

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Regional Magistrates:	YES / NO
Circulate to Magistrates:	YES / NO



**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Case Number: 252/2023

In the matter between:

HELEN BRUMILDA LANGEVELD

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

Neutral citation: *Langeveld v Road Accident Fund* (Case no 252/2023).

Coram: Stanton J

Heard: 21 July 2025.

Delivered: 15 August 2025.

Summary: *Special plea of prescription – Not pleaded that plaintiff failed to comply with the Road Accident Fund’s Board Notice 271 of 2022 – Defendant is bound by its special plea – Special plea of prescription not amended – Special plea of prescription is dismissed.*

ORDER

1. The special plea of prescription is dismissed.
2. The defendant shall pay the plaintiff's costs on a party and party scale, scale A.

JUDGMENT

Stanton J

Introduction:

- [1] On 07 February 2023, the plaintiff instituted an action for damages against the Road Accident Fund ("the RAF") arising from a motor vehicle accident that occurred on 18 November 2019. In addition to its plea on the merits, the RAF raised two special pleas: (a) a plea of prescription, and (b) a plea pertaining to the assessment of the seriousness of the injury in terms of s 17(1) of the Road Accident Fund Act 56 of 1996, as amended, ("the Act") and its regulations.
- [2] The parties agreed that the special plea of prescription would be dealt with separately and be argued on the pleadings.
- [3] According to the special plea of prescription:
- 3.1 In terms of s 23(1) and 23(4) of the Act, the right to claim compensation from the RAF, in the case where the identity of the driver or the owner of the motor vehicle from whose driving the loss or damage arose is known, becomes prescribed upon the expiry of three years from the date upon which the cause of action arose.
- 3.2 The plaintiff's cause of action arose on 18 November 2019.

- 3.3 The plaintiff's claim was lodged at the RAF on 25 November 2022.
- 3.4 The plaintiff's claim should have been lodged at the RAF on or before 17 November 2022.
- 3.5 The plaintiff failed to submit a claim to the RAF within three years from the date upon which the cause of action arose, and as a result, her claim has prescribed.
- [4] In the replication to the special plea, the plaintiff pleads that she duly complied with the provisions of s 23(1), (4) and 24(1) (b) of the Act. In support of this submission, she relies on the lodgement letter, dated 08 November 2022, together with the proof of transmission thereof by registered mail; and a letter from the RAF dated 08 November 2022 in which the RAF acknowledged receipt of the lodgement.

Background:

- [5] Section 17 of the Act makes the RAF liable to pay compensation in respect of claims arising from the driving of a motor vehicle where either the identity of the owner or driver thereof has been established.
- [6] Section 23(1) of the Act provides that:
- 'Notwithstanding anything to the contrary in any law contained, but subject to subsections (2) and (3), the right to claim compensation under section 17 from the Fund or an agent in respect of loss or damage arising from the driving of a motor vehicle in the case where the identity of either the driver or the owner thereof has been established, shall become prescribed upon the expiry of a period of three years from the date upon which the cause of action arose.'
- [7] Section 24 of the Act regulates the procedure for the lodgement of claims and provides as follows:

- '(1) A claim for compensation and accompanying medical report under section 17(1) shall –
- (a) be set out in the prescribed form, which shall be completed in all its particulars;
 - (b) be sent by registered post or delivered by hand to the Fund at its principal, branch or regional office, or to the agent who in terms of section 8 must handle the claim, at the agent's registered office or local branch office, and the Fund or such agent shall at the time of delivery by hand acknowledge receipt thereof and the date of such receipt in writing.'
- [8] What arises for consideration is the question whether the claim was lodged on 08 November 2022 or 25 November 2022.
- [9] According to the lodgement letter, dated 08 November 2022, the plaintiff submitted the following documents to the RAF and informed the RAF that the hospital records would follow:
- 9.1 The original RAF 1 form;
 - 9.2 The accident report form;
 - 9.3 The plaintiff's affidavit;
 - 9.4 The plaintiff's identity document;
 - 9.5 The clinical notes of Dr Z Kadwa;
 - 9.6 The medical certificates of Dr JK Duze;
 - 9.7 The GEMS schedule for past medical expenses, together with invoices;
 - 9.8 Proof of income;
 - 9.9 Power of attorney; and
 - 9.10 Consent to inspect all records, medical and otherwise.
- [10] On 08 November 2022, the RAF acknowledged receipt of the claim, but informed the plaintiff's attorneys that the claim form does not comply with the

RAF's Board Notice 271 of 2022 ("the Board Notice")¹ as the plaintiff failed to attach: (a) all itemised tax invoices from a registered medical provider or hospital for past medical expenses; (b) proof of payment of medical expenses; and (c) medico legal reports; which failure resulted in a non-compliant claim being lodged. It is not in dispute that the plaintiff submitted two further lodgements, on 15 November 2022 and 25 November 2022, respectively.

