

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO: 053998/2023  
and  
CASE NO: 074803/2023

1. REPORTABLE: NO  
2. OF INTEREST TO OTHER JUDGES: NO  
3. REVISED: NO  
DATE: 10 JANUARY 2024

In the matter between:

**SP RADEBE**

and

**ROAD ACCIDENT FUND**

*And*

In the matter between:

**MAHLANGU obo GS**

and

**ROAD ACCIDENT FUND**

CASE NO: 053998/2023

**Applicant**

**Respondent**

CASE NO: 074803/2023

**Applicant**

**Respondent**

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*Summary:* Declaratory relief sought to declare claim submitted to RAF as duly lodged and substantially compliant with provisions of Road Accident Fund Act, Act 56 of 1996, as amended  
Requirements for declarator discussed – Nature of objections to validity of claims in terms of Section 24(5) discussed and considered – circumstances where objection would be administrative action differentiated - found that where objections timeously made it is an administrative action which cannot be reviewed under guise of declaratory order  
Where objection does not constitute administrative action, discretion to make declaratory order must be decided having regard to all relevant circumstances – found that matters not ripe and circumstances not justifying the exercise of such a discretion

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## JUDGMENT

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**K STRYDOM, AJ**

- 1) Both the Applicants lodged claims, in terms of Section 24 of the Road Accident Fund Act 56 of 1996, as amended, with the Respondent ("RAF"). In both cases the RAF objected to the validity of their claims and returned their lodgement documents.
- 2) Ms Radebe delivered her claim, by hand, upon the RAF's registered office for the first time on 6 July 2022. The claim was later also delivered by registered mail on 14 December 2022. The RAF's objection letter, dated 10 February 2023, was transmitted in early March 2023.
- 3) Ms Mahlangu delivered her claim via registered post on the 4<sup>th</sup> of April 2023. The RAF likewise objected in early June 2023. The date is not provided; however, it was presumably before the 12<sup>th</sup> of June 2023 as the applicant's attorneys on that date directed correspondence to the RAF regarding the objection. The uncertainty as to the date of rejection can be ascribed to the fact that the RAF's objection letter was dated November 2022 – well before the claim was even lodged.

- 4) In both cases, the Respondent ("RAF") objected as follows:

*"1. To administer claims effectively and efficiently the Road Accident Fund (RAF), pursuant to section 4(1)(a) of the Road Accident Fund Act, 1996 (the Act) published the Stipulated Terms and Conditions Upon Which Claims for Compensation Shall Be Administered (the Terms and Conditions) in Board Notice 271 of 2022 which was published in Government Gazette No. 46322 on 6 May 2022. The Terms and Conditions, read with section 24 of the Act, stipulate what documents must accompany the claim documentation when submitting a claim for compensation.*

*2. We have pre-assessed the documentation posted by you on .....for the following products General Damages, Loss of Earnings, Medical Expenses, for compliance with section 24 of the Act and the Terms and Conditions. We advise that the documents submitted do not meet the requirement(s) for a substantially compliant and valid claim, as follows:*

*.....*

*.....*

*3. The RAF hereby objects to the validity of the claim submitted by you in accordance with paragraph 24(5) of the Act for the reasons set out in paragraph 2 above.*

*4. Consequently, we do not accept the documentation presented / posted / e-mailed by you as a valid claim for purposes of lodgement in terms of the Act and accordingly return the documents herewith.*

*5. Please note that prescription of a claimant's claim in terms of the Act will only be interrupted once a compliant and valid claim is lodged.*

*6. Further note that the RAF will raise a special plea should summons be issued as regards the objection as set out in paragraph 2.*

## Relief sought

5) Both Applicants now seek the following relief as per their respective notices of motion:

*“A declaratory order is issued to the effect that the Applicant's claim was duly lodged with the Respondent on the ....[date]..., and that it substantially complies with the provisions of the Road Accident Fund Act, Act 56 of 1996, as amended.”*

## Applicants' contentions in support of relief sought

6) The applicants' argument is based primarily on the invalidity of the RAF's reliance on Board Notice 271 in rejecting their claims.

7) Board Notice 271 of 2022 itself has no commencement date. Its commencement date was announced in terms of Board Notice 280 of 2022, which read:

*“The substitution of the RAF 1 Third Party Claim Form and the terms and conditions upon which claims for compensation shall be administered, as set out in Board Notice 271 of 2022 published on 6 May 2022 in Government Gazette No. 46322, shall come into effect on 1 June 2022.”* [Underlining my own]

8) However, on 31 May 2022, in terms of Board Notice 281 of 2022, Board Notice 280, *supra*, was withdrawn. As a result, there is no effective date for Board Notice 271.

