

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 2023-034357

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

DATE: 4/12/2024

SIGNATURE:

In the matter between:

KN M[...] OBO PE M[...]

Applicant

and

THE ROAD ACCIDENT FUND

Respondent

JUDGMENT

BASSON, J

(1J) On 6 November 2024 this court granted an order by default declaring that:

"The Applicant's claim was duly lodged with the Respondent on 8 February 2023 and that it substantially complies with the provisions of the Road Accident Fund, Act 56 of 1996 ['RAF'], as amended".

[2] On 11 November 2024 the respondent applied for reasons in terms of Rule 49(1)(c). Although I am of the view that this court is not obliged to give reasons where

an order was granted by default, I have nonetheless decided to give brief reasons for my order.¹

Default proceedings on 6 November 2024

[3] When the matter was heard on 6 November 2024, there was no appearance on behalf of the respondent - the Road Accident Fund ("RAF") - and the matter proceeded by default. The audit report on Caselines shows that a Notice of Intention to Defend was filed on 6 November 2024 but only at 10H26 which was well after the matter had already been dealt with. Despite this, there was, as already indicated, no appearance on behalf of the defendant.

Substantial compliance with the Act

[4] An overview of case law shows that all that is required is that there is substantive compliance with the Road Accident Fund Act 56 of 1996 ("the Act"). This was confirmed as follows in *Road Accident Fund v Busuku*:²

[6] Before I turn to consider the legislative framework applicable to the special plea it is necessary to reflect on the principles relating to the interpretation of the Act. The principles generally applicable to the interpretation of documents are well settled and have been repeatedly restated in this court. In considering the context in which the provisions appear and the purpose to which they are directed it must be recognised that the Act constitutes social legislation and its primary concern is to give the greatest possible protection to persons who have suffered loss through negligence or through unlawful acts on the part of the driver or owner of a motor vehicle. For this reason the provisions of the Act must be interpreted as extensively as possible in favour of third parties in order to afford them the widest possible protection. On the other hand, courts should be alive to the fact that the Fund relies entirely on the fiscus for its funding and they should be astute to protect it against illegitimate or

¹ *Road Accident Fund v Puleng Martha Matekoane obo RM Matekoane*. Case no 18768/2020.#1 October 2024. Noth Gauteng High Court.

² 2023 (4) SA 507 (SCA)

fraudulent claims. In the current matter there has, however, been no suggestion of any illegitimate or fraudulent claim." ³

[5] Similarly in *Pithey v Road Accident Fund*,⁴ the Supreme Court of Appeal held as follows:

[6]

"It has been held in a long line of cases⁵ that the requirement relating to the submission of the claim form is peremptory and that the prescribed requirements concerning the completeness of the form are directory, meaning that substantial compliance with such requirements suffices. As to the latter requirement this court in *SA Eagle Insurance Co Limited v Pretorius*" reiterated that the test for substantial compliance is an objective one."

Submission of the claim

[7] The RAF claim was brought by the biological mother of the child. The minor was involved in an accident on Sunday, 19 September 2021. At the time, the minor was a pedestrian. The minor sustained bodily injuries as a result of the accident. According to the papers, the minor is still unable to walk properly. Having regard to the papers, I am of the view that the minor has a valid claim against the RAF for at least some of the injuries sustained during the accident

Section 24 of the Act

³ See also: *Aetna Insurance Co v Minister of Justice* 1960 (3) SA 273 (A) 286E-F: "The intention of the Legislature was, clearly, to give the greatest possible protection, by way of insurance, to persons who have suffered loss through a negligent or unlawful act on the part of the driver or owner of a motor vehicle. That this was the intention is shown beyond doubt by sec. 11 (1) of the Act which I have quoted above." See also *Pithey v Road Accident Fund* 2014 (4) SA 112 (SCA) para 18. *Commercial Union Assurance Co Ltd v Clarke* 1972 (3) SA 508 (A) at 517F.

⁴ 2014 (4) SA 112 (SCA) at para 19.

⁵ *Nkisimane v Santam Insurance* 1978 2 SA 430 A; *Vilikazi v Malevu* 1979 (1) SA 737 (N); *Zwane v Commercial Union Assurance* 1975 4 SA 492 (W); *Lampert-Zakiewics v Marine & Trade* 1975 4 SA 597 C; *Kruger v Rondalia Versekeringskorporasie* 1976 2 SA 504 (T); *Badenhorst v Sentrakoop Assuransie* 1977 2 SA 788 (T); *Mogape v Netherland Insurance* 1978 4 SA 609 w.; *Shield v Booysen* 1979 3 SA 953 (A); *Evins v Shield* 1980 2 SA 814 (A); *Davids v Protea Assuransie* 1980 4 SA 340 (C)

[8] In terms of section 24 of the Act, a claimant must lodge a claim on the prescribed RAF1 form with the RAF. The RAF has nominated a business address as a place of lodging such claims locally. The RAF then has 60 days within to object to the validity of any such claim lodged.

