



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

CASE NO.: D10075/2023

In the matter between:

VINCENT VUSUMUZI MAJOZI

APPLICANT

and

ROAD ACCIDENT FUND

DEFENDANT

AND

Case No.: D10076/2023

In the matter between:

NKOSINETHEMBA HOPEWELL MTSHALI

APPLICANT

and

ROAD ACCIDENT FUND

DEFENDANT

ORDER

The following orders shall issue:

In the matter of VV Majozi v Road Accident Fund, Case No.: D10075/2023:

1. The application is dismissed.

In the matter of NH Mtshali v Road Accident Fund, Case No.: D10076/2023:

1. The application is dismissed.

JUDGMENT

Gajoo AJ

- [1] This judgment addresses two applications brought by the applicants against the Road Accident Fund (“the RAF”). These applications have been consolidated as the issues for determination in both matters are the same. The applicants seek a declaratory order in the following terms:
- (a) That the RAF is directed to record the registration of the applicants’ claims for compensation arising out of injuries sustained by them in a motor vehicle accident;
 - (b) The applicants’ lodgment documents are declared to be substantially compliant with the provisions of s 24 of the Road Accident Fund Act, No. 56 of 1996 (*“the RAF Act”*); and
 - (c) The RAF is to pay the attorney/client costs of the application.
- [2] The applicants were both involved in the following motor vehicle collisions:
- (a) Vincent Vusumuzi Majozi (“Majozi”) was a pedestrian involved in a motor vehicle accident on 12 October 2021 while crossing Inwabi Road, Isipingo. The driver of the vehicle was identified as Goolam Hoosen; and
 - (b) Nkosinethemba Hopewell Mtshali (“Mtshali”) was a driver involved in a motor collision on 14 February 2021 on Mfule Mission Road (P574) involving an unidentified motor vehicle.

- [3] Both men suffered injuries as a result of the motor vehicle collisions, and on this premise, they sought compensation from the RAF. They both engaged with an attorney to aid them in pursuing their claim.

Lodgment

- [4] On 4 April 2023, Majozi's claim was lodged by registered post with the RAF under the cover letter dated 31 March 2023. On 2 May 2023, the RAF returned the documents to Majozi's attorney together with a letter.
- [5] The letter advised that the documents lodged had been pre-assessed for compliance with s 24 of the Act and the Stipulated Terms and Conditions Upon Which Claims For Compensation Shall Be Administered, which were published by the RAF pursuant to s 4(1)(a) of the Act ("the Terms and Conditions"). The letter advised further that the documents submitted did not meet the requirements for a substantially compliant and valid claim as the reports of an Occupational Therapist and Industrial Psychologist had not been included in the lodgment documents.
- [6] Similarly, Mtshali's lodgment documents were sent by registered post on 1 February 2023 under a cover letter dated 27 January 2023. In answer to the documents were returned under the cover of a letter dated 13 February 2023.
- [7] The letter advised that the documents lodged had been pre-assessed for compliance with s 24 of the RAF Act and the Terms and Conditions. The letter advised further that the documents lodged did not meet the requirements for a substantially compliant and valid claim, as the following documents had not been included in the lodgment documents:
- (a) Accident Report or Docket with sketch plan;
 - (b) RAF 4 Form with medico-legal report;
 - (c) Occupational therapy and industrial psychologist's report;
 - (d) Documentation confirming any disability grant; and
 - (e) Copy of certified ID.

- [8] Both objection letters explained that based on the failure to include these specified documents, the RAF objects to the validity of the claims submitted in accordance with s 24(5) of the Act. The RAF accordingly did not accept the lodgment documents, which were returned together with the letters to the applicants' attorneys.
- [9] The applicants argue that the documents lodged met the substantial compliance requirements set by the provisions of s 24 of the Act. They argue that once they had substantially complied with the provisions of the Act, their claims should have been lodged and thereafter assessed and investigated further by the RAF.
- [10] The RAF argued that it is mandated in terms of s 4 of the Act to investigate and settle claims against it. The RAF explains that the claimants'/applicants' lodgment documents did not, in their assessment, meet the requirements of s 24, which rendered the claims invalid as it did not enable the RAF to investigate the claims and be in a position to settle the claims.

