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

Not reportable

Case no: 387/2021

In the matter between:

KAZIBONE MLAMBO

APPLICANT

(Passport number: EN195[...])

And

THE ROAD ACCIDENT FUND

FIRST RESPONDENT

(Link number: 500 1333)

**THE CHIEF EXECUTIVE OFFICER,
ROAD ACCIDENT FUND**

SECOND RESPONDENT

Neutral citation: *Mlambo v RAF* (387/2021) [2025] ZAFSHC 391 (5 December 2025)

Coram: Daffue J

Heard: 28 August 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 13h00 on 5 December 2025.

Summary: A typical example of a public institution wasting unnecessary costs and judicial resources – the RAF paid the capital of a claim granted to an injured person, but refused to pay interest on late payment and costs – protracted litigation involving four applications and four different judges – applicant's application for declaratory relief granted and RAF's counterapplication to set aside previous orders against it dismissed.

ORDER

1 It is declared that the Road Accident Fund, cited as first respondent in this application, is in breach of paragraph 2 of the order dated 22 January 2025 under the above case number by having failed to effect payment of the taxed costs and interest on the capital sum in terms of the order of this court dated 8 March 2023.

2 The relief claimed in paragraphs 2 and 3 of the notice of motion is dismissed, but leave is granted to the applicant to approach the court on the same papers, duly supplemented, for any further relief he may be advised to seek.

3 The first respondent shall pay the costs of the application on a party and party scale, inclusive of counsel's costs on scale B.

4 The Road Accident Fund's counterapplication is dismissed with costs, inclusive of counsel's costs on scale B.

JUDGMENT

Daffue J

Introduction

[1] A simple third-party claim by a Zimbabwean national which culminated in a court order in his favour has triggered a litigious war of enormous proportions. It is a shame that so much money has been wasted over the last two years. The *dramatis personae* are:

a. Kaziboni Mlambo (Mlambo), the applicant in this application and the plaintiff in the third-party claim, together with his legal team at the time;

b. The Road Accident Fund (the RAF) and its former Chief Executive Officer, Mr Collins Putshane Letsoalo (Letsoalo) and their legal team.

[2] The facts in this judgment will show how far the RAF has gone to protect Letsoalo, its former Chief Executive Officer. He has been convicted of contempt of court, as will be shown in more detail hereunder. I do not intend to show herein whether I agree with the said finding, as this is irrelevant to the outcome of the matter before me, save perhaps relating to costs. The various applications that followed upon a judgment granted on 8 March 2023 serve as proof of the RAF's recalcitrant attitude that culminated in the counterapplication filed by the RAF in response to Mlambo's present application.

The relief claimed

[3] Mlambo seeks declaratory relief, to wit that the RAF is in breach of paragraph 2 of the court order dated 22 January 2025 for failing to effect payment of the taxed costs and interest on the capital sum in terms of the order of this court dated 8 March 2023. He further seeks the immediate execution of the prison sentence of 30 days imposed upon Letsoalo. A costs order is also sought against the RAF and Letsoalo, jointly and severally, on the scale as between attorney and client.

[4] In the counterapplication, the RAF seeks the rescission and setting aside of four orders granted by this court with costs, inclusive of the costs of two counsel. These orders are:

- a) the order of Deputy Judge President Mbhele on 8 March 2023 under this case number;
- b) the order of Loubser J of 28 March 2024,
- c) the order of Chesiwe J dated 25 July 2024
- d) the order of Greyling-Coetzer AJ of 22 January 2025.

[5] In terms of the Mbhele order, the RAF accepted liability for payment of 100% of Mlambo's proven or agreed damages. It was ordered to pay the amount of R2 770 275.85 in settlement of Mlambo's general damages and loss of earnings. The usual further orders were granted, including interest on the capital if not paid within 180

days, costs of the action and the furnishing of an undertaking in terms of s 17(4)(a) of the Road Accident Fund Act 56 of 1996.

[6] In terms of the Loubser order, the RAF and Letsoalo were directed to comply with the Mbhele order within seven days, failing which leave was granted to Mlambo to approach the court on the same papers, duly supplemented, to apply for a contempt of court order. A costs order was issued in favour of Mlambo.

