

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 0114226/2023

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
20/11/2023	
DATE	SIGNATURE

In the matter between:

ROAD ACCIDENT FUND

Applicant

and

**SHERIFF OF THE HIGH COURT,
PRETORIA**

First Respondent

DANUBIO ERNESTO MACAMO

Second Respondent

JUDGMENT

TWALA J

- [1] The applicant launched this application in the urgent court wherein it sought the following orders against the respondents:

- 1.1. Dispensing with the forms and procedures provided for in the Uniform Rules of Court and hearing this matter as one of urgency in terms of Rule 6(12)(a).
- 1.2. Staying the operation of the order granted in the above Honourable Court in favour of the second respondent under case number 2622/2019.
- 1.3. The Sheriff is interdicted and restrained from removing the RAF's movable property or selling the RAF'S movable property in terms of the writ on behalf of the second respondent;
- 1.4. It is ordered that prayers 1.2 and 1.3 above shall operate as interim relief pending:
 - 1.4.1. The confirmation and verification of the second respondent's legal entry into and continued presence in the Republic of South Africa (South Africa), which shall be conducted as follows:
 - 1.4.1.1. Within 5 days from the date of this order, the second respondent is directed to deliver certified proof of his identity as well as certified copies of documentary proof of his legal entry into South Africa (in accordance with the Immigration Act 13 of 2002) at the time of the alleged motor vehicle accident.
 - 1.4.1.2. Within 15 days of receipt of the second respondent's proof of identity and confirmation of his lawful entry and presence within South Africa at the time of the accident, the RAF is directed to reconcile, confirm and verify the claim to the relevant Sheriff. The RAF is directed to simultaneously make sufficient payment into the relevant Sheriffs' trust account in satisfaction of the verified claim (if at all).
 - 1.4.1.3. The Sheriff is authorised and directed to remit the verified claim amount into the second respondent's legal representative's account, within 5 days of receipt of the verification report and payment from the RAF.
 - 1.4.2 In the alternative to prayer 1.4.1 above, pending the final determination of the application of *Mudawo v Road Accident Fund* under case number 2022/011765.
- 1.5 The second respondent is directed to pay the costs of this application.

1.6 Further and/or alternative relief.

- [2] Only the second respondent has filed its opposition to the applicant's application. Since the first respondent does not participate in these proceedings, I propose to refer to the parties as the applicant and respondent going forward in this judgment. At the end of the hearing of the matter, I granted an order dismissing the applicant's application with cost and undertook to furnish my reasons in my judgment. These are my reasons as undertaken. However, I do not intend to deal with the issue of urgency for I allowed the parties to argue the whole matter including the merits before I dismissed the application.
- [3] The genesis of this case is that the respondent was involved in a motor vehicle accident that occurred on 6 December 2015. The respondent proceeded to lodge its claim with the applicant in 2017 and then instituted the legal proceedings in 2019 under case number 2019/011765. The applicant defended the action and filed its plea to the respondent's particulars of claim. However, on 4 October 2021 the applicant's defence was struck out due to its failure to meet certain procedural aspects in the case.
- [4] On 21 June 2022 the applicant issued a directive whereby all foreign national who lodge claims against the applicant are required to submit proof of their lawful entry and presence in the Republic. On the 4 July 2022, by way of notice in the Government Gazette, the Minister of Transport promulgated the RAF 1 Claim Form incorporating the requirements in terms of the directive of 21 June 2022.
- [5] On 21 July 2022, following the striking out of the applicant's defence, the applicant made an offer to settle the matter in its entirety in the sum of R1 650 000.00 which offer was accepted by the respondent on the same day. On the 26 August 2022 the parties made joint submissions on the settlement offer and acceptance thereof which was confirmed by a memorandum from the applicant. On 18 April 2023 a consent order of the settlement was granted. Due to the failure of the applicant to make payment when it was due in terms of the order, the respondent issued a writ of execution which was served on the applicant on 12 June 2023.

