subject to the new regime as they were involved in motor accidents after 1 August 2008. They can only claim for general damages if they had suffered a "serious injury" in terms of section 17(1) and (1A) of the Act and the Regulations.

[10] Section 17(1)(A) of the Act provides:

"17. Liability of Fund and agents –

(1) The Fund or an agent shall-

(a) Subject to this Act, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established;

(b) Subject to any regulation made under section 26, in the case of a claim for compensation under this section

arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established, be obliged to compensate any person (third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person, caused by or arising from the driving of a motor vehicle by any person at any place within the republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee: Provided that the obligation of the Fund to compensate a third party ***for non-pecuniary loss shall be limited to compensation for a serious injury as contemplated in subsection (1A) and shall be paid by way of a lump sum.***

(1A) (a) Assessment of a serious injury shall be based on a prescribed method adopted after consultation with medical service providers and shall be reasonable in ensuring that injuries are assessed in relation to the circumstances of the third party.

(c) The assessment shall be carried out by a medical practioner registered as such under the Health Professions Act, 1974."

[11] The RAF is thus only required to compensate the applicants for non-pecuniary loss if their claims are supported by a serious injury report and if the RAF is satisfied that the injury has been correctly assessed as serious. In the event that it is found to be a serious injury, the applicants will qualify to claim general damages.

The purpose of the current scheme, due to the amendments to the Road Accident Fund Act and Regulations in 2008 is to implement the recommendations of the **Satchwell Commission where it was found in the Commission Report, Volume 2 page 1150, paragraph 36.186** that;

"It is essential that bold steps be taken to ensure that the proposed road accident benefit scheme is relieved of the burden of paying compensation or benefits which are neither financially or normally justifiable".

[12] In the guideline published by the health Professions Council of South Africa Appeal Tribunals in the **South African Medical Journal as Health Professions Council of South Africa Serious Injuries Narrative Test Guideline SAMJ Vol 103 No 10 (2013)** H. J. Edeling set out which criteria will be considered to decide whether injuries have resulted in significant life changing sequelae:

"In determining changes in individual circumstances the following individual circumstances should be taken into consideration:

- Basic and advanced activities of daily living (conveniently set out in the AMA Guides 4, paper 3-4);
- Personal amenities such as sporting and other recreational activities;
- Life roles such as parent, child, sibling, spouse, father, friend, breadwinner and mental supervisor, caregiver etc;
- Independence or degree of dependency;
- Educational status and capacity;
- Employment status and capacity."

[13] The findings by the Tribunal in all the applications were that the applicants had not suffered serious injuries. It is common cause that the decision of the Tribunal is a decision governed by PAJA. In **Road Accident Fund v Duma and Three Similar Cases 2013(6) SA 9 (SCA)** at paragraph 19e the Supreme Court of Appeal decided:

"Stated somewhat differently, in order for the court to consider a claim for general damages, ***the third party must satisfy the fund, not the court, that his or her injury was serious.*** *Appreciation of this basic principle, I think, leads one to the following conclusions:*

(a) Since the Fund is an organ of state as defined in Section 239 of the Constitution and is performing a public function in terms of legislation, its decision in terms of Regulation 3(3)(c) and 3(3)(d), whether or not the RAF 4 form correctly assessed the claimant's injury as 'serious' constitutes 'administrative action' as contemplated by the Promotion of Administrative Justice Act 3 of 2000 (PAJA). (A 'decision is defined in PAJA to include the

making of a determination). The position is therefore governed by the provision of PAJA.

(b) If the Fund should fail to take a decision within reasonable time, the plaintiff's remedy is under PAJA.

(c) If the Fund should take a decision against the plaintiff, that decision cannot be ignored simply because it was not taken within reasonable time or because no legal or medical basis is provided for the decision, or because the court does not agree with the reasons given.

(d) A decision by the Fund is subject to an internal administrative appeal to an appeal tribunal.

(e) Neither the decision of the Fund nor the decision of the appeal tribunal is subject to an appeal to the court. The court's control over these decisions is by means of the review proceedings under PAJA."

[14] The criteria for assessing the seriousness of an injury are set out in Regulation 3(1)(b)(ii) and (iii) as set out above. In the present applications for review, the applicants do not rely on the WPI test but on the narrative test. To determine whether injuries are serious according to the narrative test requires an expert opinion to determine whether an injury is serious or permanent.

[15] Regulation 3(11) provides:

"(11) The appeal tribunal shall have the following powers:

(a) Direct that the third party submit himself or herself, at the cost of the Fund or an agent, to a further assessment to ascertain whether the injury is serious, in

terms of the method set out in these Regulations, by a medical practitioner designated by the appeal tribunal.