Point in limine: non-compliance with the Promotion of Administrative Justice Act

- [11] The RAF raised a point in limine that it is an organ of state and that the objection letters constitute an administrative action as defined in the Promotion of Administrative Justice Act ("PAJA").¹ In the premises the RAF complains that the applications should have been brought under the provisions of s 6(1) of PAJA.
- [12] The applicants argue that the RAF under the provisions of s 24(1)(b) holds a statutory obligation to acknowledge, in writing, receipt of the lodgment documents. This section must be read together with the provisions of s 24(5) which allows for an objection to the validity of the claim within 60 days the documents being sent by registered post. The objection letters delivered

¹ Promotion of Administrative Justice Act 3 of 2000.

specifically provided that the documentation had been pre-assessed for compliance with the provisions of s 24.

[13] The Applicants argue that any action contrary to the obligations contained in the Act are *ultra vires*, inferring that the objection letters are an act by the Fund acting outside the prescripts of the Act. They argue further that actions by the RAF do not constitute administrative action. The Applicant however rightly submits that the RAF is entitled to object to the validity of the claim in terms of s 24(5) of the Act.

[14] The purpose of s 24(5) is to regulate procedural matters. Considering the function of s 24(5), the Supreme Court of Appeal (“the SCA”) in *Thugwana v Road Accident Fund*² held as follows:

‘[6] In upholding the special plea, the Court *a quo* found that the purpose of s 24(5) was to regulate the procedural matters set out in that section and nothing further. The court found support for this view in *Krischke v Road Accident Fund*. In that case the court (Jajbhay J) found that the structure of s 24 entailed procedures for the completion and lodging of a claim form with the Fund. The purpose of the section was to afford the Fund sufficient time to consider the claim and to decide whether to contest or settle it. The learned judge then concluded that s 24(5) had no bearing on substantive law, and (in that case) could not be relied upon to revive a claim that had become prescribed.

[8]... On the other hand the purpose of s 24 is to ensure that, before the onset of litigation, sufficient particulars about the claim are placed before the Fund to enable it, timeously, to make a decision whether it resisted or settled the claim. The section has nothing to do with issues not specified therein. Simply put it is incapable of breathing life into a claim that failed to arise because of non-compliance with the substantive requirement found in reg 2(1)(c).’ (Footnotes omitted.)

² *Thugwana v Road Accident Fund* 2006 (2) SA 616 (SCA).

- [15] This view was reiterated in *Mautla and Others v Road Accident Fund and Others*³ where the court found as follows:

‘[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. The Act specifically provides in section 24(5) that after receiving the claim, the RAF then has 60 days within which to object to the validity of the claim. If there is no objection to the validity of the claim, this does not mean that an otherwise invalid claim is then deemed to be valid. 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.’ (Footnote omitted.)

- [16] The objection letters delivered by the RAF indicate that an evaluation of the forms had been undertaken and the lodgment documents failed to comply with the requirements applicable at that time. The RAF objects to the validity of the claims based on the procedural irregularities in the form of the missing documents listed therein.
- [17] The provisions of s 24 of the Act require the claimants to provide all the duly completed forms and documents listed therein. The RAF made an assessment, within the prescribed 60 days, that the applicants’ claims did not comply with the requirements and therefore objected thereto under the provisions of s 24(5), which allows for that decision and process to be followed. The obligation then is placed on the applicants to remedy the issues and relodge their documents.
- [18] The applicants argue that the requirements applied were overly onerous and irregular. At the time the applicants’ lodgments were made, the prevailing guide to the form in which the lodgment must be made was set out in the Terms And Conditions Upon Which Claims For Compensation Shall Be Administered in Board Notice 271 of 2022 published, by the RAF, in Government Gazette No. 46322 on 6 May 2022 (“the Terms and Conditions”). These Terms and Conditions provided a schedule of documents which the RAF required to be

³ *Mautla and Others v Road Accident Fund and Others* [2023] ZAGPPHC 1843.

lodged with the lodgment of a claim. It is the same Terms and Conditions referred to in the objection letters by the RAF, which it complains the applicants fall foul off.