9) It was also brought to my attention that, in November 2022, the Legal Practitioners Indemnity Insurance Fund and others (including the firm representing the current applicants) instituted review proceedings to set aside, in terms of the Promotion of Access to Justice Act (“PAJA”), *inter alia*: *“The RAF's adoption and implementation of Board Notice 271 of 2022, road accident fund terms and conditions upon which claims for compensation shall be administered”, published in the Government Gazette on 6 May 2022, and any directives or instructions issued in terms thereof.*” I have been informed that this application has yet to be argued.

10) As this withdrawal of the effective date for Board Notice 271 occurred before either of the claims *in casu* were lodged *“... the Court should instead have regard to the actual lodgement requirements as per the RAF Act and Case Law in determining whether the lodgement requirements [have been met] and measure substantive compliance against such measures and not Board Notice 271 of 2022.”*<sup>1</sup> [Insertion my own]

11) After both the present applications were heard, the judgment in *Mautla and Others v Road Accident Fund and Others*<sup>2</sup> was delivered on the 6<sup>th</sup> of November 2023. It concerned the review of Board Notice 271's previous incarnation. Board Notice 58 of 2021.

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<sup>1</sup> This submission is made in the Heads of Argument for SP Radebe, however, being represented by the same counsel and firm of attorneys, I canvassed with counsel whether the arguments for Gumedre mirror those of Radebe – he confirmed this.

<sup>2</sup> *Mautla and Others v Road Accident Fund and Others* (29459/2021) [2023] ZAGPPHC 1843 (6 November 2023)

- 12) For present purposes, it suffices to note that the RAF had followed a similar *modus operandi* in *Mautla* - it sought to amend the substantive requirements for valid lodgement by way of gazetting a notice based on its own internal directives.
- 13) The full bench of this division declared 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, to be unconstitutional, unlawful and invalid. It was therefore 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. It further reviewed and set aside decisions and actions taken pursuant to the prior Board notice in terms of section 8(1) of Promotion of Administrative Justice Act 3 of 2000. Refusals or objections to claims “...between 8 March 2021 and 15 June 2021 due to non-compliance with the Management Directive, Board Notice or Substitution Notice...”, were declared to be null and void.
- 14) Despite drawing my attention to *Mautla*, counsel did not indicate the applicability thereof. Clearly, the present applications do not fall within the stated period. Furthermore, *Mautla* was decided on review, unlike the present applications which seek declaratory relief. I have had regard to some of the principles enunciated therein and have noted that Regulation 7(1) has now been declared unconstitutional.

#### **Formulation of issues for determination**

- 15) The foundational basis for declaratory orders can be found in Section 21(1)(c) of the Superior Courts Act 10 of 2013 (Superior Courts Act) which reads as follows:
- (1) A Division has jurisdiction over all persons residing or being in, and in relation to all causes arising and all offences triable within, its area of jurisdiction and all other matters of which it may according to law take cognisance, and has the power –*
- (a) ...*
- (b) ...*
- (c) in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination.’*
- 16) In *Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd* the steps to be taken in the consideration of declaratory relief were described as follows:
- “It seems to me that once the applicant has satisfied the court that he/she is interested in an “existing, future or contingent right or obligation”, the Court is obliged by the subsection to exercise its discretion. This does not, however, mean that the court is bound to grant a*

*declarator but that it must consider and decide whether it should refuse or grant the order, following an examination of all relevant factors.*<sup>3</sup> [Underlining my own]

- 17) The impact of a Section 24(5) objection, if validly raised, is that prescription is not interrupted until the defect as objected to has been rectified. The Applicants, *in casu*, accordingly meet the first requirement in that they are interested parties and have a definitive right they seek pronouncement on.
- 18) However, in exercising my discretion *vis-a-vis* a declaratory order, I must also consider all the relevant factors. In this regard, another “jurisdictional” consideration comes to the fore; namely whether the effect of such an order would result in an impermissible intrusion on the actions of the executive.
- 19) From the outset, I had queried the competency of the declaratory relief sought for a declaration that the claim was “*duly*” lodged and that it “...*substantially complies with the provisions of the Road Accident Fund Act, Act 56 of 1996, as amended*”. Would such an order effectively dismiss an objection raised by the RAF in terms of Section 24(5) of the Act, or, even more crucially, dismiss any other defence to substantive compliance the Defendant may be afforded in terms of the Act, before any litigation has commenced?
- 20) Furthermore, in making such a finding, would the Court have to determine on the conduct or legality of the action taken by the RAF? The RAF, prior to litigation, exercises almost exclusively administrative functions. Where it does so, such administrative action must be reviewed in terms of PAJA or the principle of legality. If it is found that the action(s) taken in terms of the objection letter was an exercise of an administrative function, this Court may not issue a declarator, as doing so would then be tantamount to setting the administrative action aside and substituting the finding of the administrator.