(b) Direct, on no less than five days written notice, that the third party present himself or herself in person to the appeal tribunal at a place and time indicated in the said notice and examine the third party's injury and assess whether the injury is serious in terms of the method set out in these Regulations.

(c) Direct that further medical reports be obtained and placed before the appeal tribunal by one or more of the parties.

(d) Direct that relevant pre- and post-accident medical, health and treatment records pertaining to the third party be obtained and made available to the appeal tribunal.

(e) Direct that further submissions be made by one or more of the parties and stipulate the time frame within which such further submissions must be placed before the appeal tribunal.

(f) Refuse to decide a dispute until a party has complied with any direction in paragraphs (a) to (e) above.

(g) Determine whether in its majority view the injury concerned is serious in terms of the method set out in these Regulations.

(h) Confirm the assessment of the medical practitioner or substitute its own assessment for the disputed assessment performed by the medical practitioner, if the majority of the members of the appeal tribunal consider it appropriate to substitute.

(i) Confirm the rejection of the serious injury assessment report by the Fund or an agent or accept the report, if the majority of the members of the appeal tribunal consider it appropriate to accept the serious injury assessment report."

[16] The guarantee for reasonable and fair administrative action is found in Section 33(1) of the Constitution. For the purposes of implementation and realisation of this guarantee, Section 33(3) provides that a national legislation must be enacted to give effect to this right and provide for the review of administrative action by a Court.

[17] The national legislation is PAJA, which came into effect on 30 November 2000. In terms of Section 6 thereof, to the extent relevant, it provides that a Court has the power to judicially review an administrative action if:

17.1 The action itself is not rationally connected to:

17.1.1 The purpose for which it was taken;

17.1.2 The purpose of the empowering provision;

17.1.3 The information before the administrator;

17.1.4 The reasons given for it by the administrator (Section 6(2)(f)(ii));

17.2 the exercise of the power or the performance of the function authorised by the empowering provision, in pursuance of which the administrative action was purportedly taken, is so unreasonable that no reasonable person could have so exercised the power or performed the function (Section 6(2)(h)).

[18] Counsel for the HPCSA and the Appeal Tribunal[6] ("HPCSA counsel) submitted that insofar as the ground of unreasonableness is concerned, the legal principle was reiterated by the Supreme Court of Appeal, per Howie P, in **Trinity Broadcasting (Ciskei) v ICASA 2004 (3) SA 346 (SCA) at paragraph 20 as follows**;

"In requiring reasonable administrative action, the Constitution does not, in my view, intend that such action must, in review proceedings, be tested against the reasonableness of the merits of the action in the same way as in an appeal. In other words, it is not required that the action must be substantively reasonable, in that sense, in order to withstand review. Apart from that being too high a threshold, it would mean that all administrative action would be liable to correction on review if objectively assessed as substantively unreasonable: cf Bel Porto School Governing Body and Others v Premier, Western Cape & Another. As made clear in Bel Porto, the review threshold is rationality. Again, the test is an objective one... Rationality is, as have been shown above, one of the criteria now laid down in Section 6(2)(f)(ii) of the Promotion of Administrative Justice Act. Reasonableness can, of course, be a relevant factor, but only when the question is whether the action is so unreasonable that no reasonable person would have resorted to it (see Section 6(2)(h)).

[19] Counsel for HPCSA contends that the principles above apply with equal force to the dispute in these proceedings and that they are binding on this Court. I agree with HPCSA Counsel that it is not the applicants' case that the Tribunal's decision, in each case, is so unreasonable that no reasonable person would have resorted to it. The applicants only allege that the decision is unreasonable.

[6] Advocate N H. Maenetje SC and Advocate P G. Seleka.

[20] As for rationality, the HPCSA's Counsel referred the Court to the **Pharmaceutical** case[7] wherein the Constitutional Court per Chalkalson P, held that;

> *"Decisions [of administrative bodies] must be rationally related to the purpose for which the power was given, otherwise they are in effect arbitrary and inconsistent with this requirement."*

HPCSA Counsel also relied on the **Bato Star Fishing (Pty) LTD v Minister of Environmental Affairs and Others**[8] case wherein O' Regan J, as she then was, emphasised that;

> *"Although the review functions of the Court now have a substantive as well as a procedural ingredient, the distinction between appeals and reviews continues to be significant. The Court should take care not to usurp the functions of administrative agencies. Its task is to ensure that the decisions taken by administrative agencies fall within the bounds of reasonableness as required by the Constitution."*

[21] Before I deal with each individual applicant, I would first like to address some of the applicants' grounds of review.

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[7] Pharmaceutical Manufacturers Association of south Africa & Another: In re: Ex parte President of the Republic of South Africa & Others 2000 (2) SA 674 (CC) at para 85.
[8] 2004 (4) SA 490 (CC) para 45.