- [19] The amendment of the RAF 1 form was effected by the Minister of Transport in terms of s 26 of the Act, when he published Board Notice 302 of 2022 in Government Gazette No. 46652 of 4 July 2022. This new form stipulated that any form that is not completed in its full particulars shall not be acceptable as a claim and references s 24(4)(a) of the Act.
- [20] The Terms and Conditions, new RAF 1 form and their implementation has come under scrutiny in the Pretoria High Court in the matter of *Legal Practitioners Indemnity Insurance Fund NPC and Others v Road Accident Fund and Others*.⁴ The court made an order that the Form RAF 1, prescribed by the Minister of Transport in terms of s 26 of the Act and published in Board Notice 302 of 2022 in Government Gazette No. 46653 of 4 July 2022 was declared unlawful and reviewed and set aside.
- [21] The court made the same order in respect of the Terms and Conditions. Leave to appeal has been granted against this part of the order, and the matter is pending a hearing before the Supreme Court of Appeal.
- [22] The applicants argue that the RAF is now obliged to accept the documents lodged under the provisions of the old RAF 1 form. The applicants, having complied with the provisions of the old RAF1 form, argue that the declaratory order should be granted. However, their applications fall short.
- [23] Stydom AJ in the matter of *Radebe v Road Accident Fund*⁵ considered an application of a similar nature to the one before me, wherein she found:
- ‘[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

⁴ *Legal Practitioners Indemnity Insurance Fund NPC and Others v Road Accident Fund and Others* 2024 (4) SA 594 (GP).

⁵ *Radebe v Road Accident Fund* [2024] ZAGPPHC 25.

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.'

- [24] In *Mlamli v Johnstone NO and Another*⁶ the court did grant a declaratory order, but in circumstances where no objection letter was delivered together with the lodgment documents. In that matter, there was no indication that the documents had been assessed, nor had the RAF entered a formal objection to the documents at all. The declaratory order in those circumstances was appropriate.
- [25] Here the applicants both face a formal objection letter. I agree that in light of the judgment of *Legal Practitioners Indemnity Insurance Fund* the underlying premise of the decision may be flawed but the objections still stand.
- [26] It is not permissible to rely in administrative law litigation directly on the common law or s 33 of the Constitution where PAJA provides relief. PAJA is a codification of these administrative rights and must be used to give effect to them. PAJA is intended to ensure that when the bureaucratic machinery of the State, in all its various guises, is implementing policy it does so in a manner that is procedurally fair.⁷
- [27] The question that arises is whether the objection letters evidence administrative action by the RAF. The basic assessment of whether the action is considered administrative action is whether it adversely affects the rights of any person, which these decisions by the RAF do, and whether it has a direct external legal

⁶ *Mlamli v Johnstone NO and Another* 2024 (4) SA 611 (ECMk).

⁷ *TMT Services & Supplies (Pty) Ltd t/a Traffic Management Technologies v The MEC: Department of Transport, Province of KwaZulu Natal & Others* (Case No.: 1059/2020) [2022] ZASCA 27 (15 March 2022) paragraph 8; *Grey's Marine Hout Bay (Pty) Ltd and Others v Minister of Public Works and Others* 2005 (6) SA 313 (SCA); P Van Blerk *Precedents for Applications in Civil Proceedings* (2018) at 229,

effect, which similarly it does, in refusing the applicants the opportunity to timeously lodge their claims.

[28] In the matter of *Road Accident Fund v Duma and Three Similar Cases*,⁸ the SCA, considering the RAF's approach to RAF 4 forms, held as follows:

'[24] Recognition that the Fund's decision to reject the plaintiffs' RAF 4 forms constituted administrative action, dictates that until that decision was set aside by a court on review or overturned in an internal appeal, it remained valid and binding (see eg *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* 2004 (6) SA 222 (SCA) ([2004] 3 All SA 1) para 26). The fact that the Fund gave no reasons for the rejection, or that the reasons given are found to be unpersuasive or not based on proper medical or legal grounds, cannot detract from this principle. The same holds true for the respondents' argument that it appeared from the medical evidence presented by them at the trial that the Fund was wrong in deciding that their injuries were not serious. Whether the Fund's decisions were right or wrong is of no consequence. They exist as a fact until set aside or reviewed or overturned in an internal appeal. It was therefore not open to the high court to disregard the Fund's rejection of the RAF 4 forms on the basis that the reasons given were insufficient; or that they were given without any medical or legal basis; or that they were proved to be wrong by expert evidence at the trial.'

