



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

Case No: D566/2023

In the matter between:

SIMPHIWE MOSES MYEZA

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

ORDER

Having read the papers and after hearing counsel, the following order is made:

1. The defendant's special plea of prescription is dismissed.
 2. The defendant is ordered to pay the costs of the special plea, including the costs of two counsel on scale B.
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JUDGMENT

Date delivered: 18 July 2025

Masipa J

Introduction

[1] The plaintiff, Simphiwe Moses Myeza instituted legal proceedings for a damages claim against the defendant in this matter, the Road Accident Fund (RAF) following a motor vehicle collision that occurred on 8 March 2020. As part of its defence to the plaintiff's claim, the defendant raised a special plea. It is the special plea which concerns this judgment. This special plea addresses an issue of prescription. The defendant alleges that the plaintiff's claim was not lodged timeously in terms of section 23(1) of the Road Accident Fund Act 56 of 1996 (the Act¹), and is therefore prescribed.

[2] As can be expected, the plaintiff opposes the special plea and argues that the claim was lodged on 23 September 2022, within the prescribed three-year period, and that the institution of action by summons on 24 January 2023 was similarly timeous.

Background

[3] As mention in the introduction to this judgment, the accident giving rise to the plaintiff's claim occurred on 8 March 2020. Pursuant to that accident, the plaintiff alleges that he lodged his claim with the RAF on 23 September 2022. However, the RAF, maintains that the claim was only properly lodged on 8 September 2023, when the plaintiff submitted certain outstanding documents including an industrial psychologist's report.

[4] A letter dated 29 September 2022 from the RAF to the plaintiff's attorneys acknowledged receipt of the claim and confirmed that it had been pre-assessed as compliant with section 24 of the Act and Board Notice 271 of 2022.¹ However, the same letter bore a 'pre-lodgement not a compliant' stamp and referenced missing documents, including a RAF 4 form and medical records.

¹ Board Notice 271 of 2022 as published in Government Gazette No. 46322, dated of 6 May 2022.

[5] Despite this ambiguity, the RAF did not reject the plaintiff's claim outright, nor return the lodgement documentation. The plaintiff's RAF 1 form had been submitted in the form introduced by Board Notice 302 of 2022.² This notice, and the accompanying RAF 1 form, were declared unlawful by the court in *Legal Practitioners Indemnity Insurance Fund NPC and Others v Road Accident Fund and Others*³, (the LPIIF case) with the court allowing claims submitted using the defective form to be re-lodged by 30 September 2024 and deemed lodged as of their original date of submission.

The Legal framework

[6] The relevant provisions of the Act are sections 23 and 24.

- a) Section 23(1) of the Act provides that, '(1) 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.'
- b) Section 24(1) requires that a claim for compensation be lodged in the prescribed manner and form, it provides that, '(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.'

² Board Notice 302 of 2022 as published in Government Gazette No.46652 of 4 July 2022.

³ *Legal Practitioners Indemnity Insurance Fund NPC and Others v Road Accident Fund and Others* 2024 (4) SA 594 (GP).

- c) While Section 24(4) permits the RAF to reject claims not properly completed. It provides that, '(4) (a) Any form referred to in this section which is not completed in all its particulars shall not be acceptable as a claim under this Act; (b) A clear reply shall be given to each question contained in the form referred to in subsection (1), and if a question is not applicable, the words 'not applicable' shall be inserted; (c) A form on which ticks, dashes, deletions and alterations have been made that are not confirmed by a signature shall not be regarded as properly completed; (d) Precise details shall be given in respect of each item under the heading 'Compensation claimed' and shall, where applicable, be accompanied by supporting vouchers.'

Analysis

[7] The central issue is whether the plaintiff's lodgement on 23 September 2022 constituted substantial compliance with s 24 of the Act. The RAF's communication at the time was equivocal. On one hand, it acknowledged receipt and confirmed that the claim was 'compliant' on the other, it raised certain documentary deficiencies and used the phrase 'pre-lodgement not compliant'.

[8] In terms of the common law and as confirmed in *Pithey v Road Accident Fund*,⁴ it was held that, 'substantial compliance with the requirements for lodgement under section 24 suffices. The court stated that the claim form must be completed and received within statutory or regulatory deadlines i.e. three years for identified vehicles and two years for unidentified vehicles under Regulation 2(3). However, that while completeness is formally mandatory/peremptory, courts show flexibility where claimants provide enough information for the RAF to investigate. In this regard, courts are to invoke the substantial compliance doctrines from insurance law. The court must apply an objective test to determine whether such compliance occurred.'⁵

[9] The defendant did not invoke s 24(5) to formally reject the plaintiff's claim outright, nor return the lodgement documentation. It also proceeded to engage with the claim by accepting the RAF 4 forms, issuing a formal tender on 3 October 2023

⁴ *Pithey v Road Accident Fund* [2014] ZASCA 55; 2014 (4) SA 112 (SCA); [2014] 3 All SA 324 (SCA).