## Legal principles

21) Section 24 reads as follows:

*‘(1) A claim for compensation and accompanying medical report under section 17(1) shall —*

*(a) be set out in the prescribed form, which shall be completed in all its particulars*

*(b) be sent by registered post or delivered by hand to the Fund at its principal, branch or regional office, or to the agent who in terms of section 8 must handle the claim, at the agent's registered office or local branch 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.*

*....*

*(4) (a) Any form referred to in this section which is not completed in all its particulars shall not be acceptable as a claim under this Act.*

*(b) A clear reply shall be given to each question contained in the form referred to in*

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<sup>3</sup> *Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd* [2005] ZASCA 50; [2006] 1 All SA 103 (SCA); 2005 (6) SA 205 (SCA) para 17.

subsection

(1), and if a question is not applicable, the words 'not applicable' shall be inserted.

...

(5) If the Fund or the agent does not, within 60 days from the date on which a claim was sent by registered post or delivered by hand to the Fund or such agent as contemplated in subsection (1), object to the validity thereof, the claim shall be deemed to be valid in law in all respects.

[6] No claim shall be enforceable by legal proceedings commenced by a summons served on the Fund ...-

(a) before the expiry of a period of 120 days from the date on which the claim was sent or delivered by hand to the Fund ...; and

(b) before all the requirements contemplated in section 19(f) have been complied with.”

22) To understand the nature of the decisions or actions taken in terms of the objection letter, one has to understand the difference between a claim that is procedurally compliant, and therefore not subject to an objection in terms of Section 24(5), and a substantively compliant claim, which is a claim that is legally pursuable before a Court.

23) In *Mautla*, the full bench alluded to the differentiation between the requirements for a claim to be validly lodged (“procedural compliance”) and the determination of whether the claim is substantively compliant in terms of the Act:

“ [31] It must be emphasized at the outset that the submission or delivery of a claim is a precursor to the RAF’s “investigation” obligations. .... Section 24 however deals only with procedural matters and the deeming provision does not apply to the substantive requirements. This is well established in our law.”

24) Satchwell J best summarised the distinction between procedural and substantive compliance, as follows:

“...In other words, Mr. Witz was alive to the ineluctable conclusion that section 24(5) cannot mean that a failure by the RAF to object to a claim will render valid a claim in respect of a nonexistent accident where there are no injuries. In other words, the provisions of section 24(5) apply only to procedural issues and not substantive issues.

.....

In *Krischke v Road Accident Fund 2004 (4) SA 358 (WLD)*, the RAF raised the special plea that the plaintiff had failed to comply timeously with the provisions of the Act - there had been late delivery of the claim form and medical report and accordingly the claim had prescribed. His Lordship Mr. Justice Jajbhay took the view that the provisions of section 24(5) were enacted “to allow the parties to inform each other about sufficient details regarding the claim, and, thereafter, it affords the Fund sufficient time to consider the claim and to decide whether it will oppose, settle or acquire additional information before costs of litigation are incurred”.<sup>4</sup> The learned Judge then went on to state that subsection 24(5) deals with the procedural

*aspect of a claim covered in section 24 and that this subsection “has nothing to do with substantive law”.*

*I am, with respect, in agreement with both the learned judges. To afford a different interpretation would give the subsection a meaning which would “lead to an absurdity which the Legislature did not contemplate”. In Krischke supra, the learned Judge gave the example that a claim if the Fund failed to object to the validity of a claim lodged ten years after the cause of action commenced, then this claim would be resuscitated.*

*To my mind, the provisions of subsection 24(5) must be limited to validation only of the procedural requirements of the claim which has been lodged....”<sup>5</sup>*

- 25) Later that same year, Satchwell J in the matter of *Van Zyl v Road Accident Fund*,<sup>6</sup> had occasion to elaborate on what procedural compliance would entail:

*“Clearly the RAF1 form requires the claimant to inform the RAF of sufficient particulars about the claim.... I find that if such a form, duly and properly completed in all its particularity, had been lodged with the RAF, then, on the face of it, the claimant would be compliant with the provisions of section 24 of the Act.”<sup>7</sup>*

- 26) Procedural compliance, therefore, is limited to compliance with Section 24(1) only. In other words, for a claim to be validly lodged and come into existence, the RAF1 form must be completed in all particularity and be delivered in the prescribed manner. Those are the only procedural requirements which fall within an RAF administrator’s right of objections in terms of Section 24(5).

