REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE NO: 239/2024

(1) REPORTABLE: YES/**NO**

(2) OF INTEREST TO THE JUDGES: YES/**NO**

(3) REVISED.

DATE: 09 December 2025

SIGNATURE:

In the matter between:

MOPHUTING TLOPO ENIFA	**Applicant**
And	
ROAD ACCIDENT FUND	**Defendant**

CASE NO: 8552/2023

In the matter between:

MABASA TILAH	**Applicant**
And	
ROAD ACCIDENT FUND	**Defendant**

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses. The date for the hand-down is deemed to be **09 December 2025**.

JUDGMENT

Makoti AJ

Introduction

[1] These two consolidated matters concern special pleas which were raised by the Road Accident Fund (the Fund) as a defendant to the claims of the plaintiffs. The consolidation was intended to have both cases heard simultaneously and so that one judgment covering both of them be penned. I deemed it prudent to do in light of the similarities of the special pleas raised by the Fund in both cases.

[2] In both cases the defendant was served with summons detailing the plaintiffs' respective claims. Also, in both cases the plaintiff allege that they fell victims in road accidents in which the driving or operation of motor vehicles was involved. They allege that they sustained damages as a result of the motor vehicle accidents in which they were involved, accordingly, that the Fund should be ordered to compensate them.

[3] The plaintiff in the first case (Case No: 239/2024) is **Ntlopo Enifa Mophuting** (Mophuting) who is claiming damages for injuries that she allegedly sustained out a motor vehicle accident that took place on 14 May 2021. Regarding the second case (Case No: 8552/2023), the plaintiff is **Tilah Mabasa** (Mabasa) who alleges that she was involved in a motor vehicle accident on 17 February 2022. She too claims compensation for injuries that she allegedly suffered from the accident.

The claims against the Fund

[4] Mophuting is suing the fund for an amount of **R4 000 000-00** (Four Million Rand Only) in compensation for the injuries allegedly sustained in the said motor

vehicle accident. She stated in her summons that she was a passenger when the car that she was travelling in got involved in an accident. The driver of the motor vehicle lost control and the car overturned along 33 Vaalwater, Limpopo. She described the vehicle as a Mazda 3 with registration numbers **F[...]** and that it was at the time of the accident driven on the occasion by one T E Moeng.

[5] In her explanation of the accident, her averment was that it was caused by the negligent driving of the insured driver of the Mazda 3 car. She alleged that the insured driver drove the car at an excessive speed and that he failed to keep a proper lookout whilst driving. Mophuting also blamed the insured driver for failing properly control the motor vehicle and that because of that the accident happened.

[6] She detailed the injuries sustained as: soft tissue injuries to the head, soft tissue injuries to the neck and back, as well as various other soft tissue injuries. Further, that the injuries were medically treated by health care practitioners at the hospital where she was taken after the occurrence of the accident. As a result of the accident, she alleged that she suffered pain, emotional shock and trauma for which she needs to be compensated.

[7] Mabasa was a driver of a motor vehicle with registration numbers **F[...]** when it collided with another motor-vehicle, the identity of which she does not know. She alleged in her claim that the collision occurred at Thohoyandou Road at or near Nandoni dam. In her claim she alleges that the collision occurred as a result of the negligent driving of the insured driver who drove his vehicle recklessly; who failed to pay proper lookout for other road users, and who drove the vehicle at an excessive speed.

[8] As a result of the accident, she indicated as part of the claim that she sustained serious body injuries which included: blunt abdominal trauma; right tibia and fibula open fracture; cervical spine injury as well as other multiple injuries. In relation to her injuries she indicated that she was admitted at hospital where she was treated by the medical stuff. She claims against the Fund compensation in the amount of **R4 500 000-00** (Four Million, Five Hundred Thousand Rand Only).