Reasonableness and Rationality of the Impugned Decisions

[22] The question before the Court is, did the Tribunal act reasonably when finding that the injuries sustained by the applicants were not serious as provided for in the Act and Regulations?

To determine reasonableness the Court has to consider the tribunal's decision with reference to the record of the proceedings. This decision should not be measured by the decision the Court would or could make, or to require that it must be perfect. The Court cannot substitute its own views on the merits of the applicants' appeal to the tribunal unless the Court finds that the tribunal did not act reasonably and that the findings of the Tribunals were not rational under the circumstances.

[23] I am satisfied that the Tribunal in each case, considered all the information submitted by the applicants and performed its function to determine the seriousness of the injury defined. The Tribunal supplied the reasons for its findings in the answering affidavit. The Tribunal's decisions were in the majority of cases, based on the medical reports submitted by the applicants.

Irrelevant Considerations

[24] The Tribunal considered each case on its merits, despite the fact that in some cases the RAF 4 Forms and the SIA were defective in that the forms were not completed by a medical practitioner as required by Section 17(1A)(b) of the RAF Act. In some cases, the applicant was not examined by the medical practitioner who completed the RAF 4 Form. It is therefore in my opinion, incorrect that the Tribunal was influenced by an error of law and fixated its mind on a defective form.

Procedurally Unfair

[25] According to the applicants, the tribunal should have investigated the appeal by applying its powers in Regulation 3(11), that is, to call for more submissions and reports or for further physical examination of the applicants. The applicants state that the failure by the Tribunal is irrational and procedurally unfair.

[26] It must be stressed that there is no obligation on the Tribunal to request additional information, but that it can be requested should the Tribunal require it. The tribunal did not deem it necessary to call for further investigations as the experts were satisfied that they could reach a decision with the information available to them. I cannot find that the Tribunal's decisions were procedurally unfair and that the applicants' cases were not fully and fairly considered. The submission that the Tribunal acted in an unprocedural manner is dismissed.

Panel of Experts

[28] I have to agree with counsel for HPCSA that the Tribunal is constituted by a panel of experts in the medical field and that they are more suited to make decisions as to the seriousness or otherwise of the injuries. The court should show deference to the tribunal of medical experts and recognise its specialised skills in relation to matters that come before it. (See **Roux v Health Professions Council of SA [2012] 1 a11 SA 49 (SCA) para 22**).

Under-resourced Public Health Establishments

[29] The applicants' counsel challenged that the Tribunal failed to have regard to each applicant's access or lack thereof to effective medical treatment in public health establishments. In my opinion this is not a relevant consideration to a determination as to whether or not the injury is serious. The purpose of the Tribunal is to determine the seriousness or otherwise of the alleged injury and, to the extent relevant, to do so in relation to the applicant's activities of daily living.

[30] In the event that the reviews succeed, the applicants seek an order of substitution, in terms of which the Court would take the decision in place of the Tribunal. Section 8(1)(c)(ii)(aa) of PAJA does permit the Court to couple an order reviewing and setting aside a decision with an order of substitution. However, it makes it clear that this may only be done in "exceptional cases". I have to agree with RAF counsel[9] that in the present case, the applicants have shown no such exceptional circumstances.

[31] Where a court reviews and set aside an administrative decision, *"remittal is almost always the prudent and proper course"*, as the SCA has made it clear in **Gauteng Gambling Board v Silver Star Development and Others**:[10]

"An administrative functionary that is vested by Statute with the power to consider and approve or reject an application is generally best equipped by the variety of its composition, by experience, and its access to sources of relevant information and expertise to make the right decision. The court typically has none of these advantages

[9] Advocate Steven Budlender, Reza Latib and Lebogang Kutumela.
[10] 2005 (4) SA 67 (SCA) at para 29.

and is required to recognise its own limitations... That is why remittal is almost always the prudent and proper course".

In my opinion, the applicants have laid no proper basis for a departure from this principle.

Costs

[32] Applicants' counsel submits that in the case where the review application is not granted, the court should award costs against RAF in favour of the applicant. The basis of this submission is as follows:

32.1 It is reasonable for each applicant to bring his or her review application;

32.2 The law regarding review of the Tribunal's decisions is new and as yet there is no body of law clearly setting out the Tribunal's duties and the rights of an injured person whose case has been rejected by the Tribunal. In the circumstances, no applicant should be penalised for having brought his or her review application;

32.3 The subject matter of the reviews is a matter of public importance, irrespective of the outcome of each individual review application.

[33] The award of costs is a matter wholly within the discretion of the court but this is a judicial discretion and must be exercised on grounds upon which a reasonable person could have come to the conclusion arrived at. Even the general rule *viz* that costs follow the event, is subject to the overriding principle that the court has a judicial discretion in awarding costs.

