

**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable
Case no: 4195/2024

In the matter between:

MATSHEDISO REBECCA BANYANE

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

Neutral citation: *Banyane v RAF* (4195/2024) [2025] ZAFSHC 249 (19 August 2025)

Coram: Ntshulana AJ

Heard: 5 August 2025

Delivered: 19 August 2025

Summary: Action for damages resulting from motor vehicle collision – special pleas based on objection by the Road Accident Fund – allegations of non-compliance with s 24 of the Road Accident Fund Act 56 of 1996 – no basis or grounds established for the special pleas or objection.

ORDER

- 1 The three special pleas are dismissed.
- 2 The costs of the preparation and appearance in respect of the special pleas shall be costs in the cause.

JUDGMENT

Ntshulana AJ**Introduction**

[1] The plaintiff instituted an action for damages against the Road Accident Fund (the defendant fund) pursuant to injuries sustained in a motor accident that occurred on 4 October 2022. It is alleged that the plaintiff was a passenger in a motor vehicle with registration letters and numbers CNJ[...] driven by the insured driver, a certain Mr M Mabitso. That the said motor vehicle driven by Mr M Mabitso, collided with a kombi with registration letters and numbers HT4[...], driven by the insured driver, namely L Jaletsane.

[2] As result of the accident, the plaintiff sustained serious injuries, and, consequently, claims for compensation for future medical and related expenses, general damages and estimated future loss of earnings from the defendant. The plaintiff lodged its claim on the 11 March 2024 and alleges that it complied with all relevant statutory requirements therefore the defendant is liable to pay the damages claimed in the summons. The plaintiff's total claims damages in the amount of R10 000 000 in respect of general damages, estimated past loss of earnings, future loss of earnings capacity. The plaintiff claims general damages in the amount of R2 000 000, R1 000 000 in respect of estimated past loss of earnings, R7 000 000 in respect of estimated future loss of earning capacity. The plaintiff's claim, lodged with the defendant contained an accident report, s 19(f) affidavit, special power of attorney, consent form, medical records, certified ID copy of the plaintiff and pay sheet.

[3] Section 24(5) of the Road Accident Fund Act 56 of 1996 (the RAF Act) entitles the defendant to object to the validity of the claim within a period of 60 days from the date on which the claim was lodged or served on the defendant. Section 24(5) of the RAF Act stipulates that:

'If the fund or the agent does not, within 60 days from the date on which a claim was sent by registered post or delivered by hand to the fund or such agent as contemplated in subsection (1), object to the validity thereof, the claim shall be deemed to be valid in law in all respects.'

[4] On 29 April 2024, being within the prescribed period of 60 days from date on which the claim was presented for lodgement, the defendant formally lodged a written objection in terms of the provisions of s 24(5) of the RAF Act, objecting to the validity of the plaintiff's claim lodged on the 11 March 2024. In the objection, the defendant advised the plaintiff that the documents they submitted do not meet the requirements for a substantially compliant and valid claim for the reason set out in para (2) of the letter of objection that reads as follows:

'2. We have pre-assessed the documentation dated 11 March 2024 for the following products: Past and Future Loss of Earnings, Gross Damages and Future Medical Expenses, for compliance with section 24 of the Act and the Terms and Condition. We advise that the documents submitted do not meet the requirements for a substantially compliant and valid claim, as follows:

- The claim has not been completed in compliance with Section 24 (4) (a & b) of the Road Accident Fund Act which requires the RAF 1 form to be completed in its entirety,
 - (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 and if a question is not applicable, the words "not applicable" shall be inserted.
- Certified copy of Claimants ID (Certification date within the last 6 months)
- Duly signed Power of Attorney.
- Proof of injury – RAF 4 Form for serious injury duly completed in line with AMA guides (Par 19)
 - Serious injury on RAF 4 form
 - Narrative test where applicable
- Employer's certificate of injured's service showing nature of employment, the period of service, remuneration, prospects of advancement and compensation and retirement age.
- Any other proof of income of the injured, letter from employer, affidavit from employer / or any person that can confirm that the injured had an income.
- Payslips x3 months prior & post MVA
- Medico-legal reports or documentation establishing, or substantiating claimant's temporary / permanent disability and the loss of earnings claimed

- Itemized tax invoices from registered medical providers and/or hospitals for past medical expenses claimed in terms of Section 24 (4) (d) and Section B Para 4 of the RAF 1
- Proof of payment of medical expenses
- Official Sassa documentation confirming any disability grant
- Photographs of injuries
- Medico Legal Reports to support the claim for future medical expenses.'

[5] The plaintiff issued summons on the 30 July 2024. It is common cause that the plaintiff issued summons more than 120 days after submitting her claim with the defendant being 11 March 2024. The defendant contends that the objection was not withdrawn and therefore remains valid.