The Board Notice:

[11] Ms Mhlanga, on behalf of the RAF, admits that the plaintiff lodged her claim on 08 November 2022, but denies that the plaintiff substantially complied with the requirements of s 24 of the Act as she failed to comply with the Board Notice as the plaintiff failed to submit: (a) all itemised tax invoices from a registered medical provider or hospital for past medical expenses; (b) proof of payment of medical expenses; and (c) medico legal reports; which failure resulted in a non-compliant claim being lodged.

[12] I deem it prudent to briefly deal with the status of the Board Notice to place Ms Mhlanga's argument in context.

[13] The Minister of Transport ("the Minister") issued the Road Accident Fund Regulations of 2008 in Government Gazette No 31249 of 21 July 2008, in terms of s 26 of the Act. Regulation 7(1) delegates to the RAF the power of the Minister to amend or substitute the RAF 1 Claim Form. Regulation 7(1) reads as follows:

'A claim for compensation and accompanying medical report referred to in section 24(1)(a) of the Act, shall be in the form RAF 1 attached as Annexure A to these Regulations, or such amendment or substitution thereof as the Fund may from time to time give notice of in the Gazette.'

[14] On 06 May 2022, the RAF adopted and implemented the Board Notice. The Board Notice was published in terms of s 4(1)(a) of the Act and included a

¹ GG 46322, 06 May 2022.

schedule which sets out the additional documents the RAF requires for the lodgement of a claim. The Minister, in terms of s 26 of the Act, published the Board Notice in the Government Gazette No 46652 of 4 July 2022. In the Board Notice, the Minister prescribed the RAF 1 Claim Form ("the RAF 1 Form") in a schedule. The RAF 1 Form requires the completion of the form to claim compensation in terms of s 17 of the Act. It stipulates that any form that is not completed in its full particulars shall not be acceptable as a claim in accordance with s 24(4)(a) of the Act.

- [15] On 20 March 2024, in *Legal Practitioners Indemnity Insurance Fund NPC and Others v Road Accident Fund and Others* ("LPIIF v RAF"),² the court found the delegation by the Minister unlawful; and declared that the Board Notice is unlawful, is reviewed and set aside. The court reached this conclusion on the basis that the Board of the RAF may make recommendations to the Minister, but that the Minister ultimately makes the decision; and whatever power the RAF enjoys to administer claims in terms of s 4(1)(a), it cannot trespass upon the Minister's power in terms of s 24(1) read with s 26(1).
- [16] On 26 August 2024, the court *a quo* granted the RAF leave to appeal the judgment in *LPIIF v RAF*,³ but emphasised that:

'Here, as we have explained, is an issue of public importance, that must serve before the SCA. At the centre of this case, like *Mautla*, is the interpretation of statutory powers and their application. We have in our judgment pronounced on these matters and do not think there is a reasonable prospect that another court would decide these questions differently. However, for the reasons given above, we are of the view that there are compelling reasons to grant leave to appeal paragraph (iii) of our judgment so as to permit the SCA to decide issues relevant to the Board Notice and its remedial consequences that are common as between *Mautla* and the present matter. There is no basis to grant leave to appeal to the applicants for leave in respect of the exercise by the Minister of her powers to issue the RAF 1 form because the applicants for leave

² [2024] ZAGPPHC 294; 2024 (4) SA 594 (GP).

³ *Road Accident Fund and Others v Legal Practitioner's Indemnity Insurance Fund and Others* (Leave to Appeal) (046038/2022) [2024] ZAGPPHC 854 (26 August 2024) paras 15 to 16.

did not oppose the review in respect of the exercise of these powers. No such appeal would be competent, and such leave was abandoned before us.