[9] The attorney, on behalf of the plaintiff, completed the RAF1 claim form and on 14 December 2022, the claim was sent by registered post to the RAF. In terms of section 24(1)(b) of the Act, a claim may be lodged by registered mail. In the letter dated 9 December 2022 and addressed to the RAF when the claim was lodged, the attorney specifically recorded all the documents that accompanied the lodgement. One of the documents listed is the hospital records.

[10] In January 2023, the RAF returned the entire bundle of the lodgement documents to the attorney. In the accompanying letter, the RAF stated that the lodgement of the claim does not meet the requirements for substantial compliance because certain documents were outstanding. Because there was not, according to the RAF, a valid lodgement, prescription has not been interrupted. According to the applicant, the only documents recorded in the letter as missing and which are factually necessary to meet the requirement of substantial compliance were "Copies of all medical and hospital records". The attorney, however, confirmed that these documents were lodged together with the claim form and attached proof thereof to the papers.

[11] On 20 March 2023 the attorney sent a letter to RAF confirming that the applicant had in fact complied statutorily with the requirements for the lodgement of the claim and requested RAF to confirm that the claim was validly lodged. It is further stated that the list of outstanding documents is not required for substantial compliance in terms of the Act. The RAF, however, refused to accept the claim as valid simply on the basis of these documents.

Board notices and Management Directives

[12] Several board notices and directives were published by the RAF. I intend to refer to only some of them.

[13] On 8 March 2021, the RAF furnished all attorneys with Management Directive 1 of 2021: *Compulsory Information to be Submitted when lodging a Claim for Compensation with the RAF*. The directive largely mirrors the draft notice that was subsequently published in the Government Gazette on 22 June 2021 (Board Notice 66 of 2021 and published in the Government Gazette no 44747 of 22 June 2021). This board notice sets out a list of compulsory documents and information that must be submitted at the stage of lodging of claim to ensure that a valid claim is lodged which substantially complies with the Act. This directive came into effect on 1 April 2021 and states that after this date "*the documents listed in this directive must be attached to all claims submitted to the RAF, effective 1 April 2021*" ("Management Directive"). This meant that a certain minimum set of documents *must* be submitted to the RAF. The new RAF1 form directs that the form "shall be completed, in all its particulars". The new regime thus moved away from the previous regime which required substantial compliance. Therefore, non-compliance with the new terms will be with a repudiation of the claim as not being in substantial compliance with the Act. This resulted in the RAF refusing to accept or acknowledge receipt of claims that had been submitted to it and which, in its view, were not valid.

[14] On 7 May 2021, Neukircher, J of this court handed down a judgement in *Paul Nel v RAF*.⁶ In that matter Mr Nel ("Nel") lodged a claim against the RAF on 4 May 2021. His claim was to prescribe at midnight on 7 May 2021. Nel received a letter from the RAF on 5 May 2021 advising him that the RAF refused to accept the lodgement of the claim on the basis of non-compliance with the RAF Management Directive. The court held firstly, that a court ordering the acceptance of a lodgement does not usurp the powers of the RAF. The RAF only has powers once the claim has been lodged. Secondly, the RAF must decide whether or not there is substantial compliance with the terms and conditions of the Act and the Regulations. Thirdly, and importantly, the court held that the directive has not been elevated to force of law. Lastly, with reference to section 24 of the Act, the court pointed out that the Act is not prescriptive as to the manner in which lodgement takes places.⁷

⁶ Case number 22142/2021 of 7 May 2021 (North Gauteng Division of the High Court).

⁷ The RAF has filed an application for leave to appeal against this judgment but it has subsequently been withdrawn.

[15] Subsequently, and in numerous cases courts have ordered the acceptance of the lodgement of claims with the RAF. In all these cases the RAF refused to acknowledge lodgements of claims on the basis of the Management Directive.

[16] A case in point in this matter that served before the Full Court on 6 November 2023. In *Mautla & 6 others v the Road Accident Fund* the applicants filed a review application asking that the Management Directive 1/2021, the Board Notice 58 of 2021 and the substituted RAF1 be reviewed and set aside. The court held as follows:

"[66] Fundamentally, this court concludes that the RAF exceeded its powers in issuing and applying the Board Notice in a peremptory way without any statutory authorisation. From what served before us, the Board Notice's did not facilitate the efficient administration of claims but rather reduced the number of claims by creating administrative hurdles to stop claims from being submitted. It resulted in victims of motor vehicle collisions being excluded from claiming compensation. The Act does not contemplate two sets of rules - one by Regulation and another by Board Notices.

