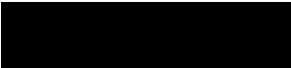


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 039384/22

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
30 July 2025	
DATE	SIGNATURE

In the matter between:

KHAYIKAZI SHAYIMVUBU

Applicant

and

ROAD ACCIDENT FUND

Respondent

***Delivered:** This judgment 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 e-mail and by uploading it to the electronic file of this matter on Caselines. The date and for hand-down is deemed to be 30 July 2025.*

Summary: Application for leave to appeal. An appeal lies against the order as opposed to the reasons of the order. In the absence of an election made in terms of regulation 3(3)(c) a Court lacks jurisdiction to hear a claim for non-pecuniary loss. Making of an offer for general damages does not equate making an election as contemplated in the regulations. Where an offer is made and rejected, there cannot be a speak of an offer made. Where the requirements of section 17(1)(a)

**of the Superior Courts Act are not met leave to appeal should not be granted.
Held: (1) The application for leave to appeal is refused.**

JUDGMENT

MOSHOANA, J

Introduction

[1] This is an application for leave to appeal against the judgment and order made by this Court on 30 June 2025. As it is customary, the application is unopposed by the Road Accident Fund (RAF). It is unnecessary for the purposes of this judgment to regurgitate the grounds upon which leave to appeal is sought. Rule 49(1)(a) of the Uniform Rules requires a statement of the grounds to request leave to appeal. It suffices to mention at this stage that the grounds must be of facts and law. A recitation of grounds not predicated on any factual or legal error is not contemplated. In an application for leave to appeal, a party is not afforded an opportunity to re-argue as it were a dismissed claim. A party must persuade a Court for the purpose of forming an opinion whether (a) the appeal sought would have a reasonable prospects of success; and (b) there is some other compelling reason why the appeal should be heard.

Analysis

[2] It is trite that an appeal does not lie against the reasons but an order of a Court. The order made in the impugned judgment is one of dismissing the claim for loss of earning capacity and earnings. In reasoning its order, the Court referred to general damages claim. It remarked that there was no election made by the RAF as contemplated in section 17 read with regulation 3(3)(c) of the RAF Regulations. The applicant persisted that this Court erred in that remark since an offer for general damages was once made and rejected. Regarding this alleged error, this Court concludes that the issue of general damages has nothing to do with the order made regarding loss of earning capacity and earnings.

- [3] For the sake of posterity, this Court concludes that making an offer is not tantamount to making an election within the contemplation of section 17 and the regulations¹. The jurisdiction of the Court to entertain the non-pecuniary loss claim is ignited by an election and not some offer being made and rejected. It was for that reason that this Court did not entertain the claim for general damages. Once the RAF makes an election, the applicant may return to this Court for the entertainment of the non-pecuniary loss claim. Seeking an appeal is inappropriate in an instance where a Court did not exercise jurisdiction.
- [4] Nevertheless, where an offer is made and rejected, there can be no speak of an existing offer. The offer made was only valid for 30 days. Accordingly, at the time the matter was heard by this Court, there was no offer in place, even if this Court were to conclude that an offer equates an election contemplated in section 17 and the regulation. Assuming that this Court were to accept that making an offer equates making an election contemplated by the section and the regulation, it must axiomatically follow that where the offer lapses, as it was the case herein, the election also falls away. Such would be a preposterous assertion, in the extreme, to make.

¹ See *Dube v Road Accident Fund* (2015-03387) [2024] ZAGPJHC 228 (6 March 2024) where the matter of *Mertz v Road Accident Fund* 2023 (8A2) QOD 6 (GN) was distinguished because an undertaking was made at the Pre-Trial Conference regarding the experts reports which were deemed to be accepted. See also *Erasmus v Road Accident Fund* (042035/22) [2025] ZAGPPHC (12 March 2025). Compare the above with the conclusions reached at paragraph 49 of the judgment of this Court per Davis J in *Masemola v Road Accident Fund* (43613/2021) [2025] ZAGPPHC 68 (21 January 2025) para 49. In my view, the Court in *Masemola* did to consider the legal effect of the lapsing of an offer made. Does it imply that once an offer is made regarding general damages, the statutory requirements would have been met? I have my own doubts. The provisions of the section and the regulations are clear and require no deeming conclusions to be made. The regulation requires the fund to be **satisfied that the injury has been correctly assessed as serious in terms of the method provided** in the Regulations. Section 17(1) makes a proviso that the obligation of the Fund to compensate a third party for non-pecuniary loss shall be limited to compensation for a serious injury **as contemplated in subsection (1A)**. subsection (1A) provides that assessment of a serious injury shall be based on a **prescribed method adopted** after consultation with medical service providers and shall be reasonable in ensuring that injuries are assessed in relation to the circumstances of the third party. To my mind making an offer is different from assessing in accordance with the prescribed method. A Court is obliged to apply the wording of a legislation and not add words not employed by the legislature. See in this regard E Kellaway *Principles of Legal Interpretation* (LexisNexis) Butterworths) 1995 at page 140 where the author states “A statute has no elasticity...it may not be stretched to meet a case for which provision has clearly not been made... if the plain and unambiguous meaning of a provision in an Act is departed from, a court does not construe it but alters it”. This statement was approved by the LAC in *Mohube v the CCMA* (JA18/2022) [2023] ZALCJHB 171 (18 May 2023) at para 48.

[5] Having considered the grounds putted for the proposed appeal, this Court is unable to form an opinion that there are reasonable prospects of success to be achieved. There are no prospects that an appeal Court would arrive at a conclusion that the applicant lost earning capacity or earnings. Further, this Court is unable to form an opinion that there is some compelling reason why the appeal should be heard. Resultantly, as guided by section 17(1)(a) of the Superior Courts Act, leave to appeal must be refused.

[6] Because of all the above reasons, I make the following order:

Order

1. The application for leave to appeal is refused.



GN MOSHOANA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES:

For the Plaintiff:	Mr Mosala
Instructed by:	Sontsele Attorneys, Pretoria.
For the Defendant:	No appearance
Date of Hearing	28 July 2025
Date of Judgment:	30 July 2025