



**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 011795/2022

(1) REPORTABLE: NO.
(2) OF INTEREST TO OTHER JUDGES: NO.
(3) REVISED.
DATE: 9 JULY 2024

SIGNATURE

In the matter between:

THE ROAD ACCIDENT FUND

Applicant

and

ADAM MUDAWO

First Respondent

WENILE SIMON NDLOVU

Second Respondent

BRUCE MTHOKOZI SIBANDA

Third Respondent

OYETUNDE ONENIYI AREO

Fourth Respondent

Summary: *Leave to appeal – no reasonable prospects of success and no “other compelling reason” – leave to appeal against an order whereby the*

Minister of Transport and the Road Accident Fund unilaterally sought to exclude illegal foreigners from the operation from the Road Accident Fund Act 56 of 1996 refused.

ORDER

The application for leave to appeal is refused with costs, such costs to include the costs of two counsel, where so employed.

JUDGMENT

This matter has been heard virtually and is otherwise disposed of in terms of the Directives of the Judge President of this Division. The judgment and order are accordingly published and distributed electronically with the effective date of the judgment being 9 July 2024.

DAVIS, J (Mnyovu AJ and Kok AJ concurring)

Introduction

[1] In June and July 2022 the Minister of Transport (the Minister) and the Road Accident Fund (the RAF) sought to put measures in place whereby illegal foreigners would be excluded from the operation of the Road Accident Fund Act¹ (the RAF Act). This was done by the promulgation of a “new RAF 1 claim form.

¹ 56 of 1996.

[2] On 26 March 2024 this full court reviewed and set aside the abovementioned measures.

[3] The RAF now seeks leave to appeal the above judgment and order to the Supreme Court of Appeal.

Reasonable prospects of success?

[4] In attempting to illustrate the RAF's prospects of success on appeal, Adv Tsatsawane SC argued that the main issue was whether the use of the words "any person" in the RAF Act includes persons who are present in South Africa contrary to the provisions of the Immigration Act² at the time of the motor vehicle accident in respect of which they claim damages.

[5] To motivate the RAF's position, Adv Tsatsawane SC referred the court to the judgment of the Constitutional Court in *Chakanyuka and Others v Minister of Justice and Correctional Services*³ (*Chakanyuka*). In the consolidated cases in *Chakanyuka* the Constitutional Court declined to confirm a finding that section 24(2) of the Legal Practice Act⁴ was unconstitutional and invalid to the extent that it does not allow foreigners to be admitted and authorised to be enrolled as legal practitioners. The RAF argued that similarly, it was justified in denying illegal foreigners access to the benefits of the RAF Act.

[6] The statutory provisions of the Legal Practice Act are however distinguishable from the provision under consideration in the RAF Act. Section 24(2)(b) of the Legal Practice Act expressly provides that a High Court must admit "any person who ... satisfies the court that he or she is a (i) South African citizen or (ii) permanent resident in the Republic". The RAF Act contains no

² 13 of 2002.

³ CCT 315/21, CCT 321/21 & CCT 06/22 [2022] ZACC 29 (2 August 2022).

⁴ 28 of 2014.

similar qualifications when it provides that “any person” is entitled to claim damages in terms of the scheme of the RAF Act.

[7] Contrary to the limitations imposed by the Legislature in the Legal Practice Act on applicants who wish to practice law in this country, the Legislature imposed no such limitations on claimants who suffered damages as a result of motor vehicle accidents which occurred in the country. The decision in *Chakanyuka* is therefore not only against the RAF, but supports the finding of this court that, absent any limitation in the RAF Act itself, the words “any person” must be interpreted to be inclusive and without any qualification or limitation.

[8] Apart from this argument, the RAF’s application for leave to appeal takes the matter no further. The notice of application consists of three paragraphs only. The first paragraph consists of a proverbial “one-liner” which simply and without foundation proclaims that “there is a reasonable prospect of success”.

[9] The second paragraph, in the first six sub-paragraphs thereof, simply lists the elements of this court’s findings while simultaneously alleging that the court had erred in respect thereof. No grounds have been set out substantiating these allegations or criticisms.