- [6] It is undisputed that the respondent submitted an affidavit with the applicant on 1 September 2023 in response to the applicant's request for certain information relating to the directive of 21 June 2022. In essence, the request was for the respondent to submit proof that he entered and was in the Republic legally at the time of the accident in 2015. The respondent testified in his affidavit that he does not have his passport for that period anymore and can therefore not assist with the requested information.
- [7] It is further not in dispute that the applicant received a list of sales in execution from the Sheriff on 10 October 2023 and that the present matter was also on that list. It is this list that galvanised the applicant into action and on 30 October 2023 instructed its attorneys to attend to this matter. On 1 November 2023 the attorneys of record for the applicant wrote to the first and second respondents requesting that the sale in execution scheduled for 7 November 2023 be cancelled. The sheriff responded by saying that it had consulted with all the relevant claimants who instructed him to proceed with the sale. The respondent did not furnish any response to the letter of the applicant – hence this application was brought on an urgent basis to stay the sale in execution and the implementation of the court order dated 18 April 2023.
- [8] It is contended by the applicant that the sale in execution should be stayed to enable it to bring an application to rescind the order of 18 April 2023 since its employee, Ms Mathebula, had no authority to settle the claim without complying with the requirements of the management directive. Since the second respondent is a foreign national, so it was argued, Ms Mathebula should not have settled his claim without complying with the requirements of the management directive by obtaining or causing the respondent to submit proof that, at the time of the occurrence, he was in the Republic legally.
- [9] Counsel for the second respondent submitted that there was an offer and acceptance between the parties as a result whereof a joint minute was concluded and presented in Court, with the consent of the applicant, that the settlement be made an order of Court. Since 18 April 2023, the applicant had not raised any issue nor was the offer dependant on any condition precedent. It is only now in

this application that the issue of compliance with the management directive has been raised by the applicant. Furthermore, the management directive relates to the lodgements or pre-assessed claims from the date of the directive. The second respondent, so it was contended, was involved in an accident on 12 December 2015 and the management directive is dated the 21 June 2022.

[10] Furthermore, so the argument went, due process of the Court was followed, and the applicant's defence was struck out. It therefore does not lie in the mouth of the applicant to now approach the Court in an attempt to introduce a new defence in the matter. The applicant has made its choice and must live with it. It chose a defence, and that defence was struck out for the applicant failed to comply with the rules of court. It cannot therefore now raise a new defence for that will mean there will be no finality in the litigation between the parties. Furthermore, the applicant has not raised any issue since the order was made and has therefore acquiesced the order and its legal effect and is precluded from seeking to undo it.

[11] There are two central issues to be determined in this case. The first is whether the second respondent is obliged to furnish the applicant with the information it requires in terms of the management directive issued by the applicant on 21 June 2022. Put in another way, whether it is competent of the management directive issued on 21 June 2022 to have retrospective effect. Secondly, whether the employee of the applicant who settled the matter with the second respondent had the necessary authority to settle and or was obliged to comply with the management directive when she settled the matter with the second respondent.

[12] Having regard to the central issues as stated above, it is useful at this stage to restate the provisions of the Road Accident Fund Act¹ ("the Act") which are relevant to the discussion that follows:

"3. Object of Fund. —The object of the Fund shall be the payment of compensation in accordance with this Act for loss or damage wrongfully caused by the driving of motor vehicles.

¹ Road Accident Fund Act 56 of 1996.

4. Powers and functions of Fund. — (1) The powers and functions of the Fund shall include—
- (a) the stipulation of the terms and conditions upon which claims for the compensation contemplated in section 3, shall be administered;”

[13] As a result of the powers conferred by the Act on the applicant in terms of section 4(1)(a), the applicant issued a management directive, the relevant portions whereof provide as follows:

“Critical validations to confirm the identity of South African Citizens and claims lodged by Foreigners.

...

Foreign Claimants

The following applies to all lodgements received or pre-assessed from the date of this directive: In instances where the claimant or injured is a foreigner, proof of identity must be accompanied by documentary proof that the claimant was legally in South Africa at the time of the accident. A copy of the foreign claimant's passport showing the entry stamp and/or exit stamp must be submitted. Where the passport does not have any stamp, the RAF will not be lodging such a claim. Where the passport document does not have an exit stamp, proof that the claimant is still in the country must be produced. In this instance the passport copy indicating approved Visa must be submitted. Copies of the passport must be certified by SAPS.”

[14] It is apposite to mention the relevant provisions of the Constitution of the Republic of South Africa² (“the Constitution”) which provides the following under the Bill of Rights:

“9. Equality.—

- (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons or categories of persons, disadvantaged by unfair discrimination may be taken.

² The Constitution of the Republic of South Africa Act 108 of 1996.

- (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
- (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.
- (5) discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair."

[15] It is now settled that, in interpreting statutory provisions, the Court must first have regard to the plain, ordinary, grammatical meaning of the words used in the statute. While maintaining that words should generally be given their grammatical meaning, it has long been established that a contextual and purposive approach must be applied to statutory interpretation. Section 39(2) of the Constitution enjoins the courts, when interpreting any legislation, and when developing the common law or customary law, to promote the spirit, purport, and objects of the Bill of Rights.