- 27) The practical application hereof can be gleaned in, for instance, the case of *Scott v Road Accident Fund*,<sup>8</sup> where the Plaintiff had not submitted a S19(f) affidavit simultaneously with the lodgement documents (which had included the RAF1 form). The Road Accident Fund raised a special plea of prescription and argued that the claim had not been “perfected” until the 19(f) was lodged. In dismissing the special plea, the Court held that:

*“[30] ..... The claim comes into existence when a claim for compensation is delivered in accordance with section 24(1). It subsists unless and until the Fund is able to establish that the claimant has acted in breach of section 19(f)(i). Thus, section 19(f)(i) operates so as to terminate a claim, rather than to complete or perfect it.*

*[31] In my view, section 24(6) does not take the matter further for the Fund. This section forms part of the provisions governing the procedure for claims under the Act. It is not aimed at regulating the substantive validity of a claim for compensation. The purpose of this section appears to me to be to ensure that claims are not pursued by way of litigation until*

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<sup>5</sup> *Mthetwa v Road Accident Fund* (2011/34424) [2012] ZAGPJHC 70 (20 April 2012) paras 12 to 17

<sup>6</sup> *Van Zyl v Road Accident Fund* 2012 SA GSJ

<sup>7</sup> *Van Zyl v Road Accident Fund* 2012 SA GSJ at paras 36 and 37

<sup>8</sup> *Scott v Road Accident Fund* (13/33469) [2015] ZAGPJHC 120 (11 June 2015)

*the Fund has been given sufficient opportunity to assess them and to determine whether it should accept liability or defend the matter in court.”*

28) Delivery aside, procedural compliance requires that the RAF1 form must be completed in “... all its particulars...”

29) In *Pithey v Road Accident Fund*<sup>9</sup>, the Supreme Court of Appeal stated that: ‘*It has been held in a long line of cases 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.*’ This approach is confirmed by the terms of the form which says in part 20 that substantial compliance is required in regard to inter alia the medical report”.

30) The Applicants submitted, correctly in my view, that the “...sufficiency or otherwise of the claim form and supporting documents is a matter for the Court to decide” and relied on *Pretorius v Road Accident Fund* (35303/2018) (2019) ZAGPJHC 293 (26 August 2019) as authority for this position. There the Court confirmed that the test (for procedural compliance) is whether RAF was provided with enough information to investigate the claim, at the time when the objection was raised. In applying *Busuku v RAF* the Court then found that an incomplete RAF1 form, as read with the accompanying documents submitted, provided sufficient information to enable the RAF to perform its investigative function.

## Analysis

31) In order to decide the application, the issues of subject-matter jurisdiction, as well as the timing and appropriateness of the relief sought, have to be considered. I will also briefly deal with the Applicants’ argument based on the principle of *stare decisis*.

### Jurisdiction

32) Where the RAF objects within the 60 day period envisioned in Section 24(5), it is exercising an administrative action in terms of a deeming provision. In this regard, sight must not be lost of the fact that a dispute on the substance and merit of the objection is not before Court at this stage, as it would have been, for instance, in the case of a special plea or a review application.

33) Instead, presently this Court is called upon to decide on the legitimacy of a decision made by an RAF administrator. The fact that the decision was based on a withdrawn or invalid Board Notice, does not confer authority on this Court to disregard the fact that the decision was made and to overrule it by making a declaration to the contrary.