My view is that following the ordinary rule that costs should follow the result will bring about considerable prejudice to the applicants. In the circumstances, my view is that each party should pay its own costs in the event where the review application is not granted.

[34] Having considered each applicant's case the following order is made:

34.1 Buthelezi, Sizwe Alois

By agreement between the parties, the matter was settled and the following order was made:

i) The decision of the Appeal Tribunal is reviewed and set aside and referred back to the Appeal Tribunal, which shall be different from the Tribunal of the first instance, and reconsidered for determination;

ii) The matter is to be reconsidered and the decision of the Appeal Tribunal conveyed to the Applicant within 30 days of the granting of this order, or such further extension as may be agreed between parties;

iii) The sixth Respondent is to pay the Applicant costs, including the costs of the application which costs are to include the costs consequent upon the employment of two counsels which costs are to be taxed or agreed.

34.2 Nzimande, Kenneth Colane

(i) The applicant has failed to make out a case that the finding by the Tribunal should be reviewed and set aside.

(ii) The application is dismissed.

(iii) Each party to pay its own costs..

34.3 Khumalo, Linda Pearl

(i) The decision of the Appeal Tribunal is reviewed and set aside and referred back to the Appeal Tribunal, which shall be different from the Tribunal of the first instance, and reconsidered for determination;

(ii) The Tribunal is to investigate the matter further by exercising one or more of its powers set out in Regulation 3(11) under the RAF Act; and

(iii) The Tribunal is to call for an examination by the gynaecologist (at RAF's expense) of Ms Khumalo to establish whether Ms Khumalo's pelvic injuries and sequelae are serious, with specific reference also to her inability to give birth naturally and her inability to have sex without pain.

(iv) The RAF is to pay the applicant's costs of the application which costs are to include the costs consequent upon the employment of two counsels which costs are to be taxed or agreed.

34.4 Mavecua, Paulo Alfreu

(i) The applicant has failed to make out a case that the findings by the Tribunal should be reviewed and set aside.

(ii) The application is dismissed.

(iii) Each party to pay its own costs.

34.5 Simelane, Patrick Mzwakile

(i) The applicant has failed to make out a case that the finding by the Tribunal should be reviewed and set aside.

(ii) The application is dismissed.

(iii) Each party to pay its own costs.

34.6 Chala, Sithembiso Sydwell

(i) The decision of the Tribunal is reviewed and set aside and referred back to the Appeal Tribunal, which shall be different from the Tribunal of the first instance, and reconsidered for determination;

(ii) The Tribunal is to investigate the matter further by exercising one or more of its powers set out was in Regulation 3(11) under the RAF Act;

(iii)The matter is to be reconsidered and the decision of the Appeal Tribunal conveyed to the applicant within 30 days of the granting of this order, or such further extension as may be agreed between the parties;

(iv)The RAF is to pay the applicant's cost of the application which costs to include the costs consequent upon the employment of two counsels which costs are to be taxed or agreed.

34.7 Nhabanga, Fernando Reginaldo

(i) The applicant has failed to make out a case that the finding by the tribunal should be reviewed and set aside.

(ii) The application is dismissed.

(iii) Each party to pay its own costs.

34.8 Ntshoyi, Thethiswa

(i) The applicant has failed to make out a case that the finding by the Tribunal should be reviewed and set aside.

(ii) The application is dismissed.

(iii) Each party to pay its own costs.

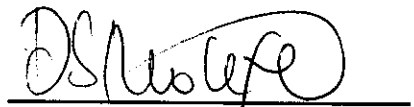
34.9 Mahlalela, Thulani Martin

(i) The decision of the Tribunal is reviewed and set aside and referred back to the Appeal Tribunal, which shall be different from the Tribunal of the first instance and reconsidered for determination;

(ii) The Tribunal is to investigate the matter further by exercising one or more of its powers set out in regulation 3(11) under the RAF Act;

(iii) The matter is to be reconsidered and the decision of the Appeal Tribunal conveyed to the applicant within 30 days of the granting of this order, or such further extension as may be agreed between the parties.

(iv)The RAF is to pay the applicant's cost of the application which costs are to include the costs consequent upon the employment of two counsels which costs are to be taxed or agreed.



D. S. MOLEFE

JUDGE OF THE HIGH COURT

For the Applicant	: Advocate Ancer SC and Advocate Goodenough
Instructed by	: Norman Berger & Partners INC
For the 1st and 2nd Respondent	: Advocate N H. Maenetje SC and Advocate P G. Seleka
Instructed by	: Gildenhuys Lessing Malatji Inc.
For the 3rd Respondent:	: Advocate Steven Budlender, Reza Latib and Lebogang Kutumela
Instructed by	: Lindsay Keller
Date of Judgment	: 29 August 2014