



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

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED: YES
DATE: 1 December 2023
SIGNATURE: [REDACTED]

CASE NO: 29459/2021

In the matter between:

THE ROAD ACCIDENT FUND

MSIBI, T N.O

LETSOALO, C N.O

And

MAUTLA, LESEDI DIKELEDI

STEYN, ANTOINETTE ELIZABETH BIANCA

DIPPENAAR, GERMARI

STRAUSS, JOHANNES CHRISTOFFEL

SILUMA, NOMTHANDAZO ELIZABETH

KUBOKO, SINOVUYO

1st RESPONDENT

2nd RESPONDENT

3rd RESPONDENT

4th RESPONDENT

5th RESPONDENT

6th RESPONDENT

MSIBI, T N.O		3 RD RESPONDENT
THE MINISTER OF TRANSPORT		2 ND RESPONDENT
THE ROAD ACCIDENT FUND		1 ST RESPONDENT
And		
W E EMERGENCY RESPOND TEAM (PTY) LTD		9 TH APPLICANT
NDIMA, OPOLA		8 TH APPLICANT
RADEBE, NONHLANHLA CECILIA		7 TH APPLICANT
KUBOKO, SINOVUYO		6 TH APPLICANT
SILUMA, NONTHANDAZO ELIZABETH		5 TH APPLICANT
STRAUSS, JOHANNES CHRISTOFFEL		4 TH APPLICANT
DIPPENAAR, GERMARI		3 RD APPLICANT
STEYN, ANTOINETTE ELIZABETH BIANCA		2 ND APPLICANT
MAUTLA, LESEDI DIKELEDI		1 ST APPLICANT
IN RE:		
W E EMERGENCY RESPOND TEAM (PTY) LTD		9 TH RESPONDENT
NDIMA, OPOLA		8 TH RESPONDENT
RADEBE, NONHLANHLA CECILIA		7 TH RESPONDENT

LETSOALO, C.N.O

4TH RESPONDENT

5TH RESPONDENT

THE LEGAL PRACTICE COUNCIL

Coram: Opperman et Milliar JJ & Ally AJ

Heard on: 30 November 2023

Delivered: 1 December 2023 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *Caselines* system of the GD and by release to SAFLLI. The date and time for hand-down is deemed to be 12H00 on 1 December 2023.

JUDGMENT

THE COURT

INTRODUCTION

[1] This is an application for leave to appeal against a judgment and order handed down by this Court on 6 November 2023. The 1st, 3rd and 4th Respondents in the main application are the Applicants in this application and will for ease of reference be referred to as the "RAF parties". The Applicants in the main application are Respondents in this application and they will be referred to as "Respondents".

[2] When the hearing commenced, the Court was informed by counsel for the Respondents that the RAF parties had at some stage during the evening preceding this hearing, filed an amended notice of application for leave to appeal. This amended notice omitted those grounds of appeal that related

primarily to the gazetting by the Minister of Transport in terms of Regulation 7(1) of the Regulations to the Road Accident Fund Act, during June 2022 of a new RAF1 claim form.

[3] There was an objection on the part of the Respondents to the application proceeding on the basis of the amended notice of appeal. This was however resolved on the basis that the application would proceed on the basis of the original notice of application for leave to appeal¹ save that the RAF parties formally abandoned those grounds of appeal which related largely to matters that had not been before the Court for either consideration or decision, the paragraphs abandoned were 3, 4, 5, 10, 13 and 16.

[4] The case before us and in respect of which we handed down judgment related specifically to decisions taken and implemented during the period 8 March 2021 up to and including 4 June 2021. On 15 June 2021 an interdict against their further implementation had been granted pending the hearing of the review.

[5] The RAF parties advanced the application for leave to appeal on 3 main legs.

[6] Firstly, that the decisions which had formed the subject of the review, were in fact not decisions that had a direct, external legal effect, were thus not decisions which constituted administrative action and on that basis could not be reviewed in terms of the Promotion of Administrative Justice Act (PAJA)².

[7] This was dealt with in the main judgement. Once the decisions were implemented, and the Respondents turned away – denied the right to submit their claims or to receive statutory acknowledgement of delivery, these decisions affected the rights of the Respondents adversely and directly. The

¹ At Caselines 029-1 to 029-9

² 3 of 2000.

delivery of a claim and acknowledgement of receipt thereof forms the basis upon which it is to be determined whether or not a claim is timeously submitted. If a claim is not timeously submitted it becomes prescribed and legally unenforceable and for this reason alone, the decisions have a direct, external legal effect and are subject to review under PAJA. The entire debate though goes nowhere as the competence of the review on the principle of legality was not challenged in either the main application or the application for leave to appeal.