[16] In *Department of Land Affairs v Goedgelegen Tropical Fruits (Pty) Ltd*,³ the Constitutional Court dealt with the interpretation of the provisions of a statute and stated the following:

"It is by now trite that not only the empowering provisions of the Constitution but also of the Restitution Act must be understood purposively because it is remedial legislation umbilically linked to the Constitution. Therefore, in construing 'as a result of past racially discriminatory laws or practices' in its setting of section 2(1) of the Restitution Act, we are obliged to scrutinise its purpose. As we do so, we must seek to promote the spirit, purport and objects of the Bill of Rights. We must prefer a generous construction over a merely textual or legalistic one in order to afford claimants the fullest possible protection of their constitutional guarantees. In searching for the purpose, it is legitimate to seek to identify the mischief sought to be remedied. In part, that is why it is helpful, where appropriate, to pay due attention to the social and historical background of the legislation. We must understand the provision within

³ [2007] ZACC 12; 2007 (6) SA 199 (CC); 2007 (10) BCLR 1027 (CC).

the context of the grid, if any, of related provisions and of the statute as a whole including its underlying values. Although the text is often the starting point of any statutory construction, the meaning it bears must pay due regard to context. This so even when the ordinary meaning of the provision to be construed is clear and unambiguous.”⁴

- [17] More recently, in *Independent Institute of Education (Pty) Limited v KwaZulu Natal Law Society and Others*⁵ the Constitutional Court again had an opportunity of addressing the issue of interpretation of a statute and stated the following:

“It would be a woeful misrepresentation of the true character of our constitutional democracy to resolve any legal issue of consequence without due deference to the pre-eminent or overarching role of our Constitution.

The interpretive exercise is no exception. For, section 39(2) of the Constitution dictates that ‘when interpreting any legislation ... every court, tribunal, or forum must promote the spirit, purpose and objects of the Bill of Rights’. Meaning, every opportunity courts have to interpret legislation, must be seen and utilised as a platform for the promotion of the Bill of Rights by infusing its central purpose into the very essence of the legislation itself.”⁶

- [18] The Court continued and stated the following:

“[18] To concretise this approach, the following must never be lost sight of. First, a special meaning ascribed to a word or phrase in a statute ordinarily applies to that statute alone. Second, even in instances where that statute applies, the context might dictate that the special meaning be departed from. Third, where the application of the definition, even where the same statute in which it is located applies, would give rise to an injustice or incongruity or absurdity that is at odds with the purpose of the statute, then the defined meaning would be inappropriate for use and should therefore be ignored. Fourth, a definition of a word in the one statute does not automatically or compulsorily apply to the same word in another statute. Fifth, a word or phrase is to be given its ordinary meaning unless it is defined in the statute where it is located. Sixth, where one of the meanings that could be given to a word or expression in a

⁴ Id at para 53.

⁵ [2019] ZACC 47; 2020 (2) SA 325 (CC); (2020 (4) BCLR 495 (CC).

⁶ Id at paras 1-2.

statute, without straining the language, 'promotes the spirit, purport and objects of the Bill of Rights', then that is the meaning to be adopted even if it is at odds with any other meaning in other statutes."

...

[38] It is a well-established canon of statutory construction that 'every part of a statute should be construed so as to be consistent, so far as possible, with every other part of that statute, and with every other unrepealed statute enacted by the Legislature'. Statutes dealing with the same subject matter, or which are *in pari materia*, should be construed together and harmoniously. This imperative has the effect of harmonising conflicts and differences between statutes. The canon derives its force from the presumption that the Legislature is consistent with itself. In other words, that the Legislature knows and has in mind the existing law when it passes new legislation, and frames new legislation with reference to the existing law. Statutes relating to the same subject matter should be read together because they should be seen as part of a single harmonious legal system.

...

[41] The canon is consistent with a contextual approach to statutory interpretation. It is now trite that courts must properly contextualise statutory provisions when ascribing meaning to the words used therein. While maintaining that word should generally be given their ordinary grammatical meaning, this Court has long recognised that a contextual and purposive must be applied to statutory interpretation. Courts must have due regard to the context in which the words appear, even where 'the words to be construed are clear and unambiguous'.

[42] This Court has taken a broad approach to contextualising legislative provisions having regard to both the internal and external context in statutory interpretation. A contextual approach requires that legislative provisions are interpreted in of the text of the legislation as a whole (internal context). This Court has also recognised that context included, amongst others, the mischief which the legislation aims to address, the social and historical background of the legislation, and, most pertinently for the purposes of this, other legislation (external context). That a contextual approach mandates consideration of other legislation is clearly demonstrated in *Shaik*. In *Shaik*, this Court considered context to be 'all-important' in the interpretative exercise. The context to which the Court had regard included the

'well-established rules of criminal procedure and evidence' and, in particular, the provisions of the Criminal Procedure Act."