⁵ *Ibid* para 18-19.

in relation to merits, and only amending its plea to raise a special plea of prescription on 8 August 2024.

[10] In this context, the letter of 29 September 2022 and the subsequent conduct of the RAF support the conclusion that there was substantial compliance with the requirements for lodgement. The plaintiff's claim included sufficient documentation for the RAF to investigate and engage meaningfully, which is the fundamental purpose of lodgement under s 24 of the Act.⁶

[11] The reasoning in *Maarman and Others v Road Accident Fund*,⁷ is apposite. There, similar special pleas based on non-compliance with the new RAF 1 form were rejected on the basis that the documents lodged were sufficient for the RAF to consider and investigate the claims. The court found, '... that defendant is entitled to refuse to accept claims which do not comply with section 24. This Court also finds that defendant is not entitled to reject claims which substantially comply with section 24 given peculiar circumstances of each case if the facts of the matter looked upon as a whole objectively leads to a finding of substantial compliance with section 24. Consequently, any ancillary directives or regulation cannot as a matter of law trump application of that provision.'⁸

[12] Moreover, in *Road Accident Fund v Busuku*,⁹ the court emphasized that the Act must be interpreted generously in favour of claimants and that the RAF is not entitled to refuse lodgement where a claim is substantially compliant. The court held, 'Before I turn to consider the legislative framework applicable to the special plea it is necessary to reflect on the principles relating to the interpretation of the Act. The principles generally applicable to the interpretation of documents are well settled and have been repeatedly restated in this Court. In considering the context in which the provisions appear and the purpose to which they are directed it must be recognized that the Act constitutes social legislation and its primary concern is to give the greatest possible protection to persons who have suffered loss through negligence or through unlawful acts on the part of the driver or owner of a motor vehicle. For this

⁶ *Radebe v Road Accident Fund* [2024] ZAGPPHC 25 at 30.

⁷ *Maarman v Road Accident Fund* [2025] ZAWCHC 106.

⁸ *Ibid* para 84.

⁹ *Road Accident Fund v Busuku* [2020] ZASCA 158.

reason the provisions of the Act must be interpreted as extensively as possible in favour of third parties in order to afford them the widest possible protection. On the other hand, courts should be alive to the fact that the Fund relies entirely on the fiscus for its funding and they should be astute to protect it against illegitimate or fraudulent claims. In the current matter there has, however, been no suggestion of any illegitimate or fraudulent claim.’¹⁰

[13] The *LPIIF* case declared the new RAF 1 form invalid and set it aside. Importantly, it permitted re-lodgement of claims submitted using the defective form and allowed them to retain their original date of submission.¹¹ The plaintiff in this case re-lodged the claim with the 2008 RAF 1 form on 12 June 2024.

[14] This means that even if this Court were to find that the initial lodgement was defective (which it does not), the claim would be deemed lodged on 23 September 2022 by virtue of the *LPIIF* order. The pending appeal in that case does not suspend the order’s effect unless and until the SCA overturns it.

[15] The RAF elected not to call any witnesses to establish the factual basis for its special plea. The special plea introduced fresh facts that required evidentiary support, which was not provided. The principle is trite that bare allegations in a special plea unsupported by evidence cannot sustain a defence of prescription.¹²

Conclusion

[16] In light of the *LPIIF* judgment and the jurisprudence emphasizing the protective object of the RAF Act, the defendant’s rigid reliance on technical non-compliance cannot be sustained. I find that the RAF has failed to discharge the onus of proving that the plaintiff’s claim is prescribed. The plaintiff has demonstrated, both factually and legally, that his claim was lodged within the three-year period prescribed by section 23(1) of the Act. The special plea must accordingly fail.

¹⁰ Ibid para 6.

¹¹ *LPIIF* fn3 above para 55.

¹² *Mason v Mason* (1286/2023) [2025] ZASCA 44 para 14.

Costs

[17] The special plea was pursued despite the ambiguities in the RAF's own correspondence, its post-lodgement conduct, and the *LPIIF* ruling which I align myself to. In these circumstances, the defendant should bear the costs of the hearing, including the costs of two counsel, given the legal complexity and significance of the issues raised.

Order

[18] In the result, I make the following order:

1. The defendant's special plea of prescription is dismissed.
2. The defendant is ordered to pay the costs of the special plea, including the costs of two counsel on scale B.

Masipa J

DETAILS OF THE HEARING

Matter heard on: 9 June 2025

Judgment Date: 18 July 2025

Appearance Details:

For the Plaintiff: Mr K McIntosh SC with Ms C Gajoo

Instructed by: K Gounden & Associates

For the Defendant: Ms M G De Klerk

Instructed by: Office of the State Attorney, KZN