[7] In terms of the Chesiwe order, the respondents were held to be in contempt of court and Letsoalo was *inter alia* sentenced to 30 days imprisonment, conditionally suspended for a period of six months, to afford the respondents an opportunity to comply with the previous two orders. Leave was also granted to the RAF and Letsoalo to approach the court, after having complied with the aforesaid order, to request the court to reconsider its order.

[8] In terms of the Greyling-Coetzer order, the Chesiwe order was further suspended for a period of 30 days. In this case, the RAF and Letsoalo were the applicants. The court specifically directed the RAF to pay the outstanding taxed costs and interest on the capital sum within 30 days from the date of the order as well as the costs of that application. The RAF and Letsoalo remained liable for the taxed costs in respect of the previous applications as ordered by the court on 28 March 2024 and 25 July 2024 respectively (the Loubser and Chesiwe orders).

[9] On 27 March 2025, more than two months after the Greyling-Coetzer order, Mlambo issued the present application. This application and the counterapplication consist of 305 pages. The two sets of heads of argument consist of a further 60 pages. Yet again, proof of an unnecessary waste of money.

A brief history of Mlambo's claim which culminated in a court order in his favour.

[10] Notwithstanding the facts presented by the parties and the submissions of their legal representatives, there is no doubt in my mind that a *bona fide* mistake has been

made. In the process, many people did not recognise the mistake, obviously insofar as the contents of the various documents were regarded as much more relevant than the identity number appearing after the name of Mlambo in the heading of various documents. More about this later. I refer to the following people:

- a. the person who drafted the combined summons and particulars of claim;
- b. the typist who typed this document;
- c. the attorney who signed this document, if it is not the same person that drafted it;
- d. the counsel who appeared on behalf of Mlambo at the hearing;
- e. the learned judge who granted the order and although she was not expected to read the court order, although a draft order was presented to her by the parties;
- f. the persons that dictated, typed and signed the Mlambo's bundle of documents dated 14 June 2021, the index to the expert notices and Mlambo's supplementary bundle of documents dated 16 November 2021.

[11] Mlambo is cited as Kazibone Mlambo, identity number 860[...], in the heading of the documents presented to the trial court, including the draft order. This is an error as such number might have been allocated to a South African woman as explained later herein. Could any reasonable person at any stage believe that this identity number is correct? Absolutely not. In paragraph 1 of the particulars of claim, Mlambo is described as 'an adult male . . . Zimbabwean citizen with passport number: EN 195[... . . . born on the 9th December 1987.' The RAF pleaded thereto and not to the heading of the document.

[12] A perusal of all the documents, from the RAF1 form presented to the RAF right through to the expert reports of Mlambo's experts, leaves no doubt that Kazibone Mlambo, a male person, is identified by way of a passport number EN195[...]. I shall not waste time to go through each document containing this information but shall merely refer to some examples. The RAF4 form prepared by Dr RS Kahn relating to the serious injury report confirms Mlambo's Zimbabwean identity number as well as his passport number EN195[...]. It is common cause, *ex facie* the report, that Mlambo was born on 9

December 1987, as is also evident from the records of the St Helena Hospital which form part of the documents submitted with the RAF form. Also, in these documents Mlambo is referred to as a Zimbabwean citizen. An extract of Mlambo's passport, issued by the Republic of Zimbabwe, forms part of the claimed documents. The passport reflects the passport number as EN195[...], issued to Kazibone Mlambo, a Zimbabwean national with Zimbabwe identity number 13-1[...]. He is cited as a male person born in Chipinge, Zimbabwe. This passport was issued on 13 September 2014 with expiry date 12 September 2024. Mlambo's affidavit, confirming his passport number and that he was self-employed as a welder residing at P[...] J[...] H[...], Thabong, Welkom, is also attached to the claim documents.

[13] Dr Johan Wilkinson, a well-known and respected neurosurgeon, consulted Mlambo on 5 July 2021 and issued his report on 9 August 2021. He clearly recorded Mlambo's Zimbabwean identity number as well as passport number in his report. Dr Louis Stevens the clinical psychologist, followed suit in his report of 30 March 2021. So did Mrs Susan van Jaarsveld, the industrial psychologist, in her report of 12 January 2022. No doubt, whoever drafted the headings of the rule 36(9)(a) and (b) notices is guilty of doing a copy-and-paste job as the same mistake was made as mentioned earlier. But the contents of the documents are what any reasonable reader would consider, and this is what mattered. In the process, even the heading of the writ of execution incorrectly refers to the incorrect identity number.