In the course of hearing the application for leave to appeal, it was drawn to our attention that the applicants for leave had been making use of their application to avoid giving effect to the interim remedial regime ordered by us. We expressed considerable concern as to this course of conduct. While the applicants for leave are entitled to seek leave to appeal in respect of those orders made by us that they contested in the main application, it is not clear how they can frame an application for leave to encompass the exercise by the Minister of her powers to issue the RAF 1 form and use such application to rely upon suspension to avoid the remedial regime ordered by us, as it relates to the RAF 1 form, and its consequence for the administration of claims that fall within the authority of the RAF. While we make no findings at all on this matter, we have nevertheless ordered the CEO of the RAF to file an affidavit explaining the Fund's failure to implement the interim regime ordered by this court. Counsel undertook to prevail on the RAF to file this affidavit on or before 16 August 2024.' (My emphasis underlined.)

- [17] The remedial regime referred to by the court hearing the application for leave to appeal is contained in prayer (vii), where the court *a quo* ordered that:

'Claimants who sought the lodgment of their claims in terms of the Board Notice or the RAF 1 Form, but lodgment was declined by the RAF or was not acknowledged by the RAF, are afforded a period until 30 September 2024 to resubmit their claims to the RAF in terms of the 2008 RAF 1 Form and those claimants who thereby secure lodgment will enjoy the benefits of such lodgment as from the date on which lodgment was originally sought by them;'

- [18] The appeal before the Supreme Court of Appeal has not been adjudicated.

Analysis:

- [19] Ms Mhlanga contended that the pending appeal before the Supreme Court of Appeal suspends the judgment of the court *a quo*; and accordingly, the plaintiff had to comply with the Board Notice, which she failed to do when her claim was submitted on 08 November 2022.

[20] Mr du Toit, on behalf of the plaintiff, argued that the RAF did not rely on the provisions of the Board Notice in its special plea and that it can therefore not raise the provisions of the Board Notice for the first time during argument.

[21] The Supreme Court of Appeal in *Minister of Police v Gqamane*⁴ reaffirmed that:

‘It is trite that a party is bound by his or her pleadings and ordinarily, he or she will not be allowed to raise a different or fresh case without a due amendment. A court is equally bound by those pleadings and should not pronounce upon any claim or defence not made in the pleadings by the parties. A court may relax this rule where the issue involves a question of law which emerges fully from the evidence or is apparent from the papers.’

[22] The Supreme Court of Appeal in *Minister of Safety and Security v Slabbert*⁵ held that:

‘There are, however, circumstances in which a party may be allowed to rely on an issue which was not covered by the pleadings. This occurs where the issue in question has been canvassed fully by both sides at the trial.’

[23] It is evident from the special plea of prescription that the RAF neither made any reference to the Board Notice nor to the fact that the plaintiff’s claim had prescribed as a result of this non-compliance therewith. The Board Notice was not canvassed fully by way of evidence. Furthermore, the RAF did not amend its special plea of prescription to include its reliance on the Board Notice. The RAF’s argument that the plaintiff’s claim has prescribed as a result of her failure to comply with the Board Notice is therefore unmeritorious.

[24] It is undisputed that the plaintiff’s claim was submitted to the RAF on 08 November 2022 and that the RAF acknowledged receipt thereof on

⁴ [2023] ZASCA 61; 2023 (2) SACR 427 (SCA) para 13.

⁵ [2009] ZASCA 163; [2010] 2 All SA 474 (SCA) para 12. See also *Fischer and Another v Ramahlele and Others* [2014] ZASCA 88; 2014 (4) SA 614 (SCA); [2014] 3 All SA 395 (SCA) para 15.

08 November 2022. The plaintiff's claim has accordingly not prescribed; and the special plea of prescription accordingly stands to be dismissed.

[25] In addition to my finding above, I align myself with the judgment of the court *a quo* in *LPIIF v RAF* that remedial steps that allow for the submission of claims in terms of the old regime had to be implemented pending the appeal in the Supreme Court of Appeal. To my mind, the same remedial steps would be apposite *in casu*.

Order:

[26] In the result, the following order is made:

1. The special plea of prescription is dismissed.
2. The defendant shall pay the plaintiff's costs on a party and party scale, scale A.



**STANTON J
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION**

On behalf of the plaintiff: Adv AJ du Toit
On instructions of: Engelsman Magabane Incorporated
Kimberley.

On behalf of the defendant: Adv J Mhlanga
On instructions of: The State Attorney
Kimberley.