[8] Secondly, the RAF parties argued that the order of this Court failed to state the relevant statutory provisions in terms of which the decisions had been reviewed and set aside (Section 6 of PAJA) or in terms of which the consequential and just and equitable relief (Section 8 of PAJA) was granted.

[9] There is no requirement in law for a Court order to specify the particular Statute or Section in terms of which an order is made. It is only required that the order granted is a lawful one which the orders granted in the present matter are but, in any event, the order reflects the correct sections

[10] Thirdly, that the order granted by this Court was ambiguous because the Court had failed to state what particular RAF1 claim form was to be used by those persons entitled to submit or re-submit their claims when events had been superseded by the promulgation by the Minister of a new RAF1 form a year later.

[11] There is a presumption against retrospectivity and unless the regulation promulgated in June of 2022 expressly provides otherwise. It does not and is only of application in future. Insofar as a different claim form would be used, it would be the claim form that was lawfully in use immediately prior to the implementation of the impeached decisions. In the present case this is the RAF1 claim form that was gazetted in terms of the Regulations during 2008. In the present matter, the claim form which was gazetted by the RAF itself, absent any action on the part of the Minister of Transport, was gazetted

and then suspended a short time later – so this form never actually came into use. The 2008 RAF1 claim form was the only form that was in use until the end of June 2022. Thus, there is in fact no ambiguity or confusion.

[12] We have considered all the grounds of appeal that were advanced before us, the heads of argument filed by the RAF parties and by the Respondents as well as the arguments of the respective parties.

[13] The test for the granting of leave to appeal is by now well established. We have considered the extensive application for leave to appeal dispassionately and hold the view that the appeal would not have reasonable prospects of success and we are not persuaded that another court would come to a different conclusion. It follows the application for leave to appeal must fail.

[14] The Respondents in their heads of argument pointed out that the RAF parties limited the appeal to section 17(1)(a)(i) of the Superior Courts Act, 10 of 2013, as amended, being whether the appeal would have reasonable grounds of success. During argument, and in particular during the replying argument, reliance was also placed on section 17(1)(a)(ii) being that there are other compelling reasons why leave to appeal should be granted. What these compelling reasons are is not clear at all. In our view, there are compelling reasons why leave to appeal should not be granted.

[15] They include that appeals do not lie against the reasons for judgment but against the order granted³. Most of the criticisms levelled against the judgment are against the reasoning which even if such criticisms were correct, have not been shown to have any effect on the orders. Also, the new RAF1 claim form gazetted by the Minister of Transport in terms of Regulation 7(1) of the Regulations to the Road Accident Fund Act, during June 2022 is the

³ *Techned Africa v The Minister of Health*, [2012] 4 ALL SA 149 (SCA).

subject of another review by a full court of this Division during February 2024. Many of the issues traversed in this hearing will probably be considered there. This hearing concerned a very limited period being from 8 March 2021 to 15 June 2021 in respect of an RAF1 form which was 'repealed' whereas the hearing in February 2024 will cover the period from June 2022 to date of judgment in respect of a Form gazetted and still of application. If these issues are to be considered by the Supreme Court of Appeal, this judgment would appear to be the wrong one.

[16]

The last issue for consideration is the question of costs. In the main case, we granted a punitive costs order and the Respondents before us in this application argued that a similar order should be made. Having regard to the fact that the original application for leave to appeal raised new and unrelated matter which required the Respondents answer, we are of the view that the Respondents were put to unnecessary and entirely avoidable costs in dealing with many grounds of appeal which were abandoned at the hearing for being irrelevant. It is for this reason that we make the order for costs that we do.

THE ORDER

[17]

In the circumstances, it is ordered that:

[16.1] The application for leave to appeal is refused.

[16.2] The First Applicant for leave to appeal, is ordered to pay the costs of each of the Respondents in the application for leave to appeal as between attorney and client, such costs to include the costs consequent upon the employment of three counsel where so engaged.

[REDACTED]
I OPPERMAN
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

[REDACTED]
A MILLAR
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

[REDACTED]
G ALLY
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON: 30 NOVEMBER 2023
JUDGMENT DELIVERED ON: 1 DECEMBER 2023

THE APPLICANTS FOR LEAVE TO APPEAL

COUNSEL FOR THE APPLICANTS: ADV J MOTEPE SC
ADV T MAKOLA

INSTRUCTED BY: MALATJIE & CO ATTORNEYS

REFERENCE: MR T MALATJIE

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