The court proceedings on 8 March 2023

[14] As in most cases, the RAF did not do its homework. This is apparent from the documents presented to me in this application. Ms Megan Booysen, who appeared for the RAF at the trial, did not have proper instructions. Apparently, she was not even presented with the claim documents. This is not surprising as this all too often is the case. When the trial was about to begin, Ms Booysen requested a mortality affidavit and Mlambo's passport, including entrance and exit stamps. She promised to seek instructions from the RAF on receipt of these documents which were provided to her

and the claims' handler as the emails confirm. Hereafter negotiations started which led to the Mbhele order.

[15] Something needs to be said about the appearance of the parties at court on 8 March 2023. That was the second day set aside for the trial. Mr HJ Cilliers, Mlambo's senior counsel, took handwritten notes of the events which form part of the record. That morning, Ms Booysen asked Mbhele DJP for the matter to stand down to 14h15, as she was awaiting instructions from the RAF. That afternoon, Ms Booysen informed Mbhele DJP that she did not have full authority to enter into an agreement in accordance with the draft that was presented to her by the plaintiff's legal team. She, however, informed the learned judge that, in her submission, the draft order was in order. As a result, Mbhele DJP deleted the words 'by agreement between' in the draft order and substituted it with 'having heard'. Thereafter the draft order was made an order of court. The heading of the draft repeated the incorrect description of Mlambo and so did the court order.

Evaluation of the evidence and submissions by the parties

[16] Mrs Estelle Louise Janse van Rensburg, the Acting Regional General Manager: Johannesburg Region, deposed to a founding affidavit attached to the counterapplication. She came up with a version that the identity number 860[...] appearing on the heading of the papers is that of a South African female citizen born on 2 February 1986, a year and 10 months and 7 days before Mlambo's birth. She then explains on what basis she came to this conclusion. The identity number belongs to a female South African citizen. Her explanation, although totally irrelevant, is a correct exposition of the manner how South African identity numbers are created. She failed to show to which woman this number was allocated. However, this is immaterial. No woman features in the litigation *in casu*.

[17] Mrs Van Rensburg's allegations of fraud is uncalled for, but also a futile exercise to protect Letsoale, her Chief Executive Officer at the time. She was not, at all, involved in the previous litigation and had no idea what the agreements between the parties

entailed. In paragraph 1.3 of both her founding and replying affidavits in the present application, she recorded as having access to all the RAF's records pertaining to Mlambo's claim and that she had perused some to avail herself therewith. She either did not read the documents or did so, and if she did, she deliberately misrepresented the facts. The first page of the RAF1 form, being the first document of the bundle of documents sent to the RAF on 19 August 2022, *ex facie* the letter of Mlambo's attorney, shows that Mlambo is a male and that his passport number is EN195[...]. Obviously, she neglected to peruse Mlambo's affidavit, the extract of his passport and the hospital records attached to the letter of 19 August 2022. She also failed to speak to Ms Booysen, the RAF lawyer who represented it at the hearing. The only reasonable inference to be drawn from her version is that she jumped to conclusions to assist Letsoalo.

[18] The Greyling-Coetzer order of 22 January 2025 came about because of an application by the RAF and Letsoalo, seeking 30 days' grace to comply with the Chesiwe order. The RAF's legal team either forgot, or did not appreciate, that this order was made by agreement and after the RAF and Letsolao sought a reprieve. In this case the heading of the order also refers to passport number EN195[...]. This is not a mistake or something that Greyling-Coetzer AJ sucked out of her thumb. Both the index and notice of motion prepared by Mpoyana Ledwaba Inc in Pretoria and their Bloemfontein correspondents, Thebe Attorneys Inc (the previous attorneys of the RAF), cited Kazibone Mlambo, passport number EN195[...] as the respondent. To make matters worse for the RAF, Letsoalo, in his founding affidavit, referred to Mlambo as follows:

'The Respondent is KAZIBONE MLAMBO, a major male Zimbabwean citizen c/o BL Kretzmann Inc., an established law firm practicing as such at 167 Constantia Street, Dagbreek, Welkom, Free State Province.'