[6] The defendant defended the action and raised a plea incorporating special pleas. In its special plea, the defendant alleged that the plaintiff had failed to lodge a substantial complaint claim in terms of s 24 of the RAF Act. In this respect, reference was made in the special plea to s 24 (1)(a) of the Act which provides that a claim for compensation and accompanying medical report under s 17(1) shall be set out in the prescribed form, which shall be completed in all its particulars. Section 24(4)(a) is also mentioned, which provides that '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'.

[7] Further, s 24 (4)(d) of the RAF Act provides that precise details shall be given in respect of each item under the heading 'compensation claimed' and shall, where applicable, be accompanied by supporting vouchers. It was pointed out that defendant could not even investigate the claim because crucial pages of RAF 1 form eg page 31 of indexed papers were not filled/completed. These pages authorise the fund to investigate the claim.

[8] For these reasons, the defendant submitted that the special plea should be upheld and that the plaintiff's claim be dismissed. That the claim for plaintiff has not prescribed, they can still lodge it properly and there is no prejudice to the plaintiff.

[9] The affidavit in terms of s 19(f) of the RAF Act was signed but not initialled by the defendant. Power of attorney was signed but not initialled and no copy of the police docket. The plaintiff however signed both the consent form and power of attorney. The defendant is taking an issue with the fact that those two documents are not initialled by the plaintiff.

[10] Further, the entire page in the RAF 1 form pertaining to declaration and consent is not completed by the plaintiff. The Road Accident Fund argues that they could not be able to investigate the claim without this particular page having been not filled or completed by the plaintiff/claimant therefore the plaintiff's claim lodged did not comply with s 24(4) of the RAF Act. The defendant argues that special pleas be upheld and plaintiff's claim can still be lodged as it has not prescribed in terms of the law.

[11] The fund argued strongly that failure to complete the relevant page pertaining to declaration and consent (contained at page 31 of indexed papers), prevented it from investigating the claim. In other words, the fund was not given permission to investigate the claim and, despite sending a letter of objection on 29 April 2024 advising the plaintiff to cure the defect, the plaintiff ignored the letter of objection and went ahead and issued summons prematurely.

[12] Further, the Road Accident Fund argues, alternatively, that, having regard to the relevant pending litigation pertaining to Board Notice 271 of 2022 and documents listed therein for purposes of substantial compliance, it proposes that the matter be postponed to a pre-trial date in the 1st term of 2026, awaiting the outcome of the judgment from Supreme Court of Appeal (SCA). That upon receipt thereof, the matter may be re-enrolled as same would give an indication as to how the special pleas should be dealt with. In this regard, the defendant relies on *Legal Practitioner's Indemnity Insurance Fund NPC and Others vs Road Accident Fund and Others (LPIIF)* in which matter the full bench of the Gauteng Division of the High Court, Pretoria held that the Board Notice 271 of 2022 published in Government Gazette NO46322 of 6 May 2022 ('the board notice') is declared unlawful and is reviewed and set aside.¹ Following the decision of the full bench, the Road Accident Fund, the defendant in the matter at hand, launched

¹ *Legal Practitioners Indemnity Insurance Fund NPC and Others v Road Accident Fund and Others* [2024] ZAGPPHC 294; 2024 (4) SA 594 (GP).

an application for leave to appeal. The judgment in the application for leave to appeal was handed down on the 26 August 2024 and leave to appeal was granted only in respect of the above finding and not any of the other issues raised on behalf of the Road Accident Fund. In the premise, the defendant argues (in the alternative) that having regard to the pending litigation pertaining to the RAF 1 claim form and the documents listed therein for purpose of substantial compliance, the defendant proposes that the matter be postponed to a pre-trial roll in the first term of 2026 awaiting the judgments of the said matter in the SCA.

[13] The plaintiff argued that its claim has substantially complied with the procedural requirements for a valid claim in terms of s 24 of the RAF Act.

[14] On behalf of the plaintiff Advocate KP Mohono argued that the RAF 1 form published on 4 July 2022 relied upon has been declared unlawful reviewed and set aside (Board Notice 271 of 2022) by the full bench of the Gauteng Division of the High Court, Pretoria. Further, that the SCA in granting leave to appeal the RAF on the issue of RAF 1 claim form, went further on to make an interim relief and said while the appeal process is still unfolding by finding that:

‘ . . . we think it preference to revert to the RAF 1 claim form that came into operation on 1 August 2008 and formed part of the Regulations published by the Minister 2008 (the 2008 RAF 1 claim form)’.

That it is clear that the contents the requirement the objection relied upon are reliant on the implementation of the 4 July 2022 RAF 1 form. It was submitted that, in line with full bench decision above, the approach that this honourable court should undertake to determine the question of substantial compliance with the requirements of s 24 of the RAF Act in line with what is required in terms of the 2008 RAF 1 form (old RAF 1 form) which entailed an element of substantial compliance and had no onerous requirements the list relied upon by the defendant. Argued that either way though, the plaintiff has still substantially complied with the requirements of s 24 of the RAF Act.

