



**IN THE HIGH COURT OF SOUTH AFRICA  
(EASTERN CAPE DIVISION, MTHATHA)**

**CASE NO.: CA 46/2025**

**REPORTABLE**

In the matter between:

**NONTSINDISO MNYAKA**

1<sup>st</sup> Appellant

**PHILA MNUKWANA**

2<sup>nd</sup> Appellant

**SINDISIWE MADANGO**

3<sup>rd</sup> Appellant

**NTOMBELIQWA MBIZA**

4<sup>th</sup> Appellant

**XOLISILE MTSOTSHO**

5<sup>th</sup> Appellant

and

**ROAD ACCIDENT FUND**

Respondent

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**JUDGMENT**

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## GQAMANA J

[1] At the centre of this appeal is the manner of service of court processes by litigants who have instituted actions against the Road Accident Fund (RAF) for bodily injury claims resulting from motor vehicle accidents. The court *a quo*<sup>1</sup> held that for proper service of summons in such actions, there must also be compliance with the provisions of section 2(2) of the State Liability Act 20 of 1957 (“the State Liability Act”). And where there is no notice of intention to defend and/or a plea filed by the RAF, an order for default judgment would only be granted if the notice of set down of such an application was served on the State attorneys’ offices in accordance with Rule 23(m) of the Joint Rules of Practice for the High Court of the Eastern Cape Province (the Joint Rules of Practice). We unanimously find that the court *a quo* was wrong on both legs for the reasons that are apparent below.

[2] The facts upon which this appeal hinges are largely common cause. In summary those facts are that: the appellants<sup>2</sup> all instituted separate actions<sup>3</sup> against the RAF<sup>4</sup> in terms of section 17(1) of the Road Accident Fund Act 56 of 1996, as amended (“the RAF Act”) for damages allegedly suffered as a result of bodily injuries caused by and/ or arising out the motor vehicle accidents, due to negligence of the drivers. All their claims arise from separate causes of actions which occurred on different dates, but all of them were represented by the same firm of attorneys. Apart from the uniqueness of each individual claim in relation to the bodily injuries sustained and the quantum thereon, the common assertion on them is that the accidents occurred as the result of the negligence caused by the

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<sup>1</sup> per Majiki J.

<sup>2</sup> Plaintiffs in the court *a quo*.

<sup>3</sup> Under five separate case numbers: 758/2022, 3250/2024, 1660/2021, 3997/2020 and 3229/2024.

<sup>4</sup> As the defendant.

driver<sup>5</sup>. The summons and the particulars of claim were served on the RAF offices in East London by the sheriff in accordance with Rule 4(1)(a)(v) of the Uniform Rules of Court.

[3] Subsequent thereto, no notice of intention to defend and/or a plea was filed by the RAF. Consequently, the appellants proceeded to apply for judgment by default in terms of Rule 30(2)(a) of the Uniform Rules. Such applications were set down for hearing on 16 October 2024, in the court that specifically hears applications for judgment by default. On the day of the hearing, the appellants did not pursue such orders, they only sought leave to withdraw their applications and costs against the RAF.

[4] Without a formal consolidation of the matters, the court *a quo mero motu* decided to hear all of the applications together and invited the appellants' Counsel as well as Mr Thaver, an attorney from the State Attorney's offices to file heads of argument. There was no formal notice of acting filed by the State Attorney's office, but costs were tendered. The court heard and decided the matter based on the heads of arguments and without affording the parties the opportunity to present oral submissions. Nothing of moment turns out of that.

[5] The court *a quo* succinctly summarised the issue for determination in paragraph 2 of the judgment as follows:

‘[2] ...whether the plaintiffs would have been entitled to an order (sic) for default judgment. Alternatively, whether the State Attorney could validly concede to an order including the payment of costs by the Road Accident Fund (RAF) in the circumstances where the State

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<sup>5</sup> Different drivers.

Attorney had not placed itself on record by filing an appearance to defend and was only served with the notice of set down’.