[9] Upon filing their respective claims the two plaintiffs were served with letter from the Fund rejecting them. The reasons advanced for rejecting the claims was that the claims did not have full information to enable the Fund to assess them. As a result, the Fund did not register the claims and demanded from the two claimants to submit the outstanding information before the claims are accepted.

[10] The claimants issued summons upon receipt of the letters from the Fund rejecting their claims. This is the genesis of the point of law that I am called to adjudicate in both cases.

[11] The Fund contends that the claims ought not to proceed as both Mophuting and Mabasa have not provided it with the full information that it has asked them to submit. As expectedly, the claimants oppose the technical points raised by the Fund against their claims. I am not called to engage with the merits of the claims at this point and I deal only with the technical points raised by the Fund. If the points succeed, that will spell the end of the claims in their present forms. The converse is that the claims will proceed to be heard on the merits if the *in limine* points are not sustained.

The essence of the special defenses raised by the Fund against both claims

[12] Starting with the case of Mophuting, the Fund contends that her claim does not comply with the provisions section 24(1)(a) of the Road Accident Fund Act[1] (the Act). The letter from the Fund contains a list of documents that the plaintiff is required to have submitted with her claim. The claim form was completed, in respect of medical information, by a qualifying medical practitioner. The Fund appears not to be taking issue with this part of the form.

[13] The Fund raised a special plea against the Mophuting's claim, firstly alleging that the claim was lodged on 28 September 2023. Because of that, the Fund had filed its objection notice on 13 November 2023. This was incorrect as contemporaneous documents show that the claim was served through the sheriff on

[1] Act No. 56 of 1996.

26 June 2023 and by registered post on 31 July 2023. Sixty days had lapsed with no objection. Claim was accordingly deemed valid *ex lege*.

[14] The objection purported to be about the alleged non-compliance with section 24(1) of the Act. In exact terms the statutory provision of relied upon by the Fund read as follows:

> **“(1) A claim for compensation and accompanying medical report under section 17 (1) shall—**
>
> **(a) be set out in the prescribed form, <u>which shall be completed in all its particulars</u>;**
>
> **(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.”**

[15] I understand the Act to be requiring from claimants to fill the prescribed form, providing the information that is required in it which should include medical report. The part which contains the medical report is to be filled by a medical practitioner who treated the injured (or deceased) person, or another qualifying practitioner.[2] Section 24(1) of the Act does not contemplate the submission of a separate document but a medical report that is filled into the form itself.

[16] The Fund took a similar objection to the claim submitted on behalf of Mabasa. For the avoidance of prolixity, I do not wish to rehash the contents of the Fund’s letter to Mabasa. I note, however, that the information that was submitted to the Fund included hospital records, special power of attorney, claimant’s ID copy, accident report and plaintiff’s affidavit.[3] The Fund required from Mabasa to submit other documentation such as pay slips and tax records.

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[2] Section 24(2)(a) of the Act.
[3] Letter dated 05 April 2023.

[17] While I understand that such information would go a long way in assisting the Fund to investigate the claim and to confirm her employment or income status, I believe that the such information could simply have been called for upon acceptance of the claims.

[18] At subsection (4) the Act stipulates that any prescribed form must be fully completed and that a form *'… which is referred to in this section which is not completed in all its particulars shall not be acceptable as a claim under this Act*.' My view at this point is that the provision is still concerned with the completion of the prescribed forms, and that all questions should be fully answered with requisite details.

[19] The Fund tied its objections on the provisions of Board Notice 271 of 2022[4] and contends that the plaintiffs have not complied with its terms. That is a notice which enlists stipulates the standard documents or information that must be submitted together with the claim when it is lodged. In view of the fact that the Fund considered the information deficient, it refused to accept the claim. The form wants actual submission of the physical information such as, where applicable, tax certificates and pay slips etc.