[15] The plaintiff also argued that they submitted the consent form, accident report, s 19(f) affidavit, special power of attorney, medical records, hospital records and RAF 1 form which set out already how the collision occurred, who is the claimant, who is the insured driver, the location of the accident, injuries sustained and the hospital that admitted and treated the plaintiff. Although the plaintiff conceded that the consent form and power of attorney are only signed but not initialled, it submitted that it provided the defendant with sufficient documents and information relating to the merits of the claim. Such information would have enabled the defendant to investigate the claim. It denied that its failure to complete the page pertaining the declaration and consent, prevented the defendant to investigate her claim. It was argued that the defendant was provided with sufficient information to be able to investigate the claim.

Findings

[16] Several decision from the Free State Division of the High Court have dealt with the issue of substantial compliance in terms of the RAF Act and all emphasized the peremptory requirements relating to the submission of the claims, and that the prescribed requirements concerning the completeness of the form are directory, meaning that substantial compliance with such requirements suffices.²

[17] In *Road Accident Fund vs Busuku (Busuku)*,³ it was stated that the RAF 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 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.

[18] In the same judgment of *Busuku*, the court went further and stated that the RAF 1 form does not call for detailed information. It is intended, of itself, to enable the fund to assess the quantum of the plaintiff's claim. It seeks to enable it to investigate the impact of the injuries sustained. In order to do so, the RAF 1 form requires the disclosure of information to guide and facilitate the investigation. The purpose of s 24(5), in the

² See *Jeje v Road Accident Fund* [2024] ZAFSHC 265; *Moeketsi v Road Accident Fund* [2024] ZAFSHC 411; *Masilo v Road Accident Fund* [2024] ZAFSHC 372; *Melanie Barkhuizen vs Road Accident Fund* case no. 5392/2023.

³ *Road Accident Fund v Busuku* [2020] ZASCA 158; 2023 (4) SA 507 (SCA) para 6.

context of the RAF Act and bearing in mind the principles of interpretation set out earlier, is to enable a plaintiff who has timeously lodged a claim, but has failed to comply fully with the procedural requirements of s 24(1) and (2) to remedy any deficiencies which arise from the completion of the RAF 1 form.⁴

[19] I am not persuaded that the RAF has been prejudiced by the plaintiff's conduct of failure to fill a page pertaining declaration and failure to initial each page of the power of attorney, affidavit in terms of s19 (F) of the RAF Act. These documents were signed by the plaintiff and most of the details required in this particular page (declaration) were contained in other pages pertaining accident report, hospital records etc. In the case of *Pretorius v RAF*,⁵ the court held that a court of first instance is required to enquire whether, as a fact, the RAF has been prejudiced by omission of information in RAF 1 form, in the sense of being derived information it properly requires to assess whether it is at risk of liability. In this matter, I am satisfied that RAF was not prejudiced because the plaintiff's RAF 1 form and its attachments contained sufficient information upon which the defendant would be able to investigate the plaintiff's claim.

[20] In this matter, I am satisfied that the defendant is armed with the plaintiff's RAF 1 form (which contains sufficient details of plaintiff, accident details including place of accident and name of the driver etc., injuries suffered etc.), accident report, plaintiff's affidavit in terms of s 19 (F) of the RAF Act, special power of attorney, plaintiff's consent admission and discharge form of the hospital and other additional hospital records etc. Therefore, the defendant has sufficient information to investigate the plaintiff's claim.

[21] Having considered the order granted by the SCA for consideration in the *Mautha* case, the limited grounds of appeal in the *HIFF* case and the authorities dealing with compliance required by s 24 for prescribed forms in claims for compensation, I am of the view that the outcome of the matters pending at the SCA will not have a bearing in the crisp points raised in the defendant's special pleas. In the result I find that the plaintiff's claim lodged with the defendant in this matter substantially complied with the requirements of section 24 of the Act.

⁴ Ibid para 20.

⁵ *Pretorius v Road Accident Fund* [2019] ZAGPJHC 293 para 11.

[22] It follows that the special pleas raised by the defendant, stands to be dismissed. Now, the principle that a court's discretion in issuing a cost order must be exercised judicially is trite. Costs are awarded at the discretion of the court, exercised judicially and on a fair and just basis. While it is a wide discretion it is of course not an unfitted one.⁶ Considering the facts of this case, I find that costs be cost in the cause of the trial when it is heard.

[23] Consequently, the following order is issued:

- 1 The special pleas are dismissed
- 2 The costs of the preparation and appearance in respect of the special pleas shall be costs in the cause.

Ntshulana AJ

Appearances

For the plaintiff:	KP Mohono
Instructed by:	Mavuya Attorneys Inc, Bloemfontein.

For the defendant:	C Bornman
Instructed by:	State Attorneys, Bloemfontein.

⁶ See *Moller & Andere v Erasmus & Andere* 1959 (2) SA 464 (T) at 467 E.