[19] Letsoalo continued in the founding affidavit, admitting the order of 8 March 2023 and that the RAF had failed to pay. Then, for the first time, it was raised that Mlambo was an illegal immigrant. Reliance was placed on a matter subject to an appeal to the

Supreme Court of Appeal pertaining to the obligation of the RAF to compensate illegal immigrants involved in motor vehicle collisions in South Africa. It is unnecessary to deal with the aspect further, bearing in mind the Greyling-Coetzer order which was made by agreement. I merely need to say that Mrs Van Rensburg, who deposed to the replying affidavit on behalf of the RAF in the absence of Letsoalo, did so under the correct heading reflecting Mlambo's details. She recorded that the capital amount of the judgment debt, to wit R2 770 275.85, had in the meantime been paid by the Sheriff Pretoria East on behalf of the RAF.

[20] Although the Mbhele order of 8 March 2023 was not officially amended in accordance with rule 42 of the Uniform Rules of Court, it is apparent that both parties to the litigation accepted the *bona fide* order. The headings of the further applications and orders referred to above reflect Mlambo's passport number as EN195[...] and not the incorrect South African identity number. More importantly, Letsoale described Mlambo as a major Zimbabwean citizen in the application brought by him and the RAF as mentioned. This application culminated in the Greyling-Coetzer order. That application and Letsoalo's version under oath confirm that the parties were *ad idem* at the time that a *bona fide* mistake has been made in the headings of the various documents referred to herein. I was not asked to amend the Mbhele order, but it appears as if a formal amendment is not called for, considering the parties' agreement as to Mlambo's true status.

[21] The submissions of Letsoalo and the RAF's legal team are more preposterous than the false version of Mrs Van Rensburg. According to them, Mlambo 'conjured up and invented an Identity Number.' They stated that to amend the citation would amount to the introduction of a new party. Also, that the alleged material error could not be reduced to a typing error. They implied that fraud had been committed. I reject these baseless arguments.

[22] It is repeated that the RAF has now paid the capital of R2 770 275.85. It merely failed to pay the interest and costs of the case. The RAF does not claim the return of the

amount paid, which is indicative of its own belief that Mlambo has made out a proper case for the relief obtained on 8 March 2023. It is not a fraudulent claim as suggested by Mrs Van Rensburg and the RAF's legal team. The RAF is just kicking for touch to prevent payment of the interest and costs.

[23] The next question is whether Mlambo is entitled to the imprisonment of Letsoalo. I am not prepared to make such an order, bearing in mind the confusion created by Mlambo's legal team. Furthermore, Letsoalo has been suspended as CEO which makes it impossible for him to comply with any order to escape imprisonment.

[24] In the circumstances, I shall merely direct the RAF to pay the outstanding amounts within 60 days. Leave shall be granted to Mlambo to approach the court on the same papers, duly supplemented, for any further relief he may be advised to seek. Consequently, the counterapplication shall be dismissed with costs and an order granted in favour of Mlambo as indicated. In both instances, Mlambo's costs shall be party and party costs, inclusive of the costs of counsel as taxed on scale B. Mlambo asked for attorney and client costs, but in the exercise of my discretion, bearing in mind the confusion caused by Mlambo, I am not prepared to grant such an order.

Order

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

1 It is declared that the Road Accident Fund, cited as first respondent in this application, is in breach of paragraph 2 of the order dated 22 January 2025 under the above case number by having failed to effect payment of the taxed costs and interest on the capital sum in terms of the order of this court dated 8 March 2023.

2 The relief claimed in paragraphs 2 and 3 of the notice of motion is dismissed, but leave is granted to the applicant to approach the court on the same papers, duly supplemented, for any further relief he may be advised to seek.

3 The first respondent shall pay the costs of the application on a party and party scale, inclusive of counsel's costs on scale B.

4 The Road Accident Fund's counterapplication is dismissed with costs, inclusive of counsel's costs on scale B.

J P DAFFUE
JUDGE OF THE HIGH COURT

Appearances

For the applicant:	MC Louw
(Respondent in the counterapplication)	
Instructed by:	BL Kretzman Inc, c/o McIntyre & Van der Post, Bloemfontein.
For the respondents:	K Mvubu and N Zwane
(Applicants in the counterapplication)	
Instructed by:	Madiba and Co Attorneys, c/o Honey Attorneys, Bloemfontein.