[67] The delivery and acknowledgement of receipt of a claim does not impede in any way the discharge of the RAF of its mandate in terms of the Act nor does it impose, without more, liability on the RAF.

[68] The Decisions taken were taken unilaterally and in circumstances where the RAF was not empowered in terms of the Act to do so. There was no prior engagement or consultation⁸ in respect of the imposition of the requirements as a pre-condition to its acceptance of delivery and acknowledgement of receipt of claims submitted to it.

[69] For the reasons set out above, the Decisions and the substituted RAF1 form were neither authorised by the Act nor rationally connected to the achievement of the purpose of the Act. Properly construed, the making of the

⁸ Section 6(2)(c) of PAJA.

Decisions and their implementation are so unreasonable and so inimical to the purpose and provisions of the Act that the RAF in doing so acted in a manifestly unreasonable and unlawful manner. The Decisions and substituted RAF1 are unlawful and must accordingly be set aside."

The Full Court ordered (*inter alia*) as follows:

"[77.2] Regulation 7(1) of the Road Accident Fund Regulations promulgated by the Second Respondent in terms of section 26 of the Road Accident Fund Act 56 of 1996, is declared to be unconstitutional, unlawful and invalid and is reviewed and set aside to the extent that it confers upon the Road Accident Fund the right to amend or substitute the "RAF1 Form" attached as Annexure A to the Regulations.

[77.3] The following Decisions and actions are reviewed and set aside: in terms of section 8(1) of Promotion of Administrative Justice Act 3 of 2000:

[77.3.1] the decision to adopt and implement the Management Directive titled "*1/2021 - Compulsory Information to be submitted when lodging a claim for compensation with the RAF*," dated 8 March 2021, and any directives or instructions issued, or actions taken in terms thereof.

[77.3.2] the decision set out in the "*RAF Supplier Claims external Communication*" dated 19 May 2021 which requires the compulsory submission of certain supporting documents for the submission of supplier claims and any directives or instructions issued, or actions taken in terms thereof.

[77.3.3] the decision to publish, adopt and implement "*Board Notice 58 of 2021*", with description "*Road Accident Fund Stipulation of Terms and Conditions upon which Claims for Compensation shall be Administered*" published in the Government Gazette on 4 June 2021 and any directives or instructions issued, or actions taken in terms thereof.

[77.3.4] the decision to publish, adopt and implement the "*SUBSTITUTION OF RAF 1 CLAIM FORM*" published in the Government Gazette on 4 June 2021, and any directives or instructions issued, or actions taken in terms thereof."

[17] I am in agreement with the sentiments expressed in the decision of the Full Court: By implementing the Management Directive 1/2021, the Board Notices and the Amended RAF, the RAF has introduced requirements over and above those stipulated in the Act and the Regulations.

[18] I must also add. We are dealing here with a minor child and one cannot overlook the fact that section 28(2) of the Constitution⁹ and repeated in section 9 of the Children's Act¹⁰ provides that a child's best interests are of paramount importance concerning of the child.¹¹ This was also confirmed by the Constitutional Court in *MR v Minister of Safety & Security*¹² as follows:

"[61] Contrary to the position pre-1994, our constitutional dispensation has ushered in a new era - an era where the best interests of a child must be accorded paramount importance in all matters affecting the child - an era where we, as society, are committed to raising, developing and nurturing our children in an environment that conduces to their wellbeing. This resolve was captured admirably by Khampepe J in *Teddy Bear Clinic*:

'Children are precious members of our society and any law that affects them must have due regard to their vulnerability and their need for guidance. We have a duty to ensure that they receive the support and assistance that are necessary for their positive growth and development. Indeed, this court has recognised that children merit special protection through legislation that guards and enforces their rights and liberties. We must be careful, however, to ensure that, in attempting to guide and protect children, our interventions do not

⁹ Act 108 of 1995.

¹⁰ Act 38 of 2005.

¹¹ *Mphuthi v Road Accident Fund* 2016 JDR 1920 HS ad par [6].

¹² 2016 (2) SACR 540 (CC) ad para [61].

expose them to harsh circumstances which can only have adverse effects on their development."

[19] On the papers, I am satisfied further that there had been strict compliance (which is in any event not required) with the requirement for the submission of documents. There is nothing on the papers to gainsay that the claim by the applicant that it did in fact supply the required documents to the RAF. Insofar as it was not done, I am satisfied that there had been substantial compliance with the requirements.

[20] It was therefore necessary for the applicant to approach the court for a declarator and the order was granted by default.

A BASSON
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA
4 DECEMBER 2024

Appearances:

For the applicant:

M Snyman SC

Instructed by: Roets & Van Rensburg Inc

For the respondent: No appearance