[6] It appears from paragraph 7 of the judgment by the court a quo that, the argument advanced by the State Attorney was that, the appellants ought to have served the summons and the particulars of claim at its offices, within 5 days after service of the initial process on the RAF as contemplated in section 2(2) of the State Liability Act. Apparently, it was submitted that service of the notice of set down in terms of Rule 23(m) of the Joint Rules of Practice was insufficient. The court a quo was persuaded with those unmerited submissions. It then found that rule 23(m) of the Joint Rules of Practice is applicable to all organs of State, ‘it would lead to inequity to have one dispensation applicable to other organs of State and not to the RAF’.

[7] To address such ‘inequality’, the court a quo concluded that, in all actions against the RAF, the summons and particulars of claim must also be served on the State Attorney’s offices after service of such initial processes to the RAF in accordance with section 2(2) of the State Liability Act. In addition, it concluded that, for applications for default judgment, the notice of set down must also be served on the State Attorney’s offices in compliance with rule 23(m) of the Joint Rules of Practice. Based on the above reasons, the applications, save for the one listed under\_case no: 3229/2024,<sup>6</sup> were removed from the roll with no order as to costs.

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<sup>6</sup> It was struck off the roll due to short service of the notice of set down.

[8] Aggrieved with such judgement and order, the appellants successfully applied for leave to appeal to this court. However, I must emphasise that for purposes of this appeal, the application under case no: 3229/2024 is not before us.

[9] This appeal turns on the two crisp issues, ie. the proper interpretation of section 2(2) of the State Liability Act and rule 23(m) of the Joint Rules of Practice.

[10] In *Cool Ideas 1186 CC v Hubbard and Another*,<sup>7</sup> the Constitutional Court held that:

‘[28] A fundamental tenet of statutory interpretation is that the words in a statute must be given their ordinary grammatical meaning, unless to do so would result in absurdity. There are three important interrelated riders to this general principle, namely:

- (a) that the statutory provision should always be interpreted purposively,
- (b) the relevant statutory provision must be properly contextualised, and
- (c) all statutes must be construed consistently with the Constitution, that is, where reasonably possible, the legislative provisions ought to be interpreted to preserve their constitutional validity. This proviso to the general rule is closely related to the purposive approach referred to in (a)’.

[11] As a point of departure, the RAF is a statutory body/ a juristic entity created in terms of section 2(1) of the RAF Act to compensate victims of motor vehicle accidents who have sustained serious bodily injuries or death provided that they are able to establish fault on the part of the driver<sup>8</sup>. Processing and payment of such claims is governed exclusively by the RAF Act. As correctly pointed out by the court a quo that, in the past<sup>9</sup> claims against the RAF were dealt with by a panel of attorneys appointed by it in terms of service level agreements entered into between

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<sup>7</sup> 2014 (4) SA 474 (CC) para 28.

<sup>8</sup> *Mafisa v Road Accident Fund and Another* 2024 (4) SA 426 (CC), 2024 (6) BCLR 805 (CC) (25 April 2024) at para [1].

<sup>9</sup> Before 1 June 2020.

the RAF and those attorneys who represented it. Such service level agreements have since been terminated.<sup>10</sup> The current model is that the RAF utilises in-house services of attorneys in the State Attorney's offices. As foreshadowed above, summons and the particulars of claim were served in terms of Rule 4(1)(a)(v) of the Uniform Rules of court at the RAF provincial offices in East London. The time frame for filing the notice of intention to defend and /or a plea passed unhindered. Only on the eve of the hearing of the default judgment applications was there some form of action by the RAF in that, the State attorney tendered costs to the appellants and the latter sought leave from the court a quo to withdraw such applications. It is not clear from the record whether the RAF adopted the technical approach provided for in Rule 19(5) of the Uniform rules.<sup>11</sup> However and despite the agreement between the parties, the court a quo declined to make the orders agreed to, including the costs.

[12] The first question relates to the interpretation and applicability of section 2(2) of the State Liability Act to actions against the RAF. When one deals with an interpretation of a statute or any legal document, the correct approach is that which is set out in *Natal Joint Municipal Pension Fund v Endumeni Municipality*:<sup>12</sup>

‘... interpretation is a process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attended upon coming into existence. Whatever the nature of the document, consideration must be given to the language used in light of the ordinary rules of grammar and syntax, the context in which the provision appear; the apparent purpose to which it is directed

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<sup>10</sup> The termination thereof is not relevant herein, but it's discussed in detail in *Road Accident Fund v Mabundla Incorporated*; *Minister of Transport v Road Accident Fund* [2023] 1 All SA 595 (SCA).