[20] In *Pithey v Road Accident Fund*[5] the court noted a long list of authorities in which it was held that the requirement relating to the submission of the claim form is peremptory and that the prescribed requirements concerning the completeness of the form are directory, meaning that substantial compliance with such requirements suffices. My understanding of the authority is that no claim can lie without submission of the form, but that, in respect of completion of the form, substantial compliance in providing the information will be sufficient. That the test for substantial compliance is an objective test.

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[4] Government Gazette No. 46661 of 04 July 2022.
[5] 2014 (4) SA 112 (SCA).

[21] *In Ndlumbini Mlamli v Road Accident*[6] Fund the court concurred with an earlier obiter dictum from *Mautla and Others v Road Accident Fund*[7] which observed the following:

> **"The date of delivery of the claim is the essential first step for the enforcement of any rights in terms of the Act. This first step is crucial for claimants because it determines whether or not their claim in the first instance has been submitted timeously. <u>There is no provision in the Act which permits the RAF to refuse to accept the delivery of a claim or to refuse to acknowledge receipt of that claim</u>. Had the legislature contemplated such a situation, it would have provided for it specifically".** [Emphasis added]

[22] The above is congruent to the determinations in *Mphuti Lettie Limakatso obo Mojalefa Mphuti*,[8] which was relied upon by the Fund in *Mphuting* case, in which the court held that:

> **"It has been held in a long line of cases that the requirement relating to the submission of the claim form is peremptory and that the prescribed requirements concerning the completeness of the form are directory, meaning that substantial compliance with such requirements suffices. As to the latter requirement this Court in SA Eagle Insurance Co Ltd v Pretorius reiterated that the test for substantial compliance is an objective one."**

[23] Both claimants have complied with the peremptory aspect by submitting their claim forms, which is the first step towards compliance with the requirements of the legislation. What remains is whether the forms submitted substantially comply with the requirement to provide information to enable the Fund to perform its part. Having considered the claims in both matters, I am satisfied that the test for substantial

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[6] 955/2024 EC at paragraph 29.
[7] (29459/2021)[2023] ZAGPPHC 1843 at para 64.
[8] Unreported. Case No. 24261/2014.

compliance has been met. It is worse for the Fund in Mophuting case where its objection was filed out of time.

[24] In *Maarman and Others v Road Accident Fund*[9] it was held the Fund may :

> **"84. This Court finds 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."**

[25] What must be kept in mind is that the legislation is intended to compensate the qualifying victims of motor vehicle accidents. It is not intended to disentitle them, by being overly technical, from being fairly compensated for the damages sustained as a result of the motor vehicle accidents. Where there is substantial compliance, the Fund ought not reject valid claims only because the information that it has been provided with is insufficient. Moreover, the Act envisages the submission of a claim form that is fully completed with available information.

[26] On behalf of the Fund it was argued that submission of the documents is peremptory. I am not persuaded by this argument. A duly completed form is one which, on its face, has answers to the questions posed in it. The submission of additional documents is distinct from what a duly completed form is, in my view. More so if one has regard to the fact that the form has a portion for completion of a medical report on it. Thus, the Fund's ability to make a decision is not dependent on the submission of the actual medical documents from hospital.

[27] Much of the information is already there on the rejected forms, including medical reports which were provided on the forms and completed by qualifying

[9] Maarman and Others v Road Accident Fund (993/2023) [2025] ZAWCHC 106 (12 March 2025).

medical practitioners. To demand that the medical records, which must still be obtained from hospitals must be submitted simultaneously with the prescribed form may leave many claimants without recourse. That is not what the statute envisages.

[28] I make the statements in the preceding paragraphs emboldened by what was enunciated in *Road Accident Fund v Busuku*[10] (Busuku) in which the following was observed by the SCA:

> **"…the primary concern of the Act 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 of a motor vehicle. For this reason, the provisions of <u>the Act must be interpreted as extensively as possible in favour of third parties to afford them the widest possible protection</u>".**

[29] To agree with the Fund, and non-suit the claimants, this court would have failed to do what the SCA has advised in *Busuku*.