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<sup>9</sup> *Pithey v Road Accident Fund* [2014] ZASCA 55; 2014 (4) SA 112 (SCA) para 19

- 34) I pause to add that, had this type of objection not been considered administrative action, the LPIIF review application referred to *supra* and the judgment in *Mautla* would have pointlessly included relief to the effect the relevant Board Notice is set aside and that pursuantly “..(a)ny objection, or rejection by the RAF of a claim for compensation submitted between .....due to non-compliance with the Management Directive, Board Notice or Substitution Notice referred to in paragraphs .....hereof is declared to be null and void....”
- 35) The framing of the relief sought as declaratory of nature, is a proverbial renaming of a rose. It does not change the fact that the Applicants essentially want this Court to find that the decision to object was wrong or incorrectly taken. In the absence of a review application, the Applicant's arguments, regarding the lack of statutory foundation for exercising of the RAF's powers under Section 24(5), are, with respect, irrelevant if the RAF exercised such powers within the prescribed 60 days.
- 36) However, where the objection is belatedly transmitted outside of the 60 day period, the Act determines that the claim will be deemed to be valid. In such an instance, the RAF, as administrator, no longer has any powers to exercise within the scope of the Act. Given that the validity of the claim (or then, the procedural compliance thereof) results automatically by virtue of statute, the Court could therefore declare procedural compliance – even though, in my view, it would be an unnecessary superfluous restatement of a legal fact.
- 37) In the case of Ms Radebe, therefore, where hand delivery took place on 6 July 2022 and the objection was only transmitted in early March 2023, by virtue of the workings of the statute, the claim was validly lodged.
- 38) Ms Mahlangu's claim, however, was delivered via registered post on the 4<sup>th</sup> of April 2023 and the objection transmitted in early June 2023. The unfortunate lack of clarity on exactly when the objection was transmitted (caused by both the Applicant, as well as the Respondent), renders it impossible to determine whether such objection was belatedly made. In the absence of a positive statement to that effect by the Applicant, I therefore cannot favour her with the same restatement of the legally prevailing position as I could Ms Radebe.
- 39) These distinctions drawn between the two applications, are however mostly academic of nature and have been made to illustrate under which circumstances the objection by the RAF would be considered as administrative action for purposes of a review application.

#### Timing and appropriateness of relief sought

- 40) Regardless of these jurisdictional issues, both applications, however, suffer the same flaw in terms of their substantive premise. In determining relief so sought, a Court is called upon to, (in addition to the method for lodgement and the peremptory lodgement of the RAF1 form

itself), determine if the directory requirements for the particularity of the completion of the RAF1 form, have been met as per *Pithey supra*.

- 41) Despite their reliance on it, *Pretorius*, in fact, underscores the principle that in order to determine substantial compliance with the procedural requirements for a validly lodged claim, the Court must conduct a contextual enquiry into whether the particularity supplied (as per the RAF1 as read with the supporting documents) was sufficient to enable the RAF to perform its investigative functions properly. Therefore, whilst the test for procedural compliance is an objective one, the enquiry necessitates a broader insight into the facts and circumstances of each specific claim and basis for the objection.
- 42) In casu, several factors denote the speculative nature of the hypothetical issue that might occur in future, should the RAF persist with the objection:
- 43) The objections raised are seemingly based on a *pro forma* template and, *prima facie*, have no legal basis, given the prior withdrawal of the Board notice. The objections would only have legal effect if they are valid and the noting of an objection by the RAF does not prohibit Applicants from proceeding with the issuance of summons to enforce her claim. Invariably the determination of the validity of the objection falls to the Courts to decide, once it is pleaded as a defence. In Ms Radebe's matter, in fact, summons has been issued and the RAF has not given notice of intention to defend, in spite of the threats that it would raise a special plea on the basis of the objection. The declaration of constitutional invalidity of Regulation 7(1) in *Mautla*, further greatly erodes any legal foundation for pursuing the objections as raised.
- 44) Recently, the Supreme Court of Appeal approvingly referred to the principle of "ripeness" of a matter concerning declaratory relief:
- As Kriegler J pointed out in Ferreira v Levin NO and Others, and quoted at para 17 in Clear Enterprises: 'Simply put, whatever issues do arise in the pending matters none of them are yet "ripe" for adjudication by this Court. To borrow from Kriegler J in Ferreira v Levin NO & others; "The essential flaw in the applicants' cases is one of timing or, as the Americans and, occasionally the Canadians call it, 'ripeness'. That term has a particular connotation in the constitutional jurisprudence of those countries which need not be analysed now. Suffice it to say that the doctrine of ripeness serves the useful purpose of highlighting that the business of a Court is generally retrospective; it deals with situations or problems that have already ripened or crystallised, and not with prospective or hypothetical ones.'*<sup>10</sup>
- 45) Further illustrative of the need for issues to be "ripe", a closer examination of the wording and resultant effect of the relief sought reveals that, even if granted, such a declarator may still be hypothetical or mere academic value. The use of the word "duly" in the relief sought, when the

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<sup>10</sup> *Association for Voluntary Sterilization of South Africa v Standard Trust Limited and Others* (325/2022) [2023] ZASCA 87 (7 June 2023) at para 14. (In line references omitted)

objection was raised to the substantial validity of the claim, bears scrutiny. “Duly” is an adverb that means “(i)n a proper manner; according to legal requirements.”, whereas “validly” “..is used to signify legal sufficiency, in contradistinction to mere regularity.”<sup>11</sup> Accordingly, despite the difference in the terminology being nuanced, it creates the potential that the relief, as phrased, would in any event not address the full extent of the legal ramifications of objections raised in terms of Section 24(5).

