



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA**

APPEAL CASE NO: A40/2023

(1) REPORTABLE: ~~YES~~ / NO

(2) OF INTEREST TO OTHER JUDGES: YES / ~~NO~~

(3) REVISED: ~~YES~~ / NO

28 October 2024

DATE

SIGNATURE

In the matter between: -

KARMANN NOORTMAN

Appellant

VS

ROAD ACCIDENT FUND

Respondent

Heard on: 23 August 2024

Delivered: 28 October 2024. This judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be 28 October 2024.

JUDGMENT

Coram: Mazibuko AJ (Langa J and Vukeya J concurring)

INTRODUCTION

[1] The litigation culminating in this appeal was launched in the court *a quo* by the appellant, Mr Karmann Noortman, a tow truck driver who sought an order to rectify his identification number reflected on the Road Accident Fund ("RAF") link system; alternatively, replacing the RAF link to reflect his identity number instead of his brother's, ("Johannes Gerhardus Noortmann"). The court *a quo* sitting in an unopposed motion roll, refused the application. Aggrieved by the court *a quo*'s decision, the appellant appealed the order and judgment.

FACTUAL BACKGROUND

- [2] According to the appellant, on 20 February 2017, he was involved in a motor vehicle accident whilst attending to a recovery of a motor vehicle. He got injured and was taken for medical attention. On 31 July 2018, he lodged a personal injury claim with RAF.
- [3] The lodgment documentation contained the particulars of the appellant but his brother's identity number. It was alleged that the appellant's erstwhile attorneys completed the lodgment documents before his current attorneys were instructed. On 23 August 2018, RAF sent out correspondence of non-compliance wherein they stated the claimant as *Johannes Gerhardus Noortmann, Reference Number 560/12700824/31/0, Link Number 4456301*. The details were those of the appellant's brother, not the appellant's. They also stated that the claimant had previously lodged three claims and he had incorrectly stated to the experts, one of whom was Dr Mncina, that he had no past medical history.
- [4] RAF has maintained its position despite the correspondence, including a letter of demand explaining the appellant's allegations that he was the one involved in a car collision on the date in question, not his brother. To this end, the appellant attached the correspondence showing his request to RAF for the details alteration. The appellant proceeded to lodge an application to rectify

his details, and RAF did not oppose it. This appeal is not opposed by RAF, there is also no cross-appeal.

THE DECISION OF THE COURT A QUO

[5] What was before the court *a quo* was an unopposed application to rectify identity details entered into the RAF digital system, which, according to the appellant, made it difficult for his RAF claim to be processed. The question was whether the applicant had made out a case for the rectification of his identity details.

[6] The court *a quo* refused the application on the basis that misrepresentations were made to RAF. It was an attempt by the appellant to take over his brother's claim through a different persona. The appellant had no *locus standi* to have his brother's details on the RAF link system altered, nor did the attorney, Mr W.P. Meintjies ("Mr Meintjies"), who deposed to the founding affidavit as he had the mandate by the appellant's brother, not the appellant. It viewed the application or the facts leading to it as planned fraud, warranting an investigation by the Director of Public Prosecutions, South African Legal Practice Council ("LPC") and the South African Police Services, respectively.

[7] At the hearing, the court *a quo* directed that it required no address or explanation of matters as it had read the papers. Mr Meintjies was in

appearance.

ISSUE

- [8] The issue before this Court is whether the court *a quo* was correct to refuse the rectification application, especially given that the appellant was required to establish a *prima facie* case. Further, were the findings justifiable?

LEGAL PRINCIPLES

- [9] It is a well-established principle that an appeal Court may interfere with the exercise of discretion in the true sense by a court of the first instance only if it can be demonstrated that the latter court exercised its discretion capriciously or on a wrong principle or has not brought an unbiased judgment to bear on the question under consideration, or has not acted for substantial reasons.¹

- [10] Section 4(1) of the RAF Act provides:

‘The powers and functions of the Fund shall include-

(a)...

(b) the investigation and settling, subject to this Act, of claims arising from loss or damage caused by the driving of a motor vehicle whether or not the identity

¹ *Trencon Construction Pty (Ltd) v Industrial Development Corporation of South Africa Limited and Another* [2015] ZACC 22; 2015 (5) SA 245 (CC); 2015 (10) BCLR 1199 (CC) para 88-89; *Hotz and Others v University of Cape Town* [2017] ZACC 10; 2017 (7) BCLR 815 (CC); 2018 (1) SA 369 (CC) para 28.

of the owner or the driver thereof, or the identity of both the owner and the driver thereof, has been established;

(c) the management and utilisation of the money of the Fund for purposes connected with or resulting from the exercise of its powers or the performance of its duties.

In terms of s 15(1)(a) the RAF may institute and defend legal proceedings. Section 15(1)(b) provides that the RAF may ‘commence, conduct, defend or abandon legal proceedings in connection with claims investigated and settled by it’.