[29] The SCA held further as follows:

'[19]...Appreciation of this basic principle, I think, leads one to the following conclusions:

- (a) Since the Fund is an organ of state as defined in s 239 of the Constitution and is performing a public function in terms of legislation, its decision in terms of regs 3(3)(c) and 3(3)(d), whether or not the RAF 4 form correctly assessed the claimant's injury as "serious", constitutes "administrative action" as

⁸ *Road Accident Fund v Duma and Three Similar Cases* 2013 (6) SA 9 (SCA).

contemplated by the Promotion of Administrative Justice Act 3 of 2000 (PAJA). (A “decision” is defined in PAJA to include the making of a determination.) The position is therefore governed by the provisions of PAJA.

- (b) If the Fund should fail to take a decision within reasonable time, the plaintiff's remedy is under PAJA..
- (c) If the Fund should take a decision against the plaintiff, that decision cannot be ignored simply because it was not taken within a reasonable time or because no legal or medical basis is provided for the decision, or because the court does not agree with the reasons given.
- (d) A decision by the Fund is subject to an internal administrative appeal to an appeal tribunal.
- (e) Neither the decision of the Fund nor the decision of the appeal tribunal is subject to an appeal to the court. The court's control over these decisions is by means of the review proceedings under PAJA.'

[30] So, too, here in consideration of these applications, the RAF is an organ of State and is performing a public function in terms of legislation; its decision to pre-assess and object to the lodgment documents in terms of s 24(5) constitutes administrative action as contemplated by PAJA.

[31] The RAF's decision to object to the validity of the claims cannot be ignored simply because it has no factual or legal basis or because the court does not agree with the reasons given for the objection.

[32] The objection by the RAF is not subject to an internal appeal as there is no provision for same in the Act or Regulations; however, it is open to the applicants to relodge their claims under the provisions of s 24 or in terms of the order granted at paragraph (vii) in the matter of *Legal Practitioners Indemnity Insurance Fund*.

[33] The RAF's decision is not subject to an appeal to the court. The court's control over these decisions is by means of review proceedings under PAJA.

[34] In *Nedbank Ltd v Mendelow and Another NNO*⁹ Lewis JA held:

'[25] Administrative action entails a decision, or a failure to make a decision, by a functionary, and which has a direct legal effect on an individual. A decision must entail some form of choice or evaluation. Thus while both the Master and the Registrar of Deeds may perform administrative acts in the course of their statutory duties, where they have no decision-making function but perform acts that are purely clerical and which they are required to do in terms of the statute that so empowers them, they are not performing administrative acts within the definition of the PAJA or even under the common law. As Nugent JA said in *Grey's Marine*:

"Whether particular conduct constitutes administrative action depends primarily on the nature of the power that is being exercised rather than upon the identity of the person who does so" (Footnotes omitted.)

[35] In the circumstances, both applications suffer the same flaw in terms of their substantive premise. There was an evaluation by the Raf and an objection entered which must be addressed before the documents are deemed properly lodged. I find that the applications do not support an exercise of my discretion in favour of the declaratory relief sought and should have been brought under the prescripts of PAJA. I find that the point in limine must be upheld.

Order

[36] The following orders shall issue:

In the matter of VV Majozi v Road Accident Fund, Case No.: D10075/2023:

1. The application is dismissed.

In the matter of NH Mtshali v Road Accident Fund, Case No.: D10076/2023:

1. The application is dismissed.

⁹ *Nedbank Ltd v Mendelow and Another NNO* 2013 (6) SA 130 (SCA).


Gajoo AJ**Appearances**

Counsel for applicants : Adv M Oliff

Instructed by : Thorrington-Smith & Silver Attorneys

Counsel for defendant : Ms Dlamini

Instructed by : State Attorney

Date of Hearing: : 25 October 2024

Date of Judgment :