[30] It is the case of the Fund that the claims were instituted prematurely and that, for that reason, they should be dismissed. The substratum of the contention being that the plaintiffs should be instructed to withdraw their actions and relodge their duly completed claim forms with the Fund. Then, that should the Fund reject the claims on the merits, the plaintiffs can institute their respective actions against the Fund. The Fund bears the onus of proving that the claims were invalid to be rejected.[11]

[31] A decision to refuse a party to litigate or access the court for resolution of dispute should not be taken lightly. This is because of the guarantees provided in section 34 of the Constitution. The court should interfere with such rights sparingly. In *Chief Lesapo v North West Agricultural Bank [1999] ZACC 16; 2000 (1) SA 409; 1999 (12) BCLR 1420 (CC)*,[12] Mokgoro J stated:

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[10] Road Accident Fund v Busuku 2023 (4) SA 507 (SCA) at para 6.
[11] Scott v Road Accident Fund (13/33469) [2015] ZAGPJHC 120 (11 June 2015). At para 21, 29 and 30.
[12] Chief Lesapo v North West Agricultural Bank [1999] ZACC 16; 2000 (1) SA 409; 1999 (12) BCLR 1420 (CC).

"The right of access to court is indeed foundational to the stability of an orderly society. It ensures the peaceful, regulated and institutionalised mechanisms to resolve disputes, without resorting to self-help. The right of access to court is a bulwark against vigilantism, and the chaos and anarchy which it causes. Construed in this context of the rule of law and the principle against self-help in particular, access to court is indeed of cardinal importance. As a result, very powerful considerations would be required for its limitation to be reasonable and justifiable.

[32] The rights of the litigants to approach court should be counter balanced with the legislative benefits afforded the Fund when making its decision to accept or to reject a claim. The statutory benefits afforded the Fund by the provisions of the Act were explained a while ago in *Multilateral Motor Vehicle Accident Fund v Radebe*[13] the court noted the following:

"It is true that the object of the Act is to give the widest possible protection to third parties. On the other hand the benefit which the claim form is designed to give the fund must be borne in mind and given effect to. The information contained in the claim form allows for an assessment of its liability, including the possible early investigation of the case. In addition, it also promotes the saving of the costs of litigation … These various advantages are important and should not be whittled away. The resources, both in respect of money and manpower are obviously not unlimited. They are not to be expected to investigate claims which are inadequately advanced. There is no warrant for casting on them the additional burden of doing what the regulations require should be done by the claimant".

[33] That being said, I am still of the view that there was sufficient information that was provided to the Fund in both cases. Its objections fall to be rejected by this court.

[13] 1996 (2) SA 145 (A).

On the facts before me the special pleas raised by the Fund for non-compliance with section 24 of the Act cannot be sustained and should be dismissed.

Order

[34] I make the following order:

[a] The point *in limine* taken in Case No: 239/2024 is dismissed with costs.

[b] The point *in limine* raise in Case No: 8552/2023 is dismissed with costs.

[c] Costs awarded in terms of the order in [a] and [b] above are to be calculated on party and party scale A.

M. Z. MAKOTI
ACTING JUDGE OF THE HIGH COURT
LIMPOPO DIVISION

APPEARANCE:

FOR PLAINTIFF (239/2024):	ADV A TRUMPIE 804 TERBLANCHE ATTORNEYS C/O A J ALDERSON INC POLOKWANE
FOR PLAINTIFF (8552/2023) :	ADV O MALULEKE MASHAMBA INC ATTORNEYS POLOKWANE
FOR DEFENDANT (239/2024) :	MR K PHASWANA OFFICE OF THE STATE ATTORNEYS

	POLOKWANE
FOR DEFENDANT (8552/2023):	MR R MUDAU
	OFFICE OF THE STATE ATTORNEYS
	POLOKWANE
DATE HEARD:	02 JULY 2025
JUDGMENT DELIVERED:	09 DECEMBER 2025