[11] '[Courts] do not, or should not, sally forth each day looking for wrongs to right. We wait for cases to come to us, and when they do we normally decide only questions presented by the parties. Counsel almost always know a great deal more about their cases than we do.'²

[12] Where the misappropriation of public funds is properly raised before a court, it must, of course, deal with it decisively and without fear, favour or prejudice. But a court has no general duty or power to exercise oversight over the expenditure of public funds. This is so for three main reasons. The first is the constitutional principle of separation of powers. The second is that the exercise of such a duty or power would infringe the constitutional rights of

² Minister of Justice and Correctional Services and Others v Estate Late Stransham-Ford and Others 2017 (3) BCLR 364 (SCA) para 24.

ordinary citizens to equality and to a fair public hearing. The third is the principle that the law constrains a court to decide only the issues that the parties have raised for decision.³

DISCUSSION

[13] In summation, the basis of the appeal is that the court *a quo* misdirected itself when:

- 13.1. It found the rectification of identity details was a misrepresentation to RAF, which could not be amended;
- 13.2. It decided the matter on evidence not placed before it;
- 13.3. During unopposed motion proceedings, it made findings without hearing any oral evidence after declining the appellant's legal representative's request to address the court *a quo* on concerns it may have had.

[14] The court *a quo* had a duty to act procedurally fair to the litigants and their legal representatives since its decision had an adverse impact on their rights. Its orders cast aspersions on Mr Meintjie's ethical behaviour. They resulted in a referral of the matter to the professional regulatory authority, the LPC, without him being afforded an opportunity to defend the findings. Inviting him and affording him an opportunity to make submissions during the proceedings

³ Magistrates Commission and Others v Lawrence [2021] ZASCA 165; 2022 (4) SA 107 SCA para 78-79.

would have contributed to the accuracy of the findings and ultimate decision of the court *a quo*.

[15] RAF is statutory empowered to conduct its own investigation and make a determination regarding claims brought against it. The court *a quo* had no evidence presented before it to make a finding that there was misrepresentation and planned fraud against RAF. The rectification request could not have been a misrepresentation when there was an investigation outcome to that effect shared by the appellant with RAF. Nothing precluded RAF from conducting its own investigation if not satisfied. However, RAF elected otherwise.

[16] The uncontested evidence before the court *a quo*, as stated in the following passage from the founding affidavit, was

“12.2 From the collision report compiled by Trafcol Collision Investigators and provided to the Respondent, the details of the accident, and the claimant Karmann Noortman appear. The respondent despite these details has failed or refuses to appoint an investigator to verify the aspect (s) which seemingly it disagrees with and chooses to do nothing delaying the finalisation of the claim.” (sic).

[17] None of the findings the court *a quo* made had been open for it to make as they were based on facts, pleadings and inadmissible evidence that was not

before it. Moreover, these findings were made without any admissible evidence, as the parties concerned were not invited to make presentations before the findings. They were mainly based on the information from the court file to which the court had not been referred. The court *a quo* did not constrain itself to the pleadings or papers for the issue before it. It went beyond that and perused the whole court file. It was required to adjudicate on the issue before it as per the pleadings and evidence presented to it. The rectification application required that it be treated as an interlocutory application, not as disposing of the matter in its entirety.

CONCLUSION

- [18] The tenor of the court *a quo*'s judgment suggests that there was something untoward about the rectification application. It based this finding on its reading of the court file content it was not referred to. The issue before it, as already alluded to, was whether or not the appellant had made out a case for an order to have his identity details corrected. Which issue RAF knew about, according to the correspondence exchanged and the rectification application. The application was properly served on RAF, and it can be accepted that it elected not to oppose same. It was not open to the court to read the contents of the court file for the purpose of making a finding without affording the side of the interested parties an opportunity to be heard, especially when they appeared before it.

[19] In the absence of facts or evidence supporting the correct exercise of discretion regarding the rectification application, the court *a quo* would not be justified in refusing to grant the rectification order and make the findings it did. For these reasons, this court is at liberty to interfere with the discretion exercised by the court *a quo*. It follows then that the order granted by the court *a quo* ought to be set aside and the appeal to succeed.

[20] Consequently, I propose the following order:

Order:

1. The order granted by the court *a quo* is set aside and substituted with the following:
 - a. The appeal is upheld.
 - b. The rectification application is remitted to the court *a quo*.
 - c. The finding of fraud and the order of referral for investigations to the Legal Practice Council, Mpumalanga, Director of Public Prosecutions, Mpumalanga, the Station Commissioner, Nelspruit Police Station and the Chief Executive Officer of Road Accident Fund, is set aside.
 - d. No costs order is made.



N. G. M. MAZIBUKO
ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MBOMBELA

I agree



M. B. G. LANGA
JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MBOMBELA

I agree and it is so ordered



L. VUKEYA
JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MBOMBELA

Appearances:

For the appellant:

Advocate T. Ngwenya

Instructed by:

Meintjies & Khoza Attorneys

For the respondent:

No appearance

Date heard:

23 August 2024

Date of Judgment:

28 October 2024