[19] The provisions of the Act are clear and unambiguous. Section 3 provides that the object of the Act is to pay compensation to people who have suffered any loss or damage wrongfully caused by the driving of motor vehicles in South Africa. The Act does not categorise the type of persons it intends to compensate except to say that such persons must have suffered loss or damage as a result of the driving of motor vehicles. Section 4(1)(a) empowers the applicant (the Fund), in order to execute its functions efficiently, to stipulate the terms and conditions upon which claims for the compensation shall be received and administered. As a result, the applicant issued the management directive that foreign nationals should comply with certain requirements before their claims can be processed.

[20] I do not understand the applicant to be denying that it concluded the settlement and consented to it being made an order of court. However, the issue is the authority of its employee in concluding and consenting to the settlement being made an order of court without the second respondent's compliance with the management directive. I am unable to disagree with the second respondent that the management directive provides that it applies to all lodgements received or pre-assessed from the date of the directive. The management directive therefore has no retrospective application. It is directed at dealing with new claims that are lodged with the applicant and are still to be processed from the date of the management directive.

[21] In *S v Mhlungu and Others*,⁷ which was quoted with approval in *Kaknis v Absa Bank Limited*; *Kaknis v Man Financial Services SA (Pty) Ltd*,⁸ the Constitutional Court stated the following:

"First, there is a strong presumption that new legislation is not intended to be retroactive. By retroactive legislation is meant legislation which invalidates what was previously valid, or *vice versa*, i.e., which affects transactions completed before the

⁷ [1995] ZACC 4; 1995 (3) SA 867 (CC); 1995 (7) BCLR 793 (CC).

⁸ [2016] ZASCA 206; 2017 (4) SA 17 (SCA).

new statute came into operation. See *Van Lear v Van Lear* 1979 (3) SA 1162 (W). It is legislation which enacts that 'as at a past date the law shall be taken to have been that which it was not'. See *Shewan Tomes 7 Co. Ltd v Commissioner of Customs and Excise* 1955 (4) SA 305(A), 311H per Schreiner ACJ. There is also a presumption against reading legislation as being retrospective in the sense that, while it takes effect only from its date of commencement, it impairs existing rights and obligations, e.g., by invalidating current contracts or impairing existing property rights. See *Cape Town Municipality v F. Robb & Co. Ltd.* 1966 (4) SA 345(C), 351 per Corbett J. The general rule therefore is that a statute is as far as possible to be construed as operating only on facts which come into existence after its passing."⁹

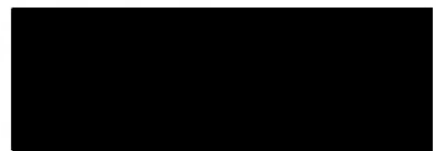
- [22] It should be recalled that the management directive is to enable the applicant to efficiently receive and process claims lodged with it. The management directive is not an Act of Parliament and therefore it is not the law and cannot trump or be contrary to the Act that created it. The empowering legislation provides that its object is to compensate persons who have suffered loss or damages due to the driving of motor vehicles. The Act does not exclude any category of persons and is in line with the Constitution which provides that everyone is equal before the law and has the right to equal protection and benefit of the law.
- [23] As it was submitted on behalf of the applicant that Ms Mathebula had the authority to handle and settle the claim of the respondent, but that she exceeded her authority by settling the claim without complying with the requirements of the management directive. I disagree. Ms Mathebula acted within her mandate to settle the claim as the management directive, as I have found above, does not have retrospective application and is therefore not applicable to the claim of the respondent which arose in 2015 and was lodged with the applicant in 2017. Only claims lodged with the applicant after 21 June 2022, the date upon which the directive was issued, are subject to the management directive.
- [24] It is my respectful view therefore that there is no merit in the application to stay the operation of the order of 18 April 2023 and to interdict the sheriff from executing that order. The applicant has failed to demonstrate that the order was erroneously

⁹ *S v Mhlungu and Others* n 5 above at para 65.

granted. The only purpose to be served by this application is to delay the respondent from receiving his compensation for the loss and or damages he suffered as a result of the driving of a motor vehicle as provided by the Act. I hold the view therefore that the applicant has failed to demonstrate that it has any prospect of success in its application for rescission of the order and therefore the application falls to be dismissed.

[25] In the circumstances, I make the following order:

1. The application is dismissed with costs.



TWALA M L
JUDGE OF THE HIGH COURT,
SOUTH AFRICA
GAUTENG LOCAL DIVISION

Date of Hearing: 6 November 2023
Date of Judgment: 20 November 2023

Appearances

For the Applicants: Advocate Z Ngakane
Instructed by: Malatji & Company

For the Second Respondent: Advocate DJ Smit
Instructed by: Raphael & David Smith Inc

This judgment and order was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal

representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the order is deemed to be the 20 November 2023.