[10] In paras 2.7 and 2.8 the RAF repeated the argument that section 4 of the RAF Act, granting the Minister and the RAF the power to prescribe the manner in which the RAF deals with claims, empowers them to exclude illegal foreigners from the operation of the RAF Act by requiring proof of the legality of their foreigner status before entertaining their claims. The argument that the Minister or the RAF may by the use of subordinate regulation change or amend the ambit of a statute itself, needs only to be stated to show its fallacy. It is trite that this cannot be done.

[11] In paras 2.9 to 2.14 of the RAF's notice, the argument is again advanced that because the Immigration Act prescribes who may legally enter the country, the persons referred to in the RAF Act must be interpreted to only refer to such persons. Again, the RAF Act does not provide for such limitation and there is, in the absence of qualifications, no indication that the wide provisions of the RAF Act should be restricted to a narrower interpretation than the actual words used.

[12] In contrast to the RAF's argument, the fact that the Supreme Court of Appeal has held that the provisions of the RAF Act must be interpreted "*as extensively as possible in favour of claimants*" has in fact been conceded by the RAF in para 2.15 of its notice of application for leave to appeal.

[13] In para 2.16 and its sub-paragraphs, this court is criticised from having mentioned in its judgment that the RAF Act has always been interpreted as conferring benefits on illegal foreigners. The basis of the criticism was that this was not an issue raised in the papers. The respondents pointed out that this criticism was not justified as the second respondent in his founding affidavit in the main application expressly stated that the exclusion of claims by illegal foreigners has "never" existed before. The point was expressly made⁵ that the new requirements constituted "novel barriers".

[14] Based on the above, we find that there are no reasonable prospects of success on appeal. The RAF has therefore not satisfied the requirements of section 17(1)(a)(i) of the Superior Courts Act⁶.

Compelling reason to grant leave to appeal?

[15] In an attempt to satisfy the requirements of section 17(1)(a)(ii) of the Superior Courts Act, the RAF simply in the concluding paragraph of its notice of

⁵ Para 27 of the Founding Affidavit in Caselines 019-16.

⁶ 10 of 2013

application for leave to appeal, aver that the matter is of significant public importance and interest and that therefore leave to appeal should be granted.

[16] It is trite that the absence of a reasonable prospect of success is a relevant factor in considering whether, despite this absence, another “compelling reasons” exist justifying the granting of leave to appeal⁷.

[17] One can readily conceive a situation where a notionally large (but unknown) number of persons who has previously been able to claim damages from the RAF, had that right curtailed by an order of court, could argue that such termination constituted a “compelling reasons” to consider the granting of leave to appeal. But here the position is the opposite. The order of this court effectively maintained the status quo of claimants whose claims have consistently been recognised by the RAF. The RAF has not even described what “compelling reasons” would be in its favour which would justify the granting of leave to appeal in these circumstances.

Conclusion

[18] We therefore find that none of the requirements for the granting of leave to appeal have been satisfied. Having reached this conclusion, we also find no reason why costs should not follow this event.

Order

The following order is made:

The application for leave to appeal is refused with costs, such costs to include the costs of two counsel, where employed.

⁷ *Minister of Justice and Constitutional Development v South African Litigation Centre* 2016(3)SA 317(SCA) at par [24]



N DAVIS

Judge of the High Court
Gauteng Division, Pretoria

I agree



B F MNYOVU

Acting Judge of the High Court
Gauteng Division, Pretoria

I agree



J A KOK

Acting Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 19 June 2024

Judgment delivered: 9 July 2024

APPEARANCES:

For the Second Applicant:

Adv K Tsatsawane SC together
with Adv C Rip

Attorney for the Second Applicant:

Malatji & Co Attorneys, Sandton
c/o Ditsela Inc., Pretoria

For the First Respondent:

Adv B P Geach SC together with
Adv R Hawman

Attorney for the First Respondent:

Roets & van Rensburg Inc., Pretoria

For the Second Respondent:

Adv F H H Kehrhahn together with
Adv S Cliff

Attorney for the Second Respondent:

Mduzulwana Attorneys Inc.,
Pretoria

For the Third Respondent:

Adv M Snyman SC together with
Adv F H H Kehrhahn

Attorney for the Third Respondent:

KWP Attorneys, Randburg

For the Fourth Respondent:

Adv P van der Schyf together with
Adv D Hinrichsen

Attorney for the Fourth Respondent:

Slabbert & Slabbert Attorneys,
Pretoria