<sup>11</sup> Rule 19 (5) does enable a defendant to file a notice of intention to defend even after the time periods specified in the summons have expired, before the default judgment has been granted; provided that the plaintiff shall be entitled to costs, if such notice was delivered after the application for default judgment had been lodged.

<sup>12</sup> 2012 (4) SA 593 (SCA) at para [18].

and material to those responsible for its production.....A sensible meaning has to be preferred to that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. *Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divine between interpretation and legislation.*'

[13] As indicated above, court *a quo*'s interpretation is that section 2(2) of the State Liability Act is also applicable to actions against the RAF, otherwise to give a limited interpretation would lead to inequality to have one dispensation applicable to other organs of state and not to the RAF. We are in agreement with the court *a quo* that the RAF is an organ of State.<sup>13</sup> But it's reasoning that there should be compliance with section 2(2) of the State Liability Act even on actions against the RAF is wrong.

[14] The State Liability Act applies only in proceedings instituted against 'a department.' In terms of section 4A of the State Liability Act, a department means a national or provincial department. The RAF is neither a national nor provincial department. Instead, it is a juristic entity created in terms of section 2(1) of the RAF.<sup>14</sup> To extend the application of the provisions of section 2(2) of the State Liability Act to actions against RAF because of perceived inequities was not interpretation but legislation, something which the Supreme Court of Appeal more than a decade ago warns us as Judges to be alert and guard against the temptation to substitute what one regards as a sensible or reasonable to words actually used in the statute.

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<sup>13</sup> See section 239 of the Constitution of the Republic of South Africa, Act 108 of 1996 as amended (the Constitution) which defines "an organ of state" to mean any institution exercising a public power or performing a public function in terms any legislation but does not include a court or a judicial officer.

<sup>14</sup> See the Constitutional Court judgment in *Mafisa*, footnote 9 above.

[15] Even on the second issue, the court was wrong in its conclusion that the notice of set down in similar matters has to be served on the State attorney as provided for in rule 23(m) of the Joint Rules of Practice. The aforementioned rule refers to cases in which default judgment is sought against the State. The RAF is not the State. Where the RAF is in default, rule 31(4) of the Uniform rules applies. Where the RAF is in default of delivery of notice of intention to defend or of a plea, the matter shall be set down for hearing and no notice of set down shall be given to the RAF.

[16] Accordingly the judgment of the court *a quo* is indefensible. Therefore, the appellant has been successful in this appeal and there are no reasons for the costs not follow the results. The RAF defended the judgment until the morning of the hearing, meaning the appeal was opposed throughout.

[17] Insofar as the costs in the court *a quo*, I do not have the benefit of all the pleadings on all matters, and I have reservations on whether the appellants would have been successful in the default of the application with the current pleadings as they stand. In light thereof, it would be just and in the interests of justice to reserve such costs for determination at trial.

[18] Furthermore, it would be fair to also issue an order governing the further conduct of these matters as they have been stalled by the present appeal.

[19] In the circumstances, the following order shall be issued:

1. The appeal is upheld with costs.
2. The judgment by the court *a quo* is set aside and substituted as follows:
  - ‘1. The applicants under case numbers: 1488/2021, 758/2022, 3250/2024, 1660/2021 and 3997/2020 are granted leave to withdraw their application for default judgment.

2. The costs of such applications are reserved for determination at trial.
3. The defendant is ordered to file its notice of intention to defend within 10 days of this order.'

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**N GQAMANA**  
**JUDGE OF THE HIGH COURT**

I agree:

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**A M BODLANI**  
**ACTING JUDGE OF THE HIGH COURT**

I agree:

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**B SOMACALA**  
**ACTING JUDGE OF THE HIGH COURT**

**APPEARANCES:**

|                            |   |                                       |
|----------------------------|---|---------------------------------------|
| Counsel for the Appellants | : | <i>Mr C Pangwa</i>                    |
| Instructed by              | : | Caps Pangwa and Associates<br>Mthatha |
| Counsel for Respondent     | : | <i>Adv L L Sambudla</i>               |
| Instructed by              | : | State Attorney<br>Mthatha             |
| Heard on                   | : | 20 October 2025                       |
| Judgment delivered on      | : | 25 November 2025                      |