46) The addition of the words “...and that it substantially complies with the provisions of the Road Accident Fund Act, Act 56 of 1996..” does not remedy this problem. Ironically, this wording casts too great a net, in that it implies more than mere procedural compliance in terms of Section 24(5). The Act contains multiple provision requiring compliance, which do not fall within the purview of the current subject matter. Section 19(f) and the finding in *Scott supra* are but one example of such a provision.

47) In view of all the aforementioned, to my mind, it would therefore not be appropriate for this Court, sitting in an unopposed motion forum, to make a determination on the validity of the lodgement of the claim, without having regard to evidence, pre-emptively, where such an objection has not yet formally been raised before it. As will become apparent from my comments on the *stare decisis* argument, below, I am in good company in my reticence.

#### Stare decisis?

48) I was referred to a variety of orders (not judgments) granted in this division, which, purportedly, were based on similar relief as is presently sought.<sup>12</sup> It was submitted that these orders bound me to grant the relief sought in the present applications. Without the actual papers and judgments, I am hesitant to venture an opinion on the correctness of any of the orders referred to. My comments below should be interpreted in this light.

49) As already indicated, any declarator that circumvents the provision of PAJA or legality reviews, is legally untenable.

50) However, from a perusal of the orders and the transcript of *Nel v RAF*<sup>13</sup> (to which I was pertinently referred), it seems as if most of the matters referred to were urgent mandamus applications to force the RAF to take delivery of the actual documents for lodgement. The validity of the declaratory orders thus made should therefore be assessed within the context of laying a foundation for the mandamus.

51) Furthermore, in *Nel* and for instance, *Werner Nel v RAF* (28417/2021) (presumably no relation), it is clear that, the Courts in this division are alive to the fact that a declaratory order should not pre-emptively oust defences that the RAF are legally entitled to raise. Hence in *Nel*

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<sup>11</sup> Black’s Law dictionary 2<sup>nd</sup> edition

<sup>12</sup> PS Radebe Founding affidavit paras 15.15 to 15.21; CL 0004-16 to 0004-17

<sup>13</sup> Pretoria High Court, Case number 22142/2021.

and in *W Nel*, it was held that the claim was lodged on a specific date, but that “*(t)he Respondent's rights are reserved and preserved in respect of the claim that has been declared to have been duly lodged.*”

## **Finding**

52) In summation therefore, I find that the relevant circumstances of the applications do not justify exercising my discretion in favour of the declaratory relief sought.

53) Furthermore, insofar as the objection made in the case of Ms Mahlangu, is assumed to have been done timeously, I find that the relief sought infringes on the domain of the executive and that the Court is not entitled to, under the guise of a declarator, such administrative action.

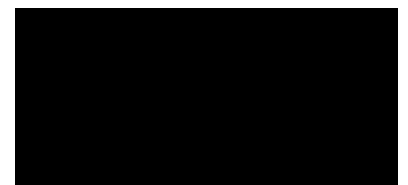
## **Order**

54) In the matter of SP Radebe v Road Accident Fund (Case no: 053998/2023) I accordingly order as follows:

a) The application is dismissed

55) In the matter of Mahlangu obo GS v Road Accident Fund (Case no: 074803/2023) I accordingly order as follows:

a) The application is dismissed



**K STRYDOM**

**ACTING JUDGE OF THE HIGH COURT  
GAUTENG DIVISION, PRETORIA**

**Date of hearing:**

SP Radebe v Road Accident Fund (Case no: 053998/2023): 4 October 2023

Mahlangu obo GS v Road Accident Fund (Case no: 074803/2023): 27 October 2023

**Judgment delivered:**

01 JANUARY 2024

**Appearances:**For both Applicants:

Counsel: Adv FHH Kehrhahn

Attorney: Roets & Van Rensburg Attorneys

For the Respondent:

No appearance